



west midlands police and crime commissioner

PURCHASE OF SERVICES STANDARD TERMS AND CONDITIONS

SUPPLY OF SERVICES

PART 1 - CONTRACT PARTICULARS

Contract No.	[CONTRACT NUMBER]
Date:	[DATE]
Authority:	West Midlands Police and Crime Commissioner
Authority's address:	West Midlands Police and Crime Commissioner, Lloyd House, Colmore Circus Queensway, Birmingham, B4 6NQ
Authority's Authorised Representative:	Name: Alethea Fuller Title: Deputy Chief Executive Email: mailto:Sam.ellis@oasisuk.org alethea.fuller@westmidlands.police.uk Telephone: 0121 606 6060 Postal Address: Lloyd House, Colmore Circus Queensway, Birmingham, B4 6NQ
Authority's email address for notices served by email pursuant to clause 24.8(a) where email notice may be used:	Email: commissioning@westmidlands.police.uk
Supplier:	"[FULL COMPANY NAME], a company incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]" <i>If the entity is a limited liability partnership, "[FULL NAME] LLP incorporated and registered in England and Wales with registered number [NUMBER] whose registered office is at [ADDRESS] (LLP)".</i> <i>If the entity is an unincorporated partnership, e: "[TRADING NAME] including "[INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS] and [INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS]". Repeat the number of individuals according to how many individuals are partners within the partnership. For larger partnerships, you might wish to identify one or two representative partners.]</i>

	<i>If the entity is an individual, “[INDIVIDUAL NAME] of [INDIVIDUAL ADDRESS]”.</i>
Supplier’s email address for notices served by email pursuant to clause 24.8(a) where email notice may be used:	Email: [EMAIL]
Supplier's VAT number:	[NUMBER]
Supplier's Authorised Representative:	Name: [NAME] Title: [TITLE] Email: [EMAIL] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
Start Date:	[DATE] OR [The date this Contract is entered into by the parties or the date of the provision of the Services, whichever is earlier.]
Expiry Date:	[DATE]
Extension Period:	[The Authority may extend this Contract for a period of up to [INSERT] by giving not less than [10 Business Days’] notice in writing to the Supplier prior to the Expiry Date. This Contract shall apply throughout any such extended period.]
Authority Premises:	NOT APPLICABLE
Services:	As set out in Annex 1 (Specification)
Deliverables:	[INSERT THE DELIVERABLES WHERE RELEVANT] OR [NOT APPLICABLE]
Fees:	As set out Annex 2 (Fees)][USE ANNEX 2 TO DETAIL ANY CHARGING RATES, MILESTONES FOR PAYMENT / PAYMENT BY DELIVERY (E.G. REPORT) / PAYMENT SCHEDULE DETAIL
Invoicing Arrangements	The Supplier shall submit invoices [to the Authority’s Authorised Representative] monthly in arrears, on or after the 10th day of each quarter in respect of Services provided in the prior quarter by reference to the

	Services delivered and where applicable by reference to those items that are payable linked to a delivery of a milestone as set out in Annex 2 (Fees).
Personal Data	TBC [INSERT DETAILS BELOW, NAMELY: Scope, nature and purpose of processing by the Supplier: [INSERT] The duration of the processing: [INSERT] Types of personal data: [INSERT] Categories of data subject: [INSERT]] OR [NOT APPLICABLE]
Mandatory Policies:	The Mandatory Policies are: • [Modern Slavery and Human Trafficking]. • [Corporate and Social Responsibility Policy]. • [Anti-bribery and Anti-corruption Policy]. • [Ethics Policy]. • [Data and Privacy Policy].] • [Equalities / Equal Opportunities] • [Safeguarding Children and/or Vulnerable adults] • [Environmental Policy]
Performance Monitoring / KPIs	As set out in Annex 3 (KPIs)
Regulated Activity Provider	The Supplier is a Regulated Activity Provider ☐ The Supplier is not a Regulated Activity Provider ☒
TUPE	The following parts of Part A of Annex 4 shall apply to this Contract: Option 1 (TUPE is expected to apply on commencement) ☐ Option 2 (TUPE is not expected to apply on commencement) ☒

	The following parts of Part B of Annex 4 shall apply to this Contract: Option 1 (TUPE may apply on exit) ☒ Option 2 (No TUPE on exit) ☐
Special terms:	NOT APPLICABLE

This Contract is made up of the following:

- (a) Part 1 - The Contract Particulars.
- (b) Part 2 - The Conditions.
- (c) [Annex 1 (Specification)]
- (d) [Annex 2 (Fees)]
- (e) [Annex 3 (KPIs)]
- (f) [Annex 4 (TUPE)]

If there is any conflict or ambiguity between the terms of the documents listed above, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

This Contract has been entered into on the date stated at the beginning of it.

Signed by [AUTHORISED SIGNATORY]
for and on behalf of [NAME OF POLICE FORCE] Authorised Officer

Signed by [AUTHORISED SIGNATORY] for and on behalf
of [SUPPLIER] Director

PART 2 - TERMS AND CONDITIONS

1. Interpretation

1.1 Definitions:

Authorised Representatives: the persons respectively designated as such by the Authority and the Supplier, being set out in the Contract Particulars.

