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Isle of Man
Government

Reiltys Ellan Vannin

Standard Conditions of Contract for the Provision of Goods

Department of Infrastructure

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1. DEFINITIONS AND INTERPRETATION

In these Conditions:

1.1 The following expressions will have the following meanings:

Business Day - Any day other than a Saturday, Sunday or a public or bank holiday in England, Wales or the Isle of Man.

Conditions - The standard terms and conditions of purchase set out in this document together with any special terms that amend and/or extend these conditions which are specified in the Purchase Order.

Contract - The contract between the Parties for the supply and delivery of Goods which shall comprise the Purchase Order, the Specification and these Conditions but excluding (unless expressly referred to in the Purchase Order) all documents issued by the Supplier including, without limitation, any acknowledgement of order or terms and conditions of the Supplier. In the event of any conflict between the documents the following descending order of priority applies:

- a. The Purchase Order.
- b. The Specification.
- c. These Conditions.

Delivery Date - The date on which the Goods are required to be supplied and delivered as specified in the Purchase Order or as otherwise agreed in writing by the Parties.

Delivery Point - The place or places where delivery of the Goods is required to take place as specified in the Purchase Order or as otherwise agreed in writing by the Parties.

Department - The Department buying the Goods which is named in the Purchase Order; this being the Department of Infrastructure, (a department of the Isle of Man Government).

Force Majeure- Fire, flood, explosion, acts of God, war or national emergency, but excluding any such events insofar as they arise from or are attributable to the wilful act, omission or negligence of the Party relying on the event of Force Majeure or to the failure on the part of the Party relying on the event of Force Majeure to take reasonable precautions to prevent such event of Force Majeure or its impact.

Goods - The goods required to be supplied and delivered by the Supplier to the Department as specified in the Purchase Order and/or the Specification or as otherwise agreed in writing by the Parties, including any variations to such goods pursuant to Condition 5.

Parties -	The Department and the Supplier and "Party" means either the Department or the Supplier (as appropriate).
Price -	The price for the Goods set out in the Purchase Order, Framework Agreement or otherwise contained in the quotation, catalogue or price list of the Supplier referred to in the Purchase Order.
Purchasing Department -	The Department's Purchasing Section based at Ellerslie Depot, Crosby, Isle of Man, IM4 2HA.
Purchase Order-	An order for Goods issued by the Purchasing Department to the Supplier either in printed or electronic format, including any variation to such Purchase Order under Condition 5.1.
Specification -	The specification of the Goods referred to in the Purchase Order and/or the Specification, including but not limited to designs, drawings and samples) or as otherwise agreed in writing by the Parties.
Supplier -	The person, firm or company to whom the Purchasing Department issues the Purchase Order including, where applicable, its legal or personal representatives, successors in title and permitted assigns.
Supplier's Equipment -	The plant, equipment, vehicles, materials, tools, machinery, apparatus, and other articles of any kind brought onto the Delivery Point by or on behalf of the Supplier for use in the supply and delivery of, but not forming part of, the Goods.

1.2 Words denoting the singular shall include the plural and vice-versa, words denoting any gender shall include all genders.

1.3 References to any enactment, order, regulation or instrument shall be construed as a reference to the enactment, order regulation or instrument as amended, modified, or extended.

1.4 The headings are for reference purposes only and shall not be used to construe or interpret the meaning of the Conditions to which they relate.

2. FORMATION

2.1 The Parties agree that the Contract contains all of the terms in relation to the subject matter of the Contract and supersedes any previous agreements or understandings between them in relation to the subject matter of the Contract.

2.2 Neither Party has relied upon any oral or written representations made to it by the other Party.

2.3 Nothing in Conditions 2.1 or 2.2 will exclude any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

2.4 Subject to Condition 2.5, the Contract shall be formed when the Purchase Order is issued to the Supplier.

2.5 Where the Purchase Order is issued by means of an electronic communication the Supplier shall, within five (5) Business Days of the date of issue of the Purchase Order, either acknowledge receipt to the Department in a form which accepts the Purchase Order unconditionally or notify the Department that it does not accept the Purchase Order. If however the Supplier acknowledges receipt to the Department in a form which either does not accept the Purchase Order unconditionally then the Supplier will be deemed to have rejected the Purchase offer. If the Supplier does not acknowledge receipt and fails to notify the Department that it does not accept the Purchase Order within five (5) Business Days of the date of issue of the Purchase Order, the Supplier will be deemed to have accepted the Purchase Order unconditionally.

