****

**Dated 20**

------------

**Call Off Terms (Lot 2)**

Between

**THE ROYAL BOROUGH OF KINGSTON UPON THAMES**

And

**[NAME OF PRINTER]**

Pursuant To The Framework Agreement For Print and Design Services

(Print Services)

© The Royal Borough of Kingston Upon Thames

Guildhall

High Street,

Kingston Upon Thames

KT1 1EU

**Contents**

**Clause**

1. Definitions And Interpretation 3

2. Supply Of Products 6

3. Delivery Of Products 6

4. Authority Remedies 8

5. Charges And Payment 9

6. Intellectual Property Rights 10

7. Indemnity 11

8. Insurance 11

9. Confidentiality And Freedom of Information 12

10. Termination 14

11. Consequences Of Termination 16

12. Force Majeure 16

13. Variation 17

14. Waiver 17

15. Rights And Remedies 17

16. Severance 17

17. Entire Agreement 18

18. Prevention Of Bribery 18

19. Assignment And Other Dealings 20

20. No Partnership Or Agency 20

21. Third Party Rights 20

22. Notices 20

23. Dispute Resolution Procedure 21

24. Governing Law 22

25. Jurisdiction 22

**CONDITIONS OF CONTRACT**

**THIS AGREEMENT** is dated **20[ ]**

**Parties**

1. **THE ROYAL BOROUGH OF KINGSTON UPON THAMES** whose principal address is The Guildhall, High Street, Kingston Upon Thames, Surrey, KT1 1EU (**Authority**).
2. [**INSERT FULL COMPANY NAME**] incorporated and registered in England and Wales with company number [*insert company number*.] **OR** [a charity registered in England and Wales with charity number (*insert charity number*.) and company number [*insert company number*.]] whose [registered office **OR** principal address] is at [*insert address*] (**Printer**).

**Background**

1. The Authority placed a contract notice with reference number [2021/S 000-026235](https://www.find-tender.service.gov.uk/Notice/026235-2021) on 20 October 2021 on the Find A Tender Service (FTS) seeking tenders from potential service providers for the provision of print and design services (divided into Lots) to the Authority under a framework agreement.

1. On the basis of the Printer’s tender, the Authority selected the Printer to enter a framework agreement to provide print services to the Authority on a call-off basis in accordance with the framework agreement.

1. The Authority undertook a mini-competition under the terms of the framework agreement and has selected the Printer to provide the Services and the Printer is willing and able to provide the Services in accordance with the terms and conditions of the Contract.

# Definitions And Interpretation

## In these Conditions, the following definitions apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Commencement Date:** as set out in the Order Form.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 14 (Variation).

**Contract**: the written agreement between the Authority and the Printer consisting of the Order Form, the Conditions and the framework agreement.

**Deliverables:** all Documents, products and materials developed by the Printer or its agents, subcontractors, consultants and employees in relation to the Products in any form.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**FOIA:** the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure Event:** any cause affecting the performance by a party of its obligations under the Contract arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Printer’s, the Printer's personnel or any other failure in the Printer's supply chain.

**Products:** the printed materials (or any part of them) set out in the Order Form.

**Products Specification:** any specification for the Products, including any related artwork, designs and drawings, the description or specification as more particularly described in the Order Form.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Authority's order for the supply of Products as set out in the Order Form.

**Order Form:** the document (in the format of Schedule 4 to the framework agreement) completed by the Authority and agreed with the Printer which sets out the description of the Services to be supplied by the Printer, relevant dates, pricing, payment information and other matters relevant to the Contract.

**Request for Information:** a request for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs.

## Clause, Schedule and paragraph headings shall not affect the interpretation of the Contract.

## A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

## The Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the Schedules.

## Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

## Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.

## A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

## A reference to **writing** or **written** includes fax and e-mail.

## Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

## References to clauses and Schedules are to the clauses and Schedules of the Contract and references to paragraphs are to paragraphs of the relevant Schedule.

## Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## If there is an inconsistency between any of the provisions in the main body of the Contract and the Schedules, the provisions in the main body of the Contract shall prevail.