Authority Materials: all materials, equipment and tools, drawings, specifications and data owned or held by the Authority and supplied by the Authority to the Supplier.

Authority Premises: the buildings and premises specified in the Contract Particulars, or as otherwise agreed between the parties.

Best Industry Practice: the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the term of the Contract, the pricing structure and any other relevant factors.

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

Conditions: these terms and conditions.

Contract: the contract between the Authority and the Supplier for the supply of Services in accordance with the Contract Particulars, the Mandatory Policies and these Conditions.

Contract Particulars: the contract particulars set out in Part 1 of this document.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

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) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Deliverables: all documents, products and materials developed by the Supplier or its agents, Sub-Contractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), including those deliverables set out in the Contract Particulars.

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

Fees: the fees payable by the Authority for the Services, as set out in the Contract Particulars.

FOIA: the Freedom of Information Act 2000 together with any guidance or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

KPI: means a key performance indicator as set out by the Authority or referred to in the Contract Particulars (if any) under the heading 'Performance Monitoring/KPIs';

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

Living Wage: means the UK living wage as determined annually and published by the Living Wage Foundation and any incremental increases applied during the term of this Contract;

Mandatory Policies: the Authority's mandatory policies and codes the details of which are set out in the Contract Particulars as amended by notification to the Supplier from time to time.

Minimum Performance Level: means the minimum acceptable performance to be achieved by the Supplier against a KPI as set out in the Contract Particulars under the heading 'Performance Monitoring/KPIs';

Prohibited Act: means

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function or activity;
- b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- c) an offence: (i) under the Bribery Act 2010; (ii) under legislation or common law concerning fraudulent acts; (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017);
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK.

Regulated Activity: in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Relevant Requirements: all applicable law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

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

Services: the services, including without limitation any Deliverables, to be provided by the Supplier as described in the Contract Particulars.

Start Date: the date set out in the Contract Particulars.

Supplier Background IPRs: all Intellectual Property Rights that are owned by or licensed to the Supplier either subsisting in the Deliverables (excluding any Authority Materials incorporated in them) or otherwise necessary or desirable to enable an Authority to receive and use the Services.

Supplier Personnel: all directors, officers, employees, other workers, agents, consultants and contractors of the Supplier and of any Sub-Contractor engaged in the performance of the Supplier's obligations under this Contract.

Sub-Contract: any contract or agreement, or proposed contract or agreement between the Supplier (or a Sub-Contractor) and any third party whereby that third party agrees to provide to the Supplier (or a Sub-Contractor) the Services or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof.

Sub-Contractor: the third parties that enter into a Sub-Contract with the Supplier.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI246/2006) (as may be amended from time to time).

1.2 Interpretation:

- (a) A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time; and shall include all subordinate legislation made from time to time.
- (b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (c) A reference to **writing** or **written** includes fax but not email.

2. Commencement and term

- 2.1 The Contract takes effect on the Start Date and ends on the earlier of the Expiry Date or termination of the Contract, or earlier if required by law.
- 2.2 The Authority can extend the Contract where set out in the Contract Particulars in accordance with the terms in the Contract Particulars.

3. Supply of Services

- 3.1** The Supplier shall supply the Services to the Authority from the Start Date in accordance with the Contract.
- 3.2** In performing the Services the Supplier shall meet, and time is of the essence as to, any performance dates specified in the Contract Particulars.
- 3.3** In supplying the Services, the Supplier shall:
- (a) perform the Services with the highest level of care, skill and diligence in accordance with Best Industry Practice;
 - (b) co-operate with the Authority in all matters relating to the Services, and comply with all instructions of the Authority;
 - (c) only use Supplier Personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
 - (d) ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in the Contract;
 - (e) ensure that the Services and Deliverables shall conform in all respects with the Contract Particulars and that the Deliverables shall be fit for any purpose that the Authority expressly or impliedly makes known to the Supplier and that the Supplier meets or exceeds the Minimum Performance Level where the Authority sets KPIs;
 - (f) provide all equipment, tools, vehicles and other items required to provide the Services;
 - (g) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
 - (h) comply (and procure that the Supplier Personnel comply) with:
 - (i) all applicable laws, statutes, regulations and codes from time to time in force; and
 - (ii) the Mandatory Policies, andthe Supplier shall maintain such records as are necessary pursuant to applicable laws and Mandatory Policies and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Authority (or its Authorised Representative);
 - (i) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Authority Premises from time to time and are notified to the Supplier;
 - (j) hold all Authority Materials in safe custody at its own risk, maintain the Authority Materials in good condition until returned to the Authority, and not dispose of or use the Authority Materials other than in accordance with the Authority's written instructions or authorisation;
 - (k) not do or omit to do anything which may cause the Authority to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;

- (l) notify the Authority in writing immediately upon the occurrence of a change of control of the Supplier; and
- (m) not do or omit to do anything which will cause reputational or political damage to the Authority.

4. Authority's obligations

4.1 The Authority shall:

- (a) provide such access to the Authority Premises and data, and such office, accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Authority in advance, for the purposes of providing the Services; and
- (b) provide such necessary information for the provision of the Services as the Supplier may reasonably request.

4.2 A failure by the Authority to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the Authority of the Authority's failure and its effect or anticipated effect on the Services.

