



**Gov Facility Services Limited (“GFSL”)  
Terms and Conditions of Contract for Goods**

**1 Interpretation**

1.1 In these terms and conditions:

**“Agreement”** means the PO and these terms and conditions between GFSL, and the Supplier;

**“Central Government Body”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

**“Charges”** means the charges for the Goods inclusive of VAT set out in the PO;

**“Confidential Information”** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which: (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;

**“Date of Delivery”** means that date by which the Goods must be Delivered to GFSL, as specified in the PO;

**“Deliver”** means hand over the Goods to GFSL at the address and on the date specified in the PO which includes unloading and any other specific arrangements agreed in accordance with clause 5 and **“Delivered”** and **“Delivery”** are construed accordingly;

**“EIR”** means the Environmental Information Regulations 2004;

**“FOIA”** means the Freedom of Information Act 2000;

**“Goods”** means the goods to be supplied by the Supplier to GFSL under the Agreement;

**“Information”** has the meaning given under section 84 of the FOIA;

**“Party”** the Supplier or GFSL (as appropriate) and **“Parties”** mean both of them;

**“PO”** means the purchase order for the Goods issued to the Supplier;



**“Request for Information”** has the meaning set out in the FOIA;

**“Specification”** means the specification for the Goods to be supplied by the Supplier to GFSL (including as to quantity, description and quality);

**“Staff”** means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

**“Staff Vetting Procedures”** means vetting procedures that accord with good industry practice or, where applicable, GFSL’s procedures for the vetting of personnel as provided to the Supplier from time to time;

**“Supplier”** means the person named as supplier in the PO;

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In the Agreement, unless the context otherwise requires:

1.2.1 references to numbered clauses are references to the relevant clause in the Agreement;

1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;

1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;

1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2 Supply of Goods**

2.1 In consideration of GFSL’s agreement to pay the Charges, the Supplier shall supply the Goods to GFSL subject to and in accordance with the Agreement.

2.2 In supplying the Goods, the Supplier shall co-operate with GFSL in all matters relating to the supply of Goods and comply with all GFSL’s instructions.

2.3 The Supplier shall supply the Goods in accordance with the PO and warrants, represents, undertakes and guarantees that Goods supplied under the Agreement:

2.3.1 are free from defects (manifest or latent), in materials and workmanship and remain so for 12 months after Delivery;

2.3.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating



to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

2.3.3 conform with the specifications, drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;

2.4 are free from design defects;

2.5 are fit for any purpose held out by the Supplier or made known to the Supplier by GFSL expressly or by implication, and in this respect GFSL relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that GFSL's approval of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this clause 2.

### **3 Charges, Payment and Recovery of Sums Due**

3.1 The Charges are the full and exclusive remuneration of the Supplier in respect of the supply of the Goods. Unless otherwise agreed in writing by GFSL, the Charges include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods, including but not limited to the costs of packaging, insurance, delivery, unloading, stacking and carriage.

3.2 Following Delivery, the Supplier shall invoice GFSL as specified in the PO. Each invoice shall include such supporting information required by GFSL to verify the accuracy of the invoice, including the relevant PO number and a breakdown of the Goods supplied in the invoice period.

3.3 In consideration of the supply of the Goods by the Supplier, GFSL shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid PO number.

3.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. GFSL shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods.

3.5 If there is a dispute between the Parties as to the amount invoiced, GFSL shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.3. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.

3.6 If a payment of an undisputed amount is not made by GFSL by the due date, then GFSL shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

3.7 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to GFSL in respect of any breach of the Agreement), that sum may be deducted unilaterally by GFSL from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement with GFSL. The Supplier is not entitled to assert any credit,



set-off or counterclaim against GFSL in order to justify withholding payment of any such amount in whole or in part.

#### **4 Cancellation**

GFSL may cancel the Goods, or any part of the Goods, which have not yet been Delivered on written notice to the Supplier. Without prejudice to the generality of the foregoing, GFSL shall pay such Charges or that part of the Charges for Goods which have been Delivered or, on the deemed date of service of the notice of cancellation, are already in transit and the costs of materials which the Supplier has purchased to fulfil the order for the Goods and which cannot be used for other orders or be returned to the supplier of those materials for a refund. For the avoidance of doubt GFSL is not liable for any loss of anticipated profits or any consequential loss.