# Supply Of Products

## The Printer shall ensure and undertakes that the Products shall:

### correspond with their description and any applicable Products Specification;

### be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Printer or made known to the Printer by the Authority, expressly or by implication, and in this respect the Authority relies on the Printer's skill and judgment;

### where applicable, be free from defects in design, materials and workmanship and remain so for [twelve (12)] months after delivery; and

### comply with all applicable statutory and regulatory requirements relating to the, labelling, packaging, storage, handling and delivery of the Products.

## The Printer shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Products.

## The Authority shall have the right to inspect and the Products at any time before delivery.

## If following such inspection the Authority considers that the Products do not conform or are unlikely to comply with the Printer's undertakings at clause 2.1, the Authority shall inform the Printer and the Printer shall immediately take such remedial action as is necessary to ensure compliance.

## Notwithstanding any such inspection, the Printer shall remain fully responsible for the Products and any such inspection or testing shall not reduce or otherwise affect the Printer's obligations under the Contract, and the Authority shall have the right to conduct further inspections and tests after the Printer has carried out its remedial actions.

# Delivery Of Products

## The Printer shall ensure that:

### the Products are properly packed and secured in such manner as to enable them to reach their destination in good condition and without interference or tampering;

### each delivery of the Products is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Products (including the code number of the Products (where applicable)), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered; and

### if the Printer requires the Authority to return any packaging material for the Products to the Printer, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Printer at the cost of the Printer.

## The Printer shall deliver the Products:

### on the date specified in the Order Form;

### to the Authority's premises set out in the Order Form or as instructed by the Authority before delivery (**Delivery Location**);

### during the Authority's normal hours of business on a Business Day, or as instructed by the Authority.

## The Products shall be received at the Delivery Location, subject to the Authority's inspection and approval and delivery shall be deemed to be complete upon signature of the delivery note (accompanying the Products) signed by the Authority’s representative.

## If the Printer:

### delivers less than [95] per cent of the quantity of Products ordered, the Authority may reject the Products; or

### delivers more than [105] per cent of the quantity of Products ordered, the Authority may at its sole discretion reject the Products or the excess Products,

and any rejected Products shall be returnable at the Printer's risk and expense. If the Printer delivers more or less than the quantity of Products ordered, and the Authority accepts the delivery, a pro rata adjustment shall be made to the invoice for the Products.

## The Printer shall not deliver the Products in instalments without the Authority's prior written consent. Where it is agreed that the Products are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Printer to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Authority to the remedies set out in clause 4.1.

## Notwithstanding the provisions of clause 3.2, the Authority may elect to collect the Products from the Printer or appoint a third party to collect them from the Printer on the date specified in the Order form.

## The Products shall be at the risk of the Printer until delivery or collection (as the case may be).

## Ownership of the Products shall pass to the Authority on completion of delivery (including off-loading) in accordance with the Contract except that if the Products are paid for before delivery, ownership shall pass to the Authority once payment has been made. The passing of ownership in the Products is without prejudice to any right of rejection to which the Authority may be entitled under the Contract or otherwise.

# Authority Remedies

## If the Printer fails to deliver the Products by the applicable date, the Authority shall, without limiting its other rights or remedies, have one or more of the following rights:

### to terminate the Contract with immediate effect by giving written notice to the Printer;

### to refuse to accept any subsequent delivery of the Products which the Printer attempts to make;

### to recover from the Printer any costs incurred by the Authority in obtaining substitute Products from a third party;

### where the Authority has paid in advance for Products which have not been delivered by the Printer, to have such sums refunded by the Printer; and

### to claim damages for any additional costs, loss or expenses incurred by the Authority which are in any way attributable to the Printer's failure to meet such dates.

## If the Products are not delivered by the applicable date, the Authority may, at its option, claim or deduct [*insert percentage*] per cent of the price of the Products for each day's delay in delivery by way of liquidated damages, up to a maximum of [*insert percentage*] per cent of the total price of the Products. If the Authority exercises its rights under this clause 4.2 it shall not be entitled to any of the remedies set out in clause 4.1 in respect of the Products' late delivery.