5. Use of Authority Premises

5.1 Where necessary to perform any of the Services and at the invitation of the Authority, the Supplier may enter the Authority's premises for the sole purpose of providing the Services to the Authority. Such access shall not be deemed to create a relationship of landlord and tenant between the parties.

5.2 Any access provided to the Supplier pursuant to clause 5.1 shall terminate immediately on the termination or expiry of this Contract.

5.3 The Supplier shall promptly vacate the Authority Premises upon the earlier of the completion of any Services or expiry or termination of the Contract and shall make good any damage caused by its occupation, use or vacation of the premises to the satisfaction of the Authority.

5.4 The Authority may refuse admission to or remove from the Authority Premises any person who the Authority deems unacceptable. The Authority does not give any warranty or assurances as to the condition, safety or suitability of the Authority Premises for the provision of the Services and, to the extent permitted by law, access to and use of the Authority Premises is at the Supplier's risk and the Supplier shall be responsible for the health and safety of Supplier Personnel at the Authority Premises.

5.5 The Supplier shall ensure that when visiting or using the Authority Premises, the Supplier Personnel shall:

- (a) keep the Authority Premises clean, tidy and properly secure;
- (b) co-operate as far as may be reasonably necessary with the Authority's employees;
- (c) act in such a way as to avoid causing unreasonable or unnecessary disruption to the routine and procedures of the Authority; and
- (d) comply with all the rules and regulations that the Authority notifies to the Supplier from time to time relating to the use and security of the Authority Premises.

5.6 The Supplier shall ensure that the Supplier Personnel shall not:

- (a) obstruct access to the Authority Premises, or any part of them; or

- (b) do or permit to be done on the Authority Premises anything which is illegal or which may be or become a nuisance, damage, inconvenience or disturbance to the Authority or the occupiers of or visitors to the Authority Premises.

5.7 The Supplier shall be responsible for the care, control, security and maintenance of any materials or equipment used to perform the Contract. The Authority may provide a storage area for any such equipment/materials but is under no obligation to do so. The Supplier shall ensure that such storage area is fit for the intended purpose and is used in a suitable, careful and secure manner at the Supplier's own risk and expense and the Authority accepts no liability for damage to equipment or material stored on its premises.

6. Data protection

6.1 Any references to "**personal data**", "**data subject**", "**processor**" and "**controller**" shall have the meanings given to such terms in Data Protection Legislation.

6.2 If any personal data is disclosed by the parties under this Contract, both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

6.3 The Contract Particulars set out the parties' determinations in respect of whether they are controllers or processors for the purposes of the Data Protection Legislation.

6.4 Without prejudice to the generality of clause 6.1, where the Supplier is required to process personal data on behalf of the Authority, 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 Supplier for the duration and purposes of this Contract.

6.5 Without prejudice to the generality of clause 6.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Contract:

- (a) process that personal data only on the documented written instructions of the Authority, unless the Supplier is required by law to otherwise process that personal data. Where the Supplier is relying on law as the basis for processing personal data, the Supplier shall promptly notify the Authority of this before performing the processing required by law unless the law prohibits the Supplier from so notifying the Authority;
- (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), 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);

- (c) ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- (d) not transfer any personal data outside of the UK unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the personal data;
- (e) notify the Authority immediately if it receives:
 - (i) a request from a data subject to have access to that person's personal data;
 - (ii) a request to rectify, block or erase any personal data;
 - (iii) receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
 - (iv) assist the Authority in responding to any request from a data subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority without undue delay on becoming aware of a personal data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of personal data in breach of this Contract;
- (g) at the written direction of the Authority, delete or return personal data and copies thereof to the Authority on termination or expiry of the Contract unless required by law to store the personal data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 23 and immediately inform the Authority if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

6.6 Where the Supplier wishes to appoint a sub-processor to process any personal data relating to this Contract, such sub-processor shall constitute a Sub-Contractor and the Supplier shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent from the Authority;

- (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 6.

7. Title to Deliverables and Authority Materials

- 7.1** Title to any Deliverables that are goods or in any physical media on which Deliverables are stored and title to any goods or materials transferred to the Authority as part of the Services shall pass to the Authority on the earlier of their delivery to the Authority or payment of the Fees for them. The Supplier transfers the Deliverables and all such goods and materials to the Authority free from all liens, charges and encumbrances.
- 7.2** All Authority Materials are the exclusive property of the Authority.

8. Intellectual property

- 8.1** The Supplier hereby assigns to the Authority, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables (except for all Intellectual Property Rights in the Supplier Background IPRs, which shall be retained by the Supplier). The Authority and its licensors shall retain ownership of all Intellectual Property Rights in the Authority Materials.
- 8.2** The Supplier grants the Authority, or shall procure the direct grant to the Authority of, an irrevocable, perpetual, fully paid-up, worldwide, non-exclusive, royalty-free, sub-licensable licence to copy and modify the Supplier Background IPRs for the purpose of receiving, using and receiving the benefit of the Services and the Deliverables.
- 8.3** The Authority grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Intellectual Property Rights in the Authority Materials and the Deliverables for the term of the Contract for the purpose of providing the Services to the Authority in accordance with the Contract.
- 8.4** The Supplier shall indemnify the Authority 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 Authority arising out of or in connection with any claim brought against the Authority for actual or alleged infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt, use or onward supply of the Services and ownership of the Deliverables by the Authority and its licensees and sub-licensees. This clause 8.4 shall survive termination of the Contract.

