

14.2.5. where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 14.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

14.2.6. where the receiving Party is the Customer:

- a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- b) on a confidential basis to any other Central Government Body, any Contracting Authority, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- d) in accordance with clause 16,

and for the purposes of the foregoing, references to disclosure "on a confidential basis" shall mean disclosure subject to a confidentiality agreement or arrangement.

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

15. Protection of Personal Data and Security of Data

15.1. When handling Customer Data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time.

15.2. Where any Personal Data are Processed in connection with the exercise of the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Supplier shall be acting as a Processor on behalf of the Customer as the Controller. The only Processing that the Supplier is authorised to do is listed in the Award Letter and may not be determined by the Supplier.

15.3. The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Customer, include:

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

15.4. The Supplier shall, and shall procure that its agents, Sub-Processors and employees shall:

15.4.1. Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Agreement, or as otherwise notified by the Customer to the Supplier in writing from time to time) and the table set out in section 7 of the Award Letter, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before Processing the Personal Data unless prohibited by Law;

15.4.2. notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Laws;

15.4.3. ensure that at all times it has in place appropriate technical and organisational measures (which are consistent with Article 32 of the UK GDPR) which the Customer may reasonably reject (but failure to reject shall not amount to approval by the Customer of the adequacy of the technical and organisational measures), to guard against unauthorised or unlawful

Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data, such measures to ensure a level of security commensurate with the risks associated with the Processing having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Personal Data Breach;
- c) state of technological development; and
- d) cost of implementing any measures;

15.4.4. notify the Customer immediately upon becoming aware of a Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Customer with sufficient information to meet any obligations to report a Personal Data Breach under the Data Protection Laws. Such notification shall as a minimum:

- a) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;
- b) communicate the name and contact details of the data protection officer or other relevant contact from whom more information may be obtained;
- c) describe the likely consequences of the Personal Data Breach; and
- d) describe the measures taken or proposed to be taken to address the Personal Data Breach;

15.4.5. co-operate with the Customer and take such reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of a Personal Data Breach;

15.4.6. not disclose the Personal Data to any Supplier Staff unless necessary for the provision of the Services;

15.4.7. other than where specifically authorised under this Agreement, not appoint any third party sub-contractor to Process the Personal Data ("**Sub-Processor**") without the prior written consent of the Customer. In all cases where a Sub-Processor is appointed:

- a) the contract between the Supplier and the Sub-Processor shall include terms which are substantially the same as those set out in this clause 15;
- b) the Supplier shall provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require;
- c) the Supplier shall remain fully liable to the Customer for any failure by a Sub-Processor to fulfil its obligations in relation to the Processing of any Personal Data; and
- d) the use of the Sub-Processor shall be otherwise in accordance with clause 15.5;

15.4.8. take reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data, ensuring in each case that access is strictly limited to those individuals who need to access the relevant Personal Data, as strictly necessary to perform the Services in the context of that individual's duties to the Supplier, and ensure that the Supplier Staff:

- a) are aware of and comply with the Supplier's obligations under this clause 15 together with any obligations pertaining to confidentiality or data protection which are set out in this Agreement;
- b) are subject to confidentiality undertakings or other contractual or professional or statutory obligations of confidentiality;
- c) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
- d) have undergone adequate training in the use, care, protection and handling of Personal Data;

15.4.9. notify the Customer immediately if it receives:

- a) from a Data Subject (or third party on their behalf);
- b) a Data Subject Access Request (or purported Data Subject Access Request);

- c) a request to rectify any inaccurate Personal Data;
- d) a request to have any Personal Data erased or blocked;
- e) a request to restrict the Processing of any Personal Data;
- f) a request to obtain a portable copy of Personal Data, or to transfer such a copy to any third party; or
- g) an objection to any Processing of Personal Data;
- h) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data under this Agreement;
- i) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- j) any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;

(each a "**Relevant Communication**").

15.4.10. taking into account the nature of the Processing, provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer, and in any case within sufficient time for the Customer to comply with any relevant timescales prescribed by the Data Protection Laws) in relation to any Relevant Communications (whether received by the Supplier or by the Customer directly) including by implementing such technical and organisational measures as may be reasonably required by the Customer and by promptly providing:

- a) the Customer with full details and copies of the Relevant Communication (where received by the Supplier);
- b) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- c) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office;

15.4.11. allow for audits (including inspections) of its data Processing activity by the Customer or the Customer's mandated Auditor, and if requested by the Customer, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause 15 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

15.4.12. cease Processing the Personal Data immediately upon the earlier of the (i) termination or expiry of this Agreement, or (ii) the cessation of the Services, and as soon as reasonably practicable thereafter, at the Customer's option, either return, or securely and irrevocably delete from its systems (so that such Personal Data cannot be recovered or reconstructed), the Personal Data and any copies of it or of the information it contains; and

15.4.13. designate a data protection officer if required by the Data Protection Laws.

15.5. The Supplier shall not Process or otherwise transfer, or permit the transfer, of any Personal Data in or to any Restricted Country without obtaining the prior written consent of the Customer (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Customer of that requirement before Processing the Personal Data, unless a Law prohibits such information being provided on important grounds of public interest).

