



**THE CITY OF LONDON
STANDARD CONDITIONS
FOR THE PURCHASE OF
GOODS, SERVICES AND WORKS**

NOTE: The Conditions applicable to an Order will vary depending upon whether it is a Commission for goods, services or works. Check the specific terms of your Order to identify which of the Conditions apply.

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MODULE A: GENERAL CONDITIONS

1. Definitions and Interpretation

1.1. In these Conditions, unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- **City** means the Mayor and Commonalty and Citizens of the City of London of PO Box 270, Guildhall, London EC2P 2EJ;
- **City's Policies** means the policies of the City identified in the Order (if any);
- **Commission** means all the works, services, materials and/or Goods set out, described in, referred to, or implied by the Specification and Contract Drawings (if any), together with any Variation to the Commission;
- **Confidential Information** means all information obtained under the Order or relating to the Commission;
- **Contract Drawings** means any drawings, plans or diagrams referred to in the Order illustrating the Commission;
- **Contractor** means the firm, company, or individual being the counterparty to the City named in the Order;
- **Contractor's Representative** means a competent site agent, or foreman, or representative engaged by the Contractor, who will be authorised to receive instructions on behalf of the Contractor;
- **Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under the Order, and/or actual or potential loss and/or destruction of Personal Data in breach of the Order, including any Personal Data Breach;
- **Data Processing Authorisation** means a written authorisation to process the City's Personal Data issued by the Controller;
- **Data Protection Legislation** means:
 - prior to 25 May 2018, the Data Protection Act 1998,
 - from 25 May 2018, Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulations (**GDPR**)), the Data Protection Act 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy, and

all applicable law relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

- **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
- **Deliverable** means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other material produced, or acquired, and provided by the Contractor during the performance of the Commission, but excluding the Goods;
- **Deprived Area** means any borough, district or other local government area (defined as such in the law of any member state of the European Union) defined as "most deprived" in the English Indices of Deprivation 2015, as published from time to time, by the Department of Communities and Local Government (DCLG), or in any similar or equivalent index or table as maybe published from time to time, by any central or local government or public body in any member state of the European Union;
- **Excepted Risks** means damage, loss or injury caused by the effects of ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive, toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure wave caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- **Goods**, where Module C (*Conditions Applicable to Supply of Goods*) applies, means the material, articles, items or things or any part of any of them described in the Order and, where appropriate, such packaging as may be necessary for the immediate safe and secure containment or handling of the Goods, but excluding additional cartons, cases and other similar containers used for convenience of distribution;
- **Insured Risks** means loss and damage by fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion, excluding the Excepted Risks;
- **Limitation Period** unless stated otherwise in the Order means the period of 6 years commencing from either the date of completion of the whole of the Commission, or (if earlier) the date upon which the Contractor's engagement under the Order is terminated;
- **Materials** means all background and third-party information and materials including, database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor, if any) in any way used by the Contractor in preparation of the Goods or the Deliverables;
- **Offsite Materials**, where Module D (*Conditions Applicable to Construction Operations*) applies, means any goods and materials intended for incorporation into the Commission which are not stored at the Site;
- **Order** means the order form, deed, or other form of written agreement issued by the City instructing the Contractor to perform the Commission (into which any part of

- these Conditions is expressly incorporated by reference), together with the Specification, Contract Drawings (if any) and any further documents referenced in or attached to the Order;
- **Payment Notice** means the written notice issued by the City in accordance with **Condition 26.2**;
 - **Payment Period** means (unless otherwise specified in the Order) 30 calendar days from the City's receipt of an invoice complying with **Condition 3** and (where applicable) **Condition 26.5**;
 - **Price** means the sum indicated in the Order to be paid by the City in consideration of the Contractor carrying out and completing the Commission to the City's satisfaction;
 - **Protective Measures** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
 - **Retention** means the percentage identified in the Order of the total of the prices for the elements of work separately identified and properly executed and completed in accordance with the Order, which the City is entitled to retain from interim payment under **Condition 26.2**;
 - **Section**, where Module E (*Conditions Applicable to Works*) applies, means each portion of the Commission (if any) identified as such in the Specification to which a separate Date of Possession and Completion Date may be allocated in the Order;
 - **Site** means the location in which the Commission is to be constructed, delivered or performed (as the case may be) as identified in the Order;
 - **Specification** means the description, standards, methods and techniques to be used in executing the Commission as specified in any specification, scope or work schedule, or other document forming part of the Order;
 - **Sub-processor** means any third-party appointed to process Personal Data on behalf of the Contractor related to the Order;
 - **Supervising Officer** means the person named in the Order or any person designated or nominated by the City in writing as its representative, in relation to instructions to, and receipt of information, documents, etc. from the Contractor under the Order;
 - **Variation** means an alteration or modification in the design quality or quantity of the Commission or work, services or goods set out, described in, referred to, or implied by the Specification and Contract Drawings and includes any addition to or omission or substitution of:
 - any work, services or goods, or

- any obligation or restriction specified in the Order in relation to access to or egress from the Site, the use of any part of the Site or the sequence, times and period for the execution of the whole or any part of the Commission; and
- **Working Day** means Monday to Friday inclusive, excluding Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England.

1.2. In Module E (*Conditions Applicable to Works*), unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- **CDM Regulations** mean the Construction (Design and Management) Regulations 2015;
- **Completion Date** means the date (or, where the Commission is divided into Sections, the dates) by which the City required the Commission to be complete specified in the Order, subject to such extensions as may be awarded pursuant to **Condition 30.5**;
- **Construction Phase Plan** means the plan prepared by the Contractor in its capacity as Principal Contractor under the CDM Regulations prior to the commencement of the Commission, and refined and revised by him during the execution of the Commission in accordance with regulation 12 of the CDM Regulations;
- **Date of Possession** means the date(s) specified in the Order for the start of the whole Commission, or (where the Commission is divided into Sections) for each Section, on site, subject to such deferment as may be made in accordance with **Condition 2.9** by the Supervising Officer;
- **Defect** means any defects, shrinkages or other faults in the Commission appearing within the Defects Correction Period due to material or workmanship not in accordance with the Order;
- **Defects Correction Period** means the period specified in the Order commencing from the date of the Practical Completion Certificate, or (where the Commission is to be completed in Sections) commencing from the date of the Section Completion Certificate for the last Section of the Commission to be completed;
- **Delay Application** means a written notification from the Contractor pursuant to **Condition 30.4** setting out the reasons for the delay and giving an estimate of the extra time that the Contractor will need to complete the Commission or the relevant Section. In the case of a Time and Money Event this time estimate must also be accompanied by an assessment of the loss and expense likely to be caused to the Contractor because of the delay;
- **Final Certificate** means a certificate issued pursuant to **Condition 34.6** stating the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 26.4** and the full value of the final account (as agreed or finally determined);
- **Making Good Defects Certificate** means the certificate issued by the Supervising Officer pursuant to **Condition 33.4**;

- **Practical Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 33.1** in respect of practical completion of the whole of the Commission, or (where applicable) the last Section or part of the Commission to be completed;
 - **Principal Designer** means the person appointed by the City to act as such under the CDM Regulations;
 - **Section Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 32.1** or **Condition 33.1** in respect of practical completion of a Section or part of the Commission, other than the last Section or part of the Commission to be completed;
 - **Time Event** means any of the following:
 - exceptionally adverse weather conditions,
 - ancient relics being discovered on the Site,
 - civil commotion, strike or other labour dispute affecting the execution of the Commission (except among the Contractor's own workforce),
 - delay on the part of a local authority or statutory undertaker in carrying out work pursuant to its statutory obligations, or failing to carry out such work,
 - the Commission (or any part) being damaged by an Insured Risk or Excepted Risk,
 - the use or threat of use of terrorism and/or the activities of the relevant authorities in dealing with the use or threat of terrorism, or
 - any circumstances wholly beyond the control of the Contractor, which the Contractor could not reasonably be expected to have foreseen at the date of signing the Order;
 - **Time and Money Event** means any of the any of the following:
 - the issue of an instruction by the Supervising Officer pursuant to **Condition 2.7** or **4.1**,
 - delay on the part of the Supervising Officer in supplying information, drawings or instructions required under the Order not occasioned by the Contractor,
 - any valid suspension by the Contractor of performance of its obligations under the Order under **Condition 26.9**, or
 - any impediment, prevention or default, whether by act or omission, by the City or any person for whom the City is responsible except to the extent that it is caused or contributed to by any default, whether by act or omission, of the Contractor, its employees, agents, sub-contractors or suppliers;
- 1.3.** Headings are for information only and do not form part of the Order.
- 1.4.** A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, enforceable EU Legislation, Code of Practice or the like will include reference to any amendment or re-enactment of the same.