9. Fees and payment

- 9.1** In consideration for the provision of the Services, the Authority shall pay the Supplier the Fees in accordance with the Contract Particulars.

- 9.2 All amounts payable by the Authority exclude amounts in respect of value added tax (**VAT**) which the Authority shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.
- 9.3 The Supplier shall submit invoices for the Fees plus VAT if applicable to the Authority in accordance with the Contract Particulars. Each invoice shall include all supporting information reasonably required by the Authority and the Authority will consider and verify each invoice in a timely fashion.
- 9.4 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed. The Authority shall accept and process an electronic invoice submitted by the Supplier, where it complies with the standard on electronic invoicing and is undisputed. For these purposes, an electronic invoice complies with the standard of electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 9.5 Where the Supplier submits an invoice to the Authority in accordance with clause 9.3, the Authority will consider and verify that invoice in a timely fashion. Where the Authority fails to do so, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 9.4 after a reasonable time has passed.
- 9.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) a provision which requires the Supplier to pay any sums due to the Sub-Contractor no later than a period of 30 days from the date on which the Supplier has determined that the invoice is valid and undisputed;
 - (b) provisions having the same effect as clause 9.3 and clause 9.5 of this Contract; and
 - (c) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 9.3, clause 9.5 and clause 9.6 of this Contract.
- 9.7 The Authority reserves the right to withhold payment to the extent that the Services have not been provided in accordance with the Contract or if the Authority receives an invoice which it considers is not valid and/or properly due and the Authority shall notify the Supplier accordingly giving reasons for such withholding. The Authority shall only be entitled to withhold an amount equal to the sum which is in dispute.
- 9.8 The Authority shall pay interest on any undisputed sum due under this Contract, calculated at a rate of 2% a year above the Bank of England's base rate from time to time but at 2% a year for any period when that base rate is below 0% from when the overdue sum became due, until it is paid.

10. Liability and indemnity

- 10.1 The Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:
- (a) the Supplier's breach or negligent performance or non-performance of this Contract;

- (b) any claim made against the Authority arising out of or in connection with the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Contract by the Supplier or Supplier Personnel.
- 10.2** References to liability in this clause 10 include every kind of liability arising under or in connection with this Contract including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.3** Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 10.4** Nothing in the Contract shall limit the Supplier's liability:
- (a) under clause 8.4 (IPR indemnity);
 - (b) for breach of clause 19 (Prevention of fraud and bribery);
 - (c) under Annex 4 (TUPE);
 - (d) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 6 (Data protection); and
 - (e) in respect of any claims, losses or damages that the Supplier does not hold any insurance for.
- 10.5** Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 10.6** Subject to clauses 10.4 and 10.5:
- (a) the Supplier's total aggregate liability to the Authority for all other claims, losses or damages shall not exceed the amount of any insurance required to be held pursuant to clause 11 by the Supplier against the claims, losses or damages in question;
 - (b) the Authority's total aggregate liability in respect of all claims, losses or damages:
 - (i) for loss arising from the Authority's failure to comply with its obligations under clause 6 (Data protection) shall not exceed 100% of the total Fees paid by the Authority; and
 - (ii) for all other claims, losses or damages (including any liability under Annex 4 (TUPE) shall not exceed 100% of the total Fees paid by the Authority to the Supplier pursuant to this Contract.
- 10.7** Subject to clauses 10.4 and 10.5, clause 10.7(b) identifies the kinds of loss that are not excluded. Subject to that, clause 10.7(a) excludes specified types of loss.
- (a) Types of loss wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;

- (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
- (b) Types of loss and specific losses not excluded:
- (i) wasted expenditure;
 - (ii) additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
 - (iii) losses incurred by the Authority arising out of or in connection with any third party claim against the Authority which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by Sub-Contractors, the Supplier's Personnel, regulators and customers of the Authority.

11. Insurance

11.1 During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force insurance policies with reputable insurance companies, against all risks associated with this Contract and that would normally be insured against by a prudent businessperson, experienced in providing goods and/or services of a similar price, type and nature as anticipated under this Contract which shall include, but not limited to:

- (a) public liability insurance of a limit of no less than £5m (five million pounds);
- (b) employer's liability insurance of a limit of no less than £5m (five million pounds); and
- (c) professional indemnity insurance of a limit of no less than £2m (two million pounds),

and produce to the Authority on demand full particulars of that insurance and the receipt for the then current premium.

11.2 Where the Supplier engages a Sub-Contractor, the Supplier shall either ensure that the insurance requirements as specified in clause 11.1 extend to cover the legal liabilities of the Sub-Contractor or that the Sub-Contractor holds its own insurance which complies with clause 11.1.

12. Termination

12.1 The Authority may terminate the Contract for convenience at any time by giving the Supplier at least 30 days written notice.

12.2 Without affecting any other right or remedy available to it, the Authority may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) there is a change of control of the Supplier; or

- (b) the Supplier's financial position deteriorates to such an extent that in the Authority's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- (c) the Supplier commits a breach of clause 19; or
- (d) the Supplier commits a breach of clause 3.3(h).