2.6 The Department will not be responsible for, nor be obliged to accept or to pay for, any Goods supplied and delivered by the Supplier otherwise than in response to and in accordance with the relevant Contract.

2.7 The supply and delivery of any Goods by the Supplier will be deemed conclusive evidence of the Supplier's acceptance of these Conditions.

2.8 These Conditions may only be varied or amended by agreement in writing of the Parties.

2.9 Unless otherwise agreed in writing by the Department, all enquiries and correspondence of the Supplier connected with the Contract should be sent to the Purchasing Department.

3. THE GOODS

3.1 The quantity and description of the Goods will be as set out in the Purchase Order and/or in the Specification.

3.2 The Supplier shall supply the Goods strictly in accordance with:

3.2.1 All applicable statutory regulations and requirements.

3.2.2 The Contract and particularly but without limitation the Specification and the delivery requirements set out in Condition 8.

4. PRICE AND PAYMENT

4.1 The Price shall:

4.1.1 Remain fixed for the duration of the Contract and may only be varied by agreement in writing of the Parties.

4.1.2 Be exclusive of VAT (and the Supplier shall show the same separately on its invoices).

4.1.3 Be inclusive of all costs and expenses of whatsoever nature incurred by the Supplier in relation to the supply and delivery of the Goods including, but not limited to packaging material, packing, shipping, carriage, loading/unloading, insurance and delivery of the Goods to and off-loading at the Delivery Point and any duties, imposts, levies or taxes (other than VAT).

4.2 The Supplier shall be entitled to issue invoices for Goods as soon as the Goods have been accepted in accordance with Condition 8.10. All invoices must be VAT invoices and must be submitted to the Purchasing Department quoting the Purchase Order number.

4.3 Payment shall be made to the Contractor within thirty (30) days of receipt of the Contractor's valid original invoice by the Department at its nominated address for invoices.

4.4 The Department may from time to time and at no additional cost to itself withhold or off-set sums due to the Supplier against sums due from the Supplier to the Department where it has reasonable grounds for so doing and any non-payment arising from any such withholding or off-set shall not be regarded as a breach by the Department of the Contract. However, unless otherwise agreed in writing by the Department, the Supplier shall not be entitled to make any withholding or off-set against the Department.

4.5 Subject to Condition 4.7, if the Department fails to pay any sum properly due to the Supplier on the due date for payment, then the Supplier may charge interest on such sum from the due date for payment until the date of payment in full, both before and after any judgement, at 3% per annum above the base rate from time to time of Isle of Man Bank plc.

4.6 Notwithstanding the terms of this Condition 4, the Department shall not be penalised in respect of a delay by the Department in fulfilling a payment obligation under a Contract where the Department has reasonable grounds for disputing the accuracy or validity of any charges set out in that invoice.

4.7 Unless it otherwise agrees in writing, the Department will make all payments to the Supplier by cheque and shall send each cheque by first class prepaid post to the mailing address for payment of the Supplier notified to the Department in accordance with the Contract provided that, in the event of any change to such mailing address, the Supplier shall mark its notice to the Department for the attention of the Department's payment section. The Department shall not be liable for any interest under Condition 4.5 where the Supplier receives payment after the due date because a cheque is either lost or delayed in the post or sent to an incorrect mailing address. The Supplier shall not call at the Department's premises to collect any payment.

4.8 If and where applicable, the Department shall be entitled to withhold payment of any invoice (or part thereof) in accordance with the provisions of Conditions 8.3, 8.5 and/or 8.12.

5 VARIATIONS

5.1 The Department may at any time, before delivery of the Goods, by notice in writing to the Supplier direct the Supplier to vary the Goods (or any part of them) and, provided that such variations are, in the opinion of the Department, reasonably practicable, the Supplier shall carry out such variations in accordance with these Conditions.

5.2 If such variations result in an increase in the cost of, or time required for, performance of the Contract, the Purchasing Department will determine, after consultation with the Supplier, an equitable adjustment to the Price, the time for completion of the delivery of the Goods, or both and will notify the Supplier accordingly.

5.3 The Supplier shall promptly notify the Purchasing Department if it is required to make any changes to the Goods for the purposes of complying with its obligation to supply and deliver Goods in accordance with all applicable statutory, regulations and requirements but the Supplier shall not vary the Goods unless so agreed in writing by the Department.

