



west midlands  
police and crime  
commissioner

## Conditions of purchase of services

(1) Police and Crime Commissioner for West Midlands

(2)

Dated 20

Contract No: [ ]

Green = Commissioning officer to complete

Yellow, blue, purple = Commissioning Officer to review and amend according to needs

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## GENERAL PROVISIONS

### 1 Definitions and Interpretation

1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

<b>Approval</b>	means the written consent of the Authority
<b>Assignee</b>	has the meaning given to that expression in clause 41.4
<b>Authority</b>	the Police and Crime Commissioner for West Midlands
<b>Authority Contact</b>	means the individual(s), whether a contract manager, category consultant or otherwise, who are to act as the day to day point of contact for communications from the Contractor to the Authority in relation to the Contract, being the individual(s) identified in the Specification Schedule or otherwise notified to the Contractor from time to time
<b>Commencement Date</b>	means the date specified as such in the Contract Duration Schedule.
<b>Commercially Sensitive Information</b>	means the information listed in the Commercially Sensitive Information Schedule comprised of information: (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or (b) that constitutes a trade secret
<b>Confidential Information</b>	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. For the avoidance of doubt, the Authority's Confidential Information shall also include any survey results, research data, advice, recommendations or other reports or information which is generated by or on behalf of the Contractor for the Authority in the course of providing the Services. Confidential Information shall not include information which: (i) was public knowledge at the time of disclosure (otherwise than by breach of clause 35 (Confidential Information)); (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information
<b>Contract</b>	means this written agreement between the Authority and the Contractor consisting of these clauses and any Schedules or other documents attached to it (in each case as amended from time to time in accordance with the terms of this agreement)
<b>Contract Duration Schedule</b>	means the Schedule of that name containing (amongst other matters) details of the Contract expiry date and provisions relating to the termination of the Contract by the Authority on notice
<b>Contract Period</b>	means the period from the Commencement Date to: (a) the date of expiry set out in the Contract Duration Schedule (Initial Contract Period), or (b) following an extension pursuant to clause 47 (Extension of Initial Contract Period), the date of expiry of the extended period, or such earlier date of termination or partial termination of the Contract

	in accordance with the Law or the provisions of the Contract
<b>Contract Information</b>	means the contents of this Contract, information regarding the tender process for this Contract and information regarding amounts paid to the Contractor under this Contract
<b>Contract Price</b>	means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause 22 (Price Adjustment)
<b>Contracting Authority</b>	means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015
<b>Contractor</b>	means the person, firm or entity with whom the Authority enters into the Contract
<b>Contractor Details Schedule</b>	means the Schedule of that name containing details of the Contractor, including its address for service of notices
<b>Contractor's Final Staff List</b>	means the list of all the Staff engaged (in whatever capacity) in or wholly or mainly assigned to the provision of the Services or any part of the Services at the End Date
<b>Contractor's Provisional Staff List</b>	means a list prepared and updated by the Contractor of all the Staff engaged (in whatever capacity) in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list
<b>Default</b>	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
<b>Deliverable</b>	means any data, database, report, drawing, specification, design, invention, plan, programme (including software), document, contract and/or other material produced by or to be produced by or provided or to be provided by the Contractor in the course of performing its obligations under the Contract
<b>DPA</b>	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>End Date</b>	means the date on which an Exit Employee becomes employed by the Authority or a Replacement Contractor or a sub-contractor thereof (as the case may be), by virtue of the TUPE Regulations
<b>Entrance Employee(s)</b>	means any person whose contract of employment transfers under the TUPE Regulations to the Contractor or a sub-contractor on the date of and by virtue of Service Commencement, being all those persons who are listed in the Entrance Employees Schedule
<b>Entrance Employees Schedule</b>	means the Schedule of that name listing the Entrance Employees
<b>Environmental Information Regulations</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
<b>Equipment"</b>	means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract
<b>Exit Employee(s)</b>	means any person: (a) who is engaged in the provision of the Services when the Contractor or any sub-contractor ceases for whatever reason,

	whether directly or indirectly, to provide the Services or any part of them; and
	(b) whose contract of employment has effect by virtue of the TUPE Regulations as if originally made between such person and the Authority or a Replacement Contractor or a sub-contractor of a Replacement Contractor (as the case may be)
<b>Fees Regulations</b>	means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>Force Majeure</b>	means in relation to either Party any event which is beyond the reasonable control of that Party and which materially and adversely affects its ability to perform its obligations under the Contract, but excluding any one or more of the following: (a) any event which is caused by or attributable to any wilful act or omission or any negligence by the Party in question or any of its personnel (including all sub-contractors and Staff in the case of the Contractor) and/or any breach by that Party of any of its obligations under the Contract; (b) any event to the extent that it could have been prevented or avoided, or its adverse impact could have been mitigated, through the exercise by the Party in question of Good Industry Practice, including the establishment and implementation of appropriate disaster recovery or business contingency arrangements; (c) any lack of funds by the Party in question; (d) any failure on the part of a sub-contractor of the Party in question, unless that failure was in turn attributable to an event of the kind which would fall within, and not be excluded from, the preceding parts of this definition (if references in those preceding parts to the Party in question were references to the relevant sub-contractor)
<b>Good Industry Practice</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
<b>Information</b>	has the meaning given under section 84 of the FOIA
<b>Initial Contract Period</b>	means the period from the Commencement Date to the date of expiry set out in the Contract Duration Schedule (Initial Contract Period)
<b>Insurance Limit</b>	means in relation to any particular insurance cover which the Contractor is required to maintain under the Contract, the minimum level of cover per occurrence or per claim (as the case may be) which the Contractor is required to have in place. For the avoidance of doubt, the value specified in the Insurance Schedule for these purposes is the Insurance Limit, regardless of whether the Contractor in fact has such a level of cover in place
<b>Insurance Schedule</b>	means the Schedule of that name containing details of the insurance(s) that the Contractor is required to effect and maintain
<b>Intellectual Property Rights</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off

<b>IP Materials</b>	means any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material furnished or made available to the Contractor by or on behalf of the Authority
<b>Key Personnel</b>	means those persons named in the Specification as being key personnel
<b>Law</b>	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply
<b>Monitoring Schedule</b>	means the Schedule of that name containing details of the monitoring arrangements
<b>Month</b>	means calendar month
<b>Outgoing Contractor</b>	means any employer of the Entrance Employees immediately prior to the date of Service Commencement
<b>Party</b>	means the Authority and/or the Contractor (as the context requires)
<b>Premises</b>	means the location where the Services are to be supplied, as set out in the Specification
<b>Pricing Schedule</b>	means the Schedule containing details of the Contract Price
<b>Property</b>	means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract
<b>Quality Standards</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule
<b>Receipt</b>	means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause 5.3 or at any other address given by the Authority to the Contractor for the submission of invoices, provided that if any such invoice arrives on a day that is not a Working Day or after 5.00pm on a Working Day, then it shall not be deemed to have been received until 10.00am on the next following Working Day
<b>Regulatory Bodies</b>	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly
<b>Replacement Contractor</b>	means any third party service provider appointed by the Authority to supply any services which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract
<b>Request for Information</b>	shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)
<b>Required Insurances</b>	means those insurances which the Contractor is required to take out in accordance with clause 51.4 (including those specified in the Insurance Schedule)
<b>Schedule</b>	means a schedule attached to, and forming part of, the Contract
<b>Services</b>	means the services to be supplied as specified in the Specification
<b>Services</b>	means the commencement of the provision of the Services by the

<b>Commencement</b>	Contractor
<b>Specification</b>	means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards
<b>Specification Schedule</b>	means the Schedule containing details of the Specification
<b>Staff</b>	means all employees, staff, workers, agents and consultants of the Contractor, and of any sub-contractor or other third party with whom the Contractor contracts in order to source the Services or any part of them, who are engaged in the provision of the Services from time to time
<b>Staff Expenses</b>	means any expenses in connection with the engagement of Staff, including wages and salaries, bonuses, commissions, expenses, sick pay, maternity pay, holiday pay (including accrued but unused holiday entitlement) income tax, national insurance contributions and contributions to occupational or personal pension schemes
<b>Staffing Information</b>	means in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Authority may reasonably request (subject to the DPA), but including in an anonymised format: - <ul style="list-style-type: none"><li>(a) their ages, dates of commencement of employment or engagement and gender</li><li>(b) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise</li><li>(c) the identity of their employer or relevant contracting party</li><li>(d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes</li><li>(e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them</li><li>(f) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them</li><li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims)</li><li>(h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;</li><li>(i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals); and</li><li>(j) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and details of any current industrial disputes and claims for recognition by any trade union</li></ul>
<b>Tender</b>	means the document(s) (including quotations and tender documents) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services
<b>Transferee</b>	has the meaning given to that expression in clause 41.10
<b>TUPE Regulations</b>	means the Transfer of Undertaking (Protection of Employment) Regulations 2006
<b>Variation</b>	has the meaning given to it in clause 43.1 (Variation)



<b>VAT</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>Working Day</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London

- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - (b) words importing the masculine include the feminine and the neuter;
  - (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
  - (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
  - (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2 Contract Period**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire at the end of the Initial Contract Period, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause 48 (Extension of Initial Contract Period).

## **3 Contractor's Status**

- 3.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

## **4 Authority's Obligations**

- 4.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Contractor.

## **5 Notices**

- 5.1 Except as otherwise expressly provided within the Contract, no notice or consent required or permitted to be given by one Party to the other shall have any validity under the Contract unless given in writing by or on behalf of the Party concerned.
- 5.2 Any notice or consent which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 5.3. Any such notice or consent shall be deemed to have been duly received:-
- (a) if hand delivered, at the time of actual delivery;
  - (b) if dispatched by first class post, recorded delivery or special delivery, two Working Days after the day on which the relevant letter was posted to the correct address;
  - (c) if dispatched by facsimile transmission, 4 hours after successful transmission to the correct number;

Provided in each case that if the deemed receipt time occurs either on a day that is not a Working Day or after 5.00pm on a Working Day, then the notice or consent in question shall not in fact be deemed to have been received until 10.00am on the next following Working Day (such times being local time at the address of the recipient).

- 5.3 For the purposes of clause 5.2, the address and other contact details for the Contractor shall be as set out in the Contractor Details Schedule and for the Authority shall be as set out below:

For the Authority: Police and Crime Commissioner for West Midlands

Address: Staffordshire and West Midlands Police Joint Legal Services, Lloyd House, Colmore Circus  
Queensway, Birmingham B4 6NQ

Fax: 0121 626 8272

- 5.4 Either Party may change its address for service by serving a notice in accordance with this clause.
- 5.5 At the same time as giving any notice or consent to the Authority in accordance with clauses 5.2 to 5.4 above, the Contractor shall provide a copy of the relevant notice or communication to the Authority Contact (or where there is more than one, to both of them) using the email address or fax number set out in the Specification Schedule or otherwise notified to the Contractor for these purposes from time to time.

## **6 Mistakes in Information**

- 6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## **7 Conflicts of Interest**

- 7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority without delay full particulars of any such conflict of interest which may arise.
- 7.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **SUPPLY OF SERVICES**

### **8 The Services**

- 8.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

### **9 Provision and Removal of Equipment**

- 9.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- 9.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 9.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.

- 9.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

## **10 Manner of Carrying Out the Services**

- 10.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 10.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

## **11 Key Personnel**

- 11.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Key Personnel shall be responsible for performing those roles referred to in the Specification.
- 11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 11.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 11.4 The Authority shall not unreasonably withhold its agreement under clauses 11.2 or 11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **12 Contractor's Staff**

- 12.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- 12.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 12.3 The Contractor shall ensure that its Staff, engaged within the boundaries of the Premises, comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- 12.4 The Contractor acknowledges that the Authority shall be free to search any member of Staff and shall procure that its Staff co-operate fully with the Authority for these purposes. The Supplier shall also ensure that all of its Staff carry out their duties and act while on any of the Authority's premises or while performing the Services in an orderly and appropriate manner, having regard to the nature of their duties and that they shall at all times be dressed appropriately in view of their job category and the Services they are to perform.
- 12.5 If and when requested by the Authority, the Contractor shall procure (in respect of its Staff) from each person identified by the request a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract.
- 12.6 The Contractor shall comply with all requirements of the Authority's policies in force from time to time in respect of vetting the identity and bona fides of any Staff requiring admission to the Authority's premises in connection with the Contract. The decision of the Authority as to any person being undesirable or failing such vetting procedures shall be final and conclusive.