12.3 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12.5 Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13. TUPE and Exit arrangements

13.1 The Supplier accepts and undertakes that when it tendered for (if applicable) and entered into this Contract it has taken into consideration the provisions of TUPE and has considered the application or otherwise of those provisions to this Contract and has taken the appropriate action required under TUPE.

13.2 The Authority and the Provider agree that the relevant provisions set out in Annex 4 (as indicated within Part 1 Contract Particulars) shall apply in respect of any application of TUPE upon entry and expiry or termination of this Contract.

13.3 On termination of the Contract for whatever reason:

- (a) the Supplier shall immediately deliver to the Authority all Deliverables whether or not then complete and return all Authority Materials. If the Supplier fails to do so, then the Authority may enter the Supplier's premises and take possession of them. Until they have been delivered or

returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and

- (b) the Supplier shall, if so requested by the Authority, provide all assistance reasonably required by the Authority to facilitate the smooth transition of the Services to the Authority or any replacement supplier appointed by it.

14. Disclosure of information, the Freedom of Information Act and the Environmental Information Regulations

14.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and EIR and shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 working days of receipt;
- (c) provide the Authority with a copy of all information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 working days (or such other period as the Authority may reasonably specify) of the Authority's request for such information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Authority.

14.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose information (including Confidential Information) without consulting or obtaining consent from The Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Contract), the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

14.3 The Supplier acknowledges that the Authority may be required under the Procurement Act 2023 to publish information concerning the award of the Contract and/or any other relevant information concerning the performance of the Contract from time to time. The Authority shall take reasonable steps to notify the Supplier of any such publication requirements with a view to considering whether such publication could disclose information which the Supplier considers commercially sensitive where reasonable and practicable for the Authority to do so (notwithstanding any other provision in this Contract). Notwithstanding this, the Authority shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information shall be exempt from such publication requirements.

15. Safeguarding Children and Vulnerable Adults

- 15.1** Where the Contract Particulars indicate that this clause 15 applies, the provisions set out in this clause 15 shall be incorporated into the Contract.
- 15.2** The parties acknowledge that the Supplier is a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006.
- 15.3** The Supplier shall:
- (a) ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS); and
 - (b) monitor the level and validity of the checks under this clause 15.3 for each member of staff.
 - (c) not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.
- 15.4** The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 15.5** The Supplier shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 15 have been met.
- 15.6** The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to the service users, children or vulnerable adults as the case may be.
- 15.7** 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.
- 15.8** 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.
- 15.9** 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.

16. Environment

- 16.1** When working on the Services the Supplier must perform its obligations under the Authority's current Environmental Policy, which the Authority must provide.
- 16.2** The Supplier must ensure that the Supplier's Staff are aware of the Authority's Environmental Policy.

17. Publicity

- 17.1** The Supplier shall not, without the prior written consent of the Authority, make any references to the Authority or its trade marks in any advertising, promotional or published material nor make any reference to the Authority or its trade marks in a way that may imply an endorsement of the Supplier or its Services or by making any reference to the Authority or its trade marks.

18. Health and Safety

- 18.1** The Supplier shall (and shall procure that the Supplier's Personnel shall) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - (a) all applicable laws, statutes and regulations and codes from time to time in force regarding health and safety;
 - (b) all health and safety policies whilst at the Authority Premises; and
 - (c) any health and safety measures implemented by the Authority in relation to the Authority Premises.
- 18.2** Each party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

19. Recovery of Sums Due

- 19.1** The Authority may set off any amount owed by the Supplier to the Authority against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 19.2** If the Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to clause 9.1 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Fees.
- 19.3** The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Authority has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

20. Prevention of Fraud and Bribery

- 20.1** The Supplier represents and warrants that neither it, nor any Supplier Personnel:

- (a) has committed a Prohibited Act;
 - (b) has been or is subject of any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has been or is listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts on the grounds of a Prohibited Act.
- 20.2** The Supplier shall promptly notify the Authority if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in this clause 19 at the relevant time.
- 20.3** The Supplier shall (and shall procure that its Supplier Personnel shall) during the term of this Contract:
- (a) not commit a Prohibited Act;
 - (b) not do, suffer or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, Sub-Contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
 - (c) notify the Authority (in writing) if it becomes aware of any breach of clause 19.3(a) or clause 19.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this Contract.
- 20.4** The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Contract and the steps taken to comply with its obligations under clause 19.3.
- 20.5** The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 23.
- 20.6** If the Supplier is in breach of its obligations under this clause the Authority may by notice:
- (a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the breach; or
 - (b) immediately terminate this Contract.
- 20.7** Any notice served by the Authority under clause 19.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

21. Anti-Slavery and Human Trafficking

21.1 In performing its obligations under the Contract, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force (**Anti-Slavery Laws**) including the Modern Slavery Act 2015;

- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct had been carried out in England and Wales;
- (c) include in contracts with its Sub-Contractors anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 20; and
- (d) maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with this Contract; and permit the Authority and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under this clause 20.