6. INTELLECTUAL PROPERTY

6.1 Unless otherwise agreed in writing by the Parties and subject to Condition 6.2, the Supplier shall retain ownership of all intellectual property rights of whatsoever nature developed or acquired by the Supplier at any time in the Goods.

6.2 The Department shall retain ownership of all intellectual property rights in any of its materials or documents which it provides to the Supplier for use in connection with the supply and delivery of the Goods.

6.3 The Supplier grants to the Department a non-exclusive, royalty-free, perpetual, world-wide licence (with the right to sub-license) to use any information and intellectual property rights (including, without limitation, patents, patent applications, copyrights and other similar rights, including applications) owned by the Supplier or over which the Supplier has rights at the commencement of the Contract or which may be developed by the Supplier in relation to the Goods, that the Department may require in order to use the Goods.

6.4 In supplying and delivering the Goods in accordance with the Contract, the Supplier shall not, without the Department's prior written consent, use any third party's intellectual property rights and, where the Department consents to such use:

6.4.1 The Supplier shall ensure that it has obtained all necessary third party consents and that all necessary licences or assignments of the third party intellectual property rights are in place to enable the Supplier and the Department to freely use such third party intellectual property rights as necessary in order to supply and use the Goods.

6.4.2 Such consent shall not relieve the Supplier of any obligation under the Contract or prejudice any of the Department's rights, powers or remedies.

6.5 The Supplier warrants, represents and undertakes to the Department that neither the Goods nor their supply or use infringes the British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any third party unless any infringement arises from any specification, drawing, sample or description provided by the Department.

6.6 The Supplier shall indemnify the Department and be responsible for the payment of any costs, claims, proceedings, expenses or demands arising from any infringement of third party intellectual property rights.

7. CONFIDENTIALITY

7.1 Except with the prior written consent of the other Party, and save as set out in Condition 7.2, neither Party shall at any time divulge to any person, any confidential or secret information of the other Party including, without limitation, the documents comprising the Contract or other information concerning the business or affairs of the other Party, their clients or customers.

7.2 The provisions of Condition 7.1 shall not apply to confidential or secret information to the extent that:

7.2.1 It is or becomes publicly available through no act or omission of either Party.

7.2.2 It is necessarily disclosed pursuant to a statutory or regulatory obligation.

7.2.3 It is reasonably and necessarily disclosed by the Department in the ordinary course of its business.

7.3 The Supplier shall not at any time publish or permit to be published either alone or in conjunction with any other person any information, article, photograph, illustration or any other material of whatever kind, relating to the Contract or the Department's business generally, without the prior written consent of the Department. Such consent shall only apply to each specific request for consent.

8. DELIVERY

8.1 The Supplier shall deliver to, off-load and place the Goods in such location at the Delivery Point as the Department may specify before or at the time of delivery.

8.2 If the Supplier fails to deliver any Goods to the correct Delivery Point (otherwise than by reason of fault on the part of the Department), the Supplier shall be solely responsible for the costs of re-delivering such Goods to the correct Delivery Point.

8.3 Unless otherwise agreed in writing between the Parties, the Goods will be delivered in accordance with Condition 8.1 on the Delivery Date and within the hours (if any) specified in the Purchase Order or, if no date or hours are specified, on a Business Day and during the Department's normal office hours. Time for delivery will be of the essence. No Goods supplied under the Contract earlier than the Delivery Date will be accepted or paid for by the Department unless the Department notifies the Supplier in writing of its intention to accept and pay for the same.

8.4 The Supplier shall ensure that:

8.4.1 The Goods are marked in accordance with the Department's instructions (if any) notified to the Supplier before their despatch and any applicable regulations or requirements of the carrier and are properly packed and stored so as to reach their destination in an undamaged condition.

8.4.2 Each delivery is accompanied by a prominently displayed un-priced delivery note which shows, amongst other matters, the Purchase Order number, the date of the Purchase Order, the number of packages and contents and, in the case of part delivery (with the prior agreement in writing of the Department), the outstanding balance remaining to be delivered.

8.4.3 Before delivery, the Department is provided in writing with a list by name and description of any harmful or potentially harmful properties of or ingredients in the Goods whether in use or otherwise, and thereafter information concerning any changes in such properties or ingredients, together with instructions for the safe use, handling and storage of Goods. The instructions shall include, but not be limited to the following:

8.4.3.1 Hazard data.

8.4.3.2 An assessment of the risks posed by the use, handling or storage of the Goods.

8.4.3.3 A description of the control measures to be implemented.

8.4.3.4 Details of any protective clothing that is required or recommended;

8.4.3.5 Details of all maximum exposure limits or occupational exposure standards applicable to any substance forming the whole or part of the Goods.