- 12.7 The Contractor shall ensure that only such of its Staff as have been authorised by the Authority be permitted access to any of the Authority premises, information or assets or otherwise have any involvement in the provision of the Services.
- 12.8 The Contractor undertakes only to nominate such persons as it believes, acting reasonably and in good faith, will require vetting pursuant to this clause 12 in order to carry out work pursuant to the Contract. The Authority reserves the right to charge a fee to the Contractor in respect of the vetting procedure carried out in relation to those persons nominated by the Contractor for vetting.
- 12.9 Those persons authorised to carry out work in respect of the Contract may, at the discretion of the Authority, be issued with a photo pass confirming their identity. The Contractor shall ensure, at its cost, that all relevant persons attend such location as the Authority shall direct for the issue of such photo passes.
- 12.10 Where photo passes are required:
- (a) the Contractor shall issue an authenticated photo pass to each person authorised to carry out work in respect of the Contract and required to have access to the relevant premises in order to do so and shall provide a second copy of each photo pass for retention by the Authority;
  - (b) the Contractor shall retrieve and destroy photo passes from any person that ceases to be authorised to carry out work in relation to the Contract or to require access to the relevant premises in order to do so;
  - (c) photo passes will be valid for a period of three years or such shorter period as the Authority may direct and in order that the Authority may be assured of the continuing suitability of staff to be employed in relation to the Contract the Contractor shall ensure that completed security questionnaires are submitted in respect of relevant staff not less than six weeks before the expiry of any existing pass.
- 12.11 The Contractor shall be required to submit a completed security questionnaire for each of its Staff who require access to any confidential information in relation to the performance of its obligations under the Contract. The security questionnaires must be completed by the individuals concerned and submitted not later than six weeks prior to work commencing. In the case of additional or replacement Staff being nominated by the Supplier, completed security questionnaires must be submitted no later than six weeks prior to the date on which the relevant individuals are required to commence work. Whether authority shall be given to any individual shall be for the Authority to decide and its decision in this matter shall be final and conclusive.
- 12.12 To ensure compliance with the requirements of this clause 12, the Contractor shall at no additional cost to the Authority nominate one of its employees as security controller for the purposes of the Contract and ensure that such nominated employee discharges the following responsibilities:
- (a) ensuring only those Staff who require access to confidential information in relation to performance of the Contractor's obligations under the Contract are nominated for security clearance;
  - (b) distribution of security questionnaires;
  - (c) securing the accurate and timely completion of such;
  - (d) confirmation and validation of the content of the security questionnaires;
  - (e) promoting security awareness and ensuring Staff understand their responsibilities under the Contract;
  - (f) liaison with the Authority's representatives and the Authority's Vetting Unit;
  - (g) undertaking training in the role and responsibilities of security controller;
  - (h) securing the return and destruction of photo passes as required; and
  - (i) carrying out such other activities as the Authority may from time to time direct.

**[TO INSERT WHERE SERVICES INVOLVE WORK WITH CHILDREN AND/OR VULNERABLE PERSONS]**

- 12.13 Where the Service involves working directly with children and/or young people and/or vulnerable adults, all Staff of the Contractor are required to have a valid Disclosure and Barring Service (DBS) check and be able to provide copies of these when requested immediately. The Contractor must have appropriate recruitment based decisions, and where reasonably possible, take into consideration that the Contractor employs Staff with relevant lived experience.

12.14 As part of the Authority's commitment to ensure robust safeguarding, the Authority requires the Contractor to have robust, relevant, legally compliant and regularly reviewed safeguarding policies in place so that each Service ensures the Contractor's Staff are trained in safeguarding practices and approaches, and that this knowledge is refreshed on a regular and proportionate basis.

12.15 As part of the Authority's monitoring and returns process, the Authority will review the Contractor's safeguarding position, including but not limited to, reassurances that any new Staff recruited by the Contractor in the relevant period have a DBS check in place.

### **13 Inspection of Premises**

Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

### **14 Licence to occupy Premises**

14.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

14.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

14.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

14.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

14.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

### **15 Property**

15.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

15.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 (five) Working Days of receipt.

15.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

15.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements from time to time.

15.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2 (two) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

### **16 Offers of Employment**

- 16.1 For the duration of the Contract and for a period of 6 (six) months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

**17 Provision of Information**

- 17.1 Without prejudice to any other provisions in the Contract, including those in the Monitoring Schedule (if used), the Contractor shall provide such information in relation to the performance of its obligations under the Contract (including information in respect of progress against relevant timescales or milestones and information required by the Authority for the purposes of re-tendering provision of the Services) as the Authority may reasonably request from time to time, such information to be provided in the format and within the timescales reasonably specified by the Authority. The Contractor shall ensure that all such information is accurate and complete and, in respect of any information required by the Authority for re-tendering purposes, shall notify the Authority without delay of any changes to information previously provided to the Authority.

**18 Procurement by the Contractor**

In so far as the Contractor procures any goods, services or works from any third party on behalf of the Authority (acting as the Authority's agent), then it shall do so in accordance with any reasonable instructions given by the Authority and with the Public Contracts Regulations 2015 and all other Laws governing public procurement as if the Contractor was itself a contracting authority within the meaning of those regulations and other Laws.

**PAYMENT AND CONTRACT PRICE**

**19 Contract Price**

- 19.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause 20 (Payment and VAT).
- 19.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

**20 Payment and VAT**

- 20.1 The Authority shall pay all sums due to the Contractor in accordance with the Pricing Schedule and in any event within 30 days of the date on which the relevant invoice is regarded as valid and undisputed by the Authority, such invoices to be submitted by the Contractor **quarterly/monthly** in arrears. For the avoidance of doubt, in the event of conflict between the Pricing Schedule and this clause 20.1, this clause 20.1 shall prevail.
- 20.2 Any invoices submitted by the Contractor under clause 20.1 shall be considered and verified by the Authority in a timely fashion and any undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed.
- 20.3 The Contractor shall ensure that each invoice contains the information set out in clause 24 and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice. Without prejudice to the generality of the previous sentence, the Contractor shall ensure that each invoice contains details of the appropriate purchase order (including purchase order number) issued by the Authority in respect of the Services in question, unless the Authority has confirming in writing that such details are not required.
- 20.4 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that provisions are included in such a sub-contract that impose, as between the parties to the sub-contract,:
- 20.4.1 requirements to the same effect as those set out in clauses 20.1 and 20.2;
- 20.4.2 a requirement for the subcontractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 20.4.
- 20.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 20.6 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 20.6 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

- 20.7 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 54.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced, such interest to accrue on a daily basis at the rate of 2% per annum above the Bank of England base rate for the time being.

## **21 Recovery of Sums Due**

- 21.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.
- 21.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 21.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- 21.4 Unless otherwise specified in the Contract, any sum payable by the Contractor to the Authority under the Contract or by either Party to the other under clause 21.2 shall be paid in cleared funds, within 5 (five) Working Days of a demand for the same being notified by the recipient Party to the paying Party, to such bank or building society account as the recipient Party may from time to time direct.

## **22 Price adjustment**

- 22.1 The Contract Price shall only be adjusted to such extent, and in such manner (if at all) as is specified in the Pricing Schedule.

## **23 Euro**

- 23.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Authority.
- 23.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause 23.1 by the Contractor.

## **24 Form of Invoice**

- 24.1 Unless otherwise agreed in writing by the Authority, all invoices shall include the following information:
- (a) the purchase order number;
  - (b) an invoice number;
  - (c) a detailed description of the Services;
  - (d) a detailed description of any recoverable expenses and the amounts of such;
  - (e) the location, date or time period of delivery of the Services;
  - (f) the Contractor's VAT number;
  - (g) the amount due exclusive of VAT, other duty or early settlement discount;
  - (h) the VAT rate and VAT amount;
  - (i) the amount of any other duty or early settlement discount;
  - (j) the source/name of the person at the Authority responsible for the order to which the invoice relates;
  - (k) details of the Contract's BACS details or other method of payment;
  - (l) the Contractor's contact details; and
  - (m) the date of the invoice.

## **STATUTORY OBLIGATIONS AND REGULATIONS**

### **25 Prevention of Corruption**

- 25.1 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as 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 Contract or any other contract with the

Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract, or do anything (whether by act or omission) which would constitute an offence under the Bribery Act 2010.

25.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract, and has done anything (whether by act or omission) which would constitute an offence under the Bribery Act 2010.

25.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 25.1 or 25.2, the Authority may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Initial Contract Period and (if applicable) any extension to that period; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

## **26 Prevention of Fraud**

26.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

26.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud in relation to any contracts with the Authority has occurred or is occurring or is likely to occur.

26.3 If the Contractor or its Staff commits fraud in relation to this Contract or any contract with the Authority, the Authority may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Initial Contract Period and (if applicable) any extension to that period; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

## **27 Discrimination**

27.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2006, the Human Rights Act 1998, the Equality Act 2010 or other relevant or equivalent legislation (including any equivalent legislation in force in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of its Staff or sub-contractors), or any statutory modification or re-enactment thereof.

27.2 The Contractor shall take all reasonable steps to secure the observance of clause 27.1 by all Staff.

## **28 The Contracts (Rights of Third Parties) Act 1999**

28.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## **29 Environmental & Ethical Requirements**

29.1 The Contractor shall perform its obligations under the Contract in accordance with the spirit and objectives of any environmental or ethical policy of the Authority, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

29.2 The Authority is committed to ensuring that workers employed or engaged in its supply chains throughout the world are treated fairly, humanely and equitably and to this end the Contractor shall comply, in relation to all workers employed or engaged by it directly or indirectly in connection with the supply of the Services, with the policies, procedures and requirements of the International Labour Organisation and United Nations Universal Declaration of Human Rights.



- 29.3 In so far as the Contractor or any sub-contractor or Staff dispose of any waste goods or other items (including electronic products) in the course of or in connection with the performance of the Contractor's obligations under the Contract, the Contractor shall ensure that those goods or other items are disposed of in an environmentally friendly manner and in accordance with all applicable laws and regulations, including (where applicable) the Waste Electrical and Electronic Equipment Regulations 2006.
- 29.4 If and when requested to do so by the Authority at any time, the Contractor shall provide the Authority with such documents and/or permit representatives of the Authority to have such access to the Contractor's premises and personnel as the Authority may reasonably require for the purposes of verifying compliance on the part of the Contractor with its obligations under clauses 29.1 to 29.3 above.
- 29.5 The Contractor shall procure that each of its sub-contractors (if any) comply with obligations substantially similar to those set out in clauses 29.1 to 29.4 above.

### **30 Health and Safety**

- 30.1 The Contractor shall, and shall ensure that all Staff and sub-contractors shall, when working on any site in connection with the Contract comply with all relevant health and safety legislation, codes of practice and any other appropriate standards, policies, procedures and documentation notified by the Authority. This will include, but is not limited to, the following:-
- (a) Health and Safety at Work etc Act 1974
  - (b) Management of Health and Safety at Work Regulations 1999;
  - (c) Workplace (Health, Safety and Welfare) Regulations 1992;
  - (d) Control of Substances Hazardous to Health Regulations 2002;
  - (e) Provision and Use of Work Equipment Regulations 1998;
  - (f) Personal Protective Equipment at Work Regulations 1992;
  - (g) Construction (Design and Management) Regulations 2007;
  - (h) Electricity at Work Regulations 1989;
  - (i) Personal Protective Equipment Regulations;
  - (j) Authority Safety Rules for contractors and sub-contractors;
  - (k) Work at Heights Regulations 2005
  - (l) any legislation which is equivalent to any of the legislation referred to in this clause 30.1 and which is in force in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of its Staff or sub-contractors.
- 30.2 The Contractor shall provide applicable hazard information such as material safety data sheets and shall inform the Authority of all regulations, guidance and significant risk (statutory or otherwise) which the Contractor knows or believes to be associated with the Services and/or any combination of the Services with another product/service.
- 30.3 The Contractor shall indemnify the Authority against all liability and loss related to any third party claim which arises from the act or omission of the Contractor and/or any of its Staff or sub-contractors resulting in the alleged release of any waste, hazardous substance or other pollutant.
- 30.4 The Contractor shall notify the Authority of past enforcement action taken against the Contractor and provide such details of prosecutions, fines, accident history and frequency rate as may be considered necessary by the Authority.
- 30.5 The Contractor shall have a designated policy to manage, control and audit the health and safety standards of its sub-contractors and shall take appropriate action if any sub-contractors fail to meet required standards.
- 30.6 The Authority shall be entitled, acting through its authorised officers and health and safety advisors, to suspend the provision of the Services in the event of non-compliance by the Contractor with its obligations under this Clause 30. The Contractor shall not resume provision of the Services until notified that the Authority is satisfied that the relevant non-compliance has been rectified.
- 30.7 For the avoidance of doubt, the Contractor acknowledges and agrees that any breach of its obligations under this Clause 30, including any persistent, minor breaches, may have the following consequences (without limitation):-
- (a) the exercise of rights on the part of the Authority to suspend the provision of the Services or terminate the Contract;
  - (b) to the extent permitted by applicable laws, the imposition of restrictions on the Contractor from working on any other contract with the Authority until improvements to its health and

safety practices have been made and suitable evidence of such has been provided to the Authority;

- (c) to the extent permitted by applicable laws, the removal of the Contractor from the Authority's approved/select lists.
- 30.8 The Contractor shall provide the Authority on request with a copy of its health and safety policy, risk assessments, method statements and safe systems and procedures. Notwithstanding this, the Contractor shall ensure that its Staff and sub-contractors comply at all times with the Authority's "Health and Safety Standards, Guidance for Contractors" (or any applicable replacement policy or rules from time to time) in so far as it or they are relevant to the Contract.
- 30.9 The Contractor shall comply with any health and safety related conditions stipulated by the Authority from time to time. Such conditions override details contained in the Contractor's internal documentation.
- 30.10 The Contractor shall notify the Authority in writing without delay of all incidents, which either could have led, or did lead, to injury and/or damage. Where incidents are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations 1995, a completed copy of form F2508 and an investigation report shall be supplied.
- 30.11 The Contractor shall nominate a senior representative to act as coordinator between both parties for matters of health and safety arising out of the Contract.
- 30.12 The Contractor shall ensure that sufficiently trained and competent employees will be provided to undertake the duties defined in the Contract and shall provide evidence of competency where required by the Authority.
- 30.13 The Contractor shall provide product specifications, technical supporting information, user instructions and maintenance information relating to any Goods to be supplied the Authority.