- 1.5. Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals will be treated as importing corporations, companies and/or partnerships and vice versa.
- 1.6. These Conditions will be the sole terms applying to the Order and all other conditions of contract, or terms of trade, supplied by the Contractor are specifically excluded and do not amend, or in any way displace these Conditions unless expressly indicated otherwise in the Order.
- 1.7. The words **including** and **include** will not be interpreted as being exclusive or limiting to the scope of the preceding statement to which it applies.
- 1.8. References to **Controller, Processor, Data Subject, Personal Data, Personal Data Breach** and **Data Protection Officer** are to be interpreted by reference to the meaning given to those terms in the prevailing Data Protection Legislation.

2. Supervising Officer

- 2.1. The City has appointed the Supervising Officer to act as its representative to exercise all the functions ascribed to the City under the Order, except for:
 - issuing a notice terminating the Contractor's engagement;
 - commencing proceeding under **Condition 19** and (where applicable) **Condition 27**; or
 - any other exception notified in writing by the City to the Contractor from time to time.The City may by notice terminate such appointment and/or appoint a replacement.
- 2.2. The Contractor will comply immediately with instructions issued by the Supervising Officer. Such instructions will either be in writing or, if given orally, will be confirmed in writing by the Supervising Officer within 5 Working Days.
- 2.3. The Supervising Officer may instruct the Contractor to open up any part of the Commission for testing or inspection or both. If, as a result, such Commission is found not to be in accordance with the Order, the Supervising Officer may issue an instruction under **Condition 2.4**.
- 2.4. If any part of the Commission, or any work, services or goods included in, or brought on to Site for inclusion in, the Commission is not in accordance with the Order, the Supervising Officer may instruct the Contractor to undertake such remedial work or remove from the Site the relevant part of the Commission, work, service or materials, as the Supervising Officer specifies. The Contractor will comply promptly with such instruction at its own expense.
- 2.5. Instructions issued by the Supervising Officer pursuant to **Conditions 2.3** and **2.4** will not constitute a Variation except where, following the opening up of the Commission for inspection, the Commission is found to be in accordance with the Order, in which event opening up and reinstating the Commission will be considered a Variation.
- 2.6. The Supervising Officer may instruct the Contractor to remove from Site an employee, agent, sub-contractor or supplier of the Contractor.

- 2.7. The Supervising Officer may instruct the Contractor to suspend the execution of the Commission (or any part) for a specified period.
- 2.8. No certificate or notice issued by the Supervising Officer under the Order, (including any certificate to be issued under **Condition 33.1**) will be conclusive evidence that any work, service or materials to which it relates are in accordance with the Order.
- 2.9. Where the Order so provide, the City may defer the giving of possession of the Site or relevant part of it for the period stated in the Order.

3. Payment

- 3.1. The City will pay to the Contractor and the Contractor will accept in full satisfaction for the execution of the Commission the Price, or such other such sums as may become payable to the Contractor in accordance with, at the times and in the proportions set out in, the Order, together with any correctly charged V.A.T. that is applicable.
- 3.2. Where it is agreed that stage payments are to be made to the Contractor by the City, these payments will be made at intervals, or on the dates set out in the Order which will be the payment due date in the Order. Payment for the Commission and any agreed Variation will, unless otherwise agreed in writing, be made by the City before the expiry of the Payment Period which will be the final date for payment under the Order. This **Condition 3.2** will not apply to Orders where Module D (*Conditions Applicable to Construction Operations*) apply.
- 3.3. As a condition precedent to payment the City's Purchase Order number must be indicated on any invoice submitted by the Contractor relating to the Order. The City will be entitled to reject any invoice submitted by the Contractor if the City's relevant Purchase Order number is not stated on the invoice. Invoices submitted by the Contractor will be considered and verified by the City in a timely fashion and undue delay in doing so will be insufficient justification for failing to regard an invoice as valid and undisputed.
- 3.4. Without waiver, or limitation, of any rights or remedies the City will be entitled to withhold, deduct or set-off from any amounts due or owing by the City to the Contractor any losses, costs or damages arising from the Contractor's breach of the terms of the Order, or of any other agreement between the parties, subject always to the City giving the Contractor written notice not later than 5 Working Days before the final date for payment of the amount due, which will specify any amount proposed to be withheld, deducted or set-off, the ground or grounds for such withholding and/or deduction.

4. Variations

- 4.1. The Supervising Officer may issue instructions requiring a Variation or sanctioning a Variation made by the Contractor. No such Variation will vitiate the Order. The value of Variations will be assessed in accordance with the Order and added or deducted from the Price.
- 4.2. If any instruction issued under the Order requires the Contractor to undertake work not provided for in, or to be reasonably inferred from the Order and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence omission or default of the Contractor, its employees, agents, sub-contractors or suppliers

the Price will be adjusted in accordance with any valuation rules specified in the Order (and in the absence of such rules by a fair and reasonable additional amount) and agreed with the City in writing. Otherwise, the Contractor will not be entitled to any additions to the Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Contractor with any such instruction.

- 4.3.** The Supervising Officer may issue instructions regarding the expenditure of any prime cost or provisional sums identified in the Order or arising out of an instruction issued under **Condition 4.1**. The value of work executed by the Contractor for which a provisional sum is identified in the Order will be substituted for such provisional sum and the Price will be adjusted accordingly.

5. Insurance & Indemnity

- 5.1.** The Contractor will be liable for and will keep the City, its employees and agents indemnified against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect to:

- personal injury to, or the death of, any person whomsoever; and
- any loss, or damage to property (real or personal),

to the extent that it is due to the negligence, or a breach of statutory duty, on the part of the Contractor, its servant or agents and arises out of, or during, or caused by, the carrying out of the Commission, or as a result of any defect in the Commission.

- 5.2.** Without prejudice to the Contractor's liability to indemnify the City under **Condition 5.1**, the Contractor will take out and maintain for the duration of the Commission (and thereafter use reasonable endeavours to maintain until the expiry of the Limitation Period) any insurances specified in the Order in each case with a limit of indemnity of not less than the amount indicated in the Order.

- 5.3.** The Contractor will produce documentary evidence to the City that all insurances required under the Order are properly maintained when requested to do so. If the Contractor fails to maintain such insurances, without limitation to any other remedy, the City may take out and arrange such insurances and the cost of any premiums it incurs will be deducted from any money which is, or becomes, due to the Contractor from the City, or may be recovered as a debt due from the Contractor to the City.

6. Intellectual Property Rights

- 6.1.** Where the Order states that **Option A** applies:

- all Deliverables will be the property of the City in all respects and the Contractor hereby assigns full copyright and future copyright and all other intellectual property rights in the Deliverables to the City.
- upon completion of the Commission or earlier termination of the Contractor's engagement under **Condition 18**, all Deliverables will immediately be delivered to the City.

- notwithstanding any other provision of the Order, the Contractor:
 - will on completion of the Commission or earlier termination of the Contractor's engagement under **Condition 18**, assign and transfer all database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor if any) specifically prepared for the City under the Order or for the purposes of entering into the Order.
 - hereby grants to (or will procure for the benefit of) the City, a non-exclusive licence to use the Materials for whatever purpose and in whatever medium the City deems appropriate and will immediately deliver copies of such Materials to the City.
- To the extent necessary for the on-going use of the delivered product or the Commission, the Contractor grants to (or procures for the benefit of) the City an irrevocable non-fee paying non-exclusive licence to use their or appropriate third-party logos, trademarks and other intellectual property together with all appropriate hosting agreements, websites and other software in accordance with agreed guidelines or conditions for the purposes of the Commission and any on-going project as set out or referred to in the specification of the Commission.

6.2. Where the Order states that **Option B applies:**

- The Contractor grants to the City an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Deliverables prepared by, or on behalf of, the Contractor for any purpose relating to the Commission or the property to which they relate, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of such property.
- The licence granted pursuant to **Condition 6.2**:
 - allows the City to use the Deliverables relating to any extension of the property, but not to reproduce the designs contained in the Deliverables in any such extension; and
 - carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor,

provided always that the Contractor will not be liable for use of the Deliverables for any purpose other than that for which it was prepared and/or provided. Insofar as the Contractor is the author (as referred to in the Copyright, Designs and Patents Act, 1988) of the Deliverables, the Contractor waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. The Contractor must procure for the City a corresponding waiver from the author (as referred to in such Act) of the remainder of the Deliverables in respect of the same.