8.4.3.6 Recommendations for health surveillance.

8.4.3.7 Recommendations regarding the provision, maintenance, cleaning and testing of both respiratory protective equipment and local exhaust ventilation.

8.4.3.8 Recommendations for effectively and lawfully dealing with waste arising from the Goods, including but not limited to the means of disposal.

8.4.4 The Department is supplied, on or before delivery of the Goods, with all operating and safety instructions, that warning notices are clearly displayed and that it provides the Department with all such information necessary for the Department to accept delivery of the Goods and for their proper use, handling, storage, maintenance and repair.

8.5 Without prejudice to any of the Department's other rights, powers or remedies, if Goods are delivered to the Department in excess of the quantities ordered, the Department will not be bound to pay for the excess and such excess will be and remain at the Supplier's risk and be returnable at the Supplier's expense.

8.6 The Department reserves the right to mark the Goods (or any part of them) immediately on delivery. This is undertaken for the purposes of security and the Department will not be deemed to have accepted the Goods by reason of this nor will the Supplier be entitled to raise any objection on this ground to any subsequent rejection of the Goods.

8.7 The Department will have the right to:

8.7.1 Inspect and perform on the Goods (or any part of them including work-in-progress) at any time the specific tests (if any) set out in the Specification and such other tests as it considers reasonable to ascertain conformance of the Goods with the Contract.

8.7.2 Reject at any time any Goods which, in the reasonable opinion of the Department, do not conform with the Contract at the point of inspection and/or testing. The Supplier shall not unreasonably refuse any request by the Department to carry out such inspection and/or testing and will provide access to all facilities reasonably required.

8.8 Notwithstanding the provisions of Condition 8.7.2, if as a result of such inspection and/or testing the Department is not satisfied that the Goods will conform with the Contract

and the Department so informs the Supplier within ten (10) Business Days of the date of inspection or, if testing is performed, of the date on which the Department receives all of the results of such testing, the Supplier will take all necessary steps to ensure conformance. Without prejudice to any of the Department's other rights, powers or remedies, any failure of the obligation by the Supplier to take all necessary steps to ensure conformance will be deemed a material breach which is not capable of remedy, entitling the Department to terminate the Contract under Condition 16.2.

8.9 Any inspection, testing, checking, rejection or approval made, carried out or given by or on behalf of the Department shall not relieve the Supplier or its sub-contractors from any obligation under the Contract and shall not prejudice any of the Department's rights, powers or remedies.

8.10 The Department will be deemed to have accepted the Goods on the tenth (10th) Business day following delivery provided always that the Department has not:

8.10.1 Rejected the Goods in accordance with Condition 8.7.2; or

8.10.2 Required the Supplier to carry out work in relation to the Goods to ensure conformance in accordance with Condition 8.8.

8.11 Where the Department has required the Supplier to carry out work in relation to the Goods to ensure conformance in accordance with Condition 8.8, the Goods shall be deemed to have been delivered on the date that they are re-supplied to the Department (having been subject to such additional work as is necessary) and the provisions of Condition 8.10 shall apply with regard to acceptance of the Goods.

8.12 The signing of a delivery note by the Department shall be proof of receipt of the Goods only and shall not constitute either inspection or acceptance of the Goods and shall not prejudice the Department's right to reject Goods. The Department shall not be liable to pay for any Goods unless its duly authorised representative has signed the relevant delivery note.

8.13 Where the Supplier requests the Department to return packaging to the Supplier, the cost of returns will be met by the Supplier and shall be credited by the Supplier against invoices or otherwise reimbursed to the Department within twenty (20) Business Days of the date of their despatch by the Department.

9. RISK / OWNERSHIP

9.1 Risk in and ownership of the Goods shall remain with the Supplier and shall not pass to the Department until the Goods have been delivered to the Delivery Point in accordance with Condition 8.1, offloaded, placed in such location as specified by the Department and signed for by a duly authorised representative of the Department pursuant to Condition 8.12, whereupon ownership of and risk in the Goods shall be with the Department.