### **31 Complaints and Conduct Matters**

- 31.1 The Contractor shall have in place and comply with (and shall ensure that all of its Staff comply with) any relevant policies in accordance with the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015 (the "Misconduct Regulations"). Upon request the Contractor shall provide a copy of any such policies to the Authority as soon as reasonably practicable and in any event within 5 Working Days of request.
- 31.2 The Contractor shall allow the Authority to review, and require amendment to, any of the policies referred to in clause 31.1 to ensure compliance with the Misconduct Regulations from time to time. Contractor shall implement any such amendments required by the Authority as soon as reasonably practicable.
- 31.3 The Contractor shall provide all reasonable assistance to the Authority, the Independent Office for Police Conduct (the "IOPC") (or any relevant body assuming the functions and responsibilities of the IOPC from time to time) or any other relevant regulatory body investigating any complaint made about the Contractor or any aspect of the provision of the Services.
- 31.4 The Contractor shall allow the Authority, the IOPC (or any relevant body assuming the functions and responsibilities of the IOPC from time to time) or any other relevant regulatory body such reasonable access to facilities, documents and/or personnel from time to time to ensure compliance with this clause 31.

### **32 Anti-Slavery and Human Trafficking**

- 32.1 In performing its obligations under the Contract, the Contractor shall:
  - (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015;
  - (b) have and maintain throughout the Contract Period its own policies and procedures to ensure its compliance; and
  - (c) ensure that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- 32.2 The Contractor represents and warrants that:

## Contract for Services

- (a) that it conducts its business in a manner that is consistent with the Modern Slavery Act 2015;
  - (b) neither the Contractor nor any of its officers, employees or other persons associated with it:
    - (i) has been convicted of any offence involving slavery and human trafficking; and
    - (ii) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 32.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers, to ensure that there is no slavery or human trafficking in its supply chains.
- 32.4 The Contractor shall notify the Authority as soon as it becomes aware of:
- (a) any breach, or potential breach, of this clause 32; or
  - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.
- 32.5 The Contractor shall:
- (a) maintain a complete set of records to trace the supply chain of all Services and, where applicable, goods provided to the Authority in connection with this Contract; and
  - (b) permit the Authority and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause 32, to have access to and take copies of the Contractor's records and any other information and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations this clause; and
  - (c) implement annual audits of its compliance and its direct subcontractors' and suppliers' compliance, either directly or through a third party auditor.
- 32.6 The Contract shall indemnify the Authority against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against the Authority as a result of a breach of this clause 32.

## PROTECTION OF INFORMATION

### 33 Data Protection Act

USE THE YELLOW HIGHLIGHTED TEXT IF THE AUTHORITY IS THE DATA CONTROLLER AND CONTRACTOR IS DATA PROCESSOR.

- 33.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. For the avoidance of doubt, this clause [33] is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 33.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and the Contractor is the Data Processor. Schedule 12 sets out the scope, nature and purpose of processing by the Contractor, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 33.3 Without prejudice to the generality of clause 33.1, the Contractor shall process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in this Agreement and in accordance with the Authority's instructions from time to time and shall not process the Personal Data for any other purpose.
- 33.4 Without prejudice to the generality of clause 33.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this Agreement.
- 33.5 Without prejudice to the generality of clause 33.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:
- 33.5.1 process that Personal Data only on the written instructions of the Authority unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data ("Applicable

**Laws**). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Authority;

- 33.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- 33.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 33.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (a) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer;
  - (b) the Data Subject has enforceable rights and effective legal remedies;
  - (c) 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; and
  - (d) the Contractor complies with reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 33.5.5 assist the Authority, at the Authority's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 33.5.6 notify the Authority without undue delay on becoming aware of a Personal Data Breach;
- 33.5.7 at the written direction of the Authority, provide to the Authority a copy of all Personal Data held by it in the format and on the media reasonably specified by the Authority;
- 33.5.8 at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination of this Agreement unless required by Applicable Law to store the Personal Data;
- 33.5.9 maintain complete and accurate records and information to demonstrate its compliance with this clause [33] and allow for audits by the Authority or the Authority's designated auditor;
- 33.5.10 comply with all applicable laws;
- 33.5.11 take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data and ensure that all such staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause [33];
- 33.5.12 ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- 33.5.13 not disclose Personnel Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority; and

33.5.14 notify the Authority within five Working Days if it receives a request from a Data Subject to have access to that person's Personal Data or a complaint or request relating to the Authority's obligations under the DPA.

33.6 The provision of this clause [33] shall apply during the Contract Period and indefinitely after its expiry.

33.7 The Authority does not consent to the Contractor appointing any third party processor of Personal Data under this Agreement.

33.8 Either party may, at any time on not less than 30 days' notice, revise this clause [33] by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

### 33. DATA PROTECTION

Use the PURPLE HIGHLIGHTED TEXT WHERE THERE IS NO PERSONALLY IDENTIFIABLE INFORMATION SHARED BETWEEN PARTIES.

33.1 Each party shall, at its own expense, ensure that it complies with the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time in the UK relating to the use of personal data and the privacy of electronic communications, including (i) the Data Protection Act 2018 and any successor UK legislation, (ii) the retained EU law version of General Data Protection Regulation ((EU) 2016/679) (UK GDPR), and (iii) the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) (and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party).

### 33. DATA PROTECTION

USE THE GREEN HIGHLIGHTED TEXT WHERE AUTHORITY AND CONTRACTOR ARE BOTH DATA CONTROLLERS IN RELATION TO PERSONAL DATA AND IF THERE IS A GREATER RISK ATTACHED TO THE EXCHANGE OF PERSONAL DATA UNDER THE AGREEMENT WHERE THE AUTHORITY AND CONTRACTOR ARE DATA CONTROLLERS. ADDITIONAL DEFINITIONS TO BE INCLUDED AND CHECKED IF USED (See Schedule 12).

#### Additional Definitions:

Agreed Purposes: [STATE THE PURPOSES FOR WHICH THE PERSONAL DATA IS TO BE HELD].  
Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures: as set out in the Data Protection Legislation.

Data Discloser: a party that discloses Shared Personal Data to the other party.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)]; [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].

UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Permitted Recipients: the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement, and [ADD ANY OTHER PERMITTED RECIPIENTS].  
Shared Personal Data: the personal data to be shared between the parties under clause 1.1 of this agreement.  
Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject:

- a. [type of personal data];
- b. [type of personal data], and
- c. [type of personal data]

33.1 Shared Personal Data: This clause sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this clause as the Data

Discloser) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.

33.2 Effect of non-compliance with Data Protection Legislation: Each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate this agreement with immediate effect.

33.3 Particular obligations relating to data sharing: Each party shall:

- (a) ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
- (b) give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
- (c) process the Shared Personal Data only for the Agreed Purposes;
- (d) not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
- (e) ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
- (f) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- (g) not transfer any personal data received from the Data Discloser outside the [UK] OR [EEA] unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.

33.4 Mutual assistance: Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- (a) consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- (b) promptly inform the other party about the receipt of any data subject rights request;
- (c) provide the other party with reasonable assistance in complying with any data subject rights request;
- (d) not disclose, release, amend, delete or block any Shared Personal Data in response to a data subject rights request without first consulting the other party wherever possible;
- (e) assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with the Information Commissioner or other regulators;
- (f) notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
- (g) at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the Shared Personal Data;
- (h) use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
- (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 33 [and allow for audits by the other party or the other party's designated auditor]; and
- (j) provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

**33.5** Indemnity: Each party shall indemnify the other against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other [reasonable] professional costs and expenses) suffered or incurred by the indemnified party arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. [The liability of the indemnifying party under this clause shall be subject to the limits set out in [CLAUSE SETTING OUT LIMITS OF LIABILITY].]

#### **34 Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989**

34.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

34.2 In the event that the Contractor or its Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

#### **35 Confidential Information**

35.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
- (b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

35.2 Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that its Staff, professional advisors and/or consultants give a confidentiality undertaking (in a form specified by the Authority) before beginning work in connection with the Contract and in any event the Contractor shall ensure that its Staff, professional advisors and consultants are aware of and comply with the Contractor's confidentiality obligations under the Contract.

35.3 The Contractor shall not, and shall ensure that its Staff do not, use any of the Authority's Confidential Information otherwise than for the purposes of the Contract.

35.4 Nothing in clauses 35.1 to 35.3 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

- (a) for the purpose of the examination and certification of the Authority's accounts; or
  - (b) for the purpose of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
  - (c) to any government department or any other Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
  - (d) to any consultant, contractor or other person engaged by the Authority,
- provided that in disclosing information under sub-paragraphs (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

35.5 Nothing in clauses 35.1 to 35.3 shall prevent either Party from:

- (a) using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or

- (b) disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, the Environmental Information Regulations or the Elected Policing Bodies (Specified Information) Order 2011.
- 35.6 In the event that the Contractor fails to comply with clauses 35.1 to 35.3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- 35.7 Clauses 35.1 to 35.6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- 35.8 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 35.9 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clauses 35.1 to 35.3. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 35.10 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause 35.8.

### **36 Freedom of Information and Transparency**

- 36.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 36.2 The Contractor shall and shall procure that any sub-contractors shall:-
  - (a) (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 (two) Working Days of receiving a Request for Information;
  - (b) (b) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within 5 (five) Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - (c) (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 36.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations
- 36.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 36.5 The Contractor acknowledges that (notwithstanding the provisions of clause 36) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:
  - (a) without consulting the Contractor; or
  - (b) following consultation with the Contractor and having taken their views into account;provided always that where 36.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 36.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 36.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause 36.



36.8 The Contractor acknowledges that the Authority is subject to the Elected Policing Bodies (Specified Information) Order 2011. Accordingly, nothing in this Contract (including the provisions of clause 34 (Confidentiality) and this clause 35 (Freedom of Information)), shall prevent the Authority from publishing the Contract Information in accordance with the Authority's obligations under the Elected Policing Bodies (Specified Information) Order 2011.

### **37 Publicity, Media and Official Enquiries**

37.1 The Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the Approval of the Authority in writing.

37.2 The Contractor shall take all reasonable steps to ensure that its Staff, suppliers and professional advisors comply with clause 37.1.

### **38 Security**

38.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply, and shall ensure that all Staff comply, with all applicable security requirements of the Authority from time to time, including (where applicable) all security requirements in respect of the Premises and/or any Confidential Information of the Authority (including documents containing confidential and/or secret information) which is in the possession and/or control of the Contractor or any of its Staff from time to time.

### **39 Intellectual Property Rights**

39.1 All Intellectual Property Rights in the IP Materials shall remain the property of the Authority or its licensors, and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

39.2 Unless and to the extent otherwise expressly agreed in writing by the Authority, the Contractor shall ensure that the Authority has the right (without payment of any charge other than the applicable part of the Contract Price) to use and permit any other person to use all Deliverables for such purposes as the Authority may think fit from time to time, including, where the nature of the Deliverable permits, the right to copy, modify, adapt, publish and create derivative works from the Deliverable in question for such purposes. To the extent necessary to give effect to such rights, the Contractor shall grant or procure that the Authority is granted by any relevant third party owner a non-exclusive, perpetual, transferable, royalty free licence (including the right to grant sub-licences) to use, copy, modify, adapt, publish and create derivative works from the Intellectual Property Rights subsisting in or in relation to all Deliverables. Without prejudice to the generality of the foregoing, and for the avoidance of doubt, any such licence shall be granted on terms that include the right for the Authority to transfer, novate or assign the licence to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.

39.3 Insofar as the Specification requires or it is otherwise agreed by the Contractor that the Intellectual Property Rights in any Deliverables shall belong to the Authority:-

- (a) the Contractor hereby assigns, and shall procure that any applicable sub-contractors or Staff assign, to the Authority absolutely (including by way of present assignment of future copyright and database rights) with full title guarantee all such Intellectual Property Rights;
- (b) the Contractor hereby waives, and shall procure that any applicable sub-contractors or Staff waive, any and all moral rights subsisting in such Deliverables; and
- (c) the Contractor shall execute and do, and shall procure that any applicable sub-contractors or Staff execute and do, all such documents and things as the Authority may reasonably require in order to give effect to clauses 39.3(a) and 39.3 (b).

39.4 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and (without prejudice to the generality of the foregoing) shall ensure that the use of any Deliverables (whether by the Authority or any other person) for the purposes contemplated by the Contract does not infringe any Intellectual Property Rights of any of third party. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Authority; or
- (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

- 39.5 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 39.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Authority; and
  - (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 39.7 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 39.4(a) or 39.4(b).
- 39.8 In connection with any negotiations or litigation conducted by the Contractor under clause 39.6, and subject to the Contractor complying with its obligations under that clause, the Authority shall not without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) make any admissions which may be prejudicial to the defence or settlement of the relevant claim.
- 39.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or
  - (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,
- and in the event that the Contractor is unable to comply with clauses 39.9(a) or 39.9(b) within 20 Working Days of receipt of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.
- 39.10 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

#### **40 Audit**

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority and/or the National Audit Office (or any other applicable national audit body from time to time) and their respective representatives such access to those records as may be requested by the Authority in connection with the Contract.