6.3. Where the Order states that **Option C** applies:

- The Contractor warrants that all royalties and fees on patented articles, processes and registered designs have been paid and agrees to indemnify the City against all claims which may arise from any breach of such warranty.
- The City will promptly notify the Contractor of any claim being made or action brought against the City arising out of the matters referred to in this **Condition 6.3**, and the Contractor may (at its own expense) conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

6.4. The Contractor acknowledges that Copyright and all other intellectual property rights in the Order (including the City's requirement/specification/design brief as referred to in the specification of the Commission, all documents and materials together with any images, designs, logos and layouts and all patents, domain names, business or trade names and trademarks (whether registered, unregistered, applied for or pending or otherwise) and all other intellectual property rights included therein), remains at all times vested in the City or other owners and the City hereby grants to the Contractor a limited licence to use such City's requirement/specification/design brief documents and materials etc. solely for the purposes of providing the Commission to the City and for no other purpose whatsoever.

6.5. The Contractor acknowledges that the City may withhold any sums due under the Order if the Contractor fails to comply fully with the provisions of this **Condition 6** until the Contractor so complies.

6.6. The Contractor warrants that it has power and necessary authority to enter into the Order and to grant the rights and licences in the Deliverables and Materials and that the use of the Deliverables and Materials will not breach any third-party intellectual property rights.

7. Confidentiality & Publicity

7.1. The Contractor will only divulge Confidential Information to those employees who are directly involved in the Commission or are engaged in support of them and will ensure that such employees are aware of, and will comply with, these obligations as to confidentiality.

7.2. The Contractor will not advertise, or publicly announce that it undertakes work for the City, nor will it make any press release, or statement, without the prior written consent of the Supervising Officer.

7.3. The Contractor agrees and warrants that it will not without the prior express written consent of the City:

- use for its own benefit or otherwise exploit any Confidential Information nor divulge to any other party that the Contractor is intending to, or has tendered for, or been appointed to perform, the Commission;
- disclose any Confidential Information, in whole or in part, to any third person, firm, company or other such similar entity or otherwise use such information to the detriment of the City for example, but not limited to, the pursuit of a business opportunity;

- use the Confidential Information for any purpose whatsoever other than that for which the Contractor is specifically given access; or
- use the Confidential Information for any illegal or immoral purposes.

7.4. The Contractor will take reasonable precautions necessary to safeguard the personal nature of the Confidential Information and will advise and inform its personnel and agents to strictly observe such obligations.

7.5. All notes, data, reference materials in any way incorporating, or reflecting, any of the Confidential Information will belong exclusively to the City and the Contractor agrees to turn over all copies of such materials in its control to the City upon request, or upon completion of the Commission, or upon termination of the Contractor's engagement under the Order.

8. Data Protection

8.1. Except as otherwise indicated in **Condition 8.16** (where applicable), for the purposes of the Data Protection Legislation, the City is the Controller in respect of the City's Personal Data. The City's Data Protection Officer is its Comptroller and City Solicitor and the Contractor is the Processor.

8.2. The Contractor may not process the City's Personal Data unless expressly authorised in writing to do so by a Data Processing Authorisation issued by the Controller. The Contractor must notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

8.3. Where required by the Controller, prior to commencing any processing the Contractor must provide reasonable assistance to the Controller in the preparation of an assessment of the impact of the envisaged processing on the protection of Personal Data. At the discretion of the Controller, such assistance may include:

- a systematic description of the envisaged processing operations and the purpose of the processing;
- an assessment of the necessity and proportionality of the processing operations in relation to the Order;
- an assessment of the risks to the rights and freedoms of Data Subjects; and
- the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

8.4. In relation to any Personal Data processed pursuant to the Order, the Contractor must:

- process that Personal Data only in accordance with the Data Processing Authorisation, unless the Contractor is required to do otherwise by the applicable law. If it is so required, the Contractor must promptly notify the Controller before processing the Personal Data unless prohibited by the applicable law;
- ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:

- nature of the data to be protected,
- harm that might result from a Data Loss Event,
- state of technological development, and
- cost of implementing any measures;
- ensure that:
 - the Contractor's personnel do not process Personal Data except in accordance with the Order and the Data Processing Authorisation,
 - it takes reasonable steps to ensure the reliability and integrity of any Contractor personnel who have access to the Personal Data and ensure that they:
 - are aware of and comply with the Contractor's duties under this clause,
 - are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor,
 - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third-party unless directed in writing to do so by the Controller or as otherwise permitted by the Order, and
 - have undergone adequate training in the use, care, protection and handling of Personal Data; and
- not transfer Personal Data outside of the United Kingdom (except to a country or territory within the European Union) unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - the Controller or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with Article 46 of the GDPR) as determined by the Controller,
 - the Data Subject has enforceable rights and effective legal remedies,
 - the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations), and
 - the Contractor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Order unless the Contractor is required by the applicable law to retain the Personal Data.

8.5. Subject to **Condition 8.6**, the Contractor must notify the Controller immediately if it:

- receives a Data Subject Access Request (or purported Data Subject Access Request);
- receives a request to rectify, block or erase any Personal Data;

- receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - receives any communication from the Information Commissioner or any other regulatory authority relating to Personal Data processed under the Order;
 - receives a request from any third-party for disclosure of Personal Data where compliance with such request is required or purported to be required by applicable law; or
 - becomes aware of a Data Loss Event.
- 8.6.** The Contractor's obligation to notify under **Condition 8.5** include the provision of further information to the Controller in phases, as details become available.
- 8.7.** Taking into account the nature of the processing, the Contractor must provide the Controller with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under **Condition 8.5** (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- the Controller with full details and copies of the complaint, communication or request;
 - such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - assistance as requested by the Controller following any Data Loss Event;
 - assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 8.8.** Except as provide otherwise in **Condition 8.9**, the Contractor is to maintain complete and accurate records and information to demonstrate its compliance with **Condition 8**.
- 8.9.** The requirements set out in **Condition 8.8** do not apply where the Contractor employs fewer than 250 staff, unless:
- the Controller determines that the processing is not occasional;
 - the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 8.10.** The Contractor must designate a Data Protection Officer if required by the Data Protection Legislation.

- 8.11.** Before allowing any Sub-processor to process any Personal Data related to the Order, the Contractor must:
- notify the Controller in writing of the intended Sub-processor and processing;
 - obtain the written consent of the Controller;
 - enter into a written agreement with the Sub-processor which give effect to the terms set out in **Condition 8** such that they apply to the Sub-processor; and
 - provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 8.12.** The Contractor will remain fully liable for all acts or omissions of any Sub-processor.
- 8.13.** The Contractor may, at any time on not less than 25 Working Days' notice, request that the terms of **Condition 8** as they apply to the Order be revised or replaced with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme which subject to the written agreement of the Controller will apply when incorporated by attachment to the Order.
- 8.14.** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 25 Working Days' notice to the Contractor amend the Order to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 8.15.** Notwithstanding any other provision of the Order, the Contractor agrees to indemnify the Controller in respect of any, fine, loss, claim, action damages or demand imposed on or suffered by the Controller because of any breach by the Contractor of the terms of **Condition 8**.
- 8.16.** If the City enters into the Order in its capacity as Police Authority, or the Order involves the processing of City of London Police Personal Data:
- the definition of **Data Protection Legislation** also includes EU Regulation 2016/680 (The Law Enforcement Directive);
 - the Commissioner of Police for the City of London is the Controller for City of London Police Personal Data and his Data Protection Officer is his Director of Information; and
 - the Commissioner of Police for the City of London has the right pursuant to the Contracts (Rights of Third Parties) Act 1999, to enforce a term of the Order in respect of any confidentiality or data protection issues as if he were a party to the Order.

9. Delegation & Third-Party Rights

- 9.1.** The Contractor may sublet to, or sub-contract with any third-party for all, or any part, of the Commission provided that:
- prior written permission has been obtained by the Contractor from the Supervising Officer; and
 - the proposed terms and conditions of the sub-contract are approved by the Supervising Officer, which approval will not be unreasonably withheld or delayed.

- 9.2.** The Contractor must not appoint a sub-contractor or supplier in relation to the Commission if there are compulsory grounds for excluding the sub-contractor or supplier under regulation 57 of the Public Contracts Regulations 2015. The Contractor must include in any sub-contract awarded by it in relation to the Commission provisions requiring that:
- payment due to the sub-contractor or supplier under the sub-contract is made no later than 30 days after receipt of a valid and undisputed invoice, unless the Order requires the Contractor to make earlier payment to the sub-contractor or supplier;
 - invoices for payment submitted by the sub-contractor or supplier are considered and verified by the Contractor in a timely fashion;
 - undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and
 - any contract awarded by the sub-contractor or supplier in relation to the Commission includes provisions to the same effect as **Condition 9.2.**
- 9.3.** The Contractor will not assign, or transfer, the benefit, or obligations of the Order, or any part of them. The City may assign any benefit, right or any other interests in the Order by way of absolute legal assignment only.
- 9.4.** Except as provided in **Condition 8.16** (where applicable), nothing in the Order confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to the Order.

