



**Ministry of
JUSTICE**

PROTECT – COMMERCIAL

Contract for the supply of Foodstuff

August 2012

Reference: MCLF-Food/Catering-2011-Supply of Foodstuff-1035

Secretary of State for the Ministry of Justice

And

BFS Group Limited

trading as 3663



THIS AGREEMENT is made on the 7th day of August 2012.

Commencement Date	07 August 2012
Service Commencement Date	08 August 2012
Expiration Date	07 August 2016

BETWEEN

(1) Secretary of State for the Ministry of Justice (hereinafter called "the **Authority**") and

(2) BFS Group Limited trading as 3663 First for Foodservice registered in England & Wales as company number [REDACTED] and having its registered office at [REDACTED], (hereinafter called the "the Contractor").

WHEREAS the Authority is desirous that certain Goods and Services should be provided, therefore:

(1) In accordance with the European Union public sector procurement principles as implemented in the United Kingdom, the Authority has held a competitive tender process to find a contractor to provide various foodstuff goods and services.

(2) On 28 December 2010, the Authority published a notice in the Official Journal of the European Union in relation to the tender of the Authority's requirements for the **Supply of Foodstuff Lot 1 – Prisoner Catering** (Reference: 2010/s 251-386183). The Authority issued a Request for Information to respondents to its notice, and then subsequently assessed and selected a shortlist of candidates.



(3) Following such assessment and selection, the Authority issued an Invitation to Participate in Dialogue ("**ITPD**") to potential providers (including the Contractor) and subsequently discussed the scope of the solution required by the Authority with the Contractor.

(4) The Specification has been prepared by the Authority on the basis of the Contractor's Final Tender and the Authority has reached agreement with the Contractor on the terms for the supply of such Goods and Services.

(5) The Initial Contract Period is four (4) years plus the option of two contract extensions of three (3) and one (1) years respectively, subject to clause 31.



NOW THIS AGREEMENT WITNESSED as follows:

(1) In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract hereinafter referred to.

(2) The following documents and their annexes, if any, shall together constitute the Contract between the Authority and the Contractor and the term “the Contract” shall in all such documents be construed accordingly, namely:

- (A) General Conditions of Contract;
- (B) Schedules;
- (C) Appendices;
- (D) Annexes;
- (E) Tender Document all of which are annexed and executed for identification by or on behalf of the Authority and the Contractor.

(3) Each party acknowledges that this Contract constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Contract and supersedes all prior discussions, understandings and agreements between the parties and their agents.

(4) The Contractor also agrees that in entering into this Contract and the documents referred to in it, it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on the part of the Authority in relation to the subject matter of this Contract, except those expressly set out in this Contract and hereby waives and releases the Authority in respect thereof absolutely.



(5) In consideration of the award of this Contract the Contractor covenants with the Authority to provide Goods and Services in conformity with the provisions of the Contract.

(6) In case of conflict between any of the documents accompanying this Form of Agreement, the order of precedence shall be as follows:

- (A) General Conditions of Contract;
- (B) Schedules;
- (C) Appendices;
- (D) Annexes;
- (E) Tender Document and the inconsistent or conflicting term shall be disappplied to the extent of the inconsistency or conflict only.

(7) The Authority hereby appoints [REDACTED] to act as Authority Representative for the purposes of the Contract.

(8) The Contractor hereby appoints [REDACTED] to act as Contractor Representative for the purposes of the Contract.

(9) This Contract shall be governed and construed according to the laws of England and Wales to resolve any dispute arising under the Terms of this Contract.



IN WITNESS whereof the parties hereto have caused this Contract to be executed in duplicate at London on the date first stated above, as follows:

SIGNED for and on behalf of the **AUTHORITY** by [REDACTED]:

.....

[REDACTED]

Duly authorised on behalf of the Authority

SIGNED for and on behalf of the **CONTRACTOR** by [REDACTED]:

.....

[REDACTED]

Duly authorised on behalf of the Contractor



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Standard Terms

1. Definitions and Interpretations

In these Conditions:

"Ad hoc Orders" means any Order made for delivery at any time other than the Delivery Time shown for each Site in Schedule G (Specification).

"Ad Hoc Delivery" means a delivery outside of the agreed Delivery Schedule

"Adjustment Month" refers to the calendar month when Unit Prices are changed in line with the Price Adjustment process.

"Approval" means the written consent of the Authority.

"Assignee" has the meaning given to it in Clause 26.5

"Apprentice" means a worker who is party to an apprenticeship agreement as defined in section 32 of the Apprenticeships, Skills, Children and learning Act 2009

"Arbitration Notice" has the meaning given to it in Clause 44.7.2

"Authority" means the Secretary of State for Justice acting through the authorised representative identified in the Contract Letter.

"Authority Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.

"Authority Data" means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:



- (i) supplied to the Contractor by or on behalf of the Authority;
or
 - (ii) which the Contractor is required to generate, process, store
or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

"Authority Personnel" means all employees, agents, consultants and sub-contractors of the Authority.

"Authority Purchase Order" (also referred to as 'Order') means an order for Goods and/or Services from the Authority in accordance with Schedule G, Appendix K - Section 3

"Authority's Representative" - see definition set out under 'Site Representative.

"Authority's Sites" refers to all the Authority's Sites and delivery points as identified in Schedule G – Appendix B – Delivery Points. Reference to the Authority's Sites refers to Prison Sites unless otherwise specified.

"Catering Manager(s)" (also referred to as Site Representative), refers to the Site Representative responsible for the ordering, preparation and serving of meals within the Authority's Sites.

"Certifier" has the meaning given to it in Schedule G, Section 4

"Change of Control" means a change in Control of the Contractor

"Change Request Procedure" means the change request procedure as set out in Schedule G, Appendix K.

"Commencement Date" means the date specified in the Contract Letter when the Contract is signed by both Parties.

"Commercially Sensitive Information" means the information (i) listed in the Commercially Sensitive Information Schedule: or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:



(a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or

(b) that constitutes a trade secret

“Commodity Appraisal Panel” has the meaning as defined in Schedule G, Appendix O - Section 4

“Commodity Cost” refers to the cost of the raw material Goods only and does not include VAT or the Movement Rate.

“Condition” means a condition of the Contract.

