

Purchase Order Terms and Conditions of Business



1. DEFINITIONS

- **"Agreement"** means this agreement, including the Purchase Order, and any arrangement for the provision of Services by the Contractor in accordance with its terms formed in accordance with Condition 2;
- **"Authority"** means the London School of Hygiene and Tropical Medicine;
- **"Authority Information"** means any information, which has been provided by the Authority or obtained or produced by the Contractor, in connection with this Agreement whether before or after the date of this Agreement, DPA Data, intellectual property, computer programs, irrespective of the format, including tangible, digital and other formats;
- **"Background IPR"** means any IPR in or relating to the Services belonging to either party prior to the Agreement or not created in the course of or in connection with the Services;
- **"Business Day"** means a day other than Saturday, Sunday or a statutory bank holiday;
- **"Contract Price"** means the prices and/rates set out or calculated in accordance with the Purchase Order;
- **"Contractor"** means the organisation to whom the Purchase Order is addressed and includes all its employees, consultants, agents and Sub-Contractors involved in the provision of the Services;
- **"Default"** means any breach of the obligations under this Agreement (including but not limited to material breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the party, its employees, agents or Sub-Contractors in connection with or in relation to the subject matter of the Agreement and in respect of which the party is liable to the other;
- **"DPA Data"** means all personal data collected, generated or otherwise processed by either party as a result of or in connection with the Services;
- **"EIR"** means the Environmental Information Regulations 2004 (SI 2004/3391) providing public access to environmental information held by public authorities.
- **"Equality Legislation"** means any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non-discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which, the Authority receives the Services including the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (SI 2000/1551) and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034);
- **"FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation; **"Group"** in relation to either party means that party and any subsidiary of it or its ultimate holding company or any subsidiary thereof (**"holding company"** and **"subsidiary"** being as defined in section 1159 of the Companies Act 2006) and to include subsidiaries that have transferred legal title in whole or in part to a third party.
- **"Intellectual Property Rights (IPR)"** means all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- **"Month"** means a calendar month unless otherwise defined;
- **"Purchase Order"** means an official written order sent by the Authority to the Contractor including the Authorities unique order number, and any other quotes or documents referenced in the order including these Terms and Conditions;
- **"Request for Information"** means a request for information (as defined in FOIA) relating to or connected with this Agreement under FOIA, EIR or to meet other legal, regulatory and public policy requirements or other duty including to provide information to Parliament;
- **"Services"** means any services (including any goods) supplied by the Contractor to the Authority pursuant to this Agreement;
- **"Sub-Contractor"** means any individual (other than an employee of the Contractor), firm or company who provides the Services on behalf of the Contractor or a Sub-Contractor;
- **"WCAG"** means Web Content Accessibility Guidelines AA+ approach using version [2.00 at a minimum and/or version 2.1]

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2. FORMATION

- 2.1 The Agreement is formed when the Purchase Order is accepted by the Contractor, either by expressly giving notice of acceptance or by implication when the Contractor takes steps to fulfil the Purchase Order.
- 2.2 The Authority shall not be liable for any order, order amendment, or instructions to proceed with orders unless, and until authorised, and confirmed in writing on the Purchase Order form;
- 2.3 The Purchase Order number must be quoted in all correspondence relating to the Agreement.
- 2.4 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them whether written or oral relating to the Agreement.

3. PROVISION OF THE SERVICES

- 3.1 The Contractor shall provide the Services with due skill, care and diligence in accordance with descriptions, specifications, documentation and performance dates included in the Agreement and shall allocate sufficient resources and equipment to enable it to comply with this obligation.
- 3.2 The Contractor shall perform its obligations under this Agreement in accordance with good industry practice, applicable statutory, local authority and Authority rules and regulations in force from time to time and within the terms of this Agreement.
- 3.3 The Contractor shall obtain, maintain and comply with all licences and consents required to provide the Services.
- 3.4 The Contractor warrants that it has full, clear and unencumbered title to all goods supplied to the Authority under this Agreement and that it will have full and unrestricted rights to sell and transfer all such items to the Authority at the date of delivery. Such warranty is in addition to the intellectual property warranties at clause 5.

4. CONTRACT PRICE AND PAYMENT

- 4.1 Unless stated otherwise, the Contract Price shall be net of Value Added Tax (VAT). The Authority shall pay the Contract Price together with VAT at the prevailing rate subject to receipt from the Contractor of a valid and accurate VAT invoice (compliant with HMRC invoice requirements). Unless stated otherwise, the Contractor shall invoice the Authority monthly in arrears and all such invoices shall include a valid purchase order number and be accompanied by a statement setting out the Services supplied in the relevant month in sufficient detail to justify the Contract Price charged.
- 4.2 The Authority shall pay the Contractor any sums due under each valid and undisputed invoice no later than 30 days. Unless otherwise agreed with the Authority in writing, payments will be made by BACS and the date of payment by electronic transmission shall be the date the transmission is effected.
- 4.3 If the Authority fails to pay any sum properly due and payable (other than any sum disputed in good faith) by the due date for payment, the Contractor may charge interest on the amount of any such late payment at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998 accruing at a daily basis from the date on which payment was due to the date on which payment is actually made.
- 4.4 The Authority may set-off part or all of the payments due to the Contractor under this Agreement against amounts due from the Contractor to the Authority under this Agreement or any other agreement.
- 4.5 Invoices shall be addressed to the London School of Hygiene and Tropical Medicine, and sent directly via email to invoices@lshtm.ac.uk, within one Business Day of the date stated on the invoice.

5. INTELLECTUAL PROPERTY RIGHTS (IPR)

- 5.1 All Background IPR is and shall remain the exclusive property of the party owning prior to the Agreement.

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- 5.2 Each party warrants to the other that its Background IPR does not, so far as it is aware, infringe the IPR of any third party and none of its Background IPR is the subject of any actual or, so far as it is aware, threatened challenge, opposition or revocation proceedings.
- 5.3 The Contractor shall have no right to use any IPR owned or licensed by the Authority save as may be necessary for the performance of its obligations under this Agreement and subject to such consents and restrictions as may be specified by the Authority.
- 5.4 The Contractor warrants that the provision of the Services does not and will not infringe any IPR of whatever nature of any third party anywhere in the world and that it has obtained, in writing, any licences, permissions or consents in connection with any Third Party IPR required for the provision of the Services, copies of which the Contractor shall provide to the Authority on request).
- 5.5 The Contractor warrants that it has all necessary contractual arrangements to enable it to perform its obligations under this clause.
- 5.6 Unless otherwise agreed, the Contractor hereby assigns (with full title guarantee) to the Authority ownership of any IPR in the products of the Services and shall procure the waiver in favour of the Authority of all moral rights relating to the products of the Services. The Contractor undertakes at the Authority's request and expense to execute all deeds and documents which may reasonably be required to vest such rights in the Authority and to give effect to this clause.
- 5.7 The Contractor shall notify the Authority as soon as reasonably practicable, if any third party notifies the Contractor of a claim or an intention to make a claim against the Contractor or Authority for infringement or alleged infringement of any IPR arising out of, or in connection with, the Services.

6. INDEMNITY

- 6.1 The Contractor shall indemnify the Authority and keep it indemnified from and against all claims and all losses arising in any way from the performance, non-performance or purported performance of the agreement by the Contractor, including:
- (a) loss of or damage to property suffered by the Authority;
 - (b) any personal injury or death suffered by any employee of the Authority (whether a current employee or employed by the Authority at the time the claim or loss arose) or any other person;
 - (c) financial loss or damage arising from any advice given or omitted to be given by the Contractor); and
 - (d) liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Authority as a result of or in connection with:
 - (i) any alleged or actual infringement, whether or not under English law, of any third party's IPR or other rights arising out of or connection with the use or supply of the Services or the products of the Services; or
 - (ii) any negligent act or omission or breach of the terms of this Agreement by the Contractor; and
 - (e) compliance with the obligations arising at (a) above.

7. LIMITATION OF LIABILITY

- 7.1 Subject to clauses 7.2 and 7.3, the total liability of the Contractor whether in contract, tort, negligence, breach of statutory duty or otherwise arising under or in connection with this Agreement shall be limited to 150% of the Contract Price, for each claim or instance of liability.
- 7.2 Nothing in this Agreement shall exclude or restrict the liability of the Contractor:

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- (a) for breach of the implied term as to title in section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (b) under the indemnity given in clause 5 (IPR Indemnity) or clause 12 (Equality, Diversity and Inclusion)
- 7.3 Nothing in this Agreement shall exclude or restrict the liability of each of the Authority or the Contractor for death or personal injury resulting from negligence or for fraudulent misrepresentation or for any other matter which cannot be excluded or restricted at law.
- 7.4 Subject to clauses 7.2 and 7.3, no party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect or consequential loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement.
- 7.5 Subject to clauses 7.2 and 7.3, the Authority's liability, whether in contract, tort, negligence, breach of statutory duty or otherwise under or in connection with this Agreement shall be limited to a sum equal to the Contract Price properly paid and payable by the Authority (plus any late payment interest properly chargeable thereon) during the period of 12 months preceding the relevant claim which gives rise to liability of the Authority.
- 8. **INFORMATION SECURITY**
- 8.1 The Contractor shall preserve the integrity of Authority Information and prevent the corruption or loss of Authority Information at all times.
- 8.2 If at any time the Contractor suspects or has reason to believe that the Authority Information has or may become corrupted, lost or degraded, compromised or improperly accessed in any way for any reason, the Contractor shall:
 - (a) notify the Authority immediately;
 - (b) inform the Authority of the remedial action which the Contractor proposes to take; and
 - (c) promptly proceed with such remedial action unless notified otherwise by the Authority.
- 8.3 The Contractor shall refrain from publicising, creating promotional material, or making any public statement or press announcement relating to the Agreement or the Authority (including the use of trademarks and logos) unless the statement is approved in writing by the Authority.
- 8.4 **Retention**
 - (a) The Contractor shall keep and maintain until six years after termination of the Agreement, or as long a period as may be agreed between the parties or required by law, full and accurate records of the Agreement, all expenditure reimbursed by the Authority, and all payments made by the Authority and shall, if so requested, as soon as reasonably practicable afford the Authority or anyone acting on its behalf such access to those records as the Authority may require.
 - (b) As soon as reasonably practicable after the termination of this Agreement, for any reason, the Contractor shall delete or return to the Authority all Authority Information including any back-ups, as directed by the Authority. The Contractor shall certify to the Authority that it has not retained any copies of Authority Information save as required by law and in respect of one copy which the Contractor may use for audit purposes only and subject to the confidentiality obligations in this clause 8.
- 8.5 **Information Disclosure**
 - (a) The Authority is a public authority within the meaning of FOIA and EIR and, as such, the Contractor acknowledges that all information received by the Authority may be subject to a future Request for Information and will be dealt with accordingly.
 - (b) The Contractor shall clearly identify any information that it sends to the Authority which it considers should be exempt from disclosure and shall explain the reason for its exemption.

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9. ANTI-BRIBERY AND CORRUPTION AND COMPETITION ACT COMPLIANCE

9.1 The Contractor shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("**Relevant Requirements**");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
- (c) comply with any anti-bribery and anti-corruption policies of the Authority which the Authority may provide to it from time to time;
- (d) have and shall maintain in place its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 9.1.(b), and shall enforce them where appropriate; and
- (e) ensure that all persons associated with the Contractor or other persons who are performing services in connection with this Agreement comply with this clause.

9.2 The Contractor warrants that:

- (a) it has not, and no member of its Group has, at any time engaged in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010;
- (b) it has not, and no member of its Group has, bribed another person (within the meaning given in section 7(3) of the Bribery Act 2010) intending to obtain or retain business or an advantage in the conduct of business for it and/or any member of its Group;
- (c) it neither is nor has been, and none of its officers, employees, suppliers or subcontractors or other persons associated with it or any member of the its Group has been, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body or any customer regarding any offence or alleged offence under the Bribery Act 2010 and no such investigation, inquiry or proceedings have been threatened or are pending and there are no circumstances likely to give rise to any such investigation, inquiry or proceedings.

9.3 If the Contractor fails to comply with any of its obligations under this clause without prejudice to any other rights or remedies which the Authority may have, the Authority shall be entitled to:

- (a) terminate this Agreement without liability to the Contractor on written notice to the Contractor; and/or
- (b) require the Contractor to take any steps the Authority reasonably considers necessary to manage the risk to the Authority of contracting with the Contractor (and the Contractor shall take all such steps); and/or
- (c) reduce, withhold or claim a repayment (in full or in part) of the Contract Price; and/or
- (d) share with third parties information about such non-compliance where the Authority considers it appropriate to do so.

9.4 For the purpose of this clause, the meaning of "**adequate procedures**" and whether a person is "**associated with**" another person shall be determined in accordance with the Bribery Act 2010 and any guidance issued under it.

9.5 The Contractor warrants that it has complied, and agrees that it shall at all times comply, with the provisions of the Competition Act 1998 in connection with this Agreement and the provision of the Services.

10. CORPORATE SOCIAL RESPONSIBILITY

10.1 The Contractor shall:

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- (a) ensure that both it and its suppliers demonstrate a set of ethical and environmental standards with a commitment to upholding ethical standards and ensuring environmentally sustainable working practices and materials; and
- (b) maintain, and provide to the Authority on request, a document setting out its policy on corporate social responsibility and discuss with the Authority any concerns the Authority may have regarding such policy.

11. HUMAN RIGHTS AND MODERN SLAVERY

11.1 The Contractor recognises the obligations imposed upon the Authority by the Human Rights Act 1998 and shall not do anything, when performing the Contract, which may cause the Authority to be in breach of that Act.

11.2 The Contractor shall:

- (a) in conducting its business, comply with all applicable laws, statutes, regulations and codes from time to time in force relating to slavery and human trafficking including, but not limited to, the Modern Slavery Act 2015;
- (b) implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains;
- (c) respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by the Authority from time to time and ensure that its responses to all such questionnaires are complete and accurate;
- (d) notify the Authority as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or in a supply chain which has a connection with this Agreement; and
- (e) ensure that it complies with the provisions of the International Labour Organisation's core standards and the provisions of the United Nations Universal Declaration of Human Rights in respect to both its employees and its suppliers.

12. EQUALITY, DIVERSITY AND INCLUSION

12.1 The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of or made under the Equality Legislation in the provision of Services in relation to this Agreement or any other contract to which the Authority is a party.

12.2 The Contractor shall

- (a) comply with, and use all reasonable endeavours to ensure that any Sub-Contractors comply with, the Equality Legislation;
- (b) provide such information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with this clause or otherwise as may be required in relation to the equality or diversity of personnel.

12.3 The Contractor shall notify the Authority forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Equality Legislation and, in the event that any such investigation or proceedings are commenced, the Contractor shall, free of charge:

- (a) provide any information requested in the timescale allotted;

12.4 In the event that any investigation or proceedings under the Equality Legislation results in a finding against the Contractor, the Contractor shall indemnify the Authority in respect of any costs, charges or expenses suffered or incurred by the Authority (including legal or administrative expenses and any payments which the Authority may be required to make to a third party) in connection with such investigation or proceedings.

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- 12.5 The Contractor recognises the Authority's commitment to adopt WCAG as part of its diversity and inclusion agenda and shall deliver any Services that involve Authority web content or Authority browser-based applications in a manner that ensures compliance with the WCAG standards.
- 12.6 The Contractor shall ensure the observance of these provisions in relation to all of those employed in the execution of the Contract.
- 12.7 Failure by the Contractor to comply with any part of this clause will constitute a material breach of the Agreement.

13. THE AUTHORITY'S REMEDIES

13.1 Any person authorised by the Authority shall be entitled, subject to reasonable notice, to inspect work being undertaken in relation to the Services at all reasonable times at the premises, the Contractor's premises or any Sub-Contractor's premises.

13.2 The following provisions shall apply if in the Authority's opinion that there has been a Default by the Contractor in its performance of its obligations under this Agreement.

13.3 In the event that:

- (a) the Authority is of the reasonable opinion that a Default has occurred which is not capable of remedy or which is a material breach or breach of a fundamental term of the Agreement; or
- (b) the Authority is of the opinion that there has been a critical or persistent failure to provide the Services;

the Authority may, at its option:

- (i) deduct from any payment due to be made to the Contractor an amount which the Authority reasonably considers appropriate in respect of the affected Services;
- (ii) without terminating the Agreement, refuse to accept any subsequent Services and itself provide or procure a third party to provide the Services until such time as the Contractor demonstrates to the reasonable satisfaction of the Authority that the Contractor will once more be able to provide the Services in accordance with the Agreement;
- (iii) without terminating the whole Agreement, terminate it in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide the relevant Services;
- (iv) require that the Contractor, without charge to the Authority, carry out such additional work as is necessary to correct the Contractor's failure to provide the Services in accordance with this Agreement.

13.4 This clause is without prejudice to the Authority's rights of termination and suspension under clause 14.

13.5 Where, pursuant to clause 13.3, the Authority itself provides or procures the provision of part of the Services, it may recover from the Contractor any additional costs including ongoing excess charges and reasonable administrative costs in respect of the relevant Services even where such costs exceed the Contract Price which would have been payable for the relevant Services.

13.6 In the event that the Authority terminates the Agreement in respect of all or part of the Services and then makes other arrangements for the provision of such Services, it shall be entitled to recover from the Contractor the reasonable costs of making those other arrangements and any additional expenditure which it incurs throughout the remainder of the term relating to such Services. Where the whole Agreement is terminated, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

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13.7 If, through any Default of the Contractor, data transmitted or processed in connection with this Agreement is either lost or, in the Authority's reasonable opinion, sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of any necessary repairs or replacements acceptable to the Authority.

13.8 The remedies of the Authority in this clause are not exclusive of any other rights and remedies available in law or equity and may be exercised successively in respect of any one or more failures by the Contractor.

14. TERMINATION

14.1 The Authority shall have the right to terminate the Agreement, or to terminate the provision of any Services, at any time for convenience by giving a minimum of 30 days' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires.

14.2 The Contractor shall notify the Authority immediately if any change of control of the Contractor occurs and the Authority reserves the right to terminate this Agreement, within three months of the notification, in whole or in part without liability to the Contractor immediately on giving notice to the Contractor.

14.3 The Authority may at any time terminate this Agreement in writing on such notice as the Authority may specify if the Contractor is in material breach of the agreement or persistent breach of any of its obligations under this Agreement whether or not such breach is capable of remedy. For the purposes of this Agreement three or more non-material breaches of the terms of this Agreement in any period of six consecutive months may, if the Authority so decides, constitute a persistent breach.

15. RIGHTS, REMEDIES AND WAIVER

15.1 The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15.2 A waiver of any right or remedy under this Agreement or by law is only effective if it is communicated to the other party in writing and shall not be deemed a waiver of any subsequent right or remedy.

15.3 The failure or delay of either party to exercise any right or remedy shall not constitute a waiver of that right or remedy. Nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16. SEVERANCE

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. The parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

17. NO PARTNERSHIP, JOINT VENTURE, CONTRACT OF EMPLOYMENT OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to establish any partnership or joint venture or contract of employment or a relationship of principal and agent between the parties. Neither party has authority to act as agent for, or to bind, the other party in any way.

18. NOTICES

18.1 Any notice given under or in connection with this Agreement shall be in writing and shall be:

(a) in the case of any notice relating to the termination or suspension of this Agreement or any of the Services for any reason whatsoever; any Claim; any loss suffered by one party; or the service of legal process by one party on the other, delivered by hand or sent by pre-paid recorded delivery or registered post to the address and for the attention of the relevant party; and

(b) in the case of any other notice, sent by email to the Authority

18.2 Any notice is deemed to have been received:

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- (a) if delivered by hand, at the time of delivery;
- (b) if delivered by post, 48 hours from the date of posting;
- (c) if sent by email, at the time of sending

provided that if deemed receipt occurs after 5.00 p.m. on a Business Day or on a day which is not a Business Day the notice is deemed to have been received at 9.00 a.m. on the next Business Day.

18.3 Each party shall notify the other promptly of any changes of address (including email addresses) for the purposes of this clause.

18.4 All notices or other communications under this Agreement shall be in English. All other documents provided under or in connection with this Agreement shall be in English, or accompanied by a certified English translation.

19. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and interpreted in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

20. GENERAL

20.1 The Contractor shall not, without the prior written consent of the Authority, assign, transfer, charge, create a trust in, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Sub-contracting any part of the Agreement shall not relieve the Contractor of its obligations under the Agreement.

20.2 Nothing in this Agreement shall prevent the Authority from obtaining services similar or identical to the Services from any other supplier.

20.3 The Contractor shall take all necessary measures to comply with the requirements of the Health & Safety at Work etc. Act 1974 and any other acts, orders, regulations, codes of practice (including, without limitation, any approved codes of practice) and any policies and procedures implemented by the Authority relating to health and safety, which may apply to the performance of the Agreement.

20.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and save as provided below no rights or benefits expressly or impliedly conferred by it shall be enforceable under that Act against the parties by any other person