21.2 The Supplier represents and warrants that it has not been convicted of any offence involving slavery and human trafficking or been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

21.3 Breach of this clause 20 shall be deemed a material breach under clause 12.3(a).

22. Human Rights

22.1 The Authority shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.

22.2 The Supplier shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

23. Equality, diversity and human rights

23.1 The Supplier must follow all applicable equality Law when they perform their obligations under this Contract, including:

- i. protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
- ii. any other requirements and instructions which the Authority reasonably imposes related to equality Law.

23.2 The Supplier must use all reasonable endeavours, and inform the Authority of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on this Contract.

24. Living Wage

24.1 It is a condition of this Contract that for the term of the Contract and any extensions thereof the Supplier:

- (a) pays all Supplier Personnel involved in carrying out the Services and who work for the Supplier for 2 hours or more a day in any day of the week, for 8 or more consecutive weeks not less than the Living Wage as set annually;
- (b) if the Supplier sub-contracts all or part of the performance of the Services to a Sub-Contractor, that the terms contained in clause 22.1(a) shall apply to all persons who are employed by the Sub-Contractor to carry out the Services (or part of them);
- (c) promptly provides evidence of its compliance with this clause 22 on written request by the Authority's Authorised Representative.

25. Audit and Monitoring

- 25.1** The Supplier shall allow the Authority and/or its agents to access, inspect and audit the Supplier's records, accounts and other relevant information and premises (including allowing copying of documents) to the extent this is reasonably required for the purpose of verifying the Supplier's compliance with its obligations under this Contract. Where such access, inspection or audit is required by a regulatory body, the Supplier shall allow such inspection or audit at any time and there shall not be a limit to the number of such inspections or audits that can be undertaken.
- 25.2** The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure by the Supplier to perform its obligations under this Contract in any material manner in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 25.3** When conducting audits, the Authority shall comply with the Supplier's reasonable directions in order to minimise disruption to the Supplier's business and to safeguard the confidentiality of the Supplier's other confidential information.
- 25.4** The Supplier will comply with all reasonable instructions or requests from the Authority in connection with the delivery of the Services in respect of performance monitoring.
- 25.5** During the term of the Contract, the Supplier will submit to the Authority's Authorised Representative such reports and documentation as may be required by the Services or as reasonably required by the Authority from time to time.
- 25.6** Where KPIs are set out in or referred to from the Contract Particulars the Supplier shall report to the Authority within ten Business Days of the end of each complete calendar month during the term of the Contract on the Supplier's performance against each KPI during the calendar month that has just ended and indicate whether the Supplier has fallen short of, met or exceeded the Minimum Performance Level for each KPI in that period. In respect of any KPI where the Supplier has failed to meet the Minimum Performance Level for that KPI during the relevant calendar month the Supplier shall report to the Authority in writing within a further 5 Business Days of submitting the monthly KPI report on the reasons why it is failing to meet the applicable Minimum Performance Levels and the additional steps it is taking and shall take to ensure that it meets or exceeds the relevant Minimum Performance Levels in the current and following two calendar months.

- 25.7 The Supplier will maintain a sound system of internal financial controls.
- 25.8 Monitoring meetings between the Authority and the Supplier will take place at such times as detailed in the Services or as the Authority may reasonably require to review the performance of the Supplier and its compliance with the terms of this Contract and/or to discuss the Supplier's performance against the KPIs (where applicable).

26. General

- 26.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 15 days, the party not affected may terminate the Contract by giving 15 days' written notice to the affected party.
- 26.2 **Sub-contracting.** The Supplier may not Sub-Contract any or all of its rights or obligations under the Contract without the prior written consent of the Authority. If the Authority consents to any Sub-contracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors as if they were its own.
- 26.3 **Confidentiality.**
- (a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the Group to which the other party belongs, except as permitted by clause 24.3(b).
 - (b) Each party may disclose the other party's confidential information:
 - (i) to its employees, officers, representatives, contractors, Sub-Contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, Sub-Contractors or advisers to whom it discloses the other party's confidential information comply with this clause 24.3; and
 - (ii) as may be required by law (including under the FOIA or EIRs), a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.
 - (c) Neither party shall use the other party's confidential information for any purpose other than to exercise or perform its rights and obligations under the Contract.
- 26.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. To the extent that any obligations under the Contract have already been performed prior to its execution, such obligations

shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of this Contract.

26.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their Authorised Representatives).

26.6 Waiver.

- (a) A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 24.7 shall not affect the validity and enforceability of the rest of the Contract.

26.8 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in the Contract Particulars (and if no email address is provided in the Contract Particulars then notice by email shall not be possible).
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 24.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 24.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

26.9 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 26.10 No Fetter of Discretion.** Nothing (contained or implied) in this Contract shall fetter or restrict the Authority's statutory rights, powers, discretions and responsibilities.
- 26.11 No Partnership or agency.** Nothing in the Contract shall be deemed to constitute either party as the agent of the other or create a partnership or joint venture between the parties and the Supplier shall have no power to bind the Authority or to contract in the name of or create a liability against the Authority in any manner whatsoever.
- 26.12 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with, the law of England and Wales.
- 26.13 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

Annex 1 (Specification)

To be inserted

DRAFT

Annex 2 (Fees)

To be inserted

DRAFT

Annex 3 (KPIs)

See Annex 1 specification

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Annex 4 (TUPE)