10. Status of the Contractor

- 10.1.** Nothing contained in the Order, or elsewhere, is to be read, or construed, as a contract of employment to place the parties in the position of employer or employee. Nothing contained in the Order is to be so construed as to constitute either party to be the agent of the other. The Order does not operate to create a partnership or joint venture of any kind between the parties.

11. Force Majeure

- 11.1.** The City reserves the right to postpone or to cancel the Order or reduce the Commission ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the City including acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

12. Notices

- 12.1.** Any demand notice, or other communication, required to be given hereunder will be sufficiently served if served personally on the addressee, or if sent by a pre-paid first class special delivery post, or by facsimile transmission to the registered office, or last known address of the party to be served with it and if so sent will subject to proof of the

contrary, be deemed to have been received by the addressee on the second Working Day after the date of posting, or on successful transmission as the case may be.

13. Waiver & Severance

- 13.1.** Failure by the City at any time to enforce the provisions of the Order, or to require performance by the Contractor of any of the provisions of the Order, will not be construed as a waiver of any such provision and will not affect the validity of the Order, or any part of the Order, or the right of the City to enforce any provision in accordance with its terms, at any time.
- 13.2.** If any provision in the Order becomes void, voidable or unenforceable by the coming into force of any statute or other mandatory legislation or in the event of any provision being declared by any court of competent jurisdiction to be such, then and in such event, the balance of the Order will remain in full force and effect.

14. Compliance

- 14.1.** The Contractor will in the performance of the Commission take account of any Statute, Statutory Instrument, Byelaw, relevant British Standard (or equivalent E.U. standard) or other mandatory requirement or Code of Practice and the City's Policies, which may be in force, or come into force, during the performance of the Commission.
- 14.2.** Without limitation to **Condition 14.1**, the Contractor must:
- comply with the provisions of the Bribery Act 2010 and, in particular, Section 7 of that Act in relation to the conduct of its employees, or persons associated with it;
 - not unlawfully discriminate within the meaning and scope of the Equality Act 2010; and
 - comply with applicable requirements of the Modern Slavery Act 2015.
- 14.3.** The Contractor warrants that it has and will maintain in place adequate procedures designed to prevent acts of bribery from being committed by its employees or persons associated with it, and must provide to the City at its request, within a reasonable time, proof of the existence and implementation of those procedures.
- 14.4.** The Contractor will take all necessary steps to secure the observance of the provisions of **Condition 14.2** by all its employees, agents, sub-contractors and suppliers engaged in the execution of the Commission.
- 14.5.** The City is entitled by notice to the Contractor to terminate the Contractor's engagement under the Order or any other contract with the Contractor if, in relation to the Order or any other such contract, the Contractor or any person employed by it or acting on its behalf fails to comply with the requirements set out in **Condition 14.2**.

15. Freedom of Information

- 15.1. If the City receives a request in connection with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004:
- the Contractor will use reasonable endeavours to assist the City, at no additional charge and within such timescales as the City may reasonably specify, in meeting any requests for information in relation to the Order which are made to the City; and
 - the City will, wherever reasonably practical, consult with the Contractor before disclosing information that relates to the Contractor.
- 15.2. All information provided, or assistance rendered by the Contractor under **Condition 15** is part of the Contractor's general obligations to the City and will be at no cost to the City.

16. Community Benefit & Sustainable Development

- 16.1. Where indicated in the Order, the Contractor must use reasonable endeavours to procure at least 10% of the value of any supplies, services and works from sub-contractors and/or suppliers whose businesses have registered offices, (or seats of business as this latter term may be defined in the law of any member state of the European Union) in a Deprived Area(s) located in areas contiguous to the boundaries of the City of London.
- 16.2. For the purposes of the Order the figure of 10% referred to in **Condition 16.1** has been calculated as a percentage of the Price.
- 16.3. If requested by the City from time to time, the Contractor must produce written evidence of its compliance with the target set out in **Condition 16.1**.
- 16.4. The Contractor acknowledges being aware generally of the European Union initiatives in matters of training skills and apprenticeship and more particularly with the requirements of the Apprenticeships, Skills, Children and Learning Act 2009 in matters relating to the creation of Apprenticeships Frameworks and the issuing of Apprenticeships Certificates and the wider social issues this involves. If the Order requires any particular education and/or skills training to be made available and/or undertaken as part of the Commission, the Contractor will ensure that it is made available or undertaken. Where there is no such requirement, the Contractor is encouraged by the City to ensure that appropriate training and opportunities for education, including (if appropriate) the provision of Apprenticeships, is available to its employees.
- 16.5. The Contractor is encouraged to suggest economically viable methods of procuring the Commission or the subject thereof which, if instructed by the City, may result in an improvement in environmental performance in the carrying out of the Commission or the subject thereof.

17. Audit

- 17.1. During the Commission and for the Limitation Period, the City may conduct or be subject to an audit for the following purposes:
- to verify the accuracy of the Price (and proposed or actual variations to it in accordance with the Order) and/or the costs of all agents, sub-contractors and suppliers for the Commission;

- to review the integrity, confidentiality and security of any data relating to the City;
 - to review the Contractor's compliance with the Data Protection Legislation or any other applicable law;
 - to review any records created for the Commission;
 - to review any books of account kept by the Contractor relating to the provision of the Commission;
 - to carry out the audit and certification of the City's accounts;
 - to carry out an examination pursuant to any legislation applicable to the economy, efficiency and effectiveness with which the City has used its resources; or
 - to verify the accuracy and completeness of any reports delivered or required by the Order.
- 17.2.** Except where an audit is imposed on the City by a regulatory body, the City may not conduct an audit under **Condition 17** more than once in any calendar year.
- 17.3.** The City will use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Commission.
- 17.4.** Subject to the City's obligations of confidentiality, the Contractor must on demand provide the City and any relevant regulatory body (and/or their agents or representatives) with reasonable co-operation and assistance in relation to each audit, including:
- all information requested by the above persons within the permitted scope of the audit;
 - reasonable access to any sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Commission; and
 - access to the Contractor's personnel.
- 17.5.** The City will endeavour (but is not obliged) to provide at least 10 Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 17.6.** The parties agree to bear their own respective costs and expenses incurred in respect of compliance with their obligations under **Condition 17**, unless the audit identifies a material failure to perform its obligations under the Order in any material manner by the Contractor in which case the Contractor must reimburse the City for all the City's reasonable costs incurred in the course of the audit.

18. Termination

- 18.1.** If the Contractor breaches any term or condition of the Order the City may, without prejudice to any other rights or remedies, serve notice on the Contractor specifying the breach and requiring its remedy and if the Contractor fails to remedy the same on or before the expiry of 10 Working Days from service of such notice, the City may by further written notice terminate the engagement of the Contractor under the Order immediately.

18.2. The City may by written notice also terminate the engagement of the Contractor under the Order immediately on the occurrence of any of the following:

- if at any time the progress of any part of the Commission (or any Section) appears to the Supervising Officer to be unnecessarily delayed and such delay, and its cause, are not made good or removed within 5 Working Days after an instruction requiring the same has been given by the Supervising Officer to the Contractor;
- if the Contractor refuses or neglects to comply with the City's Policies, or any provisions of such policies, or commits any breach of any obligation imposed upon the Contractor by such policies, or refuses, or neglects within a reasonable time to comply with any instructions given to the Contractor by the Supervising Officer regarding such policies;
- the Contractor becomes bankrupt or makes a composition or arrangement with its creditors or has a proposal in respect of its company for a voluntary arrangement for a composition of debts or scheme of arrangement approved in accordance with the Insolvency Act 1986, as amended by the Enterprise Act 2002 or has an application made under the Insolvency Act 1986 as amended by the Enterprise Act 2002 in respect of its company to the Court for the appointment of an administrator, or has a winding up order made or (except for the purposes of amalgamation or reconstruction on terms acceptable to the City) a resolution for voluntary winding up passed, or has a provisional liquidator receiver, or manager of its business or undertaking duly appointed, or has an administrator or administrative receiver as defined in the Insolvency Act 1986 as amended by the Enterprise Act 2002 appointed or has possession taken by, or on behalf of the holders of any debentures secured by a floating charge of any property comprised in, or subject to, the floating charge;
- in the event of any substantial change in legal status, or circumstances, occurring which will materially affect the contractual relationship between the parties, or the rights of either party to sue, or otherwise recover monies due or enforce any other right arising under the Order which will not be mutually agreed between the parties;
- in the event of loss or damage being occasioned by one or more of the Excepted Risks; or
- in the circumstances specified in **Condition 14.5**; or
- in the circumstances specified in regulation 73(1) of the Public Contracts Regulations 2015.