“Confidential Contract Information Exceptions” means the Information listed in the relevant Schedule.

“Confidential Information” means the Authority’s Confidential Information and/or the Contractor’s Confidential Information.

“Contract” means this written agreement between the Authority and the Contractor consisting of the Contract Letter, these terms and conditions, any attached Schedules, Appendices; Annexes and the Contractor’s Tender.

“Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

“Contract Letter” means the letter identifying those documents which form the Contract.

“Contract Management Meeting” means the meetings held between the Parties, as set out in Schedule G, Appendix K, and (Administration Instructions).

“Contract Period” means the period from the Commencement Date to:

- a. the date of expiry set out in clause 2 (Initial Contract Period);
or
- b. following an extension pursuant to clause 31 (Extension of Initial Contract Period), the date of expiry of the extended period;



- c. or such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

"Contractor" means the person, firm or company with whom the Authority enters into the Contract.

"Contractor's Confidential Information" means any information which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

"Contractor's Personnel Vetting Procedure" means the Authority's procedures for the vetting of Contractor's Personnel, as advised to the Contractor by the Authority.

"Contract Price" means the amount (inclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Pricing and Payment Schedule, exclusive of any price adjustment formula agreed between the Parties for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment.

"Contract Variation" has the meaning given to it in Clause 28.1.

"Contract Year" means a period of twelve (12) months from the Commencement Date or on an anniversary of the Commencement Date.

"Control" means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of another person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly.



"**CPI**" refers to the Consumer Price Index

"**CPI Guarantee**" refers to the Contractor's commitment to cap the annual Contract Price to the same rate of movement in the CPI during a 12 month period.

"**Crown**" means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

"**Data Controller**" shall have the same meaning as set out in the Data Protection Act 1998.

"**Data Processor**" shall have the same meaning as set out in the Data Protection Act 1998.

"**Data Protection Legislation**" means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"**Data Subject**" shall have the same meaning as set out in the Data Protection Act 1998.

"**Default**" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or their Personnel in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

"**Delivery Charge**" refers to an additional charge applied to orders placed by other Government Departments for deliveries which do not meet the Minimum Order Quantities.

"**Delivery Schedule**" (also referred to as Delivery Time) means the normal days and time agreed between the Contractor and the Authority



when the delivery of Goods shall take place at each Site as detailed in Schedule G (Specification).

"**Disaster Recovery Plan**" has the meaning given to it in Schedule G, Appendix P

"**Environmental Information Regulations**" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

"**Equipment**" means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

"**Establishment**" – see definition set out under 'Authority Sites'.

"**Estimate**" has the meaning given to it in Schedule G, Appendix K, and Administration Instructions.

"**Fees Regulations**" means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

"**FOIA**" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

"**Force Majeure**" means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- a. any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- b. the failure by any sub-contractor to perform its obligations under any sub-contract



"**Fraud**" means any offence under the Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

"**Future Service Contractor**" means each and every future service Contractor who provides any services equivalent to any of the services included in the Specification.

"**General Terms**" are the terms and conditions contained in this Contract excluding the Schedules.

"**Good Industry Practice**" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

"**Goods**" (also referred to as Products) means any such goods as are to be supplied by or on behalf of the Contractor (or by the Contractor's sub-contractor) under the Contract as specified in the Specification and the Tender.

"**GPS**" means the Government Procurement Service.

"**Halal Certifier**" has the meaning given to it in Schedule G, Section 4

"**Information**" has the meaning given under section 84 of the Freedom of Information Act 2000.

"**Initial Contract Period**" means the period from the Commencement Date to the date of expiry set out in clause 2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

"**Intellectual Property Rights**" or "**IPRs**" means patents, inventions, trade marks, service marks, logos, design rights (whether registered or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registered or not in any country



(including but not limited to the United Kingdom) and the right to sue for passing off.

"Independent Safeguarding Authority" is a non-departmental public body sponsored by the Home Office set up under the provisions of the Safeguarding Vulnerable Groups Act 2006 and which is responsible for the decision making and maintenance of two lists covering the children's and vulnerable adults' sectors

"Installation Works" means, as the context so requires:

- a. collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification and the Tender; or
- b. where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification and the Tender, each set of installation works.

"Key Performance Indicator (KPI)" see definition set out under 'Service Levels'

"Key Personnel" refers to those members of the Contractor's Personnel identified as such in the Specification.

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Contractor's or the Authority's possession before the Contract.

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

"Liquidated Damages Period" has the meaning given to it in Schedule B, Clause 12.1.1



"Liquidated Damaged Threshold" has the meaning given to it in Schedule B, Clause 12.1.1

"Management Information" means the information specified in the Monitoring Schedule.

"Mediator" has the meaning given to it in Section 44.5.1

"Minimum Order Quantities" means the minimum order value permitted per delivery to any site in another Government Department.

"Month" means a calendar month.

"Monitoring Schedule" means the Schedule containing details of the monitoring arrangements.

"Movement Rate" is the cost attributed to the distribution of Goods delivered to site.

"Non Prisoner Goods" mean any such Goods as are to be supplied by or on behalf of the Contractor under the Contract specific for Non Prisoner Catering requirements.

"Other Government Departments" refers to Government departments other than the Ministry of Justice.

"Packing Stations" means one of the Authority's Sites as detailed in Appendix I, who are responsible for manufacturing the Single Portion packs.

"Party" means a party to the Contract.

"Personal Data" shall have the same meaning as set out in the Data Protection Act 1998.

"Personnel" means all employees, agents, consultants and sub-contractors of either Party.

"Point of Order" means the location at which a valid Purchase Requisition is processed into a valid Purchase Order.

"Positive Release" has the meaning given to it in Schedule G, Appendix Q.

"Premises" means the location where the Goods or Services are to be delivered or provided as set out in the Specification.



"**Price Hold**" refers to a fixed price hold period for a range of goods as identified by the Contractor.

"**Price Ordered, Price Paid**" means the price identified on a valid Purchase Order is the agreed price which will appear on the Contractor's Invoice for payment by the Authority.

"**Pricing and Payment Schedule**" means the Schedule containing details of the Contract Price.

"**Prisoner Goods**" mean any such Goods as are to be supplied by or on behalf of the Contractor under the Contract specific for Prisoner Catering requirements.