Entrance Employee	any person who is engaged in the provision, by the Authority or the Former Supplier to the Authority, of services which are (in whole or part) replaced by the Services; and in respect of whom rights, powers, duties or liabilities transfer to the Supplier under the Transfer Regulations (and Entrance Employees shall be interpreted accordingly);
Exit Employee	any person who is engaged in the provision of the Services (or any part of them) when the Supplier ceases for whatever reason, to provide the Services (or any part of them); and in respect of whom rights, powers, duties or liabilities transfer to the Authority or a Replacement Supplier under the Transfer Regulations and whose name is set out in the Supplier's Final Staff List;
Exit Transfer Date	the date of any Exit Transfer which is a relevant transfer for the purpose of the Transfer Regulations
Former Supplier	a supplier supplying services to the Authority before the Services Commencement Date that are the same or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier;
Losses	any and all losses (howsoever arising), including all claims, expenses, damages, proceedings, liabilities, fines, costs, arising directly or indirectly;
Replacement Supplier	each person who provides services (in replacement of any of the Services) on behalf of the Authority following a cessation of the provision of any of the Services by the Supplier for whatever reason;
Services Commencement Date	the date of commencement of the Services pursuant to this Contract;

Staffing Information

in relation to all persons detailed on the Supplier's Provisional Staff List or the Supplier's Final Staff List such information and/or documentation in accordance with relevant data protection legislation as the Authority may reasonably request (to include the same unique reference code in relation to each employee or person to whom the information or documentation relates each time it is supplied) including but not limited to:

- (i) the job description, continuous service start date, age, notice period, immigration status, remuneration, benefits, place of work, the proportion of their time spent on the services; and
- (ii) such additional information and/or documentation as set out in Regulation 11 of the Transfer Regulations; and
- (iii) details of any other agreement or arrangement (including with any trade union or any other representative body) which may affect the employment of the employee;

Sub-Contract

any contract between the Supplier and a third party pursuant to which the Supplier agrees to source the provision of any of the Services from that third party; and any agreement or commitment to enter into a such a contract, whether formal or informal and whether or not in writing;

Sub-Contractors

those persons with whom the Supplier enters into a Sub-Contract or its or their servants or agents, and any third party with whom that third party enters into a sub-contract or its servants or agents (and **Sub-Contractor** shall be interpreted accordingly);

Supplier's Final Staff List

the list of all the Supplier's Staff engaged (in whatever capacity) in or wholly or mainly assigned to the provision of the Services or any part of the Services immediately before the Exit Transfer Date;

Supplier's Provisional Staff List

a list prepared and updated by the Supplier of all the Supplier's 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;

Supplier's Staff	all employees, staff, other workers, agents and consultants of the Supplier or any Sub-Contractor who are engaged in the provision of the Services from time to time;
Transfer Regulations	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by subsequent legislation.

Part A - Employment Commencement provisions

Option 1 - TUPE is expected to apply on commencement

- 1 The parties agree that the Transfer Regulations will apply to the assumption of provision of the Services by the Supplier and that, accordingly, the Supplier or any Sub-Contractor will become the employer of the Entrance Employees with effect from the Services Commencement Date.
- 2 Subject to paragraph 3 of Option 1 of Part A, the Authority shall indemnify the Supplier in full for and against all Losses whatsoever and howsoever arising incurred or suffered by the Supplier or any Sub-Contractor including without limitation any legal expenses and other professional fees in relation to any act or omission by the Authority or the Former Supplier on or before the Services Commencement Date in respect of:
 - 2.1 the employment or termination of employment of any of the Entrance Employees; or
 - 2.2 in respect of any failure by the Authority or the Former Supplier to comply with its obligations pursuant to the Transfer Regulations save to the extent that such Losses arise out of or in connection with any act or omission of the Supplier or any Sub-Contractor.
- 3 The Supplier shall indemnify the Authority and the Former Supplier in full for and against all Losses whatsoever and howsoever arising, incurred or suffered by the Authority or a Former Supplier (in the case of the Authority whether directly or indirectly under an indemnity given by the Authority to the Former Supplier or otherwise) in relation to:
 - 3.1 any failure by the Supplier or any Sub-Contractor to comply with its obligations pursuant to the Transfer Regulations; or
 - 3.2 any act or omission by the Supplier or any Sub-Contractor relating to an Entrance Employee occurring on or after the Services Commencement Date; or
 - 3.3 any proposal by the Supplier or any Sub-Contractor prior to or following the Services Commencement Date to make a change which amounts or would amount to (i) a

repudiatory breach of contract of employment; and/or (ii) a substantial change in working conditions to the material detriment (as provided for by the Transfer Regulations), of any Entrance Employee.

Option 2 – TUPE is not expected to apply on commencement

- 1 The parties do not believe that the Transfer Regulations shall apply so as to transfer the employment of any employees to the Supplier or any Sub-Contractor on the Services Commencement Date.
- 2 The Authority shall indemnify the Supplier against any claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered (including all legal expenses and other professional fees (together with any VAT thereon)) in connection with any claim made by or in respect of any person who claims to be employed or to have been employed by the Authority or any sub-contractors of the Authority and for which it is alleged that the Supplier or any Sub-Contractor may be liable by virtue of the Transfer Regulations.