9.2 Where Goods are rejected in accordance with Condition 8.7.2, the ownership and risk in the Goods will pass to the Supplier immediately upon receipt by the Supplier of notice of rejection from the Department.

10. WARRANTY

Notwithstanding and in addition to the Department's rights under the Limitation Act 1984, the Supplier warrants, represents and undertakes to the Department that the Goods will on delivery and until the expiry of a period of either 18 months from the date of delivery or 12 months from the date of putting into use of such Goods (whichever is the earlier to expire):

10.1 Be of satisfactory quality within the meaning of the Supply of Goods and Services Act 1996 and fit for any purpose held out by the Supplier or made known to the Supplier in writing at or before the time of formation of the Contract.

10.2 Be free from defects in design, material and workmanship.

10.3 Correspond in every respect with the Specification or, in the absence of a Specification, be of the highest standard of industrial quality of goods of the same type as the Goods.

10.4 Comply with all applicable statutory requirements, regulations and voluntary codes of conduct relating to the Goods and their sale labelling, packaging, transportation and supply.

10.5 Be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

11. REPAIR REPLACEMENT AND REFUNDS

11.1 Without prejudice to any of the Department's other rights, powers or remedies (whether express or implied), if the Department either rejects any Goods in accordance with Condition 8.7.2 or otherwise notifies the Supplier of a breach of warranty under Condition 10.1 in respect of any Goods then the Supplier shall, at its own cost and as soon as reasonably practicable, but in any event within twenty (20) Business Days of the Department's rejection or notice (as the case may be), at the Department's option either:

11.1.1 Repair; or

11.1.2 Replace; or

11.1.3 Pay to or credit the Department with a refund of the price paid in respect of the Goods in question; or

11.1.4 Provide a combination of the remedies set out in Conditions 11.1.1 to 11.1.3 in respect of the Goods that are the subject of such rejection or notice always provided that:

(a) The Department shall not have altered, installed, used or stored such Goods contrary in all respects to any reasonable instructions provided by the Supplier to the Department pursuant to the Contract; and

(b) The rejection under Condition 8.7.3 or breach of warranty under Condition 10.1 is not wholly attributable to such alteration, installation, use or storage under Condition 11.1.4(a).

11.2 Repaired or replacement Goods shall themselves be subject to the provisions of these Conditions (to include (without limitation) Conditions 8, 10 and 11).

11.3 The Department may (but shall not be obliged to) give the Supplier a reasonable opportunity to repair or replace Goods pursuant to Condition 11.1. However, if the Department: (i) chooses not to give the Supplier the opportunity to repair or replace these Goods; or (ii) after notice from the Department requiring the Supplier to repair or replace Goods, the Supplier is unable or unwilling or fails to repair or provide replacement goods within such period as the Department shall reasonably determine is necessary, nothing shall prevent the Department from procuring the repairs or replacement goods from an alternative supplier and the Department shall be entitled to recover from the Supplier all additional cost, loss and expense reasonably incurred by the Department.

12. THE SUPPLIER'S EQUIPMENT

12.1 Except as otherwise agreed in writing by the Department:

12.1.1 The Supplier shall at its own risk and expense provide everything necessary for the supply, delivery and off-loading of the Goods, including the provision of the Supplier's Equipment.

12.1.2 All Supplier's Equipment shall remain the responsibility and at the risk of the Supplier who shall be liable for its delivery, unloading, loading, maintenance, care, safety and storage.

12.1.3 The Supplier shall remove all Supplier's Equipment from the Delivery Point at the end of each of its visits and immediately upon Termination of the Contract and leave the Delivery Point in an undamaged, clean, tidy and safe condition.

12.2 The Supplier shall, in supplying and delivering the Goods, ensure that there is no avoidable interference with the operations of the Department, contractors or with the use and enjoyment of any public rights or of any property (whether or not such property is owned by the Department) and shall use its best endeavours to minimise the nature and duration of any unavoidable interference.

13. LIABILITY

13.1 Subject to Conditions 13.2 and 13.3, the Supplier shall indemnify, keep indemnified and hold harmless the Department from and against all costs (including but not limited to the cost of enforcement and legal and other professional fees and expenses on a full indemnity basis), expenses, liabilities, injuries, direct, indirect or consequential loss (all 3 of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings, awards, orders or judgments which the Department incurs or suffers as a consequence of any direct or indirect breach or negligent performance by the Supplier or its employees, agents or sub-contractors or any failure or delay in performance by the Supplier or its employees, agents or sub-contractors of any of the provisions of the Contract.