"**Prisoners**" means an offender or prisoner who is accommodated at the Authority Site.

"**Process**" has the meaning given to it under the Data Protection Legislation and, for the purposes of the Contract; it shall include both manual and automatic processing.

"**Property**" means the property, other than the real property, issued or made available to the Contractor by the Authority in connection with the Contract.

"**Quality Standards**" means the quality standards published by the British Standards Institute, the National Standards Body of the United Kingdom, the International Organisation for Standardisation, the Authority or any other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

"**Receipt**" means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause 6 or at any other address given by the Authority to the Contractor for the submission of invoices.

"**Regulatory Bodies**" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and



bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and "**Regulatory Body**" shall be construed accordingly.

"**Relevant Conviction**" means a conviction that is relevant to the nature of the Goods or Services or as listed by the Authority and/or relevant to the work of the Authority.

"**Replacement Contractor**" means any third party service provider appointed by the Authority to supply any Goods or Services which are substantially similar to any of the Goods or Services, and which the Authority receives in substitution for any of the Goods or Services following the expiry, termination or partial termination of the Contract.

"**Requests for Information**" shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

"**Re-tendering Employment Information**" means the information required under D5.1.

"**Rogue Substitute Product**" means the alternative product in the event the Contractor is unable to deliver either the Goods or a predetermined Substitute Good(s).

"**Schedule**" means a schedule attached to, and forming part of, the Contract.

"**Service Commencement Date**" means subject to the provisions of this Contract, the date on which the Contractor commences in the provision of the Goods and Services in accordance with terms of this contract, which shall be the date when the first delivery is made to the Authority's site.

"**Service Credits**" means any service credits payable by the Contractor for failure to meet the Service Levels, as determined in accordance with Monitoring Schedule J – Section 1 – Authority's Monitoring Requirements J1. Section 2: Management Information



"**Service Levels**" (also referred to as Service Level Agreement) means the service levels to be met by the Services as referenced in the Contract Letter and set out in Monitoring Schedule J – Section 1 – Authority's Monitoring Requirements J1. Section 2: Management Information.

"**Services**" means the services to be supplied as detailed in the Specification Schedule G.

"**Setting-up Operations**" means the activities the Contractor shall undertake between Commencement Date and Service Commencement Date as set out in Schedule G, Appendix U.

"**Single Portion(s)**" means pre-packed component meals that form part of the daily feeding requirements for Prisoners.

"**Site**" see definition set out under 'Authority Site'.

"**Site Representative**" (also referred to as Catering Manager)

"**SME**" means small and/or medium enterprises as defined by the European Commission.

"**Special Offer Plan**" has the meaning given to it in Schedule G, Section 6.

"**Specification**" means the description of the Goods or Services to be supplied under the Contract as set out in Schedule G (Specification) including, where appropriate, the Contractor's Key Personnel, the Premises and the Quality Standards and Food Quality Standards.

"**Standard Order Time**" means the normal minimum period of time in working days between an Order being placed and the delivery of Goods or Services to the Authority. For the purposes of this Contract the Order shall be placed by 1400 hours on day one (1) for delivery on day four (4). Except where otherwise agreed or amended in accordance with the Change Request Procedure, or where an emergency order is agreed, the Authority shall ensure that Orders raised shall coincide with the agreed Delivery Schedule as detailed in Schedule G (Specification).

"**Sub-Contractor**" means any person, firm or company approved by the Authority pursuant to Clause 26.1 who enters into a contract with the



Contractor to provide goods or services to enable the Contractor to meet his obligations under this Contract

"Substitute Good(s)" means any goods which are substantially similar to the contracted Goods and which the Authority received in substitution for the Goods ordered either from the Contractor or a third party.

"Tender" means any document(s) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Goods or Services.

"Sustainability Plan" has the meaning given to it in Schedule G, Appendix R.

"Transferee" has the meaning given to it in Clause 26.11

"Transferring-In Employees" means those employees wholly or mainly engaged in the provision of the Services immediately before the commencement of the Contract whose employment transfers from the Authority or the current contractor pursuant to TUPE.

"Transferring-Out Employees" means those employees wholly or mainly engaged in the provision of the Services immediately before the expiry or earlier termination of the Contract.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246). **"Variation"** has the meaning given to it in clause 28 (Variation).

"Type" means one of the eight (8) different types of Single Portion Goods as defined in Schedule G, Appendix I.

"Unit of Measure" refers to unit of measurement for relevance to weights and measures in relation to the Goods supplied. The units may be measured in litres, kilograms and each.

"Unit Prices" is the total delivered price of the Goods purchased and is inclusive of Commodity Cost, Movement Rate and VAT.

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994.



"**Variant**" means one of the seven (7) variations of each Type, as defined in Schedule G, Appendix I.

"**The Vetting and Barring Scheme**" means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006.

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



1.1 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- a. Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- b. Words importing the masculine include the feminine and the neuter.
- c. Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- d. Reference to any statute, enactment, order, regulation or other similar instrument where appropriate shall be construed as referring to any subsequent amendment or re-enactment of the same.
- e. References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted.
- f. The words "**include**", "**includes**" and "**including**" are to be construed as if they were immediately followed by the words "**without limitation**".
- g. Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. Initial Contract Period

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date specified in the Contract Letter, unless it is terminated earlier or extended under clause 31.

3. Contractor's Obligations

- 3.1 The Contractor shall employ at all times a sufficient number of Contractor's Personnel to fulfil its obligations under the Contract. All Contractor's Personnel shall possess the qualifications and competence appropriate to the tasks for which they are employed. If and when so directed in writing by the Authority the Contractor shall within twenty eight (28) days provide details of the



qualifications and competence of any person employed or proposed to be employed by the Contractor in connection with the Contract and shall provide a copy of any certificate or qualification or competence that has been issued in respect of any such person. The Contractor shall, if required by the Authority, provide its Personnel with a copy of the Cabinet Office Joint Statement on access to skills, trade unions and advice in government contracting.

3.2 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Goods or Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Goods or Services with the Authority prior to the supply of the Goods or Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice. The Contractor shall ensure that all Contractor's Personnel supplying the Goods or Services shall do so with all due skill, care and diligence as are necessary for the proper supply of the Goods and Services and strictly in accordance with the Terms of this Contract.