## If the Printer has delivered Products that do not comply with the undertakings set out in clause 2.1, then, without limiting its other rights or remedies, the Authority shall have one or more of the following rights, whether or not it has accepted the Products:

### to reject the Products (in whole or in part) whether or not title has passed and to return them to the Printer at the Printer's own risk and expense;

### to terminate the Contract with immediate effect by giving written notice to the Printer;

### to require the Printer to repair or replace the rejected Products, or to provide a full refund of the price of the rejected Products (if paid);

### to refuse to accept any subsequent delivery of the Products which the Printer attempts to make;

### to recover from the Printer any expenditure incurred by the Authority in obtaining substitute Products from a third party; and

### to claim damages for any additional costs, loss or expenses incurred by the Authority arising from the Printer's failure to supply Products in accordance with clause 2.1.

## This clause 4 shall extend to any repaired or replacement Products supplied by the Printer.

## The Authority's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

# Charges And Payment

## The price for the Products:

### shall be the price set out in the Printer’s tender attached as Appendix 2 to the Order Form; and

### shall be inclusive of the costs of packaging, insurance and carriage of the Products, unless otherwise agreed in writing by the Authority. No extra charges shall be effective unless agreed in writing and signed by the Authority.

## The Printer shall invoice the Authority on or at any time after completion of delivery or at the time set out in the Order Form. The invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice including but not limited to the relevant purchase order number.

## In consideration of the supply of the Products by the Printer, the Authority shall pay the invoiced amounts within the time limits set out in the Order Form (provided that the invoice is rendered correctly) to a bank account nominated by the Printer in writing.

## All amounts payable by the Authority under the Contract are exclusive of amounts in respect of valued added tax (**VAT**) chargeable from time to time. Where any taxable supply for VAT purposes is made under the Contract by the Printer to the Authority, the Authority shall, on receipt of a valid VAT invoice from the Printer, pay to the Printer such additional amounts in respect of VAT as are chargeable on the supply of the Products at the same time as payment is due for the supply of the Products.

## If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of [2]% per annum above [*insert name of bank*] 's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

## The Authority may at any time, without limiting any of its other rights or remedies, set off any liability of the Printer to the Authority against any liability of the Authority to the Printer, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

# Intellectual Property Rights

## In respect of the Products [including without limitation the Deliverables or any part of them,] the Printer warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the Authority, it will have full and unrestricted rights to sell and transfer all such items to the Authority.

## The Printer assigns to the Authority, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables.

## The Printer shall, promptly at the Authority's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Authority may from time to time require for the purpose of securing for the Authority the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Authority in accordance with clause 6.2.

## All Authority Materials are the exclusive property of the Authority.

# Indemnity

## The Printer shall keep the Authority indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered incurred by the Authority as a result of or in connection with:

### any claim made against the Authority for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Products to the extent that the claim is attributable to the acts or omissions of the Printer, its employees, agents or subcontractors;

### any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Products, to the extent that the defects in the Products are attributable to the acts or omissions of the Printer, its employees, agents or subcontractors; and

### any claim made against the Authority by a third party arising out of or in connection with the supply of the Products to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Printer, its employees, agents or subcontractors.

## This clause 7 shall survive termination of the Contract.

# Insurance

8.1 The Printer shall be liable for any and all losses, liabilities or costs (including reasonable legal costs) incurred by the Authority in connection with the Printer’s performance of the Contract and shall maintain in force during the period of the Contract and for six (6) years thereafter as a minimum the following insurance cover with reputable insurers acceptable to the Authority in the amounts set out below or in the Order Form:

8.1.1 Employer’s Liability Insurance of not less than £5,000,000 for each and every claim, act or occurrence or series of claims, acts or occurrences; and

8.1.2 Public Liability Insurance of not less than £5,000,000 for each and every claim, act or occurrence or series of claims, acts or occurrences.