#### **5 Delivery**

- 5.1 The Supplier shall Deliver the Goods on or by the Date of Delivery. Unless otherwise agreed in writing by GFSL, Delivery shall be on the date and to the address specified in the PO. Delivery of the Goods is completed once unloading the Goods from the transporting vehicle at the Delivery address has taken place and GFSL has signed for the Delivery.
- 5.2 Any access to GFSL's premises and any labour and equipment that may be provided by GFSL in connection with Delivery is provided without acceptance by GFSL or the Crown of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of GFSL or its servant or agent. The Supplier indemnifies GFSL and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which GFSL or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of its sub-contractors.
- 5.3 Delivery shall be accompanied by a delivery note which shows the PO number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.
- 5.4 Unless otherwise stipulated by GFSL in the PO, Deliveries shall be accepted by GFSL only on Working Days and during normal business hours.
- 5.5 If access to GFSL's premises is required for Delivery:
  - 5.5.1 the Supplier and Staff shall comply with all GFSL's security measures;  
and
  - 5.5.2 GFSL may carry out any search of Staff or vehicles used by Staff at GFSL's premises.
- 5.6 The Supplier shall allow GFSL to inspect or test the Goods ("**Inspection**") on or after Delivery and no failure by GFSL to complain at the time of Inspection and no approval



given during or after Inspection constitutes a waiver by GFSL of its rights or remedies in respect of the Goods.

- 5.7 If either the Supplier fails to Deliver the Goods or part of the Goods by the Delivery Date or the Goods or part of the Goods do not comply with clause 2 then, without limiting any of its other rights or remedies implied by statute or common law, GFSL may:
- 5.7.1 terminate the Agreement;
  - 5.7.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by GFSL;
  - 5.7.3 require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 5.7.4 reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and the Supplier shall pay a full refund on those Goods or part of Goods duly returned;
  - 5.7.5 buy the same or similar Goods from another supplier and recover any expenses incurred in respect of buying the Goods from another supplier which shall include administration costs, chargeable staff time and extra delivery costs.

## **6 Property and Guarantee of Title**

- 6.1 Without prejudice to any other rights or remedies of GFSL, title and risk in the Goods pass to GFSL when Delivery is complete (including off-loading and stacking).
- 6.2 The Supplier warrants that:
- 6.2.1 it has full clear and unencumbered title to all the Goods;
  - 6.2.2 at the date of Delivery of any of the Goods it has full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to GFSL. On Delivery GFSL acquires a valid and unencumbered title to the Goods.

## **7 Staff**

- 7.1 If GFSL reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 7.1.1 refuse admission to the relevant person(s) to GFSL's premises;
  - 7.1.2 direct the Supplier to end the involvement in the provision of the Goods of the relevant person(s); and/or
  - 7.1.3 require that the Supplier replace any person removed under this clause 7 with another suitably qualified person and procure that any security pass issued by GFSL to the person removed is surrendered, and the Supplier shall comply with any such notice.



7.2 The Supplier shall:

- 7.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and if requested, comply with GFSL's Staff Vetting Procedures as supplied from time to time;
- 7.2.2 if requested, give to GFSL a list of the names and addresses (and any other relevant information) of all persons who may require admission to GFSL's premises in connection with the Agreement; and
- 7.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by GFSL.

**8 Assignment and Sub-Contracting**

- 8.1 The Supplier shall not without the written consent of GFSL assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement.
- 8.2 The Supplier is responsible for the acts and omissions of its sub-contractors as though those acts and omissions are its own.
- 8.3 If the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in the sub-contract which requires payment of all sums due by the Supplier to the sub-contractor within 30 days from receipt of a valid invoice.
- 8.4 If GFSL consents to a sub-contract, the Supplier shall, at the request of GFSL, send copies of the sub-contract, to GFSL as soon as is reasonably practicable.
- 8.5 GFSL may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

**9 Intellectual Property and Indemnity**

- 9.1 The Supplier grants GFSL a perpetual, royalty-free, irrevocable, non-exclusive licence (with the right to sub-licence) to use all intellectual property rights in the Goods or in any materials accompanying the Goods to the extent that it is necessary to fulfil its obligations under the Agreement.
- 9.2 The Supplier indemnifies GFSL in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by GFSL as a result of or in connection with any claim made against GFSL for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.
- 9.3 GFSL shall notify the Supplier of any infringement claim made against it relating to any Goods and, subject to any statutory obligation requiring GFSL to respond, shall permit



the Supplier to have the right, at its sole discretion to assume, defend, settle or otherwise dispose of such claim. GFSL shall give the Supplier such assistance as it may reasonably require to dispose of the claim and shall not make any statement which might be prejudicial to the settlement or defence of the claim.