3.3 The Authority, whose decision shall be final and conclusive, reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any Premises occupied by or on behalf of the Authority:

3.3.1 any member of the Contractor's Personnel; or

3.3.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be in the opinion of the Authority undesirable.

3.4 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption



certificates of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably desire.

- 3.5 The Contractor's Personnel, engaged within the boundaries of a Government property, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Contractor's Personnel when at that establishment and when outside that establishment.
- 3.6 If the Contractor fails to comply with clause 3.4 above the Authority, (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown; and if the Contractor does not comply with the provisions of clause 3.4 within two (2) Months of the date of a written notice from the Authority so to do then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 3.7 The Contractor shall bear the cost of any complying with any requirement of this clause.
- 3.8 The Contractor shall promptly inform and keep informed the Authority in writing of any industrial relations problems or other matters relating to the Contractor's Personnel which may affect the performance of the Contract.
- 3.9 The Contractor shall not employ any person where the Contractor knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the Contractor. The



Contractor shall not knowingly make, facilitate or participate in the procurement of any unlawful payments to any person employed by the Contractor, whether in the nature of Social Security fraud, evasion of tax or otherwise.

- 3.10 The Contractor shall comply with the Authority's procedures for the vetting of Contractor's Personnel in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Contractor's Personnel Vetting Procedures.
- 3.11 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 3.12 The Authority may require the Contractor to ensure that any person employed in the provision of the Goods or Services has undertaken a Criminal Records Bureau check as per the Contractor's Personnel Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a relevant conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of the Goods or Services.
- 3.13 Individuals, including those held in lawful custody or on probation are regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the Authority deems it necessary the Contractor shall provide a list of Personnel who will be providing the Services that have been vetted by the Independent Safeguarding Authority. The Authority may in its sole discretion



refuse access to its Premises by any member of the Contractor's Personnel who does not successfully complete the vetting procedures under the Vetting and Barring Scheme.

- 3.14 The Contractor shall be subject to the provisions of the Schedules to this contract as applicable.
- 3.15 From the Commencement Date, the Contractor shall comply with its obligations in respect of Setting-up Operations as set out in the Specification. Without prejudice to the foregoing provisions of this Clause, the Contractor shall be responsible for managing and achieving the Setting-up Operations and for providing weekly progress reports to the Authority. If the Contractor fails to achieve the commencement of full operations date (as identified in the Contract Letter) then the Authority shall notify the Contractor, and if such failure is not remedied within seven (7) Working Days, the Contractor will reimburse the Authority any actual costs and expenses incurred by the Authority as a result of such failure.
- 3.16 The parties shall comply with the provisions for the Disaster Recovery Plan and the Contractor shall ensure that it is able to implement the Disaster Recovery Plan as set out in the Specification at any time in accordance with its terms. On request the Authority shall be permitted access to the Contractor to check the Contractor's Disaster Recovery Plans and any back-up recovery procedures.
- 3.17 In the event of an emergency the Contractor shall immediately:
- 3.18. Notify the Authority of the disaster and its anticipated impact on the Contractor's obligations under this contract;
- 3.18.1 Implement the Disaster Recovery Plan; and
- 3.18.2 Consult with the Authority to ensure minimum disruption.



4. Authority's Obligations

- 4.1 Subject to reasonable notification by the Contractor of its requirements, the Authority shall give to the Contractor such instructions and/or decisions as pursuant to the Contract as required to be given by the Authority at such a time and in such a manner as shall enable the Contractor properly to perform the Contract.
- 4.2 The Authority shall supply or make available to the Contractor, without charge, such information as it is required to provide in accordance with the Specification in such time so as not to delay or disrupt the performance of the Contractor's duties under the Contract.
- 4.3 The Authority shall provide access to areas of land and building (including details of any restrictions) as stated in the Specification as it is reasonably able to do to enable the Contractor to carry out the Contract.
- 4.4 The Authority may provide site facilities to the Contractor for the carrying out of the Contract, which, if required, shall be as detailed and on such terms as set out in the Specification.
- 4.5 The Authority shall be subject to the provisions of the Schedules to this Contract as applicable.

5. Scope of Contract

- 5.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.



5.2 Other than as set out in the Contract, the Contractor agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees whatsoever in relation to the volume of the Goods or Services provided under the Contract.

6. Notices

6.1 For the purposes of this clause 6, the address of each Party shall be as stated in the Contract Letter. Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by receipted facsimile transmission or receipted electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such notice or communication.

6.3 Either Party may change its address for service by serving a notice in accordance with this clause.

7. Mistakes in Information

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

7.2 The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Goods or Services required by the



Authority, the means of communication and access to the Authority's Premises, the supply and conditions affecting labour, the suitability of the Authority's Premises and the equipment necessary for the performance of the Contract, subject to all such matters being discoverable by the Contractor.

7.3 The Contractor acknowledges that it has:

7.3.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;

7.3.2 raised all relevant due diligence questions with the Authority before the Commencement Date;

7.3.3 satisfied itself that it has sufficient information to ensure that it can provide the Goods or Services; and

7.3.4 entered into the Contract in reliance on its own due diligence alone.

7.4 Without prejudice to clause 7.3, the Contractor shall:

7.4.1 use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority are accurate; and

7.4.2 notify the Authority immediately if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority.

8. Conflicts of Interest

8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Contractor's Personnel is placed in a position where, in the reasonable opinion of the Authority:

8.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Contractor



and the duties owed to the Authority under the provisions of the Contract; or

8.1.2 the behaviour of the Contractor or the Contractor's Personnel is not in the Authority's best interest or might adversely affect the Authority's reputation.

The Contractor will as soon as reasonably practicable disclose to the Authority full particulars of any behaviour which might give rise to the acts complained of in sub-clauses 8.1.1 or 8.1.2

8.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the Contractor or the Contractor's Personnel and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which has accrued or will accrue to the Authority.

9. Prevention of Fraud and Prevention of Corruption

9.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by the Contractor's Personnel in connection with the receipt of monies from the Authority.