#### **CONTROL OF THE CONTRACT**

#### **41 Transfer and Sub-Contracting**

- 41.1 Except where 41.4 and 41.5 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 41.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 41.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable after the relevant sub-contract has been entered into.

- 41.4 Notwithstanding clause 41.1, the Contractor may assign to a third party (the **Assignee**) the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under clause 20.7). Any assignment under this clause 41.4 shall be subject to:
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause 21 (Recovery of Sums Due);
  - (b) all related rights of the Authority under the Contract in relation to
  - (c) the recovery of sums due but unpaid; and
  - (d) the Authority receiving notification under both clauses 41.5 and 41.6.
- 41.5 In the event that the Contractor assigns the right to receive the Contract price under clause 41.4, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 41.6 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.
- 41.7 The provisions of clause 20 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- 41.8 Subject to clause 41.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 41.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 41.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 41.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 41.8 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **Transferee**):
- (a) the rights of termination of the Authority in clauses 53 (Termination on change of control and insolvency) and 54 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor (such consent not to be unreasonably withheld or delayed).
- 41.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 41.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## **42 Waiver**

- 42.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 42.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 5 (Notices).
- 42.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **43 Variation**

- 43.1 Subject to the provisions of this clause 43, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a “**Variation**”.
- 43.2 The Authority may request a Variation by notifying the Contractor in writing of the “Variation” and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- 43.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may;
- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification; or
  - (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at clause 62.
- 43.4 No variation of the Contract shall be valid unless effected in accordance with clause 43.2 (in respect of Variations) or otherwise expressly agreed in writing by an authorised representative of the Authority.

#### **44 Severability**

- 44.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **45 Remedies in the event of inadequate performance**

- 45.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor’s obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 54 (Termination on Default) of the Contract.
- 45.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 54 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract and for the avoidance of doubt, in such circumstances, the Authority shall have no liability to pay the Contract Price in respect of those Services which the Authority has itself supplied or procured;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - (c) terminate, in accordance with clause 54 (Termination on Default), the whole of the Contract.
- 45.3 Without prejudice to its right under clause 21 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party (including pursuant to clause 45.2) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 45.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall be entitled to instruct the Contractor to remedy the failure, in which event the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

- 45.5 In the event that:
- (a) the Contractor fails to comply with clause 45.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
  - (b) the Contractor persistently fails to comply with clause 45.4 above,
- the Authority may terminate the Contract with immediate effect by notice in writing.

#### **46 Remedies Cumulative**

- 46.1 Except as otherwise expressly provided by the Contract, all rights and remedies available to either Party under the Contract or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right remedy to the exclusion of, and shall be without prejudice to the availability of, any other right or remedy.

#### **47 Monitoring of Contract Performance**

- 47.1 The Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule (if used) including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

#### **48 Extension of Initial Contract Period**

- 48.1 The Authority may, to the extent envisaged by the Contract Duration Schedule and subject to any notice provisions specified in that Schedule, extend the duration of the Contract beyond the Initial Contract Period. The provisions of the Contract will apply throughout any such extended period.

#### **49 Entire Agreement**

- 49.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contractor acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon, and in connection with the Contract does not have any remedy and waives all rights in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contract, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.
- 49.2 In the event of, and only to the extent of, any conflict or inconsistency between the clauses of the Contract, the Schedules and any other documents referred to in or attached to the Contract, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:
- (a) first priority, the clauses of the Contract;
  - (b) second priority, the Schedules;
  - (c) third priority, any other document referred to in or attached to the Contract.

#### **50 Counterparts**

- 50.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

### **LIABILITIES**

#### **51 Liability, Indemnity and Insurance**

- 51.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
  - (b) fraud; or
  - (c) fraudulent misrepresentation; or
  - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
  - (e) any liability arising under any indemnity provision in the Contract, save for the indemnity set out at clause 51.2, or (in the case of the Contractor only) any liability arising under clause 25.3 (Prevention of Corruption).
- 51.2 Subject to clauses 51.3 and 51.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the actual or purported supply, delayed supply or failure to supply the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

- 51.3 Subject always to clause 51.1, the liability of either Party for Defaults shall be subject to the following limits:-
- (a) save as provided by clause 51.3(c), the liability of either Party for any single Default resulting in loss of or damage to the property of the other Party shall not exceed £10,000,000] (ten million pounds);
  - (b) save as provided by clause 51.3(c), the aggregate liability under the Contract of either Party for any and all Defaults (other than a Default covered by clause 51.3(a) above) shall not exceed an amount equal to 150% (one hundred and fifty percent) of the total Contract Price (being the aggregate of all amounts already paid to the Contractor and all amounts payable over the balance of the Initial Contract Period and, if applicable, any extension of that period);
  - (c) to the extent that the liability of the Contractor for any particular Default is (or, but for any breach of the Contract by the Contractor, would be) covered by any insurance which the Contractor is required under the Contract to maintain, the Contractor shall at a minimum be liable to the Authority in respect of that Default up to the Insurance Limit, even if this results in the liability of the Contractor under the Contract exceeding the limits specified in clauses 51.3(a) or 51.3(b), as applicable.
- 51.4 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 51.5 Without prejudice to its liability to indemnify the Authority under the Contract, the Contractor shall take out and maintain, or procure the taking out and maintenance of the insurances specified in the Insurance Schedule, together with any other insurances as may be required by Law. All insurances of the kind specified in the Insurance Schedule shall comply in all respects with the requirements set out in the Insurance Schedule.
- 51.6 The Contractor shall ensure that the Required Insurances are taken out with insurers of good financial standing and of good repute in the United Kingdom insurance market and that the relevant policies are effective in each case not later than the date on which the relevant risk commences and in any event by the Commencement Date.
- 51.7 The Contractor shall not (and shall use all reasonable endeavours to procure that none of its sub-contractors of any tier shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any policy in which the Contractor is an insured, a co-insured or additional insured person.
- 51.8 The Contractor shall in respect of the Required Insurances:-
- (a) provide for 5 (five) Working Days prior written notice of their cancellation or non-renewal to be given to the Authority. Failure to do so will be deemed to be a material breach of the Contract;
  - (b) insofar as they relate to damage to assets, cover the same for the full reinstatement or replacement value;
  - (c) in respect of third party public and products liability insurance, procure that this shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority arising from death or bodily injury or third party property damage and for which the insured is legally liable in the provision of the Services or in connection with the Contract.
- 51.9 The Contractor shall provide on request by the Authority:-
- (a) evidence of the Required Insurances in a form satisfactory to the Authority;
  - (b) evidence in a form satisfactory to the Authority, that the premiums payable under the Required Insurances have been paid and that those insurances are in full force and effect and meet the insurance requirements of the Contractor in respect thereof,
- provided that neither inspection, nor receipt of such evidence shall constitute acceptance by the Authority of the terms thereof, nor be a waiver of the Contractor's liability under the Contract.
- 51.10 Renewal certificates or cover notes, in a form satisfactory to the Authority, in relation to any of the Required Insurances shall be obtained by the Contractor as and when requested and certified copies shall be forwarded to the Authority as soon as possible but in any event no later than 10 (ten) Working Days following the request.

- 51.11 If the Contractor is in breach of clause 51.5 in respect of any Required Insurance, the Authority may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand, together with all expenses incurred in procuring such insurance.
- 51.12 The Contractor shall promptly notify to insurers any matter arising from or in relation to the Contract for which it may be entitled to claim under any of the Required Insurances and diligently pursue any valid insurance claim.
- 51.13 In the event that the Authority receives a claim relating to the Services or the Contract, the Contractor shall co-operate with the Authority or its insurers and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 51.14 The Contractor shall:-
- (a) (except where the Authority is the claimant party) give the Authority notification within 10 (ten) Working Days after any claim in excess of £50,000 (fifty thousand pounds) relating to the provision of the Services or the Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Authority) provide full details of the incident giving rise to the claim;
  - (b) promptly and diligently deal with all claims received relating to the Required Insurances and in accordance with the relevant insurers' requirements;
  - (c) (except where the Authority is the claimant party) in relation to all claims relating to the Required Insurances, give the Authority details of the value and nature of all such claims relating to the provision of the Services or the Contract as may from time to time be required by the Authority.
- 51.15 Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Contractor of its liabilities and obligations under the Contract.
- 51.16 Where any policy relating to the Required Insurances requires payment of a premium then, subject to clause 51.11, the Contractor shall be liable for such premium.
- 51.17 Where any policy relating to any of the Required Insurances is subject to an excess or deductible below which the indemnity from insurers is excluded the Contractor shall be liable for such excess or deductible and shall indemnify the Authority against any loss or claims which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Required Insurances whether under the terms of the Contract or otherwise.
- 51.18 If at any time during the provision of the Services, any of the Contractor's Staff are required to travel, the Contractor shall be responsible for ensuring that it has and maintains at no cost to the Authority adequate personal accident, medical and personal effects travel insurance for such purposes. For the avoidance of doubt, the Authority shall not, in any circumstances, be responsible for arranging or maintaining such insurance or for ensuring that the Contractor arranges or maintains such insurance.

## **52 Warranties and Representations**

- 52.1 The Contractor warrants and represents that:
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract it has not committed any fraud;
  - (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
  - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
  - (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for

the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;

- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three 3 years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract.

#### **DEFAULT, DISRUPTION AND TERMINATION**

### **53 Termination on insolvency and change of control and due to procurement issues**

53.1 The Authority may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a body corporate (whether a limited company, a limited liability partnership or otherwise) and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed or any other step is taken with a view to it being determined that it be wound-up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 10 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) it is for any reason dissolved or struck-off the register of companies; or
- (i) any event similar to those listed in 53.1(a)-(h) occurs under the law of any jurisdiction.

53.2 The Authority may terminate the Contract with immediate effect by giving notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or an order is made for the Contractor's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 10 Working Days; or



## Contract for Services

- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

53.3 The Authority may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a partnership and in respect of the Contractor:-

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme, arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;
- (c) a petition is presented for its winding-up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
- (d) a receiver, or similar officer, is appointed over the whole or any part of its assets;
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994;
- (f) any of the following occurs in relation to any of its partners:-
  - (i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition, scheme or arrangement with, or assignment for the benefit of, his creditors;
  - (ii) a petition is presented for his bankruptcy;
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets.

53.4 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control, where "**control**" shall mean in relation to a body corporate the power of a person (or persons acting in concert with him) to secure directly or indirectly that the affairs of that body are conducted in accordance with the wishes of that person (and any persons acting in concert with him), whether by means of the exercise of voting power or any other contractual right, or otherwise. The Authority may terminate the Contract with immediate effect by giving notice in writing within six months of:

- (a) (a) being notified that a change of control has occurred; or
- (b) (b) where no notification has been made, the date that the Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

53.5 The Authority reserves the right to terminate the Contract with immediate effect by giving written notice to the Contractor if:

53.5.1 the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;

53.5.2 the Contractor has, at the time of the time of the award of this Contract, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015 including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure for this Contract; or

53.5.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaty on the European Union, the Treaty on the Functioning of the European Union and/or the Public Contracts Directive (Directive 2014/24/EU of the European Parliament and Council) that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.

## 54 Termination on Default

54.1 The Authority may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the reasonable satisfaction of the Authority within 10 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the reasonable opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Contract; or
- (d) the Default relates to a failure to meet and/or rectify performance in respect of particular service levels or key performance indicators and the failure in question is of a severity that permits the Authority by reference to other provisions in the Contract (whether in a Schedule or otherwise) to terminate the Contract.

54.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

54.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 21 (Recovery of Sums Due).

## **55 Break**

55.1 The Authority shall have the right to terminate the Contract at any time by giving to the Contractor not less than the period of notice specified for these purposes in the Contract Duration Schedule.

55.2 The Authority shall have the right to terminate the Contract at any time with immediate effect on giving notice to the Contractor if there is a risk, or the Authority reasonably considers that there is a risk, of the Authority's reputation being damaged if the Contract was to continue in force.

## **56 Consequences of Expiry or Termination**

56.1 Where the Authority terminates the Contract under clauses 7.2 (Conflicts of Interest), 25.3 (Prevention of Corruption), 26.3 (Prevention of Fraud); 30.7 (Health and Safety), 34.2 (Official Secrets and the Finance Act), 35.6 (Confidentiality), 39.9 (Intellectual Property), 45.2 or 45.5 (Remedies in the event of inadequate performance), 53.1 to 53.3 (Termination on insolvency), 54 (Termination on Default) or 57.4 (Disruption) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Initial Contract Period and (if applicable) any extension to that period.

56.2 Where the Contract is terminated under any of the clauses referred to in 56.1, no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under that clause.

56.3 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 20 (Payment and VAT), 21 (Recovery of Sums Due), 25 (Prevention of Corruption), 33 (Data Protection Act), 34 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 35 (Confidential Information), 36 (Freedom of Information), 39 (Intellectual Property Rights), 40 (Audit), 46 (Remedies Cumulative), 51 (Liability, Indemnity and Insurance), 56 (Consequences of Expiry or Termination), 58 (Recovery upon Termination), 61 (Governing Law and Jurisdiction) and 64 (TUPE).