13.2 The liability of the Supplier to the Department under or in connection with the Contract howsoever arising shall be limited in aggregate to and shall in no circumstances exceed:

13.2.1 £2,000,000 (two million pounds) for any single claim.

13.2.2 £2,000,000 (two million pounds) for claims in aggregate over the life of the Contract (whether such claims arise during the Contract or after the Contract has expired or otherwise terminated).

13.3 The Supplier shall not be liable for any loss, damage, liability, costs, claim or expense to the extent that the same is wholly attributable to:

13.3.1 Any error, fault or defect in any data or information provided or procured to be provided by the Department to the Supplier under and for the purposes of the Contract.

13.3.2 Any breach or negligent performance or delay in any of its obligations under the Contract by the Department or its employees, agents or sub-contractors (other than the Supplier) or any delay by the Department or its employees, agents or sub-contractors (other than the Supplier).

13.4 The Department shall not be liable to the Supplier for any loss of profits, direct, indirect or consequential, or any other indirect or consequential loss (both of which terms

include, without limitation, pure economic loss, loss of business, depletion of goodwill and like loss) howsoever arising out of or in connection with the Contract.

13.5 Nothing in the Contract excludes or limits the liability of a Party for death or personal injury caused by its own negligence, for fraudulent misrepresentation by it, for fraud or for any matter for which it would be illegal for that Party to exclude or to attempt to exclude its liability.

13.6 The Parties acknowledge that the above provisions of this Condition 13 are reasonable and are reflected in the Price.

14. INDUCEMENTS

If the Supplier shall offer, give or agree to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract or any other contract with the Department or if like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier) or if, in relation to the Contract, the Supplier or any person employed by it or acting on its behalf shall have committed any offence under the Corruption Act 1986 or shall have given any fee or reward contrary to law, the Supplier will be deemed to be in material breach of the Contract which is not capable of remedy and the Department will be entitled to terminate the Contract pursuant to Condition 16.2 and, without prejudice to any of its other rights, powers or remedies, may recover from the Supplier the amount of all loss resulting from such termination.

15. INSURANCE

15.1 Unless the Department otherwise agrees in writing, the Supplier shall effect and maintain at its own cost the insurances specified in Condition 15.1.1 with a limit of indemnity of not less than and an excess of not more than those referred to in Condition 15.1.1 and such other insurances as are from time to time required by law (the "Insurances"):

15.1.1	<u>Cover</u>	<u>Maximum Excess</u>	<u>Limit of Indemnity</u>
	Public & Products liability	£100,000	£2,000,000 for any one claim or series of claims arising out of any one occurrence and, in relation to public liability, unlimited in the aggregate

15.2 The Supplier shall effect and maintain the Insurances for such period as is necessary to ensure that insurance is provided for all of the Supplier's liabilities arising under or in connection with the Contract irrespective of when any claim in relation to any such liability is made.

15.3 The Supplier shall in relation to all of the Insurances provide to the Department on request:

15.3.1 Copies of all insurance policies (including all documents evidencing any amendments, extensions or variations to such Insurances).

15.3.2 Evidence that the premiums payable under all insurance policies have been paid and that the Insurances are in full force and effect.

15.4 If the Supplier is in breach of Condition 15.1 the Department may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances. In either case, the Department may recover such premiums from the Supplier, together with all expenses incurred in procuring such insurance, as a debt.

16. TERMINATION

16.1 The Department may (without prejudice to any other rights, powers or remedies it may have) terminate the Contract immediately by notice to the Supplier if the Supplier:

16.1.1 (being a company) summons a meeting of its creditors, or makes a proposal for a voluntary arrangement, or becomes subject to any voluntary arrangement, or is unable to pay its debts, or has a receiver, manager, administrator or administrative receiver appointed over any of its assets, undertaking or income, or has a petition presented or a resolution passed for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation without insolvency), or is subject to a petition presented to any Court for its administration, or has a provisional liquidator appointed, or is the subject of a notice to strike off the register at Companies Registry, or is subject to an administration order.

16.1.2 (being an individual, partnership or firm) has entered into any composition or arrangement with its creditors, or has a bankruptcy order made against it, or has been made subject to an application for an interim order, or has an interim receiver of its property appointed.