9.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

9.3 Subject to 9.1 and 9.2, if the Contractor or its Personnel commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:



- A) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods or Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- B) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

9.4 The Contractor shall not offer or give or agree to give to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

9.5 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

9.6 If the Contractor, its Personnel or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 9.4 or 9.5, the Authority may:

- 9.6.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods or Services and any additional expenditure incurred by



the Authority throughout the remainder of the Contract Period; or

9.6.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

PAYMENT AND CONTRACT PRICE

10. Contract Price

10.1 In consideration of the performance by the Contractor of the Contractor's obligations under the Contract by the Contractor, the Authority shall pay the Contract Price in accordance with clause 11 below.

10.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods or Services supplied in accordance with the Contract.

11. Payment and VAT

11.1 The Contractor shall ensure that each invoice contains all appropriate references, including the date of the invoice, the Contractor's name and address, the Contractor's banking details, the relevant purchase order number supplied by the Authority, the agreed payment and a detailed breakdown of the Goods or Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice. For the avoidance of doubt invoices must be dated no earlier than the delivery date of each consignment of Goods, and must show any applicable trade or settlement discounts.

11.2 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.



- 11.3 The Authority shall pay all sums due to the Contractor within thirty (30) days of Receipt of a valid invoice, submitted monthly in arrears. Payment is to be made by BACS and in accordance with Schedule H (Pricing and Payment).
- 11.4 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 11.4 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- 11.5 The Authority may reduce payment in respect of any Goods or Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 11.6 The Contractor shall not suspend the supply of the Goods or Services unless the Contractor is entitled to terminate the Contract under clause 37.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.
- 11.7 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice provided always that the Contractor has been paid by the Authority.



11.8 Where the Contractor has delivered Substitute Good(s) the invoice will automatically be considered in dispute whilst investigated. Substitute Good(s) invoices will be paid on receipt of an otherwise valid invoice when the Substitute Good(s) invoice line(s) information can be validated as correct. The Contractor shall provide any information required to substantiate the substitution.

11.9 For the avoidance of doubt, unless otherwise agreed in writing, where Substitute Good(s) are supplied the price for these shall be no more than the original contract price per Kilogram, Litre or Each (or other appropriate unit of measurement), whichever offers best value to the Authority.

12. Recovery of Sums Due

12.1 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any Default), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement or contract with the Authority or the Crown.

12.2 Any overpayment by either Party, whether of the Contract Price or of VAT, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

12.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

13. Price Adjustment

13.1 The Contract Price shall be firm subject to the price adjustments as provided for in Clause 13.5. In the event that the Authority agrees



to extend the Initial Contract Period pursuant to clause 31 the Authority shall, in the twelve (12) Months period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than thirty (30) Working Days) to agree a variation in the Contract Price.

13.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause 13.1, the Contract shall terminate at the end of the Initial Contract Period.

13.3 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

13.4 Any increase in the Contract Price pursuant to clause 13.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index ("CPI") (or such other index specified in the Pricing and Payment Schedule) between the Commencement Date and the date six (6) Months before the end of the Initial Contract Period.

13.5 Price Adjustments in accordance with normal contract management shall be in accordance with Schedule H (Pricing and Payment Schedule).

14. Euro

14.1 Any legislative requirement to account for the Goods or Services in Euro € (or to prepare for such accounting), instead of and/or in addition to Pounds Sterling £, shall be implemented by the Contractor at nil charge to the Authority.

14.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause 14.1 by the Contractor.



STATUTORY OBLIGATIONS AND REGULATIONS

15. Discrimination

15.1 The Contractor shall not unlawfully discriminate within the meaning and scope of Law relating to discrimination in employment. The Contractor shall take all reasonable steps to secure the observation of this provision by all the Contractor's Personnel. The Contractor shall have proper regard to the Codes of Practice prepared and issued from time to time by the Equality and Human Rights Commission.

16. The Contracts (Rights of Third Parties) Act 1999

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

INFORMATION

17. Authority Data

17.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

17.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.

17.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.



17.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

17.5 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

18. Protection of Personal Data

18.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.

18.2 The Contractor shall:

18.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to the Contractor during the Contract Period) and the Contractor shall at the very least comply with the provisions of the Information Security Schedule;

18.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Goods or Services or as is required by Law or any Regulatory Body;

18.2.3 Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised; or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having



regard to the nature of the Personal Data which is to be protected and in any event the measures shall not be of a lesser standard than that set out in Schedule E (Information Security)

- 18.2.4 Take reasonable steps to ensure the reliability of any Contractor's Personnel who have access to the Personal Data;
- 18.2.5 Obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors or affiliates for the provision of the Services;
- 18.2.6 Ensure that all Contractor's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 18;
- 18.2.7 Ensure that none of the Contractor's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 18.2.8 Notify the Authority (within five Working Days) if it receives:
 - 18.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 18.2.8.2 a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 18.2.9 Provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
 - 18.2.9.1 providing the Authority with full details of the complaint or request;
 - 18.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;



18.2.9.3 providing the Authority with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Authority; and

18.2.9.4 providing the Authority with any information requested by the Authority;

18.2.10 Permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 25, the Contractor's data Processing activities (and/or those of its Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;

18.2.11 Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and

18.2.12 Not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

18.2.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

18.2.12.2 any reasonable instructions notified to it by the Authority.

18.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.



19. Freedom of Information

19.1 The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, Government Transparency Agenda, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.

19.2 The Contractor shall and shall procure that its sub-contractors shall:

- 19.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- 19.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- 19.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

19.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

19.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

19.5 The Contractor acknowledges that (notwithstanding the provisions of this clause 19) the Authority may be obliged under the FOIA, or



the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

- 19.5.1 in certain circumstances without consulting the Contractor; or
- 19.5.2 following consultation with the Contractor and having taken their views into account provided always that where clause 19.5.1 applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 19.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

20. Confidentiality

- 20.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract. Prior to publication the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:
- a) national security;
 - b) personal data;
 - c) information protected by intellectual property law;



- d) information which it is not in the public interest to disclose (under a Freedom of Information Act analysis)
- e) third party confidential information;
- f) IT security; or
- g) prevention of fraud

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

20.2.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

20.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

20.3 Clause 20.2 shall not apply to the extent that:

20.3.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 19;

20.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

20.3.3 such information was obtained from a third party without obligation of confidentiality;

20.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

20.3.5 it is independently developed without access to the other Party's Confidential Information.