## **10 Governance and Records**

10.1 The Supplier shall:

- 10.1.1 attend progress meetings with GFSL at the frequency and times specified by GFSL and ensure that its representatives are suitably qualified to attend such meetings; and
- 10.1.2 submit progress reports to GFSL at the times and in the format specified by GFSL.

10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement full and accurate records of the Agreement including the Goods supplied under it and all payments made by GFSL. The Supplier shall allow GFSL access to those records as may be reasonably requested by GFSL.

## **11 Confidentiality, Transparency and Publicity**

11.1 Subject to clause 11.2, each Party shall:

- 11.1.1 treat all Confidential Information it receives as confidential, protect it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:

- 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 11.2.2 to its auditors or for the purposes of regulatory requirements;
- 11.2.3 on a confidential basis, to its professional advisers;
- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

11.2.6 where the receiving Party is GFSL:



- (a) on a confidential basis to the employees, agents, consultants and contractors of GFSL;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which GFSL transfers or proposes to transfer all or any part of its business;
- (c) to the extent that GFSL (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 12.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on GFSL under this clause 11.

11.3 The Parties acknowledge that, except for any Information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby consents to GFSL publishing the Agreement to the public (but with any Information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. GFSL may consult the Supplier regarding any redactions but has the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the FOIA.

11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement except with the prior written consent of GFSL.

## **12 Freedom of Information**

12.1 The Supplier acknowledges that GFSL is subject to the requirements of the FOIA and the EIR and shall:

- 12.1.1 provide all necessary assistance and cooperation reasonably requested by GFSL to enable GFSL to comply with its obligations under the FOIA and the EIR;
- 12.1.2 transfer to GFSL all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 12.1.3 provide GFSL with a copy of all Information belonging to GFSL requested in the Request for Information which is in its possession or control in the form that GFSL requires within 5 Working Days (or such other period

as GFSL may reasonably specify) of GFSL's request for such Information; and

- 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by GFSL.





12.2 The Supplier acknowledges that GFSL may be required under the FOIA and the EIR to disclose Information concerning the Supplier or the Goods (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances GFSL shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure

12.3 Notwithstanding any other provision in the Agreement, GFSL is responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Goods is exempt from disclosure in accordance with the FOIA and/or the EIR.

### **13 Protection and Security of Data**

When handling GFSL data, the Supplier shall ensure the security of the data is maintained in line with the security requirements of GFSL as notified to the Supplier from time to time.

### **14 Liability**

14.1 The Supplier is not responsible for any injury, loss, damage, cost or expense suffered by GFSL if and to the extent that it is caused by the negligence or wilful misconduct of GFSL or by breach by GFSL of its obligations under the Agreement.

14.2 Subject to clause 14.3:

14.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall not exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

14.2.2 except in the case of claims arising under clause 9.2, neither Party is liable to the other Party for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or (f) any indirect, special or consequential loss or damage.

14.3 Nothing in the Agreement limits or excludes either Party's liability for:

14.3.1 death or personal injury caused by its negligence or that of its Staff;

14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff;



14.3.3 breach of any obligation as to title implied by section 12 of the Sale of Goods

Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

14.3.4 any other matter which, by law, may not be excluded or limited.

14.4 The Supplier's liability under the indemnity in clauses 9.2 and 18.3 is unlimited.

## **15 Force Majeure**

Neither Party has any liability under or is in breach of the Agreement for any delays or failures in performance of its obligations under the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 30 days, either Party may terminate the Agreement by written notice to the other Party.

## **16 Termination**

16.1 Without prejudice to any other right or remedy it has, GFSL may terminate the Agreement in whole or in part before Delivery or after Delivery (where only part of Goods have been Delivered) by written notice to the Supplier with immediate effect if the Supplier:

16.1.1 (without prejudice to clause 16.1.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

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

16.1.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

16.1.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

16.1.5 breaches the provisions of clauses 7.2, 11, 12, 13 and 17; or

16.1.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.1.6) in consequence of debt in any jurisdiction.