16.1.3 (being an individual or a member of a partnership) dies or, by reason of any illness (including mental disorder or infirmity), accident, injury or any other cause whatsoever, becomes unable, for a consecutive period of one (1) month or for an

aggregate period of two (2) months in any one (1) consecutive period of twelve (12) months, to comply with its obligations under the Contract.

16.1.4 Has any distraint, execution or other process levied or enforced on any of its property.

16.1.5 Ceases or threatens to cease to carry on a material part of its business.

16.2 Either the Party shall have the right to terminate the Contract immediately by notice to the other Party if the other is in material breach of the Contract and the other Party fails to remedy such breach within ten (10) Business Days of the date of service of a notice specifying the breach and requiring it to be remedied and referring to the provisions of this Condition 16.2 if it is not so remedied; or such breach is incapable of remedy. For the purposes of this Condition 16.2:

(a) A breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

(b) The expression "material breach" shall mean a breach of any of the provisions of the Contract which is material having regard to all relevant circumstances including, without limitation, the nature of the relationship between the parties and the need for each Party to maintain the confidence of the other and the nature of the breach (and, in particular but without limitation, whether it was intentional, negligent or otherwise).

16.3 The Department may terminate the Contract either totally or in part by giving one calendar months notice to the Supplier.

16.4 Termination of the Contract shall not prejudice any rights, powers or remedies of either Party which had arisen on or before the date of termination. Upon the termination of the Contract (howsoever it may be terminated including but not limited to expiry):

16.4.1 Each Party shall (if required by the other Party) promptly return to the other all data, materials and other property of the other held by it provided that, if the Department terminates because the Supplier is in default, the Department shall have the right to retain and use such data, materials and other property of the Supplier until such time as it has found a comparable alternative supplier from whom to procure the Goods (or any part of them).

16.4.2 The Supplier shall (if required by the Department) remove all Supplier's Equipment remaining at the Delivery Point in accordance with Condition 12.

16.5 For the avoidance of doubt, unless otherwise agreed in writing by the Parties:

16.5.1 The Department shall, in the event of termination by the Department under Condition 16.1 or 16.2, be entitled to recover from the Supplier all additional cost, loss and expense reasonably incurred by the Department in procuring the Goods (or any part of them) from an alternative supplier.

16.5.2 In the event of termination by either Party under Condition 16.1 or 16.2, the Supplier shall not be obliged to comply with the Purchase Order if the Delivery Date falls after the date of termination and the Department shall not be obliged to accept and to pay for any Goods that the Supplier delivers after the date of termination.

16.6 The Department shall not be obliged to pay any cancellation charge or other compensation to the Supplier by reason solely of termination of the Contract.

16.7 Without prejudice to any of the Department's other rights, powers or remedies (whether express or implied), if the Supplier breaches any provision of the Contract (including, without limitation, a failure or delay in delivery on the Delivery Date), or the Department terminates the Contract in accordance with Conditions 16.1 or 16.2, then the Department may by notice to the Supplier:

16.7.1 Cancel the whole or any part of the Purchase Order that remains to be fulfilled and refuse to accept any subsequent delivery of Goods which the Supplier attempts to make.

16.7.2 Recover from the Supplier all additional cost, loss and expense reasonably incurred by the Department which is properly attributable to the Supplier's breach of the Contract or arises from termination of the Contract including, without limitation, all additional costs incurred by the Department in obtaining the Goods (or any part of them) in substitution from an alternative supplier.

16.8 The Conditions that expressly or by implication have effect after termination including, without limitation, Conditions numbered 1 (Definitions and Interpretation), 2 (Formation), 3.2 (The Goods), 4.3, 4.4, 4.5 and 4.7 (Price and Payment), 6 (Intellectual Property), 7 (Confidentiality), 9 (Risk and Ownership), 10 (Warranty and Cancellation), 11 (Repair, Replacement and Refunds), 12.1 (The Supplier's Equipment), 13 (Liability), 15 (Insurance), 16.3 to 16.6 inclusive (Termination), 17 (Assignment and Sub-contracting), 19 (Notices), 20 (Dispute Resolution), 21 (Third Party Rights), will continue to be enforceable notwithstanding termination.

17. ASSIGNMENT AND SUB-CONTRACTING

17.1 The Contract is personal to the Supplier and shall not be assigned, novated or otherwise transferred by the Supplier or sub-contracted as a whole or in part without the

prior written consent of the Department, such consent not to be unreasonably withheld or delayed.