## **57 Disruption**

57.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

57.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

- 57.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 57.4 If the Contractor's proposals referred to in clause 57.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- 57.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **58 Recovery upon Termination**

- 58.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which were obtained or produced in the course of providing the Services;
  - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor under clause 15. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
  - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.
- 58.2 If the Contractor fails to comply with clause 58.1(a) or 58.1(b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- 58.3 Where the Contract is terminated by the Authority under any of the clauses referred to in clause 56.1 or under clause 59.3 (Force Majeure), the Contractor shall provide all assistance under clause 58.1(c) and (d) free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **59 Force Majeure**

- 59.1 Subject to compliance with clause 59.2, neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure.
- 59.2 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 59.1 it shall:
- (a) immediately notify the other by the most expeditious method then available;
  - (b) inform the other of the period for which it is estimated that such failure or delay shall continue;
  - (c) use its best endeavours, acting in accordance with Good Industry Practice, to resume performance of its obligations as quickly as possible and minimise the duration and impact of such failure or delay.
- 59.3 The Authority shall be entitled to terminate the Contract by written notice to the Contractor with immediate effect if:-
- (a) the performance by the Contractor of some or all of its obligations under the Contract is prevented or delayed by Force Majeure for a period of more than 15 Working Days cumulatively or consecutively; or
  - (b) the Authority reasonably anticipates that the performance by the Contractor of some or all of its obligations under the Contract is likely to be prevented or delayed by Force Majeure for a period of more than 15 Working Days cumulatively or consecutively.
- 59.4 For the avoidance of doubt, the Authority shall not be required to pay the Contractor in respect of any period during which (and to the extent that) the Contractor is prevented or delayed in performing its obligations due to Force Majeure. In these circumstances, the Contract Price shall be adjusted and any necessary refund or credit effected in accordance with the Authority's reasonable instructions.

## **60 Ineffectiveness**

- 60.1 If at any time a "declaration of ineffectiveness" is made by a court in respect of the Contract pursuant to regulation 98 of the Public Contracts Regulations 2015 then:-
- (a) the provisions of clause 58 and any other provisions in the Contract which are intended to apply on or after the date on which the Contract is terminated for any reason shall apply as if on the date on which the relevant declaration of ineffectiveness is to take effect (and as a result the Contract is to come to an end) the Contract had been terminated;
  - (b) if and only if it is expressly stated in another provision of the Contract that the Authority will indemnify the Contractor where the Authority terminates the Contract during the Initial Contract Period under clause 55.1 (Break), the Authority shall indemnify the Contractor subject to and in accordance with the terms of that provision as if on the date on which the relevant declaration of ineffectiveness is to take effect (and as a result the Contract is to come to an end) the Contract had been terminated under clause 55.1;
  - (c) subject to clause 60.1(b), the Authority shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Contractor in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Contractor as a result of or in connection with the relevant declaration of ineffectiveness being made, including any loss of revenue or profit that the Contractor might otherwise have generated under the Contract during the Contract Period.
- 60.2 If at any time an order is made by a court, pursuant to regulation 102 of the Public Contracts Regulations 2015, that the duration of the Contract be shortened, then:-
- (a) for the avoidance of doubt, the provisions of clause 58 and any other provisions in the Contract which are intended to apply on or after the date on which the Contract is terminated for any reason shall apply as if on the date on which the Contract expires in accordance with the relevant court order the Contract had been terminated;
  - (b) if the relevant court order provides for the Contract to expire prior to the end of the Initial Contract Period, then if and only if it is expressly stated in another provision of the Contract that the Authority will indemnify the Contractor where the Authority terminates the Contract during the Initial Contract Period under clause 55.1 (Break), the Authority shall indemnify the Contractor subject to and in accordance with the terms of that provision as if on the date on which the Contract expires in accordance with the relevant court order the Contract had been terminated under clause 55.1;
  - (c) subject to clause 60.1(b), the Authority shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Contractor in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Contractor as a result of or in connection with the duration of the Contract being shortened in accordance with the relevant court order, including any loss of revenue or profit that the Contractor might otherwise have generated under the Contract during the Contract Period.

## **DISPUTES AND LAW**

### **61 Governing Law and Jurisdiction**

- 61.1 Subject to the provisions of clause 62, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

### **62 Dispute Resolution**

- 62.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 62.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 62.3 If the dispute cannot be resolved by the Parties pursuant to clause 62.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 62.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 62.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

- 62.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
  - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
  - (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
  - (e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts, unless the dispute is referred to arbitration pursuant to the procedures set out in clause 62.6.
- 62.6 Subject to clause 62.2, the Parties shall not institute court proceedings until the procedures set out in clauses 62.1 and 62.3 have been completed save that:
- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 62.7.
  - (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 62.7.
  - (c) the Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 62.7, to which the Authority may consent as it sees fit.
- 62.7 In the event that any arbitration proceedings are commenced pursuant to clause 62.6:
- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - (b) the Authority shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
    - (i) that the dispute is referred to arbitration; and
    - (ii) providing details of the issues to be resolved;
  - (c) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 62.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - (e) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the Arbitration Notice being issued by the Authority under clause 62.7(b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (f) the arbitration proceedings shall take place in London and in the English language; and
  - (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

### 63 Step-in rights

- 63.1 The Authority may take action under this clause 63 in the following circumstances:-

- (a) any circumstances have occurred which would entitle the Authority to terminate the Contract (whether under any part of clauses 53 to 60 of the Contract or otherwise);
  - (b) any circumstances have occurred (such as, but without limitation, a failure to meet and/or rectify performance in respect of specified service levels or key performance indicators) in which the Authority is entitled by reference to other provisions in the Contract (whether set out in a Schedule or otherwise) to exercise step-in rights.
- 63.2 Before the Authority exercises its right of step-in under this clause 63 it shall permit the Contractor the opportunity to demonstrate to the Authority's reasonable satisfaction within 10 (ten) Working Days (or such other shorter period as the Authority may reasonably specify) that the Contractor is still able to provide the Services in accordance with the terms of the Contract and/or remedy the circumstances giving rise to the right to step-in without the requirement for the Authority to take action.
- 63.3 If the Authority is not satisfied with the Contractor's demonstration pursuant to clause 63.2, the Authority may:-
- (a) where the Authority considers it expedient to do so, require the Contractor by notice in writing to take those steps that the Authority considers necessary or expedient to mitigate or rectify the state of affairs giving rising to the Authority's right to step-in;
  - (b) appoint any person to work with the Contractor in performing all or a part of the Services (including those provided by any sub-contractor); and/or
  - (c) take the steps that the Authority considers appropriate to ensure the performance of all or part of the Services (including those provided by any sub-contractor)
- 63.4 The Contractor shall co-operate fully and in good faith with the Authority, or any other person appointed in respect of clause 63.3 and shall adopt any reasonable methodology in providing the Services recommended by the Authority or that person.
- 63.5 If the Contractor:
- (a) fails to confirm within 10 Working Days of a notice served pursuant to clause 63.3(a) that it is willing to comply with that notice;
  - (b) fails to work with a person appointed in accordance with clause 63.3(b);
  - (c) fails to take the steps notified to it by the Authority pursuant to clause 63.3(c),
- then the Authority may take action under this clause either through itself or with the assistance of third party contractors, provided that the Contractor may require any third parties to comply with a confidentiality undertaking equivalent to clause E3.
- 63.6 If the Authority takes action pursuant to clause 63.5, the Authority shall serve notice ("Step-in Notice") on the Contractor. The Step-in Notice shall set out the following:-
- (a) the action the Authority wishes to take and in particular the Services it wishes to control;
  - (b) the reason for and the objective of taking the action and whether the Authority reasonably believes that the primary cause of the action is due to the Contractor's Default;
  - (c) the date it wishes to commence the action;
  - (d) the time period which it believes will be necessary for the action;
  - (e) whether the Authority will require access to the Contractor's premises;
  - (f) to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period the action is being taken.
- 63.7 Following service of a Step-in Notice, the Authority shall:-
- (a) take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary (together, the "Required Action");
  - (b) keep records of the Required Action taken and provide information about the Required Action to the Contractor;
  - (c) co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the Authority is not assuming control;
  - (d) act reasonably in mitigating the cost that the Contractor will incur as a result of the exercise of the Authority's rights under this clause.
- 63.8 For so long as and to the extent that the Required Action is continuing, then:-
- (a) the Contractor shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

- (b) the Authority shall pay to the Contractor the Contract Price after the deduction of the Authority's costs of taking the Required Action and any other sums which the Authority is entitled to deduct.
- 63.9 Before ceasing to exercise its step in rights under this clause the Authority shall deliver a written notice to the Contractor ("Step-Out Notice"), specifying:-
- (a) the Required Action it has actually taken;
- (b) the date on which the Authority plans to end the Required Action ("Step-Out Date") subject to the Authority being satisfied with the Contractor's ability to resume the provision of the Services and the Contractor's plan developed in accordance with clause 63.10.
- 63.10 The Contractor shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's Approval a draft plan ("Step-Out Plan") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of the Contract.
- 63.11 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's Approval. The Authority shall not withhold or delay its Approval of the draft Step-Out Plan unnecessarily.
- 63.12 The Contractor shall bear its own costs in connection with any step-in by the Authority under this clause 63.
- 64 TUPE**
- 64.1 The Parties acknowledge and agree that if Service Commencement gives rise to a relevant transfer within the meaning of the TUPE Regulations:-
- (a) the Contractor shall, and shall procure that any sub-contractor shall, comply with such obligations as may arise under Regulation 13 of the TUPE Regulations to inform and (if appropriate) consult with employees and/or their appropriate representatives;
- (b) clauses 64.2 to 64.5 shall apply.
- 64.2 Subject to clauses 64.3 and 64.4, the Authority shall indemnify the Contractor in respect of all and any costs, expenses, liabilities, damages and losses (including legal costs) arising out of any claim, demand, action or proceeding which is made or brought against the Contractor at any time:
- (a) by an Entrance Employee, to the extent that it relates to the period before the date of Service Commencement;
- (b) in relation to a failure by any Outgoing Contractor to comply with its obligations under Regulation 13 of the TUPE Regulations; and/or
- (c) by an employee or former employee of any Outgoing Contractor other than an Entrance Employee whose employment is deemed to transfer to the Contractor under the TUPE Regulations by virtue of Service Commencement.
- 64.3 The indemnities in clause 64.2 shall not apply to the extent that:-
- (a) any contract between the Authority and the Outgoing Contractor provides for the Outgoing Contractor to indemnify the Contractor in respect of any of the costs, expenses, liabilities, damages and losses covered by the indemnities set out in clause 64.2;
- (b) the relevant indemnity in such contract is enforceable directly by the Contractor against the Outgoing Contractor pursuant to the Contract (Rights of Third Parties) Act 1999; and
- (c) the Authority has provided to the Contractor a copy of the relevant clauses from such contract.
- 64.4 Subject always to clause 64.3, the indemnities in clause 64.2 shall only apply to the extent that the Authority recovers (in respect of the subject matter of such indemnities) such sum of money as may be required to satisfy such indemnities from any Outgoing Contractor under any indemnity or other legal entitlement it has against such Outgoing Contractor. The Authority shall use its reasonable endeavours to recover any such sums under such entitlement as is mentioned in this clause 64.4.
- 64.5 The Contractor shall indemnify the Authority for and against all claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Authority (whether directly or indirectly under an indemnity given by the Authority or otherwise) including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- (a) any failure by the Contractor or any sub-contractor to comply with its obligations pursuant to the TUPE Regulations; and/or

- (b) anything done or omitted to be done by the Contractor or any sub-contractor in respect of any of the Entrance Employees whether before or after the date of Service Commencement.

64.6 The Parties acknowledge and agree that:-

- (a) subsequent to the commencement of the Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of the Contract, or part of it, or otherwise) resulting in a transfer of the Services in whole or in part ("Exit Transfer"); and
- (b) if an Exit Transfer is a relevant transfer for the purposes of the TUPE Regulations, then the Authority or a Replacement Contractor or a sub-contractor of a Replacement Contractor (as the case may be) would inherit liabilities in respect of the Exit Employees.

64.7 The Contractor agrees that, subject to compliance with the DPA:-

- (a) within 15 Working Days of the earliest of:-
  - (i) receipt or the giving of notice of early termination of the Contract or any part thereof;
  - (ii) the date which is 12 months before the expiry of any fixed period for the duration of this Contract (whether an initial or any extended period);
  - (iii) receipt by the Contractor of a written notice from the Authority given on or after the commencement by the Authority of a re-tendering exercise in respect of the provision of part of all of the Services or any similar services;

it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Authority or, at the direction of the Authority, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List and updated Staffing Information when reasonably requested by the Authority or any Replacement Contractor;

- (b) at least 10 Working Days prior to the End Date, the Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Staff named are Exit Employees;
- (c) the Authority shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
- (d) upon reasonable request by the Authority the Contractor shall provide the Authority or at the request of the Authority, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Authority reasonably requests.

64.8 The Contractor shall ensure that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be true and accurate in all material respects.