18.3. The Contractor may terminate its engagement under the Order if the carrying out of the whole of a substantial part of the Commission is suspended or postponed for a continuous period exceeding three months because of:

- loss or damage occasioned by one or more of the Insured Risks, unless caused by the negligence of the Contractor or anyone for whom the Contractor is responsible;
- loss or damage occasioned by one or more of the Excepted Risks; or

- instructions issued by the Supervising Officer under any of **Condition 2.3** or **2.7**, unless caused by the negligence of the Contractor or anyone for whom the Contractor is responsible,

such termination will take immediate effect upon the Contractor delivering a written notice to the Comptroller & City Solicitor for the City by Special Delivery post.

- 18.4.** If the Contractor's engagement under the Order is terminated, the City will not be bound to make any further payment to the Contractor until the full and final cost of completion of the Commission by others has been ascertained. Upon such cost being ascertained the amount of any damage, loss and/or expense suffered or incurred by the City because of termination of the Contractor's engagement under the Order will be notified by the City to the Contractor and, if such amount when added to the monies paid to the Contractor before the date of termination exceeds the total value of work properly executed up to the date of termination, the difference will be payable as a debt to the City by the Contractor.
- 18.5.** If the Contractor's engagement under the Order is terminated (notwithstanding that the validity of such termination is disputed) the Contractor is to protect and secure the Commission immediately, leave the Site and deliver to the City all Deliverables prepared by or, on behalf of, the Contractor for the Commission. The City will be entitled to employ others to complete the Commission and for that purpose such persons may use temporary buildings, scaffolding, ladders, machinery, plant, materials and goods brought on to the Site by the Contractor.
- 18.6.** Termination of the Contractor's engagement under the Order will not prejudice the rights of either party to sue for and recover any damage, loss or expense suffered or incurred and arising out of or relating to any breach of the Order by the other party prior to such termination and generally to enforce any rights and remedies in relation to anything done prior to such termination.

19. Disputes & Governing Law

- 19.1.** Where Module D (*Conditions applicable to Construction Operations*) applies to the Order, the following provisions of **Condition 19** are without prejudice the parties' rights to seek adjudication at any time in accordance with **Condition 27**.
- 19.2.** If any dispute arises out of the Order which cannot be amicably settled between the parties, then the parties will attempt to settle such dispute by mediation in accordance with the Model Mediation Procedure published by the Centre for Effective Dispute Resolution from time to time.
- 19.3.** It is agreed that if the dispute remains unresolved 20 Working Days after it has arisen either party may refer the dispute to the English Courts, which will have exclusive jurisdiction to hear the matter.
- 19.4.** The Order will be governed by and construed in accordance with the Laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

MODULE B: CONDITIONS APPLICABLE TO A SERVICE

20. The Service

- 20.1. The Commission is to be provided for the duration set out in the Order unless terminated in accordance with these Conditions or extended by agreement of the parties. In the event of an extension, the parties will in good faith negotiate and agree any price increase with reference to the retail prices index.
- 20.2. The Contractor will ensure that the Commission is performed in a good and workmanlike manner and conform to the standards set out or referred to in the Order to the reasonable satisfaction of the Supervising Officer.
- 20.3. The Contractor will provide all supervision, labour, materials, transport, plant, tools, equipment, storage and other facilities necessary to perform the Commission unless otherwise stated on the Order.
- 20.4. So far as practicable the Contractor will use biodegradable or other environmentally friendly products in carrying out the Commission.
- 20.5. The Contractor will be deemed to have inspected the Site(s) where it is to perform the Commission and to have satisfied itself as to the conditions and circumstances affecting the Site(s).
- 20.6. The Supervising Officer may inspect and test (if appropriate) the Contractor's performance of the Commission at any time. Where the Supervising Officer rejects any work, which forms part of the Commission, the Contractor will re-execute that work at no additional cost to the City.

21. Security

- 21.1. If required by the Order, personnel to be employed by the Contractor in relation to the Commission will be subject to character, employment and all appropriate police and other security checks to ensure they are competent, reliable, discreet and honest. Full details of all persons to be employed must be provided to the City for approval.
- 21.2. Where access to the City's premises is necessary relating to the Commission, the Contractor will ensure that its employees, agents, sub-contractors or suppliers are made fully aware of and comply with the City's security procedures.
- 21.3. The Contractor must take all steps required by the City to prevent unauthorised persons (including its employees, agents, sub-contractors or suppliers) being admitted to the City's premises. If the City gives the Contractor notice that any employee agents, sub-contractors or suppliers is not to be admitted to or is to be removed from its premises, the Contractor must take reasonable steps to comply with such notice. The decision of the City as to whether any person is to be admitted to or removed from its premises will be final and conclusive.

22. Health & Safety

- 22.1. Before starting the Commission, the Contractor must produce a risk assessment and submit it to the Supervising Officer for approval. The Contractor will comply with all oral and written requests of the Supervising Officer, immediately.

- 22.2.** The Contractor undertakes with the City (without limiting its duties to its employees) to:
- safeguard their health, safety and welfare at work under the Order;
 - bring to their notice the health and safety policies of the Contractor and the City;
 - provide all necessary information, training and supervision in safe working practices and the need to work safely; and
 - have regard for the health and safety of those not employed by the Contractor but who may be affected by the Contractor's performance of the Commission.
- 22.3.** The Contractor will be solely responsible for the suitability and safety of any equipment or tools used by it. The Contractor will not use any equipment or tools which may be unsuitable, unsafe or likely to cause damage or injury.
- 22.4.** The City reserves the right to inspect any equipment or tools used by the Contractor and to ask the Contractor to remove from the Site(s) and/or the City's premises, any equipment or tools that may in his opinion be unsuitable, unsafe or likely to cause injury or damage to the same, without incurring any responsibility to the Contractor for additional costs or time.

MODULE C: CONDITIONS APPLICABLE TO SUPPLY OF GOODS

23. Quality & Marking

- 23.1.** The Goods must conform as to quantity, quality and description. The Goods must be of sound material and workmanship. If samples or patterns are or have been provided, the Goods must be equal in all respects to the samples or patterns. If a standard of performance is specified, the Goods must be capable of the required performance.
- 23.2.** The Contractor will comply with such provisions relating to or affecting the health and/or safety of anyone despatching, receiving, handling, using or processing the Goods (particularly with reference to Section 6 of the Health and Safety at Work Etc. Act 1974 obliging suppliers to provide adequate information and operating instructions for such articles so supplied and the Control of Substances Harmful to Health Regulations for the time being in force).
- 23.3.** All Goods supplied must be suitably and sufficiently marked endorsed and labelled with information and advice necessary to instruct and warn any person into whose hands the Goods come about any hazards to health and/or safety reasonably foreseeable as arising from despatching, receiving, handling, using or processing the Goods and also about the necessary precautions to be taken in respect thereof provided however that if it is not reasonably practicable to mark, endorse or label the Goods accordingly, the Contractor must fully instruct and advise such persons by an accompanying notice at the time of despatch.
- 23.4.** The Contractor must clearly mark the outside of each consignment or package with:
- the Contractor's name;
 - the Contractor's address;
 - the City's Purchase Order number;
 - the number of packages and their contents (and in the case of part delivery, the outstanding balance remaining to be delivered); and
 - the full details of the destination as stated in the Order.
- 23.5.** The Contractor must include a packing note stating the contents of each consignment or package.
- 23.6.** On despatch of each consignment the Contractor must send to the City at the delivery address an advice note specifying the:
- means of transport;
 - weight, number or volume of each consignment; and
 - the point and date of despatch.
- 23.7.** The Contractor must send the City a detailed invoice as soon as is reasonably practicable after the delivery of each consignment.

24. Inspection, Testing & Warranty

- 24.1.** Before despatching the Goods, the Contractor must inspect and test them for compliance with the Specification. If requested by the City, the Contractor will give the City reasonable notice of such tests and the City will be entitled to be represented at the tests. The Contractor must also supply to the City with certificates of the results of inspection and test in such form as the City may require.
- 24.2.** If so specified in the Order, the City will be entitled to inspect and test the Goods during manufacture, processing or storage, and the Contractor must provide or procure the provision of all such facilities as may reasonably be required by the City in that respect.
- 24.3.** If, as a result of any inspection or test under **Conditions 24.1** and **24.2**, the City considers that the Goods do not comply or are unlikely on completion of manufacture or processing to comply with the requirements of the Order, the City will inform the Contractor in writing and the Contractor must then take such steps as may be necessary to ensure such compliance. The City may require and witness further testing and inspection.
- 24.4.** Notwithstanding any inspection or testing by the City, the Contractor remains fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Contractor's obligations under the Order.
- 24.5.** The Contractor must, at its own expense, make good, repair or replace with reasonable speed any defect or malfunction in the Goods which develop within the warranty period stated in the Order.
- 24.6.** The City's rights under the Order are in addition to the statutory conditions implied in favour of the City under the Sales Goods Act 1979 and the Supply of Goods and Services Act 1982.
- 24.7.** If any of the Goods fail to comply with the provisions set out in **Conditions 23** and **24**, the City is entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the City:
- to rescind the Order;
 - to reject the Goods (in whole or in part) and return them to the Contractor at the risk and cost of the Contractor on the basis that a full refund for the Goods so returned are to be paid forthwith by the Contractor;
 - at the City's option, to give the Contractor the opportunity (at the Contractor's expense) either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Order are fulfilled;
 - to refuse to accept any further deliveries of the Goods but without any liability to the Contractor;
 - to carry out (at the Contractor's expense) any work necessary to make the Goods comply with the Order; and
 - to claim such damages as may have been sustained in consequence of the Contractor's breach or breaches of the Order.