17.2 Notwithstanding any sub-contracting pursuant to Condition 17.1, the Supplier shall be and remain responsible for all of its duties and obligations under the Contract whether performed by itself or by its sub-contractors.

18. FORCE MAJEURE

18.1 Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract due to Force Majeure.

18.2 If a Party's performance of its obligations under the Contract is affected by Force Majeure, then:

18.2.1 It shall give written notice to the other Party, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to mitigate the severity of the Force Majeure.

18.2.2 Subject to the provisions of Condition 18.2.4, the date for performance of such obligation shall be deemed suspended but only for a period equal to the delay caused by such event.

18.2.3 Except as otherwise provided in the Contract, it shall not be entitled to payment from the other Party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

18.2.4 If the Force Majeure in question prevails for a continuous period in excess of three (3) months after the date on which the Force Majeure begins, the other Party is then entitled to give notice to the Party whose performance is affected by Force Majeure to terminate the Contract. This notice to terminate must specify the termination date, which must not be less than ten (10) Business Days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the Contract will terminate on the termination date set out in the notice.

19. NOTICES

19.1 Subject to the provisions of Condition 19.2, any notice to be served on a Party by the other Party shall be in writing sent to the address or facsimile (fax) number of the Department or the Supplier (as the case may be) set out in the Purchase Order or to such

other addresses or fax numbers of either Party as may be notified from time to time by one Party to the other in accordance with this Condition 19.

19.2 Each such notice under the Contract shall be sent by hand or by prepaid recorded delivery or registered post or fax (provided that where notice is sent by fax it shall only be valid if a hard copy is sent the same day by prepaid recorded delivery or registered post by way of confirmation) and shall be deemed to have been received by the addressee at the time of delivery by hand or within three (3) Business Days of posting or on the next Business Day if sent by fax to the correct fax number of the addressee.

20. DISPUTE RESOLUTION

20.1 Any dispute which may arise between the Parties in connection with or arising out of the Contract may, with the agreement in writing of both the Parties, be referred by either Party to arbitration.

20.2 The arbitrator shall be a single arbitrator to be agreed upon by the parties or, failing such agreement within ten (10) Business Days of the date on which agreement is reached by the parties to resolve a dispute by arbitration, to be nominated by the President of the Isle of Man Law Society in accordance with the Arbitration Act 1976. The decision of the arbitrator shall be final and binding and the cost of the arbitration shall be borne equally by the Parties or as the arbitrator in his sole discretion otherwise directs.

21. THIRD PARTY RIGHTS

Except as otherwise provided in the Contract this Contract is intended to be solely for the benefit of the Supplier and the Department and no third party shall acquire any benefit, claim or rights under a Contract.

22. LAW

All Contracts shall be governed by and construed in accordance with the laws of the Isle of Man, the courts of the Isle of Man will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties irrevocably submit to that jurisdiction.

23. IMPORTATION

The Supplier shall be responsible for complying with all regulations, requirements and procedures and bear all costs involved in the importation of the Goods.

24. SAFETY

The Supplier shall:

24.1 Warrant that the Goods are in strict compliance with all applicable laws, regulations and requirements relating to safety.

24.2 Take all reasonable precautions and safety measures necessary to protect their own and the Department's employees and any other persons who are at any time directly or indirectly affected by the Supplier's operations.

24.3 Inform the Department of the hazards and handling requirements in the use of the goods supplied.

25 GENERAL

25.1 The failure or delay by either Party to exercise any right, remedy or power shall not in any circumstances impair such right, remedy or power nor operate as a waiver of it.

25.2 The Contract shall constitute neither an agency nor a partnership between the parties. In carrying out their respective duties neither Party shall say or do anything that might lead any third party to believe that the Department or the Supplier (as the case may be) is acting as agent or partner to the other Party.

25.3 If any provision of the Contract is declared by a judicial or other competent authority to be wholly or partly void, voidable, illegal or otherwise unenforceable it will be severed from the Contract and will not affect any other provisions of the Contract which will remain in full force and effect. The parties will in good faith endeavour to agree to amend the Contract to reflect as nearly as possible the spirit and intention behind that void, voidable, illegal or otherwise unenforceable provision but so that the amended provision complies with the law of the Isle of Man.

25.4 All rights, powers and remedies granted to either of the parties shall be cumulative and no single or partial exercise by either of the parties of any right, power or remedy shall restrict or prejudice any other or further exercise of it or the exercise of any other right, power or remedy available to it.



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Isle of Man
Government

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