8.2 The Printer shall give the Authority, on request, copies of all insurance policies referred to in this clause 8 or a broker's verification of insurance to demonstrate that the appropriate cover as required by this clause 8 is in place, together with receipts or other evidence of payment of the latest premiums due in respect of such insurances.

# Confidentiality And Freedom of Information

## A party (‘R**eceiving Party’**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**‘Disclosing Party’**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain. The Receiving Party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause 10 as though they were a party to the Contract. The Receiving Party may also disclose such of the Disclosing Party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

## The Printer acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs and the Printer shall assist and co-operate with the Authority (at the Printer’s expense) to enable the Authority to comply with these information disclosure requirements.

## The Printer shall and shall procure that its staff including its subcontractors:

### transfer any Request For Information received by the Printer and/or any Printer personnel to the Authority as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request For Information;

### provide the Authority with a copy of all information in the Printer’s possession or power in the form that the Authority requires within five (5) Business Days (or such other period as the Authority may specify) of the Authority requesting that information; and

### provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request For Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.

## The Authority shall be responsible for determining at its absolute discretion whether the information:

### is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;

### is to be disclosed in response to a Request For Information, and in no event shall the Printer respond directly to a Request For Information unless expressly authorised to do so by the Authority.

## In no event shall the Printer respond directly to a Request For Information unless expressly authorised to do so by the Authority.

## The Printer acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:

###  without consulting with the Printer; or

### following consultation with the Printer and having taken its views into account,

provided always that where clause 9.6 (b) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Printer advanced notice, or failing that, to draw the disclosure to the Printer’s attention as soon as practicable after any such disclosure.

## The Printer shall ensure that all information produced in the course of performing its obligations under this Call-Off Contract or relating to this Call-Off Contract is retained for disclosure for six (6) years after expiry or earlier termination and shall permit the Authority to inspect such records as requested from time to time.

## This clause 9 shall survive termination of the Call-Off Contract.

# Termination

## Without limiting its other rights or remedies, the Authority may terminate the Contract in whole or in part at any time before delivery of the Products with immediate effect by giving written notice to the Printer, whereupon the Printer shall discontinue all work on the Contract. The Authority shall pay the Printer fair and reasonable compensation for any work in progress on the Products at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

## Without limiting its other rights or remedies, the Authority may terminate the Contract with immediate effect by giving written notice to the Printer if:

### the Printer commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within [*insert number of days*] days of receipt of notice in writing to do so;

### the Printer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

### the Printer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];

### the Printer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Printer with one or more other companies or the solvent reconstruction of the Printer];

### [a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Printer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Printer with one or more other companies or the solvent reconstruction of the Printer];

### [an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Printer (being a company)];

### [the holder of a qualifying floating charge over the assets of the Printer (being a company) has become entitled to appoint or has appointed an administrative receiver];

### a person becomes entitled to appoint a receiver over the assets of the Printer or a receiver is appointed over the assets of the Printer;

### [the Printer (being an individual) is the subject of a bankruptcy petition or order;]

### a creditor or encumbrancer of the Printer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Printer's assets and such attachment or process is not discharged within [14] days;

### any event occurs, or proceeding is taken, with respect to the Printer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.3 (c) to clause 10.2(j) (inclusive);

### the Printer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; [or]

### [the Printer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation] [; or]]

### [there is a change of control of the Printer [ (within the meaning of section 1124 of the Corporation Tax Act 2010)].]

## Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

## Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

# Consequences Of Termination

On termination of the Contract for any reason, the Printer shall immediately deliver to the Authority all Deliverables whether or not then complete, and return all Authority Materials. If the Printer fails to do so, then the Authority may enter the Printer's premises and take possession of them. Until they have been returned or delivered, the Printer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

# Force Majeure

## Provided it has complied with clause 12.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

## The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

## The Affected Party shall:

### as soon as reasonably practicable after the start of the Force Majeure Event but no later than [*insert number*] days from its start, notify the other party [in writing] of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Call-Off Contract; and

### use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than [*insert number*] [weeks **OR** months], the party not affected by the Force Majeure Event may terminate the Contract by giving [*insert number*] [days **OR** weeks'] written notice to the Affected Party.