Part B – Employment exit provisions

Option 1 – TUPE may apply on Exit

- 3 This Agreement envisages that after the Services Commencement Date the Supplier may cease to provide the Services or any part of them resulting in the provision by a third party (or third parties) of services in substitution for the Services or any part of them (**Exit Transfer**). If an Exit Transfer is a relevant transfer for the purposes of the Transfer Regulations then the Authority or a Replacement Supplier would inherit liabilities in respect of any Exit Employee. Accordingly, the Supplier agrees that:
 - 3.1 within twenty (20) days of notice of termination or partial termination of this Agreement or a written notice by the Authority that it intends to retender all or part of the Services and, in any event, no later than six (6) months prior to expiry of the Agreement, it shall provide the Supplier's Provisional Staff List and the Staffing Information to the Authority or, at the direction of the Authority, to a Replacement Supplier and it shall provide an updated Supplier's Provisional Staff List at such intervals as may reasonably be requested by the Authority or any Replacement Supplier;
 - 3.2 at least 28 days prior to the Exit Transfer Date, the Supplier shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Supplier, the

Supplier's Final Staff List, which shall be complete and accurate in all material respects (and the Supplier's Final Staff List shall identify which of the Supplier's Staff named are Exit Employees);

- 3.3 the Authority shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services which are significantly the same type of services as the Services (or any part thereof).
- 4 The Supplier will use its best endeavours to ensure that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information will be full, accurate and up to date in all material respects and will immediately notify the Authority, and any such proposed Replacement Supplier as the Authority may nominate, of any changes to the information provided.
- 5 The Supplier agrees that it shall not, and shall procure that any Sub-Contractor shall not, from the date of the written request referred to in paragraph 3.1 of this Schedule, assign any person to the provision of the Services (or the relevant part) who is not listed in the Supplier's Provisional Staff List or increase the total number of employees listed on the Supplier's Provisional Staff List or make, or permit, any changes to the terms and conditions of employment of any employees on the Supplier's Provisional Staff List or increase the proportion of working time spent on the Services (or the relevant part) by any of the Supplier's Staff or introduce any new practice concerning the making of any payment or the giving of any benefit on the termination of employment of any employee on the Supplier's Provisional Staff List or redeploy any person such that they cease to be assigned to the Services.
- 6 The Supplier shall indemnify the Authority and any Replacement Supplier in full for and against all Losses whatsoever and howsoever arising, incurred or suffered by the Authority (whether directly or indirectly under an indemnity given by the Authority to a Replacement Supplier or otherwise) or any Replacement Supplier in relation to:
 - 6.1.1 the employment or termination of employment of the Exit Transferring Employees on or before the Exit Transfer Date;
 - 6.1.2 any claim made by or in respect of any person, other than an Exit Employee, who claims to be employed, or to have been employed, by the Supplier or any Sub-Contractor and for which it is alleged that the Authority or any

Replacement Supplier may be liable by virtue of this Agreement and/or the Transfer Regulations;

- 6.1.3 in respect of any failure by the Supplier or a Sub-Contractor to comply with its obligations pursuant to the Transfer Regulations save to the extent that such Losses arise out of or in connection with any act or omission of the Authority or any Replacement Supplier;
 - 6.1.4 any failure to provide or any inaccuracy in the Supplier's Provisional Staff List, the Supplier's Final Staff List or the Staffing Information.
- 6.2 The Authority shall indemnify the Supplier against all Losses arising from the Authority's or the Replacement Supplier's:
- 6.2.1 failure to perform and discharge any obligation and against any claims in respect of any Exit Employees arising from or as a result of any act or omission by the Authority or the Replacement Supplier relating to an Exit Employee occurring after the Exit Transfer Date;
 - 6.2.2 any failure by the Authority or a Replacement Supplier to comply with its obligations pursuant to the Transfer Regulations; or
 - 6.2.3 any proposal by the Authority or any Replacement Supplier prior to or following the Exit Transfer Date to make a change which amounts or would amount to (i) a repudiatory breach of contract of employment; and/or (ii) a substantial change in working conditions to the material detriment (as provided for by the Transfer Regulations), of any Exit Employee.
- 6.3 The parties agree that the Former Supplier and any Replacement Supplier shall be entitled to enforce the obligations owed to and the indemnities given to such Former Supplier or Replacement Supplier under this Part B, Option 1 pursuant to the Contracts (Rights of Third Parties) Act 1999.

Option 2 – No TUPE on exit

- 1 The parties do not anticipate or intend that on the termination of this agreement (or any part thereof) any employees of the Supplier (or any Sub-Contractor's employees) shall transfer to the Authority or any Replacement Supplier under the Transfer Regulations.
- 2 The Supplier shall indemnify the Authority and any Replacement Supplier against any claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or

suffered (including all legal expenses and other professional fees (together with any VAT thereon)) in connection with any claim made by or in respect of any person who claims to be employed or to have been employed by the Supplier or any Sub-Contractor and for which it is alleged that the Authority or any Replacement Supplier may be liable by virtue of this Agreement and/or the Transfer Regulations.

- 3 The parties agree that any Replacement Supplier shall be entitled to enforce the obligations owed to and the indemnities given to a Replacement Supplier under this Part B, Option 2 pursuant to the Contracts (Rights of Third Parties) Act 1999.