25. Delivery

- 25.1.** The Goods remain at the risk of the Contractor until delivery of the Goods to the City is completed (including off-loading and stacking) at which point ownership of the Goods passes to the City. The Contractor must repair or replace free of charge to the satisfaction of the City, Goods damaged in transit and in the event of such damage, delivery of the Goods will not be deemed to have taken place until repaired or replacement Goods have been delivered.
- 25.2.** The Goods are to be delivered carriage paid by the Contractor at the place or places and in the manner specified in the Order or as subsequently specified in writing prior to delivery of the Goods. The Contractor will off-load the Goods at its own risk as directed by the City.
- 25.3.** Where the Order provides for delivery of the Goods within a specified time, such time runs from the date of receipt by the Contractor of the Order, or of the necessary information and drawings, whichever may be the later.
- 25.4.** Time for delivery of the Goods is of the essence. Where no date or time is specified in the Order, then delivery of the Goods is to be within a reasonable time, but no later than 20 Working Days from the date of the Order. Unless otherwise stipulated by the City in the Order, deliveries will only be accepted by the City during normal business hours.
- 25.5.** Where the City agrees in writing to accept delivery of the Goods by instalments, the Order is to be construed as a single contract in respect of each instalment. Nevertheless, failure by the Contractor to deliver any one instalment will entitle the City at its option to treat the whole of the Order as repudiated.
- 25.6.** If the Goods are delivered to the City more than the quantities ordered, the City will not be bound to pay for the excess and any excess remains at the Contractor's risk and will be returnable at the Contractor's expense.
- 25.7.** If the Contractor requires the City to return any packaging material to the Contractor that fact must be clearly stated on any delivery note delivered to the City and any such packaging material will only be returned to the Contractor at the cost of the Contractor.
- 25.8.** If the Contractor purchases the Goods from a third-party, The Contractor will pay for those Goods within the time allowed by that third-party and will not in its dealings with that third-party put at risk the City's possession and ownership of the Goods after delivery and payment.

MODULE D: CONDITIONS APPLICABLE TO CONSTRUCTION OPERATIONS

26. Interim Payment

- 26.1.** On first Working Day falling one calendar month after the Commencement Date and thereafter on the same day in each month or the nearest Working Day in that month, the Contractor will give to the City an written application for payment (accompanied by supporting documentation), setting out the whole amount the Contractor claims is due to it calculated in accordance with **Condition 26.2** for work executed and goods and materials supplied up to and including the date of the application for payment.
- 26.2.** Within 5 Working Days of receiving an application for payment from the Contractor, the City will issue to the Contractor a Payment Notice, setting out the whole amount (if any) the City considers due to the Contractor and the basis on which it is calculated being:
- the total of the prices for the elements of the Commission separately identified in the Order which have been properly executed and completed in accordance with the Order;
 - any Variation instructed pursuant to **Condition 4**;
 - any other amounts which may become due to the Contractor from the City under the Order; and
 - where applicable, the total value of any Offsite Materials subject to **Condition 26.3**;
- less any:
- amounts previously paid;
 - amounts which may become due to the City from the Contractor;
- and, if Module E (*Conditions Applicable to Works*) applies to the Order, less any:
- Retention relating to the Commission or any Section thereof; and
 - amounts in relation to which the Contractor has failed to provide adequate or any supporting documentation in accordance with **Condition 26.3**.
- 26.3.** If Module E (*Conditions Applicable to Works*) applies to the Order, the City will only pay the Contractor the total value of any Offsite Materials if the Contractor can show to the Supervising Officer's satisfaction:
- that the Offsite Materials are clearly marked and identified for delivery to the Site;
 - documentary evidence of ownership;
 - that the Offsite Materials are stored in secure and locked accommodation appropriate to their value; and
 - documentary evidence that the Offsite Materials are covered by insurance for their full reinstatement value against the Insured Risks.
- 26.4.** If a Payment Notice is not issued pursuant to **Condition 26.2** the Contractor may issue a notice, at any time after the date on which the Payment Notice was required to be given,

specifying the sum that the Contractor considers is due on the date the notice is served and the basis on which that sum is calculated.

26.5. Not later than 10 Working Days from receipt of a Payment Notice, or (where applicable) from issue of the Contractor's notice pursuant to **Condition 26.4**, the Contractor will give to the City:

- a tax invoice, quoting the City's Purchase Order number, in the amount so notified by or to the City, which complies with Regulation 14 of the Value Added Tax Regulations 1995 as amended by Regulation 7 of the Value Added Tax (Amendment) (No. 5) Regulations 2007; and
- the information prescribed by **Condition 34.1**.

and the amount stated in the tax invoice will then be due to the Contractor. If the Contractor's invoice complies with **Condition 26.4** then the Contractor need not give another notice pursuant to **Condition 26.4** in respect of that payment.

26.6. The final date for payment will be the last day of the Payment Period. Invoices submitted by the Contractor will be considered and verified by the City in a timely fashion and undue delay in doing so will be insufficient justification for failing to regard an invoice as valid and undisputed.

26.7. Subject to **Condition 26.8**, nothing contained in the Order will in any way limit or exclude any of the City's rights to withhold, deduct or set-off in accordance with **Condition 3.4**.

26.8. To the extent not already paid, the City must pay the sum notified in the Payment Notice, or (where applicable) the Contractor's notice pursuant to **Condition 26.4** on or before the expiry of the Payment Period unless either:

- it gives to the Contractor a notice of the City's intention to pay less than the notified sum, specifying the sum that the City considers to be due on the date the notice is served and the basis on which that sum is calculated. Such notice must be given not later than 5 Working Days before the expiry of Payment Period and it is immaterial for the purposes of this Condition that the sum referred to in such notice may be zero; or
- the Contractor becomes insolvent not earlier than 5 Working Days before the expiry of the Payment Period, in which event the City need not pay any sum due in respect of the payment.

26.9. Where any amount due to the Contractor under the Order is not paid in full before the expiry of the Payment Period, no effective notice is given under **Condition 26.8** and the Contractor is not insolvent, the Contractor will be entitled to:

- suspend performance of its obligations under the Order by giving not less than 5 Working Days' notice to the City stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance will cease when the City makes payment in full of the amount due. The Contractor will be entitled to a fair and reasonable payment in respect of the reasonable costs necessarily incurred by the Contractor, because of a valid suspension to be ascertained by the City after consultation with the Contractor; and

- be paid interest at the statutory rate provided for in the Late Payment of Commercial Debts (Interest) Act 1998. The Contractor will be entitled to claim such interest from the day after the expiry of the Payment Period on any unpaid amount up to the date that the City pays the Contractor such amount.

27. Adjudication

27.1. Any disputes arising from the Order may be referred to adjudication in accordance with Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011, subject to the following modifications:

- the nominating body is the Technology and Construction Solicitors Association;
- in the first sentence of paragraph 1(3) the word *briefly* is deleted and substituted by the words *in detail*;
- paragraph 22 is deleted and substituted with the following:

The adjudicator must give a decision together with reasons therefor in writing and may award costs as part of the decision. Each party is entitled to make written representations as to why it should not be allocated any portion of the costs flowing from the adjudicator's decision, and the adjudicator must take due consideration including giving reasons for his further determination in this regard. If no award as to costs is made by the adjudicator, the parties bear the costs of the adjudication in equal shares.

- a new paragraph 22A(5) is inserted as follows:

As part of the corrected decision, the adjudicator also has power to reassess his prior determination as to which party will be responsible for the costs flowing from his corrected decision.

28. Collateral Warranties

28.1. The Contractor must, within 10 Working Days of receipt of engrossments from the City, execute and deliver to the City a deed or deeds of collateral warranty in the relevant form set out in the Specification in favour of each or any recipient identified in the Order.

28.2. Where so specified in the Order or the Specification, upon the appointment of each sub-contractor or supplier (and in any event within 10 Working Days of a notice by the City), the Contractor must procure that the sub-contractor or supplier executes and delivers to the City a deed or deeds of collateral warranty in the relevant form set out in the Specification in favour of the City and each or any recipient identified in the Order. If, during the sub-contract tender and selection process, the Contractor becomes aware of any objections from any proposed sub-contractor or supplier to the required form of collateral warranty, the Contractor must bring to the attention of the City any such objections that remain unresolved after negotiation with the proposed sub-contractor or supplier concerned. The City will engage in discussion with the Contractor with a view to resolving any such objections.

- 28.3.** If the Contractor fails to deliver to the City any deed of collateral warranty validly requested by the City under **Condition 28.1** or **Condition 28.2** within the respective timescale specified in those clauses, the City will be entitled to withhold any payment or further payment which would otherwise be due to the Contractor under the Order until such deed of warranty has been so delivered to the City.
- 28.4.** Upon the appointment of each sub-contractor or supplier in respect of which a deed of collateral warranty validly requested by the City under **Condition 28.2**, the Contractor must deliver to the City a certified copy of the appointment or sub-contract entered into with the sub-contractor or supplier.

MODULE E: CONDITIONS APPLICABLE TO WORKS

29. Contractor's Obligations

- 29.1.** The Contractor will commence on the Commencement Date, execute and complete the Commission (or, if applicable, each Section) in compliance with:
- the Specification;
 - the Construction Phase Plan;
 - the Contract Drawings; and
 - the instructions of the Supervising Officer;
- on or before the relevant Completion Date.
- 29.2.** To the extent that the quality of workmanship, materials and goods employed in the execution of the Commission is not indicated in the Specification, or the Contract Drawings, the Contractor will execute such Commission in a good and workmanlike manner using goods and materials of satisfactory quality to the satisfaction of the Supervising Officer.
- 29.3.** The property in any goods and materials intended for the Commission will vest in the City upon delivery to the Site by the Contractor.
- 29.4.** The Contractor will give written notice to the Supervising Officer of any discrepancy in or divergence between the Specification, the Contract Drawings and statutory requirements and will take and follow the Supervising Officers instructions in this respect.
- 29.5.** To the extent the Contractor is responsible for the design of the Commission, the Contractor has the like liability to the City, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding itself out as competent to undertake such design, who acting independently under a separate contract with the City, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.
- 29.6.** No provision of the Order will operate to exclude or restrict the Contractor's liability under statute or common law for any goods and materials that the Contractor supplies, or has supplied, for use on, or incorporation in to the Commission.
- 29.7.** The Contractor will provide all supervision, labour, materials, transport, plant, tools, equipment, and facilities necessary to perform the Commission in accordance with the Order except where the Order expressly provides otherwise.
- 29.8.** The Contractor will set out the whole of the Commission (including establishing all levels) and will be liable for any loss, or expense, occasioned through mistakes in setting out the Commission.
- 29.9.** Prior to the Date of Possession (or, if applicable, the Date of Possession for the first Section to be commenced) the Contractor will confirm to the City the identity of the Contractor's Representative. The Contractor will during the progress of the Commission keep and employ the Contractor's Representative at the Site. The Contractor is to give 10

Working Days prior notice to the Supervising Officer of any change in the identity of the Contractor's Representative.

- 29.10.** Unless stated otherwise in the Order, the Contractor will act as “principal contractor” for the purposes of the CDM Regulations. The Contractor will produce the Construction Phase Plan and make sure that it has all the features required by regulation 12 of the CDM Regulations. If the Contractor refines, revises or otherwise amends the Construction Phase Plan it must let the City know immediately and provide the City with a copy of any such changes.
- 29.11.** If the Contractor is the “principal contractor” for the purposes of the CDM Regulations, it will assist the Principal Designer with his task of compiling the health and safety file by responding promptly to any requests the Principal Designer may make for information in relation to the Commission. Any breach of **Condition 29.11** will entitle the Supervising Officer to postpone or withhold the issue of a Practical Completion Certificate, or (where applicable) Section Completion Certificate, under **Condition 33.1** until such time as the Contractor has remedied the breach.
- 29.12.** Any ancient relics discovered on the Site are in all cases deemed to be the property of the City. On discovery the Contractor must suspend all work immediately and take all steps that may be necessary to preserve the object in the exact position and condition in which it was found, and immediately inform the Supervising Officer, in writing, of the discovery and the precise location of the object.
- 29.13.** The Contractor is to make all applications, give all notices and pay all fees required by, and fully comply with, the provisions of any Act of Parliament, any instrument, rule, or order made under any Act of Parliament, or any regulation, or bye-law of any local authority, or of any statutory undertaker; or any conditions attached to any notices served under any such Act, instrument, rule or order, regulation or bye-law; or any codes of practice, guidance notes and recommendations for the time being in force and approved by the Health and Safety Commission or published by the Health and Safety Executive.

30. Commencement & Delay

- 30.1.** The City will give to the Contractor such access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Contractor to execute and complete the Commission in accordance with the Order. The Contractor acknowledges that such access may (where indicated in the Order) be in common with other persons on the Site and may not be exclusive to the Contractor.
- 30.2.** The Contractor in executing and planning the Commission will consider the presence of other contractors employed by the City, from time to time, on site or in the vicinity of the Commission. The Contractor must liaise with such other contractors and the City at the request of the Supervising Officer and programme and plan its work considering the activities of those other contractors and the reasonable requests of the City. The Contractor must comply with **Condition 30.2** at no additional cost to the City.
- 30.3.** The Contractor will start the execution of the Commission on Site or a Section of the Commission on Site on the relevant Date of Possession stipulated in the Order and will thereafter proceed with the Commission or a Section of the Commission regularly and

diligently and in accordance with the Programme so that the Commission or the relevant Section thereof are completed on the relevant Completion Date.

30.4. As soon as it becomes reasonably apparent to the Contractor that it will be unable, for any reason, to complete the Commission or a Section of the Commission by the relevant Completion Date due to the occurrence of a Time Event or Time and Money Event the Contractor will:

- take reasonable steps to prevent the occurrence arising from further affecting the progress of the Commission or the relevant Section thereof and mitigate the effects of such occurrence; and
- issue to the City a Delay Application.

30.5. On receipt by the Supervising Officer of a Delay Application, the Supervising Officer will, within a reasonable period, decide whether it will:

- adjust the relevant Completion Date and by what length of time; or
- agree to an addition to the Price and the amount of such an addition; or
- both of the above.

Whether or not the Contractor has complied with **Condition 30.4**, the Supervising Officer may only adjust the relevant Completion Date on the occurrence of a Time Event or Time and Money Events and may only adjust the Price on the occurrences of Time and Money Events.

30.6. Any adjustment to the Price will be made applying the same principles of valuation as apply to a Variation under the Order.

30.7. The City reserves the right to:

- reject any Delay Application;
- require the Contractor to further substantiate a Delay Application that is not accompanied by documentary evidence supporting the reasons given for the delay, or reasonably substantiating the additional sums claimed as loss and expense; or
- both of the above.

30.8. If the Contractor fails to complete the Commission or a Section of the Commission within the period for completion of the Commission or the relevant Section stated in the Order subject to any extension granted by the Supervising Officer under **Condition 30.5** and the Supervising Officer so certifies, the Contractor will pay, or allow to the City, as liquidated damages, a sum calculated at the rate specified in the Order for the period during which the Commission or the relevant Section thereof are incomplete. Where no rate for liquidated damages for delay is stated in the Order, time for completion of the Commission or the relevant Section will be of the essence and the City may claim damages for delay by due process of law.

31. Works Insurances

31.1. The Commission will be at the risk of the Contractor until completion of the Commission and the Contractor is to protect the Commission as may reasonably be necessary to

prevent damage to the Commission until the date upon which the Supervising Officer issues the Practical Completion Certificate.

- 31.2.** Where the Commission is being carried out to an existing structure if, because of any of the Insured Risks, any loss or damage is occasioned to the existing structure (or, to any contents owned by the City or for which the City is responsible), the Supervising Officer may issue instructions for the reinstatement and making good of such loss or damage as a Variation.
- 31.3.** Where the Order so specifies, the Contractor will maintain Contractor's All Risks insurance in the joint names of the Contractor and the City as composite insured (and under which the insurers have no right of recourse against any person named or recognised as an insured) to provide cover against (inter alia) the Insured Risks for the full value of all work executed and all unfixed goods and materials intended for, delivered to, placed on or adjacent to the Commission and intended for incorporation in the Commission. In the event of loss or damage occurring which is covered by such insurance, the Contractor will with due diligence restore or replace the work, materials or goods lost, or damaged, and dispose of debris and proceed with and complete the Commission. The Contractor will not be entitled to payment for such work other than money received from the insurance and such money will be paid to the Contractor upon the certificate of the Supervising Officer issued for the same period and at the same intervals as apply to Payment Notices.
- 31.4.** Where the Order so specifies, the Contractor will maintain in the joint names of the City and the Contractor as composite insured (and under which the insurers have no right of recourse against any person named or recognised as an insured) insurances for such amounts of indemnity as may be required by the City in respect of any expense, liability, loss, claim or proceedings that the City may incur or sustain by reason of damage to any property other than the Commission caused by the collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising in the course of or by reason of the carrying out of the Commission except where:
- caused by the negligence, omission or default of the Contractor, its servant and agents;
 - attributable to error or omissions in the design of the Commission;
 - which can reasonably be foreseen as inevitable, having regard to the nature of the work and the manner of its execution; or
 - occasioned to the existing structure, or to any contents owned by the City or for which the City is responsible.