15.6. In respect of any Processing in, or transfer of Personal Data to, any Restricted Country permitted in accordance with clause 15.5, the Supplier shall, when requested by the Customer, promptly enter into an agreement with the Customer including or on such provisions as the Standard Contractual Clauses and/or such variation as a regulator or the Customer might require which terms shall, in the event of any conflict, take precedence over those in this clause 15, and the Supplier shall comply with any reasonable instructions notified to it in advance by the Customer with respect to the transfer of the Personal Data;

- 15.7. Subject to the Customer providing the Supplier with all information reasonably required by the Supplier to comply with this clause 15.7, the Supplier shall create and maintain a register setting out:
- 15.7.1. the types of Personal Data and categories of Data Subject whose Personal Data are Processed during the provision of the Services; and
 - 15.7.2. a general description of the technical and organisational security measures adopted by the Supplier to protect the Personal Data in accordance with clause 15.4.3.
- 15.8. The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Laws and shall not perform its obligations under this Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Laws to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 15.9. Both the Customer and the Supplier shall comply with their respective obligations under the UK GDPR in relation to this Agreement, including by adhering to any relevant codes of conduct published pursuant to Article 40 of the UK GDPR.
- 15.10. Notwithstanding clause 25.3 the Customer may, at anytimeany time on not less than 30 Working Days' notice, revise this clause 15 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 incorporated by attachment to this Agreement).
- 15.11. Both the Customer and the Supplier shall comply with their respective obligations under any relevant law implementing or otherwise giving effect to the NIS Regulations. In response to the obligations created by any law implementing or otherwise giving effect to the NIS Regulations, the Customer may elect to produce a report setting out the steps to be reasonably followed by both parties in relation to their compliance with the NIS Regulations in the context of the Services, and the Supplier shall comply with the terms of any such report.
- 15.12. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 15.13. If following the date of this Agreement:
- 15.13.1. any codes of practice, codes of conduct, regulatory guidance, standard clauses and any other related laws arising from the UK GDPR or from the NIS Regulations are published; or
 - 15.13.2. the UK ceases to be a Member State of the European Union, then the Customer may require the Supplier to take such further reasonable actions, or enter into such further contractual terms, in each case as necessary to take account of these developments.
- 15.14. The Supplier shall at all times during and after the expiry of the Agreement, indemnify the Customer and keep the Customer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this clause 15.

16. Transparency and Freedom of Information

- 16.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, and which shall be determined by the Customer, the content of this Agreement, including any changes to this Agreement agreed from time to time, (the "**Transparency Information**") is not Confidential Information.
- 16.2. Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Customer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) ("**Transparency Report**"). The Customer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

- 16.3. The Supplier shall assist and co-operate with the Customer to enable the Customer to publish the Transparency Information, including the preparation of the Transparency Reports.
- 16.4. If the Customer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Customer shall be entitled to exclude such information from publication. The Customer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Customer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 16.5. The Customer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 16.6. The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Goods and Services shall be provided to the Customer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Customer may disclose such information under the FOIA and the EIRs and may publish such Information. The Supplier shall provide to the Customer within 5 Working Days (or such other period as the Customer may reasonably specify) any such Information requested by the Customer.
- 16.7. The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 16.7.1. provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
- 16.7.2. transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 16.7.3. provide the Customer with a copy of all Information held on behalf of the Customer which is requested in a Request for Information and which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
- 16.7.4. not respond directly to a Request for Information addressed to the Customer unless authorised in writing to do so by the Customer.
- 16.8. The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Customer 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 EIRs.

17. Liability

- 17.1. The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 17.2. Subject always to clauses 17.4 and 17.5:
- 17.2.1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the Liability Cap; and

17.2.2. except in the case of claims arising under clauses 12.3, 15.14 and 22.3, in no event shall either Party be liable to the other Party for any:

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

17.3. The Customer's maximum aggregate liability under this Agreement shall in no event exceed a sum equal to 100% of the Charges paid or payable under the Agreement to the Supplier.

17.4. Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

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

17.4.2. fraud or fraudulent misrepresentation by it or that of its Staff;

17.4.3. breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

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

17.5. The Supplier's liability under the indemnities in clauses 12.3, 15.14 and 22.3 shall be unlimited.

17.6. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

18. Insurance

18.1. During the Term and for a period of 12 months thereafter, the Supplier shall maintain in force, and shall procure that any Sub-contractors maintain in force, with a reputable insurance company insurance sufficient to cover the liabilities that may arise under or in connection with this Agreement, and shall, on the Customer's request, produce both the insurance certificates giving details of cover and the receipts for the current year's premium in respect of each insurance.

19. Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from a Force Majeure Event. Each Party shall promptly notify the other Party in writing when a Force Majeure Event causes a delay or failure in performance and when it ceases to do so. If a Force Majeure Event continues for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

20. Termination

20.1. The Customer may terminate the Agreement at any time by providing notice in writing to the Supplier to take effect on any date falling at least 30 days (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

20.2. Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

20.2.1. (without prejudice to clause 20.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

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

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

20.2.4. undergoes a change of Control without the prior written consent of the Customer. The Customer shall be entitled to withhold such consent if, in the reasonable opinion of the