20.4 The Contractor may only disclose the Authority's Confidential Information to the Contractor's Personnel who are directly involved in the provision of the Goods or Services any of the Authority's Confidential Information and need to know, and shall ensure that



the Contractor's Personnel are aware of and shall comply with this clause 20.

20.5 The Contractor shall not, and shall procure that the Contractor's Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.

20.6 At the written request of the Authority, the Contractor shall procure that those members of the Contractor's Personnel identified in the Authority's notice sign a confidentiality undertaking on similar terms to the Contract prior to commencing any work in accordance with the Contract.

20.7 Nothing in the Contract shall prevent the Authority from disclosing the Contractor's Confidential Information (including the Management Information obtained under clause 24):

20.7.1 to any Crown Body or any other Contracting Authority on the understanding that they shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

20.7.2 to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;

20.7.3 for the purpose of the examination and certification of the Authority's accounts; or

20.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

20.8 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential



Information is disclosed pursuant to clause 20.7 is made aware of the Authority's obligations of confidentiality.

20.9 Nothing in this clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

21. Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

21.1 The Contractor undertakes to abide by, and ensure that its Personnel abide by, the provisions of:

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

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

22. Publicity, Media and Official Enquiries

22.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

22.2 Both Parties shall take reasonable steps to ensure that their Personnel comply with clause 22.1.

23. Intellectual Property Rights

23.1 Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

23.1.1 furnished or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and



23.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor's Personnel shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights in the IP Materials.

23.2 Subject to any pre-existing Intellectual Property Rights the Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 23.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

23.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor for the performance of the Contract.

23.4 The Contractor shall use best endeavours to ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying Goods or Services to the Authority.



23.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Goods or Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where such claim arises from:

23.5.1 items or materials based upon designs supplied by the Authority; or

23.5.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

23.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

23.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor shall:

23.7.1 consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

23.7.2 take due and proper account of the interests of the Authority; and

23.7.3 not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

23.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting



any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 23.5.1 or 23.5.2.

23.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.

23.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority as soon as reasonably practicable and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

23.10.1 modify any or all of the Goods or Services without reducing the performance or functionality of the same, or substitute alternative Goods or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutatis mutandis to such modified Goods or Services or to the substitute Goods or Services; or

23.10.2 procure a licence to use and supply the Goods or Services, which are the subject of the alleged infringement, on terms



which are acceptable to the Authority and in the event that the Contractor is unable to comply with clauses 23.10.1 or 23.10.2 within twenty (20) Working Days of receipt of the Contractor's notification the Authority may terminate the Contract by notice in writing.

23.11 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) (and where appropriate worldwide) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the Contract including the Goods or Services provided.

24. Monitoring

24.1 The Contractor shall comply with the monitoring arrangements set out in Schedule J, Monitoring and Management Information including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

24.2 Where requested by the Authority, the Contractor shall supply the Management Information to the Authority and to GPS in the form set out in Schedule J, Monitoring and Management Information during the Contract Period.

24.3 The Contractor agrees that the Authority may provide GPS with information relating to the Services and Goods procured and any payments made under the Contract.

24.4 Upon receipt of the Management Information supplied by the Contractor in response to a request under 24.2 or receipt of information provided by the Authority to GPS under 24.3, the Authority and the Contractor shall consent to GPS:

- (a) storing and analysing the Management Information and producing statistics; and



(b) sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.

24.5 In the event that GPS shares the Management Information or information provided under clause 24.3 in accordance with 24.4(b), any Contracting Authority receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body who is not a Contracting Authority (unless required by law). The Authority may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) Month's written notice of any changes.

25. Audit

25.1 The Contractor and its Personnel shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods or Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

25.2 The Contractor and its Personnel shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or



agreement for the examination, certification or inspection of the accounts of the Contractor by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act of 1983.

CONTROL OF THE CONTRACT

26. Assignment and Sub-Contracting

- 26.1 Except where clauses 26.5 and 26.6 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 26.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 26.3 Where the Authority has consented to the placing of sub-contracts for the provision of services, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 26.4 Alternatively, the Authority may require that, if the Contractor wishes to sub-contract any obligations under the Contract for the provision of services at any time it shall submit a list of sub-contractors to the Authority for approval. The Contractor shall obtain the Authority's prior written approval before changing any of the sub-contractors so approved. The Authority shall not unreasonably withhold or delay such approval.
- 26.5 Notwithstanding clause 26.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including any interest which the Authority incurs under clause 11). Any assignment under this clause 26.5 shall be subject to:



26.5.1 reduction of any sums in respect of which the Authority exercises its right of recovery under clause 12;

26.5.2 all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and

26.5.3 the Authority receiving notification under both clauses 26.6 and

26.6 In the event that the Contractor assigns the right to receive the Contract Price under clause 26.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

26.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment.

26.8 The provisions of clause 11 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.

26.9 Subject to clause 26.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof as it sees fit provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

26.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 26.9, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

26.11 If the rights and obligations of the Authority under the Contract are assigned, novated or otherwise disposed of pursuant to clause 26.9 to a body which is not a Contracting Authority, or if there is a change in the legal status of the Authority such that it ceases to be a Contracting



Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):

26.11.1 the rights of termination of the Authority in clauses 36 (Termination on Change of Control and Insolvency) and 37 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency or Default of the Transferee; and

26.11.2 the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor;

26.11.3 the rights of the Authority to deduct or withhold sum herein shall be adjusted such that the Transferee may only deduct or withhold sums as are agreed or adjudicated as due from the Contractor to the Transferee

26.11.4 without prejudice to the Contractor's rights at clause 37.3 below, where the Transferee has failed to pay the Contractor undisputed sums of money when due in accordance with clause 11.3, the Contractor shall notify the Transferee of such failure and if the Transferee fails to pay such undisputed sum within twenty eight (28) days of such notice the Contractor will have a right to suspend supply of the Services and in any event the Contractor shall notify the Authority if any undisputed sum due to the Contractor not paid by the Transferee on its due date remains unpaid for more than five (5) days. The Authority shall within five (5) days of being so notified make inquiries of the Transferee as to the nature of the delay with a view to seeking timely payment of that undisputed sum is made. Notwithstanding the obligation on the Authority in this clause 26.11.4 and without prejudice to the Contractor's rights, the Contractor shall continue to use



reasonable endeavours to resolve payment of such sums with the Transferee.