16.2 The Supplier shall notify GFSL as soon as practicable of any change of control as referred to in clause 16.1.4 or any potential change of control.



16.3 In addition to the Supplier's statutory rights, the Supplier may terminate the Agreement by written notice to GFSL if GFSL has not paid any undisputed amounts within 90 days of them falling due.

16.4 Termination or expiry of the Agreement is without prejudice to the rights of either Party accrued prior to termination or expiry and does not affect the continuing rights of the Parties under clauses 2.2, 2.3, 7, 9, 10.2, 11, 12, 13, 14, 16.5, 17.6, 18, 19 and 20.9 and any other term or condition of the Agreement that either expressly or by implication has effect after termination.

16.5 Upon termination or expiry of the Agreement, the Supplier shall:

16.5.1 give all reasonable assistance to GFSL and any incoming supplier of

Goods; and

16.5.2 return all requested documents, information and data to GFSL as soon as reasonably practicable.

## **17 Compliance**

17.1 The Supplier shall promptly notify GFSL of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. GFSL shall promptly notify the Supplier of any health and safety hazards which may exist or arise at GFSL's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

17.2 The Supplier shall:

17.2.1 comply with the reasonable requirements of GFSL's security arrangements;

17.2.2 comply with all GFSL's health and safety measures;

17.2.3 notify GFSL immediately if any incident occurs in the performance of its obligations under the Agreement on GFSL's premises if that incident causes any personal injury or damage to property which could give rise to personal injury;

17.2.4 perform its obligations under the Agreement in accordance with all applicable equality law and GFSL's equality and diversity policy as provided to the Supplier from time to time;

17.2.5 take all reasonable steps to secure the observance of clause 17.2.4 by all Staff; and

17.2.6 supply the Goods and any packaging in accordance with GFSL's environmental policy as provided from time to time.

17.3 The Goods shall be packed and marked in a proper manner and in accordance with any instructions specified in the PO, any statutory requirements and any requirements of the carriers.

17.4 All packaging materials are non-returnable.



17.5 The Supplier indemnifies GFSL against all actions, suits, claims, demands, losses, charges, costs and expenses which GFSL may suffer or incur as a result of, or in connection with, any breach of clause 17.3.

17.6 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

17.6.1 the Official Secrets Acts 1911 to 1989; and

17.6.2 section 182 of the Finance Act 1989.

## **18 Prevention of Fraud and Corruption**

18.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify GFSL immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with GFSL or any Crown body GFSL may:

18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by GFSL resulting from the termination, including the cost reasonably incurred by GFSL of making other arrangements for the supply of the Goods and any additional expenditure incurred by GFSL throughout the remainder of the term of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by GFSL in consequence of any breach of this clause.

## **19 Dispute Resolution**

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.



- 19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law. **20 General**
- 20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 20.2 A person who is not a party to the Agreement cannot enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 20.4 Save where GFSL has issued the PO pursuant to a written contract for the Goods signed by both Parties (an “**Existing Contract**”):
- 20.4.1 the Agreement contains the whole agreement between the Parties and replaces any prior agreements, representations or understandings between them; and
  - 20.4.2 the Parties do not enter into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement.
- 20.5 If there is a conflict between these terms and conditions and the PO or any other terms and conditions the conflict will be resolved in the following order of precedence:
- 20.5.1 the Existing Contract;
  - 20.5.2 these terms and conditions;
  - 20.5.3 the PO; and
  - 20.5.4 any other terms and conditions.
- 20.6 Nothing in this clause 20 excludes liability for fraud or fraudulent misrepresentation.
- 20.7 Any waiver or relaxation either partly, or wholly, of any part of the Agreement is valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 20.8 The Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party has any authority to make any commitments on the other Party’s behalf.
- 20.9 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the



exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

20.10 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **21 Notices**

21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 21.3, e-mail to the address of the relevant Party set out in the PO, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 21.

21.2 Notices served as above are deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery occurs on the next Working Day. An email is delivered when sent unless an error message is received.

21.3 Notices under clauses 15 and 16 may be served only by personal delivery or recorded delivery in the manner set out in clause 21.1.

## **22 Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, are governed by English law and are subject to the exclusive jurisdiction of the English courts to which the Parties submit.