## If the Force Majeure Event prevails for a continuous period of more than [*insert number*] months, either party may terminate the Contract by giving [*insert number*] days' written notice to all the other party. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of the Contract occurring prior to such termination.

# Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

# Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

# Rights And Remedies

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

# Severance

## If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, subject to clause 16.2, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

# Entire Agreement

## The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

## Nothing in this clause 17 shall limit or exclude any liability for fraud.

# Prevention Of Bribery

## The Printer represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or sub-contractors, have at any time prior to the Commencement Date:

### committed a Prohibited Act or been formally notified that they are subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Printer shall not during the term of the Contract:

### commit a Prohibited Act; and/or

### do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the provisions of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.

## The Printer shall during the term of the Contract:

### establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and

### keep appropriate records of its compliance with its obligations under clause 18.3(a) and make such records available to the Authority on request.

## The Printer shall immediately notify the Authority in writing if it becomes aware of any breach of clause 18.1 and/or clause 18.2, or has reason to believe that it has or any of the Printer's personnel (including its advisors, agents and sub-contractors) have:

### been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person or party directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

## If the Printer makes a notification to the Authority pursuant to clause 18.4, the Printer shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

## If the Printer is in default under clause 18.1 and/or clause 18.2, the Authority may by notice:

### require the Printer to remove from performance of the Contract any Printer's personnel whose acts or omissions have caused the default; or

### immediately terminate the Contract.

## Any notice served by the Authority under clause 18.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which the Contract shall terminate).

# Assignment And Other Dealings

## The Contract is personal to the Printer and the Printer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Authority.

## The Authority may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under the Contract.

# No Partnership Or Agency

## Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, or authorise one party to make or enter into any commitments for or on behalf of the other party.

## Each party confirms it is acting on its own behalf and not for the benefit of any other person.

# Third Party Rights

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and no one other than a party to the Contract shall have any right to enforce any of its terms.

# Notices

## Any notice or other communication required to be given under the Contract, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice or communication at its address as set out in the Order Form or as otherwise specified by a party by notice in writing to the other party.

## Any notice or other communication provided that it is clearly marked for the attention of the Authority’s contact person or the Printer’s contact person referred to in clause 22.1 (as the case may be) shall be deemed to have been duly received:

(a) if delivered personally, when left at the address referred to in clause 22.1; or

(b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

(c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or

(b) if sent by email, at 9.00 am on the second Business Day after transmission provided that an out of office message is not received in which case the date of receipt will be the day after the recipient’s return to the office as stated in the out of office message.

## A notice required to be given under the Contract shall be validly given if sent by e-mail.

## The provisions of this clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

# Dispute Resolution Procedure

## If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

### either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Corporate Communication and Engagement Manager (Campaigns) of the Authority and [*insert employee title*] of the Printer shall attempt in good faith to resolve the Dispute;

### if the Corporate Communication and Engagement Manager (Campaigns) of the Authority and [*insert employee title*] of the Printer are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the Communications Manager of the Authority and [*insert senior officer title*] of the Printer who shall attempt in good faith to resolve it; and

### if the Communications Manager of the Authority and [*insert senior officer title*] of the Printer are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [*insert number*] days after the date of the ADR notice.

## If the Dispute is not resolved within [*insert number*] days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of [*insert number*] days, or the mediation terminates before the expiration of the said period of [*insert number*] days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 23 (Governing Law) and clause 25 (Jurisdiction).

# Governing Law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

# Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed by the parties and takes effect on the date stated at the beginning of it.

| EXECUTED  |   |
| --- | --- |
| by **THE ROYAL BOROUGH OF KINGSTON** acting by and under the signature of |  |
|  |  |
| Name: | ................................. |
|   | Signature  |
| Position: |  |
| EXECUTED  |   |
| by **[INSERT NAME OF PRINTER]** |   |
| acting by and under the signature of: |   |
| Name: | ................................. |
|   | Signature  |
| Position: |  |