26.12 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

26.13 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of whatever further actions, (including the execution of further documents), the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

27. Waiver

27.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

27.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 6.

27.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.



28. Variation

28.1 Subject to the provisions of this clause 28, the Authority may request a variation to the Contract provided that such variation does not amount to a material change to the Contract. Such a change is hereafter called a "**Variation**".

28.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

28.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:

28.3.1 allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;

28.3.2 terminate the Contract following the arrangements provided by clause 38.

29. Severability

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

29.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall



immediately commence negotiations in good faith to remedy the invalidity.

30. Remedies Cumulative

30.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not exclude the exercise of any other remedy.

31. Extension of Initial Contract Period

31.1 Subject to clause 13 (Price Adjustment), the Authority may, by giving written notice to the Contractor not less than twelve (12) Month(s) prior to the last day of the Initial Contract Period, extend the Contract for such further period as may be specified in the notice. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 13) throughout any such extended period.

32. Entire Agreement

32.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

32.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved, unless the Parties have agreed in writing to the contrary, in accordance with the following order of precedence:

- (1) the Contract Letter;



- (2) the Standard Terms and Conditions of the Contract;
- (3) the Schedules, Appendices and Annexes;
- (4) any other document referred to in the Contract Letter.

33. Counterparts

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

LIABILITIES

34. Liability, Indemnity and Insurance

34.1 Neither Party excludes or limits liability to the other Party for:

34.1.1 death or personal injury caused by its negligence; or

34.1.2 fraud; or

34.1.3 fraudulent misrepresentation; or

34.1.4 any breach of any obligations imposed by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979.

34.2 Subject to clauses 34.1 and 34.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully up to £1million pounds against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods or Services or the performance or non-performance by the Contractor of its obligations under the Contract or the unlawful presence of the Contractor or any Contractor's Personnel on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any wrongful act or omission of the Contractor or the Contractor's personnel.



- 34.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of any Authority Personnel or the breach by the Authority of its obligations under the Contract.
- 34.4 Subject always to clause 34.1, the aggregate liability of either Party for Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall unless agreed to the contrary not exceed £5,000,000.
- 34.5 Subject always to clause 34.1 in no event shall either Party be liable to the other for:
- 34.5.1 loss of profits, business, revenue, goodwill; and/or
 - 34.5.2 loss of savings (whether anticipated or otherwise); and/or
 - 34.5.3 indirect or consequential loss or damage.
- 34.6 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- 34.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as specified in the Specifications Schedule in respect of risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- 34.8 The Contractor shall hold and shall ensure that all sub-contractors hold employer's liability insurance in respect of all eligible workers engaged in providing the Services in accordance with any legal requirement from time to time in force.
- 34.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification



of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.

34.10 If, for whatever reason, the Contractor fails to ensure that insurances required by the provisions of the Contract are maintained, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

34.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 34.2.

35. Warranties and Representations

35.1 The Contractor warrants and represents that:-

35.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

35.1.2 in entering the Contract it has not committed any Fraud;

35.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;

35.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;



- 35.1.5 it is not subject to any contractual obligations, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 35.1.6 no proceeding or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 35.1.7 it owns, or has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 35.1.8 in the three (3) years prior to the date of the Contract:
- 35.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- 35.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 35.1.9 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- 35.1.10 it has not, at any relevant time prior to or during the Tender process for this contract (ref: MCLF – Food/Catering-2011-Supply of Foodstuff-1035) and in pursuance of its bid for this contract (the "Tender Process"):
- 35.1.10.1 obtained, or solicited, by whatever means, or utilised, the prices, tenders, bidders' Outline Proposals,



BAFO submission or other confidential material, in each case relating to the Tender Process belonging to or produced by any other bidder in the process; or

35.1.10.2 engaged in any collusion, price-fixing, or other anti-competitive practice, in each case in relation to the Tender Process and which would amount to a breach of the procurement process.

35.2 For the purposes of clause 35.1.10, the contractor shall be taken to have known that the material in question belonged to or was produced by any other bidder in the Tender Process if the quality, style or type of material in question was such that a reasonable person would have concluded that it came from that source.

35.3 If, contrary to clause 35.1.10 above, subsequently at any time it becomes apparent to the Authority that the Contractor has in fact engaged in any activity referred to in clause 35.1.10 and such behaviour has caused loss to the Authority whether by way of liability to another party or otherwise, the contractor shall indemnify and hold harmless the Authority against any and all such losses to their full extent, including, if necessary, any resultant legal costs incurred by the Authority in defending or taking any necessary legal proceedings, provided however that the Authority shall at all times take reasonable steps to mitigate and reduce its loss, and provided further that the Contractor's liability under this clause 35.3 shall be limited to ten £10 million in total"

DEFAULT, DISRUPTION AND TERMINATION

36. Termination on Change of Control and Insolvency

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



36.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

36.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reorganisation or amalgamation); or

36.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

36.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

36.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

36.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or

36.1.7 being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

36.1.8 any event similar to those listed in clause 36.1.1 to 36.1.7 occurs under the law of any other jurisdiction.

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

36.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is



- made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 36.2.2 a petition is presented and not dismissed within fourteen (14) days or order made the Contractor's bankruptcy; or
- 36.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 36.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 36.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- 36.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005
- 36.3 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:
- 36.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with or assignment for the benefit of its creditors; or
- 36.3.2 it is for any reason dissolved; or
- 36.3.3 a petition is presented for its winding up or for the making of an administrative order, or an application is made for the appointment of a provisional liquidator; or
-



- 36.3.4 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
- 36.3.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- 36.3.6 any of the following occurs in relation to any of its partners:
 - 36.3.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of his creditors; or
 - 36.3.6.2 a petition is presented for his bankruptcy; or
 - 36.3.6.3 a receiver, or similar officer, is appointed over the whole or any part of his assets.
- 36.4 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:
 - 36.4.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 36.4.2 it is for any reason dissolved; or
 - 36.4.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
 - 36.4.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the



purpose of, a bona fide reconstruction or amalgamation)
within Part IV of the Insolvency Act 1986; or

36.4.5 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or

36.4.6 a receiver, or similar officer, is appointed over the whole or any part of its assets; or

36.4.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

36.4.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986

36.4.9 References to the Insolvency Act 1986 in clause 36.4.1 shall be construed as references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

36.5 The Contractor shall notify the Authority immediately of a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (change of control). Where in the reasonable opinion of the Authority the change is likely to result in an adverse effect on the provision of the Goods or Services the Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

36.5.1 being notified that a change of control has occurred; or

36.5.2 where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where an Approval was granted prior to the change of control.