64.9 Within 10 Working Days following the End Date, the Contractor shall, if so requested by the Authority, provide to the Authority or any Replacement Contractor, in respect of each person (subject to compliance with the DPA) on the Contractor's Final Staff List who is an Exit Employee, their:-

- (a) pay slip data for the most recent month;
- (b) cumulative pay for tax and pension purposes;
- (c) cumulative tax paid;
- (d) tax code;
- (e) voluntary deductions from pay; and
- (f) bank or building society account details for payroll purposes.

64.10 From the date of the earliest event referred to in clause 64.7(a) the Contractor shall not, and shall procure that each sub-contractor shall not, without the prior written consent of the Authority assign any person to the provision of the Services (or the relevant part) which is the subject of an Exit Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

- (a) increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
- (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;



- (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - (d) introduce any new contractual or customary practice concerning the making of any lump sum payment or the giving of any benefit on the termination of employment of any employees listed on the Contractor's Provisional Staff List; and
  - (e) replace any of the Staff listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.
- 64.11 The Contractor shall promptly notify the Authority or, at the direction of the Authority, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 64.12 In connection with a relevant transfer to which the TUPE Regulations apply, the Contractor shall, and shall procure that each sub-contractor shall, perform and discharge all obligations in respect of all the Exit Employees and their representatives for its own account up to and including the End Date.
- 64.13 The Contractor shall indemnify the Authority and any Replacement Contractor (and any sub-contractor of a Replacement Contractor) in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Authority (whether directly or indirectly under an indemnity given by the Authority to a Replacement Contractor or otherwise) or any Replacement Contractor (or any sub-contractor thereof) including all legal expenses and other professional fees (together with any VAT thereon) in relation to:-
- (a) any act or omission by the Contractor or any sub-contractors on or before the End Date or any other matter, event or circumstance occurring or having its origin before the End Date, which relates to an Exit Employee;
  - (b) all and any claims in respect of all emoluments and outgoings in relation to the Exit Employees (including without limitation all wages, holiday entitlement, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the End Date;
  - (c) any claim arising out of the provision of, or proposal by the Contractor or any sub-contractor to offer any change to any benefit, term or condition or working condition of any Exit Employee where such offer or agreement is made on or before the End Date;
  - (d) any claim made by or in respect of any person who claims to be employed or to have been employed by the Contractor or any sub-contractor, other than an Exit Employee, and for which it is alleged that the Authority or any Replacement Contractor (or any sub-contractor thereof) may be liable by virtue of this Agreement and/or the TUPE Regulations;
  - (e) any act or omission of the Contractor or any sub-contractor in relation to its obligations under Regulations 11 or 13 of the TUPE Regulations, or in respect of an award of compensation under Regulation 15 of the TUPE Regulations except to the extent that the liability arises from the failure of the Authority or any Replacement Contractor (or any sub-contractor thereof) to comply with Regulation 13 of the TUPE Regulations;
  - (f) any statement communicated to or action done by the Contractor or any sub-contractor in respect of any Exit Employee on or before the End Date regarding the Exit Transfer which has not been agreed in advance with the Authority in writing.
- 64.14 All Staff Expenses which relate to any Exit Employees shall be apportioned on a time basis so that such part of such Staff Expenses which relates to any Exit Employee and is attributable to the period ending on the End Date shall be borne by the Contractor. Within 10 Working Days of the End Date, the Contractor shall account to the Authority or any Replacement Contractor for such Staff Expenses, including the cost of unused holiday entitlement accrued to the End Date. The Contractor agrees to indemnify the Authority and any Replacement Contractor (or any sub-contractor thereof) against any liability arising because of any failure by the Contractor to fulfil its obligations under this clause 64.14.
- 64.15 The Contractor shall indemnify the Authority, any Replacement Contractor and/or (as the case may be) any sub-contractor of a Replacement Contractor in respect of any claims (including claims under an indemnity given by the Authority to a Replacement Contractor or otherwise) arising from any act or omission of the Contractor (or any of its sub-contractors) in relation to any other Staff who is not an Exit Employee during any period whether before, on or after the End Date.
- 64.16 The parties agree that any Replacement Contractor and any sub-contractor of a Replacement Contractor shall be entitled to enforce the obligations owed to and the indemnities given to such

Replacement Contractor or sub-contractor (as the case may be) under this clause 64 pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** of which this contract has been duly executed by the parties.

Signature page to the **[insert description of contract]** between the Police and Crime Commissioner for West Midlands and **[redacted]**.

**Signed by** **[redacted]**  
Print Name **[redacted]**  
Role within organisation **[redacted]** )  
for and on behalf of **Police and Crime** )  
**Commissioner for West Midlands** )

**Signed by** **[redacted]**  
Print Name **[redacted]**  
Role within organisation **[redacted]** )  
for and on behalf of **[redacted]** )

**Schedule 1**

**Contractor details schedule**

Full name: **[INSERT]**

Registered office/principal place of business: **[INSERT]**

Registered number (if applicable): **[INSERT]**

Address for notices (if different to above): **[INSERT]**

Contact name (person for whose attention notices to be addressed): **[INSERT]**

## Schedule 2

### Contract duration schedule

Initial Contract Period

Commencement Date: **INSERT**

Expiry Date (for purposes of clause 2): **INSERT**

Extension to Initial Contract Period

For the purposes of clause 48, the Authority may extend the Initial Contract Period for a further period of up to XX months on giving written notice to the Contractor not less than 3 Months prior to the last day of the Initial Contract Period.

Authority Break Option

For the purposes of clause 55.1, the minimum length of notice to be given by the Authority if it wishes to terminate the Contract early is 3 Months.

### Schedule 3

#### Specification schedule

##### **No Exclusivity**

The Contractor is not being appointed as the Authority's exclusive provider of all services which are the same as or similar to the Services and the Authority shall be free at any time to purchase any such services from one or more other contractors.

##### **No Guaranteed Purchases**

The Authority does not give, and shall not be deemed to have given, any guarantee, warranty or other assurance as to the quantity or value of Services that may be required under the Contract, nor as to the revenue that the Contractor will generate as a result of entering into the Contract

##### **Authority Contact(s)**

**INSERT**

***\*\*The remainder of this Schedule shall be completed on award of contract incorporating the Authority's requirements and successful Tenderer response to such requirements\*\****

**Schedule 4**  
**Pricing Schedule**

Contract Price **INSERT**  
Please refer to ITT pricing schedule

Payment Terms  
in accordance with clause 20 (Payment and VAT).

Variation of Contract Price

The Contract Price shall not without the express prior written consent of the Authority be subject to any increase whatsoever by the Contractor during the term of the Contract.

## Schedule 5

### Insurance Schedule

#### [Third Party Public and Products Liability Insurance

**Insured £10 million for Public Liability and £10million for Employers Liability.**

The Contractor

#### *Interest/Insured Risks*

To indemnify the Insured in respect of all sums that it may become legally liable to pay as damages (including claimants costs and expenses) in respect of accidental:

- (i) death, bodily injury to, or sickness, anguish or shock whether mental or otherwise, or illness or disease contracted by any person (other than employees of the Contractor);
- (ii) loss or damage to property;

happening during the Period of Insurance (as defined below) and arising out of or in connection with the provision of the Services and/or the Contract.

#### *Limit of Indemnity*

**Not less than £10,000,000 (10 million pounds) in respect of any one occurrence the number of occurrences being unlimited, but in respect of products liability not less than £10,000,000 (10 million pounds) for each and every occurrence and in the aggregate per annum and, in respect of pollution liability (to the extent pollution liability is insured by the policy), not less than £1,000,000 (one million pounds) for each and every occurrence.**

#### *Territorial Limits*

United Kingdom

#### *Jurisdiction relating to policy interpretation*

Courts of England and Wales

#### *Choice of Law*

This insurance shall be governed in accordance with the laws of England and Wales

#### *Period of Insurance*

From the date of the Contract for the duration of the Contract.

#### Compulsory Insurance

The Contractor and any sub-contractors of the Contractor are required to meet their United Kingdom statutory insurance obligations in full. Insurances required to comply with all statutory requirements including, but not limited to, United Kingdom employers' liability and motor third party liability insurance.

**The limit of indemnity for the employers' liability insurance shall not be less than GBP 5,000,000 (5 million pounds sterling) (or such other limit as may be required by law from time to time) for any one occurrence inclusive of costs, the number of occurrences being unlimited.]**

## Schedule 6

### Performance criteria schedule

**[Note: this Schedule will only be required where the Authority wishes to establish a service level/KPI regime against which performance by the Contractor can be measured. If this Schedule is required, the following parts of the Schedule will need to be considered carefully and completed:-**

- **the table of KPIs set out in the section headed "Key Performance Indicators". For each KPI, it will be necessary to determine and record in clear, objectively measurable terms both the required level of performance and the number of "Performance Points" that will accrue for a given level of under-performance;**
- **paragraph 1.11, setting out the value of each "Performance Point" and the trigger point for application of "Service Credits";**
- **paragraph 1.13, setting out the trigger point (by reference to a certain number of accrued Performance Points) for the Contractor being required to prepare a "Service Rectification Plan";**
- **paragraph 1.18, setting out the trigger point (by reference to a certain number of accrued Performance Points) for the Authority being entitled to exercise step-in rights;**
- **paragraph 1.19, setting out the trigger point (by reference to a certain number of accrued Performance Points) for the Authority being entitled to exercise termination rights.**

**If this Schedule is not required, all of the text below (and these drafting notes) should be deleted and the words "Not Used" inserted below instead.]**

#### Key Principles

- 1.1 Throughout the Contract Period, the Contractor shall supply Services that meet or exceed the standards set out in the Key Performance Indicators (KPIs) described in the section below headed "Key Performance Indicators" and take corrective action in the event of failure to meet those standards.
- 1.2 The Contractor shall provide monthly reports (in accordance with the section below headed "Reporting Obligations") summarising the performance achieved by the Contractor against the KPIs.
- 1.3 Where the Contractor fails to meet the required performance standard against a KPI, the Contractor shall accrue "Performance Points" in the manner described in the section headed "Key Performance Indicators" below.
- 1.4 Where the number of Performance Points accrued in a particular period exceeds certain levels, as set out in the following sections of this Schedule, the consequences may include:-
  - (a) the application of service credits by way of an adjustment to the Contract Price
  - (b) the preparation and implementation of a "Service Rectification Plan";
  - (c) the exercise of step-in rights by the Authority; and/or
  - (d) the exercise of termination rights by the Authority.
- 1.5 The remedies set out in this Schedule for failure to meet the KPIs are not intended to be the Authority's exclusive remedy for any such failure and shall be without prejudice to any other right or remedy to which the Authority may be entitled, whether under other express provisions of the Contract, under the general law or otherwise.

#### Key Performance Indicators

- 1.6 Each of the following KPIs shall be measured on a monthly basis and accordingly relate to the standard of performance that is required, in respect of the relevant tasks or activities, over any one calendar month:-

Title of KPI	Required Standard of Performance	Basis on which Performance Points accrue
--------------	----------------------------------	------------------------------------------



### Reporting Obligations

- 1.7 The Contractor shall ensure that it has appropriate systems and procedures in place in order to capture and report on compliance with KPIs as required by this Schedule.
- 1.8 Within 10 (ten) Working Days after the end of each calendar month, the Contractor shall deliver to the Authority a management report detailing performance in respect of each KPI ("Monthly Service Report") during that month. Each such report shall be in the format reasonably specified by the Authority, shall identify any failures to meet a particular KPI during the relevant month and shall include relevant "Explanatory Statements" in relation to any such failures describing why, in the reasonable opinion of the Contractor, the failure occurred and the steps that the Contractor proposes to take to avoid any recurrence of that failure.
- 1.9 In order to verify the accuracy of any Monthly Service Report:-
- (a) the Contractor shall promptly provide the Authority with such additional information and/or supporting documentation as the Authority may reasonably request from time to time;
  - (b) if requested to do so, the Contractor shall permit representatives of the Authority to have access to the Contractor's premises for the purposes of inspecting records and other information held by the Contractor in relation to the Services.
- 1.10 The Authority may provide representations and/or comments on any Explanatory Statement. The Contractor shall take reasonable account of all such comments and/or representations and, subject to this, shall fully implement any actions set out in the relevant Explanatory Statement.

### Service Credits

- 1.11 Each Performance Point accrued shall have a value of [£XXX] per point. Where more than [XX] ([ ] Performance Points are accrued in any one month, the value of that excess (i.e. the total number of points, over [ ], accrued in that month multiplied by [£XXX]) shall be deducted from the Contract Price payable to the Contractor for that month and itemised as a service credit (the "Service Credit") on the relevant monthly invoice submitted by the Contractor.
- 1.12 The Contractor acknowledges and agrees that the Service Credits are a reasonable method of price adjustment to reflect the value of poorly performed Services.

### Service Rectification Plan

- 1.13 Where:-
- (a) the number of Performance Points accrued in a month exceeds [XXX]; or
  - (b) the number of Performance Points accrued over any three (3) consecutive months exceeds [XXX] in aggregate
- the Contractor shall prepare a formal written rectification plan ("Service Rectification Plan") to satisfy the Authority that the Contractor is taking, or will imminently take, all necessary steps to improve future performance and minimise the risk of repeated poor performance.
- 1.14 The Service Rectification Plan shall at a minimum contain the following information:-
- (a) identification of the scale of the problem and the steps that the Contractor proposes to take, or is taking, to rectify or improve its performance including all failures to perform the Services in accordance with the KPIs; and
  - (b) a statement as to how success in implementing the Service Rectification Plan will be measured; and

(c) a statement as to the timescales within which the Service Rectification Plan will be implemented; and

(d) such other information as may be reasonably required.