32. Partial Possession by the City

- 32.1.** If at any time before the expiry of the period for the completion of the Commission, the City agrees with the Contractor to take possession of part or parts of the Commission that are complete to the satisfaction of the Supervising Officer:
- the Supervising Officer will issue a Section Completion Certificate for such part or parts and such certificate will state the value of the part, or parts, so completed;

- the Supervising Officer will issue a Payment Notice for the value of the part, or parts, completed as stated in the Section Completion Certificate; and
- from the date of the Section Completion Certificate the part, or parts of the Commission to which that certificate applies will be at the sole risk of the City and the total value insured in accordance with **Condition 31.4** will be reduced by the value stated in such certificate.

32.2. Where liquidated damages for delay are required under **Condition 30.8**, the rate of such damages will be reduced by the proportion that the value of the part, or parts, stated in the Section Completion Certificate bears to the Price.

33. Completion & Defects Rectification

33.1. Subject to the Contractor having complied with **Condition 29.11**, when the whole of the Commission (or a relevant Section of the Commission) has been completed to the Supervising Officer's reasonable satisfaction, he will issue to the Contractor a Practical Completion Certificate, or (where applicable) a Section Completion Certificate.

33.2. Any Defects notified to the Contractor by the City before the issue of the Making Good Defects Certificate must be made good by the Contractor (at its own expense) to the reasonable satisfaction of the Supervising Officer.

33.3. The Supervising Officer may whenever he considers it necessary issue instructions pursuant to **Condition 2.4** requiring any such Defects to be rectified. No such instructions may be issued after the issue of the Making Good Defects Certificate.

33.4. The Supervising Officer will issue a schedule of remaining Defects to the Contractor no later than 10 Working Days after the expiry of the Defects Correction Period. When, in the opinion of the Supervising Officer, all Defects notified to the Contractor have been made good to the Supervising Officer's reasonable satisfaction, the Supervising Officer will issue to the Contractor a Making Good Defects Certificate.

33.5. If the Contractor fails to make good Defects to the reasonable satisfaction of the Supervising Officer by the date stipulated by the Supervising Officer in writing, or in the absence of such stipulation within a reasonable time of being notified of their existence, the City may employ other persons to make good the Defects. The cost and expense incurred by the City in doing so will be ascertained and certified by the Supervising Officer and the City may deduct such sum from the monies payable to the Contractor under the Order, or otherwise recover the same from the Contractor by due process of law.

34. CIS, Retention & Final Account

34.1. For the purposes of the Construction Industry Scheme (CIS), the status of the City is a 'contractor' pursuant to section 59 (d) of the Finance Act 2004. The Contractor will provide with each tax invoice all information required by section 63 of the Finance Act 2004 and as may be required by H M Revenue & Customs from time to time, and the Income Tax (Construction Industry Scheme) Regulations 2005 and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007.

34.2. Each payment to be made it in accordance with **Condition 3** and (where applicable) **Condition 26** is subject to compliance with the requirements of **Condition 34.1** and

conditional upon the Contractor having previously advised the City of the Contractor's Unique Taxpayer Reference Number as allocated to it by H M Revenue & Customs. The Contractor acknowledges that its failure to provide its Unique Taxpayer Reference Number will mean that no proper application for payment has been made by it in accordance with **Condition 3** and (where applicable) **Condition 26**.

34.3. Where the Order specifies that Retention is to be deducted from interim payments, unless specified otherwise in the Order, it will be due for payment to the Contractor as follows:

- 50% upon the issue of the Practical Completion Certificate for the whole of the Commission;
- 25% upon the issue of the Making Good Defects Certificate; and
- the remainder in accordance with **Condition 34.6**, subject always to the Contractor having provided sufficient supporting information as required by **Condition 34.4**.

34.4. Within 10 Working Days of the issue of the Practical Completion Certificate for the whole of the Commission, the Contractor will deliver to the City a draft final account indicating the total Price adjusted in accordance with the terms of the Order and the basis on which that sum is calculated in the format stipulated in the preliminaries, together with all supporting documentation used in its preparation. The Contractor and the Supervising Officer will use reasonable endeavours to agree the content of the final account within six months of the delivery of the draft final account and supporting documentation, subject in the event of the Contractor or Supervising Officer being unable within that time to reach agreement, to either party's right to refer the matter to be finally determined in accordance with the provisions of with **Condition 19**.

34.5. The agreed final account will only be formalised for payment on the happening of all the following events:

- the issuing of the issue of the Practical Completion Certificate for the whole of the Commission;
- the issuing of the Making Good Defects Certificate; and
- no dispute having been lodged in accordance with **Condition 19**.

34.6. Within 10 Working Days of the final account being agreed between the parties or resolved in accordance with **Condition 19** and the conditions listed in **Condition 34.5** having been satisfied, the Supervising Officer will issue the Final Certificate to the Contractor. The difference between:

- the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 26.4**; and
- the full value of the final account (as agreed or finally determined),

will be indicated in the Final Certificate as the sum which the Supervising Officer believes to be due to or from the Contractor. Final payment of any sum due to or from the Contractor (as the case may be) will then fall due 10 Working Days after the date of issue of the Final Certificate.

- 34.7.** The Contractor undertakes to the City that all financial statements and invoices given to the City under the Order will properly reflect the fact of all activities and transactions made, or undertaken by the Contractor in executing the Commission, and that such financial statements and invoices may be relied upon as being accurate and complete, in any further recording or reporting made by the City. The Contractor will notify the City of any error in any statement, application or invoice and correct the same in writing, promptly upon discovery of any such error.

MODULE F: CONDITIONS APPLICABLE TO PROFESSIONAL SERVICES

35. Duty of Care

- 35.1.** The City engages the Contractor and the Contractor agrees to carry out the Commission and all its duties and obligations under the Order exercising the standard of reasonable skill, care and diligence to be expected of a properly qualified professional person experienced in undertaking commissions comparable in size, scope, complexity and purpose to the Commission.
- 35.2.** The City will be relying upon the Contractor's skill and expertise in the provision of the Commission and also upon the accuracy of all statements made and advice given by the Contractor in connection with the provision of the Commission and the accuracy of any documents, reports or other materials drawn up or created by the Contractor in relation to the same, subject always to the Contractor's obligations set out in **Condition 35.1**.

36. Time for Performance

- 36.1.** The Commission will be performed by the Contractor exercising the level of skill, care and diligence referred to under **Condition 35.1** having due regard to the time limits stated in the Order, or (if none are stated) within a reasonable time.
- 36.2.** If the Order indicates the Commission is to be carried out in stages, the Contractor will not proceed with any stage without the prior written authority of the Supervising Officer.

37. Personnel

- 37.1.** The Contractor will provide suitably qualified personnel to carry out the Commission exercising the standard of reasonable skill, care and diligence required pursuant to **Condition 35.1**, having regard to current knowledge, information and good practice.
- 37.2.** Where the Order identifies any of the Contractor's personnel as "Key Personnel", the Contractor will procure that such personnel will:
- devote sufficient time and attention fulfilling their respective roles in connection with the Commission;
 - are not removed without the City's prior written consent (such consent not to be unreasonably withheld or delayed), except in the event of:
 - death;
 - permanent incapacity;
 - an illness making the relevant individual unavailable for work; or
 - the relevant individual leaving the Contractor's employment.
- 37.3.** The City may at any time instruct the Contractor to remove any person engaged in performing the Contractor's obligations pursuant to the Order if, in the City's reasonable opinion, that person's performance or conduct is unsatisfactory. The Contractor will remove any such person promptly.

- 37.4.** Any personnel appointed by the Contractor to replace persons removed under **Condition 37.2** or **Condition 37.3** will be subject to the City's prior written consent (such consent not to be unreasonably withheld or delayed).

38. Collaboration and attendance

- 38.1.** The Contractor will collaborate and work in consultation with any other consultants or contractors appointed now, or at any time by the City, during the execution of the Commission.
- 38.2.** The Contractor will, if so required, attend upon a Committee of the City, or any statutory or public body, on any matter concerning the Commission and will attend any meetings called by the Supervising Officer, make such reports concerning the Commission as the Supervising Officer may reasonably require.