37. Termination on Default

37.1 The Authority may terminate the Contract with immediate effect if the Contractor commits a Default and if:



37.1.1 the Contractor has not remedied the Default to the satisfaction of the Authority within ten (10) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

37.1.2 the Default is not, in the opinion of the Authority, capable of remedy; or

37.1.3 the Default is a material breach of the Contract.

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

37.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within sixty (60) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 12.1.



38. Termination for Convenience

38.1 The Authority shall have the right to terminate the Contract at any time by giving six (6) Months' written notice to the Contractor.

38.2 Where, following the expiry or termination of the Contract, there is a transfer of an undertaking or a service provision change, within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, Schedule D (Transfer of Undertakings) shall have effect.

39. Consequences of Expiry or Termination

39.1 Where the Authority terminates the Contract under clause 37 and then makes other arrangements for the supply of Goods or Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 37, no further payments shall be payable by the Authority to the Contractor (for Goods or Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

39.2 Subject to clause 34, where the Authority terminates the Contract under clause 38, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not



covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 38.

39.3 The Authority shall not be liable under clause 39.2 to pay any sum which:

39.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

39.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

39.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.

39.4 In the event of any termination or expiry of the Contract:

39.4.1 the Authority shall be entitled to obtain a refund of the Contract Price paid by the Authority in respect of any part of the Contract which has not been performed by the Contractor;

39.4.2 the Contract Price shall be reduced on a pro rata basis where any part of the Contract is terminated, and the remaining parts of the Contract shall continue to be performed for the remainder of the Contract Period;

39.4.3 the Contractor shall return to the Authority all Property and all other items belonging to the Authority in its possession (save for copies required by the Contractor for statutory audit or archive purposes);



39.4.4 subject to the payment of the appropriate portion of the Contract Price the Contractor shall provide the Authority with a copy of all deliverables undertaken to date (whether completed or not) in its state at that time and, at the Authority's option, return or destroy all other copies in the Contractor's possession or control; and

39.4.5 the Contractor shall at the Authority's request novate any agreements between the Contractor and any third parties that are relevant to the receipt of the Goods or Services by the Authority.

39.5 Upon expiry or termination of all or any part of the Contract, the Contractor shall provide all reasonable assistance and information to the Authority (and to any Replacement Contractor appointed by the Authority) if requested, to the extent necessary to effect an orderly assumption of the Goods or Services by the Authority or the Replacement Contractor.

39.6 Save as otherwise expressly provided in the Contract:

39.6.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

39.6.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 9 (Prevention of Fraud and Prevention of Corruption), 11 (Payment and VAT), 12 (Recovery of Sums Due), 16 (Rights of Third Parties), 17 and 18 (Authority Data and Protection of Personal Data), 19 (Freedom of Information), 20 (Confidentiality), 21 (Official Secrets Acts 1911-1989), 23 (Intellectual Property Rights),



25 (Audit), 30 (Remedies Cumulative), 34 (Liability, Indemnity and Insurance), 35 (Warranties and Representations), 39 (Consequences of Expiry or Termination), 41 (Recovery upon Termination), 43 (Governing Law), 44 (Dispute Resolution) and clause A12 of the Special Conditions (Professional Indemnity).

40. Disruption

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

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

40.3 In the event of industrial action by the Contractor's Personnel the Contractor shall seek Approval to its proposals to perform its obligations under the Contract.

40.4 If the Contractor's proposals referred to in clause 40.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.

40.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time thereafter to fulfil the original requirement.

41. Recovery upon Termination

41.1 On the termination of the Contract for any reason, the Contractor shall:



41.1.1 immediately return to the Authority all Confidential Information, Personal Data and Materials subject to Intellectual Property Rights in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Goods or Services;

41.1.2 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor for the purposes of the Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

41.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods or Services to the Replacement Contractor and/or the completion of any work in progress;

41.1.4 promptly provide all information concerning the provision of the Goods or Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods or Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

41.2 If the Contractor fails to comply with clauses 41.1.1 and 41.1.2, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

41.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clauses 41.1.3 and 41.1.4 free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance

and the Contractor shall take all reasonable steps to mitigate such costs.

42. Force Majeure

42.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

42.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

42.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 42.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

DISPUTES AND LAW

43. Governing Law

43.1 Subject to the provisions of clause 44, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and



agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

44. Dispute Resolution

44.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute, such efforts shall involve the escalation of the dispute to the Director of Procurement (or equivalent) of each Party.

44.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

44.3 If the dispute cannot be resolved by the Parties pursuant to clause 44.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 44.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.

44.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Contractor's Personnel shall comply fully with the requirements of the Contract at all times.

44.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

44.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either



Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.

44.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.

44.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

44.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

44.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

44.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 44.6.



44.6 Subject to clause 44.2, the Parties shall not institute court proceedings until the procedures set out in clauses 44.1, 44.3 and 44.5 have been completed save that:

44.6.1 The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 44.7.

44.6.2 If the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 44.7.

44.6.3 The Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with the provisions of clause 44.7, to which the Authority may consent as it sees fit.

44.7 In the event that any arbitration proceedings are commenced pursuant to clause 44.6:

44.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

44.7.2 the Authority shall give a written notice of arbitration to the Contractor ("**the Arbitration Notice**") stating:

44.7.2.1 that the dispute is referred to arbitration; and

44.7.2.2 providing details of the issues to be resolved;

44.7.3 the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 44.7.2 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;



- 44.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- 44.7.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 44.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 44.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 44.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with English law.



SCHEDULES

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Schedule B	Goods
Schedule C	Prisons
Schedule D	Transfer of Undertakings
Schedule E	Information Security
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