1.15 The Service Rectification Plan shall be signed by [appropriate senior executive] and submitted to the Authority for Approval by no later than 5pm on the fifth (5th) Working Day following but excluding the day of submission of the Monthly Service Statement in which the Performance Points are accrued to reach the thresholds set out in paragraph 1.13 above.

1.16 The Authority shall give its Approval or (if not approved) any comments on the Service Rectification Plan as soon as reasonably practicable and in any event within ten (10) Working Days from and including the date of its submission. Failure to respond shall be deemed approval. Where the Authority decides not to approve the Service Rectification Plan, the Contractor shall make such amendments to the Service Rectification Plan as may reasonably be required by the Authority and shall re-submit the Service Rectification Plan for Approval within five (5) Working Days from and including the date upon which the Authority notifies its request.

1.17 If the Contractor fails fully to implement the Service Rectification Plan in accordance with its terms (including timescales) then without prejudice to any other right or remedy, the Authority may treat such failure as a material breach of the Contract that is incapable of remedy and that accordingly provides grounds under clause 52 of the Contract for the Authority to *terminate the Contract with immediate effect on giving notice to the Contractor*.

#### Authority Step-in Rights

1.18 Where:-

(a) the number of Performance Points accrued in a month exceeds [XXX]; or

(b) the total number of Performance Points accrued over any three (3) consecutive months exceeds [XXX],

the Authority shall be entitled to exercise a right of step-in under clause J1 of the Contract.

#### Authority Termination Rights

1.19 Where:-

(a) the number of Performance Points accrued in a month exceeds [XXX]; or

(b) the total number of Performance Points accrued over any three (3) consecutive months exceeds [XXX] in aggregate,

the Authority shall be entitled to treat such under performance as a material breach of the Contract that is incapable of remedy and that accordingly provides grounds under clause 52 of the Contract for the Authority to terminate the Contract with immediate effect on giving notice to the Contractor.

**Schedule 7**  
**Monitoring schedule**

The Contractor will provide the Authority with quarterly management information that is broken down into:

- [INSERT]
- [INSERT]

The Authority and the Contractor will have regular contract review meetings. It is anticipated that the contract shall be reviewed two times in an annual period at a time and date to suit the Contractor and the Supervising Officer.

**Schedule 8**

**Commercially sensitive information schedule**

**Not Used.**

**Schedule 9**

**Entrance employees schedule**

**Not Used.**

## Schedule 10

### Guarantee schedule

#### Obligation to Procure Guarantee

On or before the Commencement Date, the Contractor shall procure that a guarantee in the form set out in Annex A of this Schedule is executed in favour of the Authority by *insert details of Guarantor*.

**Schedule 11**

**Information Security Schedule**

**Glossary**

<p>Facility or Facilities</p>	<p>shall mean any kind of building intended to house any combination or permutation of Confidential Information, Organisational Data, Personal Data (as defined by the Data Protection Act), Staff, the provision or operation of the Services, or the Contractor's Systems Environment.</p>
<p>ISO/IEC 27001 and ISO/IEC 27002</p>	<p>the international standards for information security management as published by the International Organisation for standardisation and as updated from time to time.</p>
<p>Authority's Systems Environment</p>	<p>shall include, without limitation, all the Authority's information systems (including hardware, software and communications devices) which are accessible to the Contractor in relation to provision of the Services to the Authority.</p>
<p>Contractor's Systems Environment</p>	<p>shall include, without limitation, all information systems (including hardware, software and communication devices) owned or controlled by the Contractor (and any sub-contractors of the Contractor) which are used for the provision of the Services to the Authority.</p>

Capitalised terms used in this Schedule and which are not defined above shall bear the meanings given to them in the Contract.

## 1. General Provisions

- 1.1. The Contractor shall at all times use all reasonable endeavours to ensure that the Contractor's Systems Environment and the Facilities are adequately and appropriately secured to minimise the risk of unauthorised access or disclosure, theft, loss, destruction or misuse of the Authority's Information and Confidential Information and ensure that the information security terms of this Schedule are complied with.
- 1.2. The Contractor shall be liable for the failure of any of its Staff to comply with this Information Security Schedule as if such failure were the failure of the Contractor.
- 1.3. Should the Authority be subject to any Regulatory Body request related to the security of the Authority's Information and Confidential Information related to the Services provided, the Contractor will provide to the Authority on request, written evidence and assurance (to the extent that assurance can be accomplished without compromising third-party confidential information or violating applicable laws, contracts or pre-existing policies or security protocols of the Contractor), in respect of the security of any of the Authority's Information or Confidential Information processed by the Contractor as may be reasonably required by the Authority to comply with its obligations under relevant UK and European legislation.

## 2. Information Security Management and Governance

- 2.1. The Contractor shall allocate someone with relevant skills and experience to the role of Information Security Manager who shall be responsible for ensuring the Contractor's compliance with the requirements set out in this Information Security Schedule including the security of the Contractor's Systems Environment.
- 2.2. If the Contractor operates and maintains an information security management system which is certified to ISO/IEC 27001 or an equivalent industry accepted standard as agreed with the Authority, it shall include:
  - 2.2.1. scope statement (which covers all of the Services provided under this Contract)
  - 2.2.2. risk assessment (which shall include, as required, any risks specific to the Services being provided to the Authority)
  - 2.2.3. statement of applicability (which shall be shared with, and agreed with the Authority in advance of the Commencement Date)
  - 2.2.4. risk treatment plan (which shall be shared with, and agreed with the Authority in advance of the Commencement Date)
  - 2.2.5. incident management plan

If the Contractor does not have such information security management system then the Contractor shall comply with the requirements in the Annex to this Information Security Schedule where these requirements are applicable given the nature of the Services provided to the Authority by the Contractor.



### **3. Information Processing & Handling**

- 3.1. The Contractor must make all reasonable endeavours to ensure that the Authority's Information and Confidential Information is not compromised, lost, destroyed or corrupted in any way by provision of the Services.
- 3.2. The Contractor shall ensure that it only uses and retains the necessary Information obtained from the Authority in order to perform the Services.
- 3.3. The Contractor shall ensure that only those Staff who need to have access to the Authority's Information for the purposes of performing the Contractor's obligations under the Contract shall have access to the Authority's Information.
- 3.4. The Contractor shall not copy, disclose, transmit or automatically process in any manner any Authority's Information and Confidential Information to any third party (except as expressly required by law or with Approval).
- 3.5. The Contractor shall ensure that appropriate operational and procedural controls are in place to control access to the Authority's Information and Confidential Information printed by the Contractor or received in hard copy format from the Authority. All hard copy Information and Confidential Information of the Authority's shall be stored in a locked container out of standard office working hours.

### **4. Access to the Authority's Systems Environment**

- 4.1. Where the Contractor is granted access to the Authority's Systems Environment for the provision of the Services, any access to or use of the Authority's Systems Environment other than that strictly necessary for the purpose of fulfilling its obligations under the Contract is strictly forbidden.
- 4.2. Access to the Authority's Systems Environment shall only be permitted from a pre-agreed range of designated Contractor network addresses.
- 4.3. The Contractor shall ensure that access to authentication credentials (including passwords, certificates, tokens and biometric data) that enable access to the Authority's Systems Environment must be kept strictly confidential by the Contractor and must not be disclosed to any third party or to Staff who are not authorised for the purposes of the Contract, unless specifically authorised to do so by the Authority in writing.
- 4.4. All controls and limitation of access specified by the Authority in relation to access to the Authority's Systems Environment must be strictly complied with. Such limitations may include defining access to specific systems and times and dates of access as applicable.
- 4.5. The Authority will, for the duration of the Contract, provide ongoing advice as required to overcome any problems that the Contractor may have in accessing or operating the Authority's Systems Environment. As such the Contractor must not attempt to resolve any problems, which, as a result, could jeopardise the Authority's Systems Environment. Any problems encountered in the use of the Authority's Systems Environment must be reported immediately to the Authority through the agreed channels relevant to this Contract.

### **5. Equipment**

- 5.1. The Contractor shall be responsible for the implementation, change management, support and maintenance of the development, configuration, management and policies

for all information security aspects of the Equipment within the Contractor's Systems Environment wherever such Equipment may be located.

## **6. Encryption**

- 6.1. The Contractor shall ensure that technical (automatic data encryption controls for laptops and USB removable media) or procedural (policies and user awareness) controls are in place for all portable devices (e.g. laptops, tablets) and removable media (e.g. CDs, DVDs, USB data keys, back up tapes) that contain the Authority's Information and Confidential Information.
- 6.2. The Contractor shall ensure that the Authority's Information and Confidential Information transferred electronically outside of the Contractor's Systems Environment, or over any public network, is encrypted when initiated by the Contractor.
- 6.3. The encryption mechanisms used in relation to clauses 6.1 and 6.2 shall be in accordance with Good Industry Practice encryption standards which would be agreed between the Contractor and the Authority. Encryption functions provided by office automation software (e.g. Microsoft Office, Adobe Acrobat) excluding Data Compression tools such as WinZip (where 256 AES encryption or higher is used) must not be relied upon to protect the Authority's Information and Confidential Information unless specifically agreed in writing with the Authority.

## **7. Secure Disposal of the Authority's Information**

- 7.1. The Contractor shall destroy or delete, in accordance with Good Industry Practice, the Authority's Information and Confidential Information when no longer required in support of the Services provided.
- 7.2. Any Authority's Information and Confidential Information stored on media and where the media is no longer needed shall be treated as confidential waste. For such media the Contractor shall:
  - 7.2.1. be able to provide independently verifiable evidence that all such media has been processed in accordance with Good Industry Practice to ensure the Information contained on it cannot be subsequently retrieved
  - 7.2.2. only use a means of media processing previously agreed with the Authority in writing.
- 7.3. Notwithstanding clause 7.1 and 7.2, the Contractor will be permitted to retain one copy of the Authority's Information and Confidential Information for the purposes of and for so long as required by any law or regulatory requirement, judicial or administrative process, or its internal compliance procedures. Any obligation to destroy or delete the Authority's Information and Confidential Information shall not be applicable to such information that forms part of an electronic back-up system that is encrypted in accordance with Good Industry practice and is not immediately retrievable as part of day-to-day business.

## **8. Security Incidents**

- 8.1. Any confirmed security incident that affects the security, confidentiality or integrity of the Authority's Information and Confidential Information, shall be promptly (within two to three business days) notified to the Authority through the agreed channels relevant to this Contract.

- 8.2. Formal investigation of any security incident involving Staff, Contractor's information or Contractor's Systems Environment shall be carried out in accordance with Good Industry Practice.

## **9. Audit and Compliance by the Contractor**

- 9.1. Where the Contractor's Systems Environment is connected to the Internet or to other organisations / networks, the Contractor shall perform a security penetration test to ensure the system's security at least annually and upon any major changes to the Contractor's Systems Environment that could have a security impact to the Contractor's Systems Environment supporting the Services (and the Authority's Information collected) under this Contract.
- 9.2. The Contractor shall perform regular and risk based security audits of components of the Contractor's System Environment.
- 9.3. If the Contractor provides a code development service to the Authority as part of its Services to the Authority, the Contractor shall, in relation to code development for applications / systems within the Contractor's Systems Environment, be required to follow Good Industry Practice for code development.
- 9.4. Should Services under this Contract require the Contractor to provide software development Services, the Contractor and the Authority will mutually agree code development practices in the contract award letter prior to the Services being performed.
- 9.5. With prior agreement and support from the Contractor there will be a right to audit at least annually to ensure compliance and due diligence. This may form part of the third party management and assurance process.

## **10. Termination of Contract**

- 10.1. Upon termination of the Contract, in addition to the termination provisions as set out in the Contract, the Contractor shall also:
  - 10.1.1. undertake to return, or securely destroy in accordance with clause 7, all the Authority's Information and Confidential Information, except that which it is required to retain for legal or regulatory compliance obligations or its internal compliance procedures. Where the Authority's Information and Confidential Information is retained for reasons of legal or regulatory compliance or its internal compliance procedures, it must remain secured in accordance with the other requirements of this Information Security Schedule and be returned or securely disposed of in accordance with clause 7 as soon as the legal or regulatory compliance obligations expire;
- 10.2. Notwithstanding clause 10.1, the Contractor will be permitted to retain one copy of the Authority's Information and Confidential Information for the purposes of and for so long as required by any law or regulatory requirement, judicial or administrative process, or its internal compliance procedures.

## Annex

Additional provisions where an information management system complying with clause 2.2 of this Schedule is not held

The Contractor shall implement and maintain an information security policy which shall be aligned to ISO 27001 or an equivalent industry accepted standard as agreed with the Authority.

Prior to commencing the Contract, the Contractor will carry out a risk assessment to assess the information security risks specific to the Contract and to define any specific information security and data handling arrangements that are applicable to this Contract.

As part of this risk assessment, the Contractor will consider each of the requirements set out below and their relevance given the risks identified.

The Contractor will share the outcomes of the performed risk assessment with the Authority and mutually agree any specific information security and data handling arrangements under the contract award letter between the Contractor and the Authority.

### 1. Physical Access to Facilities

- 1.1 The Contractor shall maintain appropriate and adequate physical access control mechanisms to prevent unauthorised access to the Facilities.
- 1.2 The Contractor shall ensure that it puts in place and operates physical access control mechanisms to prevent Staff entering areas within the Facilities that they are not authorised to enter.
- 1.3 The Contractor shall ensure that physical access controls mechanisms within the Facilities for communications rooms, server rooms or any rooms providing connectivity or transport for the Authority's Information or Confidential Information shall prevent unauthorised Staff or other individuals from entering these locations, including ensuring that:
  - 1.3.1 Entry points into data centres shall be accessed via use of authentication which is unique to the individual accessing the location ( i.e. shared PIN codes or keys are not permitted).
  - 1.3.2 Entry points into other locations shall be accessed by only those authorised to have access to the location for business purposes.
- 1.4 Data centre and server room locations must be constructed of floor to ceiling walls and either not contain windows or where windows are present these must be opaque and secured by suitable grilles/bars to prevent physical ingress into the location
- 1.5 The Contractor shall ensure that entry and exit points to the Facilities, data centres and server rooms for the Authority's Information and Confidential Information are monitored by CCTV (24x7). CCTV images shall be retained for a minimum of 30 days.
- 1.6 Fire doors on security perimeters to the Contractor's data centres and server rooms should be alarmed and should close shut.
- 1.7 The Contractor shall ensure that any third party requiring access to provide support or maintenance for any Equipment that is directly or indirectly involved in providing the Services shall be logged into and out of the Facilities including the reason for their visit and the responsible member of Staff and shall be escorted by the responsible member of Staff at all times.

- 1.8 The Contractor will ensure that logs will be maintained of access to the Contractor's data centres and server rooms and that these logs are retained for at least 6 months.

## **2. Access Control**

- 2.1 All Staff who access the Contractor's Systems Environment must be granted authorised access using formally defined and approved processes in accordance with Good Industry Practice.
- 2.2 All Staff must be allocated a unique identifier for their personal and sole use.
- 2.3 The Contractor shall ensure that Staff activities can subsequently be traced back to the individual.
- 2.4 The Contractor must promptly remove, or request the Authority to remove, the access rights of any Staff who have changed roles or left the Contractor's employment or who no longer need access to the Authority's Systems Environment and / or the Contractor's Systems Environment for the purposes of the Contract.
- 2.5 The Contractor must periodically check for and remove, or in the case of the Authority's Systems Environment request the Authority to remove any redundant user identifiers and accounts relating to Staff that are no longer required in relation to the Contractor's Systems Environment or the Authority's System Environment. The Contractor
  - 2.5.1 must keep a formal record of the checks carried out;
  - 2.5.2 must carry out these checks at least annually.
- 2.6 The Contractor must not reallocate user identifiers issued to specific Staff to other Staff without the formal written agreement of the Authority.
- 2.7 The Contractor must maintain a formal record of all Staff authorised to have access to the Authority's Systems Environments and must provide the Authority with a copy of the record upon request.

## **3. Equipment**

- 3.1 The Contractor shall implement a formal change management process to ensure changes made to the Contractor's Systems Environment are approved before being implemented.
- 3.2 Any change to the Contractor's Systems Environment which does or may reduce specific security control requirements defined in a contract award letter for the Services shall be subject to Approval.
- 3.3 Firewall and network based intrusion detection software must be implemented to control and monitor connections to the Contractor's Systems Environment from the Internet or other networks.
- 3.4 All information security controls relating to the development, build, configuration, deployment, operation, change management, maintenance and support for all technologies relating to the Contractor's Systems Environment shall be in line with Good Industry Practice.
- 3.5 The Contractor shall ensure that all systems within the Contractor's Systems Environment or accessing the Authority's System Environment have appropriate up to date anti-virus software installed, in accordance with Good Industry Practice. Anti-virus

software updates must be applied upon being released by the vendor and the software must be configured for at least daily scheduled and on-access scanning.

3.6 Devices (including PCs, laptops and servers) which are used to access, hold or process the Authority's Information and Confidential Information or devices which are used to service, support or maintain systems holding or processing the Authority's Information and Confidential Information must:

- 3.6.1 ensure user interface screens or sessions automatically lock after a short period of inactivity (maximum 30 minutes) and require use of a password, or other authentication credential, to unlock;
- 3.6.2 have all vendor operating system and application software updates / patches installed promptly upon issue by the vendor;
- 3.6.3 have all successful and unsuccessful logon attempts and modifications to system access permissions logged and these logs must be retained for at least 90 days unless the frequency of security events and reasonable file size restrictions reduce this retention period during a specific time period;

3.7 The Contractor shall ensure that the Authority's Information and Confidential Information obtained from the Authority's Systems Environment is only stored and processed in the Contractor's Systems Environment.

#### **4. Staff**

4.1 The Contractor shall ensure that all Staff shall be appropriately vetted for security compliance relevant to the Services being provided to the Authority before commencement of the individuals' involvement with the Services. Vetting will be in compliance with ACPO/ACPOS Vetting requirements.

4.2 Should Services under this Contract require Staff to have bulk access to download/export significant volumes of the Authority's Information or Confidential Information, i.e. Staff holding privileged levels of access to the Authority's Systems Environment such as system administrators, database administrators, the Contractor and the Authority will mutually agree vetting checks in a contract award letter prior to the Services Commencement.

4.3 The Contractor shall maintain complete records of the checks performed for each person vetted.

#### **5. Awareness & Training**

5.1 The Contractor shall ensure that all Staff complete an information security awareness training programme.

5.2 The information security awareness programme shall:

- 5.2.1 ensure Staff are aware of their obligations in relation to protecting the confidentiality, integrity and availability of the Authority's Information and Confidential Information;
- 5.2.2 ensure Staff are made aware of relevant Contractor's information security policies;
- 5.2.3 be performed:
  - 5.2.3.1 before Staff are given access to the Authority's Systems Environment

and / or the Authority's Information or Confidential Information;

5.2.3.2 at regular intervals thereafter, such intervals to be no more than 12 months.

5.3 The Contractor shall ensure that Staff shall only be involved in the provision of the Services or parts of the Services for which they have been adequately trained and vetted.

Schedule 12

Data Protection

<b>Data Discloser:</b>	a party that discloses Shared Personal Data to the other party.
<b>Data Protection Legislation</b>	All applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended [and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications)]; [and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party].
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:</b>	as set out in the Data Protection Legislation.
<b>UK GDPR:</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
<b>Permitted Recipients:</b>	the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement, and [ADD ANY OTHER PERMITTED RECIPIENTS].
<b>Shared Personal Data:</b>	the personal data to be shared between the parties under clause 1.1 of this agreement. Shared Personal Data shall be confined to the following categories of information relevant to the following categories of data subject: a. [type of personal data]; b. [type of personal data], and c. [type of personal data].



**USE THIS WORDING ONLY IF THE CONTRACTOR IS DATA PROCESSOR**

**Scope, Nature and Purpose of Processing by the Contractor**

The fundamental purpose of this Agreement is to meet the Authority's requirements for the provision of [INSERT] Service, as set out further in the Specification included in Section 3 of the Invitation for Submitting a Tender Document.

The purpose of any data processing by the Contractor will be to meet this fundamental purpose and the Contractor agrees that, in terms of scope, it shall process Personal Data only to the extent, and in such a manner, as is necessary for meeting this fundamental purpose. The Contractor further agrees that it shall not process Personal Data for any other purpose.

Under the terms of this Agreement, Personal Data will only be disclosed to the Contractor following signed consent given by the relevant Data Subject. The Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful disclosure of the Personal Data to the Contractor for the duration and purposes of this Agreement.

The Authority is required to disclose Personal Data to refer Data Subjects to the Contractor for treatment. The Contractor is required to process Personal Data in order to receive referrals and deliver treatment. The Personal Data needs to be disclosed in order that the Contractor can be advised of the identities and contact details of the individuals who have been referred. The Contractor requires this information to contact those individuals and to assess their suitability for the course and to ensure correct and appropriate treatment is delivered. The Contractor undertakes to use all reasonable endeavors to ensure that any and all Personal Data disclosed by the Authority is safeguarded in accordance with the terms of this Agreement and the Data Protection Legislation. Referral constitutes a step to reduce future offending by the individual which is both in the public interest and exercising an official duty of the Authority.

**Duration of the Process**

The Contractor shall continue to process the Personal Data for the duration of the Contract Period, but the Contractor's obligations under the Data Protection Legislation and under clause 33 of this Agreement shall continue to apply indefinitely after the expiry of this Agreement.

**Types of Personal Data**

[INSERT]

**Categories of Data Subject**

[INSERT]

**\*\*The remainder of this Schedule shall be completed on award of contract incorporating the Authority's requirements and successful Bidder(s) response(s) to such requirements\*\***

**APPENDIX A (SCHEDULE 12)**

**DATA PROCESSING DETAILS**

***[Note: This Appendix should be completed and added to the agreement]***

**1.1.1 SUBJECT-MATTER OF PROCESSING:**

***[INSERT]***

**1.1.1 DURATION OF THE PROCESSING:**

***[INSERT]***

**1.1.1 NATURE AND PURPOSE OF THE PROCESSING:**

***[INSERT]***

**1.1.1 TYPE OF PERSONAL DATA:**

***[INSERT]***

**1.1.1 CATEGORIES OF DATA SUBJECTS:**

***[INSERT]***

**1.1.1 ADDITIONAL INSTRUCTIONS**

**a) Approved international transfers**

***[Insert details of approved international transfers]***

**b) Technical and organisational security measures**

***[Insert details of specific technical and organisational security measures that the processor agrees to maintain, e.g. encryption]***

**Annex A Of Guarantee Schedule - Form of Guarantee**

**[Insert the name of the Guarantor]**

- and -

The Police and Crime Commissioner for West Midlands

DEED OF GUARANTEE

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**THIS DEED OF GUARANTEE** is made the                    day of                    20[ ]  
BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales with number [ ] whose registered office is at [insert details of the Guarantor's registered office here]] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**")]; in favour of
- (2) The Police and Crime Commissioner for West Midlands whose principal office is at Lloyd House, Colmore Circus Queensway, Birmingham B4 6NQ ("**Beneficiary**")

**WHEREAS:**

- [(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Contractor, to guarantee the due performance by the Contractor of all of the Contractor's obligations under the Guaranteed Agreement.
- (C) It is the intention of the parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

**1. DEFINITIONS AND INTERPRETATION**

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:
  - 1.2.1 "Guaranteed Agreement" means the [ ] made between the Beneficiary and the Contractor on [ ]; and
  - 1.2.2 "Guaranteed Obligations" means all obligations of the Contractor to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Contractor to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to clauses and schedules are, unless otherwise provided, references to clauses of and schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

## 2. **GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Contractor duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Contractor to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Contractor to the Beneficiary under the Guaranteed Agreement or in respect of the Guaranteed Obligations.
- 2.3 If at any time the Contractor shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
  - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
  - 2.3.2 indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Contractor to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Contractor under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation, the Guarantor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the

Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Contractor's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

**3. OBLIGATION TO ENTER INTO A NEW CONTRACT**

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Contractor, or if the Guaranteed Agreement is disclaimed by a liquidator of the Contractor or the obligations of the Contractor are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

**4. DEMANDS AND NOTICES**

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

4.1.1 [Address of the Guarantor in England and Wales]

4.1.2 [Facsimile Number]

4.1.3 [For the Attention of]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 if delivered by hand, at the time of delivery; or

4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

**5. BENEFICIARY'S PROTECTIONS**

5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Contractor and the Beneficiary (whether or not such arrangement is made with or without the assent of the

Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged by any partial performance (except to the extent of such partial performance) by the Contractor of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement or other incapacity, of the Contractor, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Contractor for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Contractor of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Contractor or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Contractor or any third party, or to take any action whatsoever against the Contractor or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.



- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

**6. RIGHTS OF SUBROGATION**

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Contractor and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 6.1 of subrogation and indemnity;
- 6.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Contractor's obligations; and
- 6.3 to prove in the liquidation or insolvency of the Contractor, only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Contractor and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this clause on trust for the Beneficiary.

**7. REPRESENTATIONS AND WARRANTIES**

The Guarantor hereby represents and warrants to the Beneficiary that:

- 7.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- 7.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 7.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to clause 3 have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- 7.3.1 the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
- 7.3.2 any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

7.3.3 the terms of any agreement or other document to which the Guarantor is a party or which is binding upon it or any of its assets;

7.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

7.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## 8. PAYMENTS AND SET-OFF

8.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

8.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee from the day after the date on which payment was due up to and including the date of payment in full (as well after as before any judgment) calculated from day to day at a rate per annum equal to [4%] above the base rate of the Bank of England from time to time in force.

8.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

## 9. GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

## 10. ASSIGNMENT

The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

## 11. SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

## 12. THIRD PARTY RIGHTS

A person who is not a party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of

Guarantee. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**13. GOVERNING LAW**

- 13.1 This Deed of Guarantee shall be governed by and construed in all respects in accordance with English law.
- 13.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 13.3 Nothing contained in this clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 13.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 13.5 [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Contractor] [a suitable alternative to be agreed if the Contractor's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by \_\_\_\_\_ )  
[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary