



**Model Terms and Conditions of Goods**

**April 2014**

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## 1. GENERAL PROVISIONS

### 1.1. Definitions and Interpretation

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

**"Approval"** means the written consent of the Client.

**"Client"** means the Royal Air Force Museum

**"Commencement Date"** means the date of the Contract.

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

- which is provided by the Contractor to the Client in confidence for the period set out in that Schedule or notification; and/or
- that constitutes a trade secret.

**"Confidential Information"** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- was public knowledge at the time of disclosure (otherwise than by breach of clause 5.3 (Confidential Information));
- was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- is independently developed without access to the Confidential Information.

**"Contract"** means this written agreement between the Client and the Contractor consisting of these clauses and any attached Schedules.

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

**"Contractor"** means the person, firm or company with whom the Client enters

into the Contract.

**"Contract Period"** means the period from the Commencement Date to:

- the date of expiry set out in clause A2 (Initial Contract Period), or
- following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,
- or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

**"Contract Price"** means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause 3.4 (Price Adjustment on Extension of Initial Contract Period).

**"Crown"** means the government of the United Kingdom (including the Northern Ireland Executive Committee and 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.

**"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 the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**"DPA"** means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**"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.

**"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:

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

**"Fraud"** means any offence under Laws 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.

**"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"** means any such goods as are to be supplied by the Contractor (or by the Contractor's sub-contractor) under the Contract as specified in the Specification.

**"Information"** has the meaning given under section 84 of the FOIA.

**"Initial Contract Period"** means the period from the Commencement Date to the date of expiry set out in clause 1.2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

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

- 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; or
- where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works.

**"Intellectual Property Rights"** means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications

for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**"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 or any Regulatory Body of which the Contractor is bound to comply.

**"Month"** means calendar month.

**"Party"** means a party to the Contract.

**"Premises"** means the location where the Services are to be supplied, as set out in the Specification.

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

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

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

**"Receipt"** means the physical or electronic arrival of the invoice at the address of the Client detailed at clause 1.5.3 or at any other address given by the Client 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 Client and "Regulatory Body" shall be construed accordingly.

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

**"Request 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).

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

**"Specification"** means the description of the Services to be supplied under the Contract including, where appropriate, the quantity of the Goods and any applicable Quality Standards; the location to which the Goods are to be delivered and, where relevant, installed; a description of any installation works to be carried out by the Contractor or any Staff; any equipment with which the Goods must be compatible; the date(s) and time(s) of delivery of the Goods and any necessary training or instruction to be given to the Client by the Contractor in connection with the use or maintenance of the Goods.

**"Specification Schedule"** means the Schedule containing details of the Specification.

**"Staff"** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

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

**"Variation"** has the meaning given to it in clause 6.3.1 (Variation).

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

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

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

- words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- words importing the masculine include the feminine and the neuter;
- reference to a clause is a reference to the whole of that clause unless stated otherwise;
- reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;



- reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **1.2. Client's Obligations**

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

## **1.3. Initial Contract Period**

- 1.3.1. The Contract shall take effect on the Commencement Date and shall expire automatically on [..... 20--], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause 6.7 (Extension of Initial Contract Period).

## **1.4. Contractor's Status**

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

## **1.5. Notices**

- 1.5.1. 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.
- 1.5.2. 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 facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 1.5.3. 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 letters, facsimile transmission or item of electronic mail.

1.5.3. For the purposes of clause 1.5.2, the address of each Party shall be:

**For the Client:**

[Redacted]

**[Address]**

[Redacted]

**For the attention of:**

**Tel:**

**Email:**

**For the Contractor**

[Redacted]

**[Address]**

[Redacted]

**For the attention of:**

**Tel:**

**Email:**

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

## **1.6. Mistakes in Information**

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

## **1.7. Conflicts of Interest**

1.7.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

1.7.2. The Client 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 Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which

shall have accrued or shall thereafter accrue to the Client.

## **2. THE GOODS**

### **2.1. The Specification**

- 2.1.1. The Contractor shall supply and, where relevant, install the Goods in accordance with the specification

### **2.2. The Goods**

- 2.2.1. If requested by the Client, the Contractor shall provide the Client with samples of Goods for evaluation and approval at the Contractor's cost and expense.
- 2.2.2. The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.
- 2.2.3. The Contractor acknowledges that the Client relies on the skill and judgement of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

### **2.3. Delivery**

- 2.3.1. The Contractor shall deliver the Goods at the times(s) and date(s) specified in the Specification.
- 2.3.2. Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Client, the point of delivery shall be when the Goods are loaded on the Client's vehicle.
- 2.3.3. Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Client or duly authorised person shall reasonably direct.
- 2.3.4. The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Client elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the Client any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Client may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Client.

- 2.3.5. The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

## **2.4. Risk and Ownership**

- 2.4.1. Subject to clause 2.3.4, risk in the Goods shall, without prejudice to any other rights or remedies of the Client (including the Client's rights and remedies under clause 2.6 (Inspection, Rejection and Guarantee)), pass to the Client at the time of delivery.
- 2.4.2. Ownership in the Goods shall, without prejudice to any other rights or remedies of the Client (including the Client's rights and remedies under clause 2.6 (Inspection, Rejection and Guarantee)), pass to the Client at the time of delivery (or payment, if earlier).

## **2.5. Non - Delivery**

- 2.5.1. On dispatch of any consignment of the Goods, the Contractor shall send the Client an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Client on the due date for delivery, the Client shall, (provided that the Client has been advised in writing of the dispatch of the Goods), within 10 Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by the Client.

## **2.6. Inspection, Rejection and Guarantee**

- 2.6.1. The Client or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 2.5.2
- 2.6.2. The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this clause the Client may (without prejudice to other rights and remedies) either:
- have such Goods promptly, and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have

taken place until such repair or replacement has occurred; or

- treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Client will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this clause 2.5.2

2.6.3. The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.

2.6.4. The Contractor hereby guarantees the Goods for the period from the date of delivery to the date 18 Months thereafter against faulty materials or workmanship. If the Client shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during each guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge.

2.6.5. Any Goods rejected or returned by the Client as described in clause 2.5.2 shall be returned to the Contractor at the Contractor's risk and expense.

## **2.7. Labelling and Packaging**

2.7.1. The Goods shall be packed and marked in a proper manner and in accordance with the Client's instructions and any statutory requirements and any requirements of the carriers.

## **2.8. Training**

2.8.1. Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Client's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification

## **2.9. Contract Performance**

2.9.1. The Contractor shall perform its obligations under the Contract:

- with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

- in accordance with Good Industry Practice; and
- in compliance with all applicable Laws.

2.9.2. The Contractor shall ensure that

- the Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Client;
- the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;
- the Goods conform in all respects with all applicable Laws; and
- the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Client.

**2.10. Manner of Carrying out Installation Work**

2.10.1. The Contractor shall not deliver any materials or plant or commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Client's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Client are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.

2.10.2. Any access to, or occupation of, the Premises which the Client may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the Premises to such Staff as is necessary for that purpose. The Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on the Premises as the Client may reasonably request.

2.10.3. When the Contractor reasonably believes it has completed the Installation Works it shall notify the Client in writing. Following receipt of such notice, the Client shall inspect the Installation Works and shall, by giving written notice to the Contractor:

- accept the Installation Works, or
- reject the Installation Works and provide reasons to the Contractor if, in the Client's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.

2.10.4. If the Client rejects the Installation Works in accordance with clause 2.10.3 (b) the Contractor shall immediately rectify or remedy any defects and if, in the Client's reasonable opinion, the Installation Works do not, within 5 Working Days, meet the requirements set out in the Specification, the Client may terminate the Contract with immediate effect by notice in writing.

2.10.5. The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Client in accordance with clause 2.10.3 (a). Notwithstanding acceptance of any Installation Works in accordance with that clause, the Contractor shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Client of the Installation Works.

2.10.6. Throughout the Contract Period, the Contractor shall:

- have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the Installation Works;
- provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works:
- not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

2.10.7. On completion of any Installation Works the Contractor shall remove its plant, equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.

## **2.11. Property**

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

2.11.2. The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client

otherwise within 5 Working Days of receipt.

- 2.11.3. The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property, solely in connection with the Contract and for no other purpose without prior Approval.
- 2.11.4. The Contractor shall ensure the security of the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods, in accordance with the Client's reasonable security requirements as required from time to time.
- 2.11.5. The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear) unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

### **3. PAYMENT AND CONTRACT PRICE**

#### **3.1. Contract Price**

- 3.1.1. In consideration of the Contractor's performance of its obligations under the Contract, the Client shall pay the Contract Price in accordance with clause 3.2 (Payment and VAT).
- 3.1.2. The Client shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

#### **3.2. Payment and VAT**

- 3.2.1. The Client shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears.
- 3.2.2. The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice.
- 3.2.3. 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 30 days from the receipt of a valid invoice.
- 3.2.4. The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.



- 3.2.5. The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Client 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 3.2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- 3.2.6. The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 8.2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

### **3.3. Recovery of Sums Due**

- 3.3.1. Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Client.
- 3.3.2. Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 3.3.3. The Contractor shall make all payments due to the Client 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 Client to the Contractor.
- 3.3.4. All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **3.4. Price adjustment on extension of the Initial Contract Period**

- 3.4.1. The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to clause 6.7 (Extension of Initial Contract Period) the Client shall, in the 6 month 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 30 Working Days) to agree a variation in the Contract Price.
- 3.4.2. If the Parties are unable to agree a variation in the Contract Price in accordance with clause 6.4.1, the Contract shall terminate at the end of

the Initial Contract Period.

- 3.4.3. If a variation in the Contract Price is agreed between the Client 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.
- 3.4.4. Any increase in the Contract Price pursuant to clause 6.4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

### **3.5. Euro**

- 3.5.1. Any requirement of Law to account for the Services in Euros, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Client.
- 3.5.2. The Client shall provide all reasonable assistance to facilitate compliance with clause 3.5.1 by the Contractor.

## **4. STATUTORY OBLIGATIONS AND REGULATIONS**

### **4.1. Prevention of Corruption**

- 4.1.1. The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or on behalf of the Client 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 Client 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.
- 4.1.2. The Contractor warrants that:
- it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of the Client or any other public body in connection with the Contract; or
  - otherwise committed an offence under the Bribery Act 2010.
- 4.1.3. If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 4.1.1 or 4.1.2, the Client may:
- terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the

Contract Period; or

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

#### **4.2. Prevention of Fraud**

- 4.2.1. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Client.
- 4.2.2. The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 4.2.3. If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Client) the Client may:
  - terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
  - recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this clause.

#### **4.3. Discrimination**

- 4.3.1. The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 4.3.2. The Contractor shall take all reasonable steps to secure the observance of clause 4.3.1 by all Staff.

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

- 4.4.1. 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.

#### **4.5. Environmental Requirements**

- 4.5.1. The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

#### **4.6. Health and Safety**

- 4.6.1. The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 4.6.2. While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working there.
- 4.6.3. The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 4.6.4. The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- 4.6.5. The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Client on request.

### **5. PROTECTION OF INFORMATION**

#### **5.1. Data Protection Act**

- 5.1.1. The Contractor shall (and shall ensure that its entire Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- 5.1.2. Notwithstanding the general obligation in clause 5.1.1, where the Contractor is processing Personal Data (as defined by the DPA) as a Data

Processor for the Client (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personnel Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

- provide the Client with such information as the Client may reasonably request to satisfy itself that the Contractor is complying with its obligations under the DPA;
- promptly notify the Client of any breach of the security measures to be put in place pursuant to this clause; and
- ensure that it does not knowingly or negligently do or omit to do anything which places the Client in breach of the Client's obligations under the DPA.

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

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

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

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

## **5.3. Confidential Information**

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

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

5.3.2. The Contractor shall not use any Confidential Information it receives from the Client otherwise than for the purposes of the Contract.

5.3.3. Nothing in clauses 5.3.1 to 5.3.2 shall prevent the Client disclosing any Confidential Information obtained from the Contractor:

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

5.3.4. Nothing in clauses 5.3.1 to 5.3.2 shall prevent either Party from:

- using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or
- disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

5.3.5. In the event that the Contractor fails to comply with clauses 5.3.1 to 5.3.2, the Client reserves the right to terminate the Contract with immediate effect by notice in writing.

5.3.6. Clauses 5.3.1 to 5.3.5 are without prejudice to the application of the Official Secrets Act 1911 to 1989 to any Confidential Information.

5.3.7. In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods

under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

- 5.3.8. The Contractor will immediately notify the Client of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clause 5.3.1 to 5.3.2. The Contractor will co-operate with the Client in any investigation that the Client considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- 5.3.9. The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Client's request if the Client reasonably believes the Contractor has failed to comply with clause 5.3.7.
- 5.3.10. 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 Client 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 his consent for the Client 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.
- 5.3.11. The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.
- 5.3.12. The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract.

#### **5.4. Freedom of Information**

- 5.4.1. The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.
- 5.4.2. The Contractor shall and shall procure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within [five] Working Days

(or such other period as the Client may specify) of the Client's request;  
and

- provide all necessary assistance as reasonably requested by the Client to enable the Client 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.

5.4.3. The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

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

5.4.5. The Contractor acknowledges that (notwithstanding the provisions of Clause 42) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- without consulting the Contractor; or
- following consultation with the Contractor and having taken their views into account;
- provided always that where 5.4.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

5.4.6. The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

5.4.7. The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause 5.4.

## **5.5. Publicity, Media and Official Enquiries**

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



- 5.5.2. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 5.5.1.

## **5.6. Security**

- 5.6.1. The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Client while on the Premises, and shall ensure that all Staff comply with such requirements.

## **5.7. Contractor's Staff**

- 5.7.1. The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on the Premises:

- any member of the Staff; or
- any person employed or engaged by any member of Staff,

whose admission or continued presence would, in the reasonable opinion of the Client be undesirable.

- 5.7.2. At the Client'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 Client may reasonably request.

- 5.7.3. The Contractor's Staff, engaged within the boundaries of the Premises, 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 personnel when at or outside the Premises.

- 5.7.4. If the Contractor fails to comply with clause 5.7.2 within 2 Months of the date of the request and in the reasonable opinion of the Client such failure maybe prejudicial to the interests of the Crown then the Client 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 Client.

- 5.7.5. The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause 5.7.2 shall be final and conclusive.

## **5.8. Intellectual Property Rights**

- 5.8.1. Subject to clause 5.8.11, all Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases,

patents, patterns, models, designs or other material (the "**IP Materials**"):

- furnished to or made available to the Contractor by or on behalf of the Client shall remain the property of the Client; and
- prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client;

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

- 5.8.2. The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 5.8.1(b). 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.
- 5.8.3. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 5.8.4. The Contractor shall 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 Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client 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 Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.
- 5.8.5. The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- items or materials based upon designs supplied by the Client; or
  - the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

- 5.8.6. The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 5.8.7. 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 consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
  - shall take due and proper account of the interests of the Client; and
  - shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).
- 5.8.8. The Client 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 Client 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 Client 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 Client 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 5.8.5.
- 5.8.9. The Client 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 Client or the Contractor in connection with the performance of its obligations under the Contract.
- 5.8.10. 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 Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply *mutatis mutandis* to such modified Services or to the substitute Services; or

- procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

and in the event that the Contractor is unable to comply with clauses 5.8.10 within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

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

## 5.9. Audit

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

## 6. CONTROL OF THE CONTRACT

### 6.1. Transfer and Sub-Contracting

- 6.1.1. Except where 6.1.4 and 6.1.5 applies, 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.
- 6.1.2. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 6.1.3. Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- 6.1.4. Notwithstanding clause 6.1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Client incurs under clause 3.2.6). Any assignment under this clause 6.1.4 shall be subject to:
- reduction of any sums in respect of which the Client exercises its right of recovery under clause 3.3 (Recovery of Sums Due);

- all related rights of the Client under the contract in relation to the recovery of sums due but unpaid; and
- the Client receiving notification under both clauses 6.1.5 and 6.1.6.

6.1.5. In the event that the Contractor assigns the right to receive the Contract price under clause 6.1.4, the Contractor or the Assignee shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.

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

6.1.7. The provisions of clause 3.2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.

6.1.8. Subject to clause 6.1.10, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- any Contracting Authority; or
- any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
- any private sector body which substantially performs the functions of the Client,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

6.1.9. Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause 6.1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

6.1.10. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 6.1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

- the rights of termination of the Client in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

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

6.1.11. The Client 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 Client 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.

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

## **6.2. Waiver**

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

6.2.2. No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 1.6 (Notices).

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

## **6.3. Variation**

6.3.1. Subject to the provisions of this clause 6.3, the Client may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".

6.3.2. The Client 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 Client 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.

6.3.3. 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 Client may;

- allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;
- terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause 9.2.

#### **6.4. Severability**

6.4.1. 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.

#### **6.5. Remedies Cumulative**

6.5.1. Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies

#### **6.6. Extension of Initial Contract Period**

6.6.1. Subject to clause 3.4. (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than 3 Months prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 12 Months. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 3.4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

#### **6.7. Entire Agreement**

6.7.1. The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. 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.

6.7.2. 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 in accordance with the following order of precedence:

- the clauses of the Contract;
- the Schedules; and
- any other document referred to in the clauses of the Contract.

## **6.8. Counterparts**

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

## **7. LIABILITIES**

### **7.1. Liability, Indemnity and Insurance**

7.1.1. Neither Party excludes or limits liability to the other Party for:

- death or personal injury caused by its negligence; or
- Fraud; or
- fraudulent misrepresentation; or
- any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

7.1.2. Subject to clauses 7.1.3, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, installation and/or commissioning of the Goods, or the late or purported supply, installation and/or commissioning of the Goods, or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

7.1.3. 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 the Client or by breach by the Client of its obligations under the Contract.



7.1.4. Subject always to clause 7.1.1, in no event shall either Party be liable to the other for any:

- loss of profits, business, revenue or goodwill; and/or
- loss of savings (whether anticipated or otherwise); and/or
- indirect or consequential loss or damage.

7.1.5. 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.

7.1.6. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all 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.

7.1.7. The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

7.1.8. The Contractor shall give the Client, 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 premiums due under those policies.

7.1.9. If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

7.1.10. 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 7.1.2.

## **7.2. Warranties and Representations**

7.2.1. The Contractor warrants and represents that:

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

- in entering the Contract it has not committed any Fraud;
- 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 Client prior to execution of the Contract;
- 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;
- it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- in the three 3 years prior to the date of the Contract:
- 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;
- it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 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.

## **8. DEFAULT, DISRUPTION AND TERMINATION**

### **8.1. Termination on insolvency and change of control**

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

- 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
- 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 reconstruction or amalgamation); or
- petition is presented for its winding up (which is not dismissed within 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
- receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 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
- it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 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
- any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

8.1.2. The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- 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
- a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
- 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
- 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

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

8.1.3. The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("**change of control**"). The Client may terminate the Contract by notice in writing with immediate effect within six months of:

- being notified that a change of control has occurred; or
- where no notification has been made, the date that the Client 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.

## 8.2. Termination on Default

8.2.1. The Client may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- the Contractor has not remedied the Default to the satisfaction of the Client within 25 Working Days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or
- the Default is not, in the opinion of the Client, capable of remedy; or
- the Default is a material breach of the Contract.

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

8.2.3. If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract

in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clauses 3.3.1 (Recovery of Sums Due).

### **8.3. Break**

- 8.3.1. The Client shall have the right to terminate the Contract at any time by giving 3 Months' written notice to the Contractor.

### **8.4. Consequences of Expiry or Termination**

- 8.4.1. Where the Client terminates the Contract under clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 8.2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.
- 8.4.2. Subject to clause 7.1, where the Client terminates the Contract under clause 8.3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which 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 Client 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 Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 8.3 (Break).
- 8.4.3. The Client shall not be liable under clause 8.4.2 to pay any sum which:
- 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;
  - 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

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

8.4.4. Save as otherwise expressly provided in the Contract:

- 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
- termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 5.3 (Confidential Information), 5.4 (Freedom of Information), 5.7 (Intellectual Property Rights), 5.8 (Audit), 5.6 Remedies Cumulative), 7.1 (Liability, Indemnity and Insurance), 8.4 (Consequences of Expiry or Termination), 8.6 (Recovery upon Expiry or Termination) and 9.1 (Governing Law and Jurisdiction).

## 8.5. Disruption

- 8.5.1. 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 Client, its employees or any other contractor employed by the Client.
- 8.5.2. The Contractor shall immediately inform the Client 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.
- 8.5.3. In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 8.5.4. If the Contractor's proposals referred to in clause 8.5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.

## 8.6. Recovery upon Termination

- 8.6.1. On the termination of the Contract for any reason, the Contractor shall:
- immediately return to the Client all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was

obtained or produced in the course of providing the Services;

- immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor under clause 2.8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
- promptly provide all information concerning the provision of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.

8.6.2. If the Contractor fails to comply with clause 8.6.1 (a) and (b), the Client may recover possession thereof and the Contractor grants a licence to the Client 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.

8.6.3. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 8.6.1(c) and (d) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **8.7. Force Majeure**

8.7.1. 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 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

8.7.2. 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.

8.7.3. 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 8.7.1 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.

## 9. DISPUTES AND LAW

### 9.1. Governing Law and Jurisdiction

- 9.1.1. Subject to the provisions of clause 9.2, the Client 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.

### 9.2. Dispute Resolution

- 9.2.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent)] of each Party.
- 9.2.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 9.2.3. If the dispute cannot be resolved by the Parties pursuant to clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 9.2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- 9.2.4. The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 9.2.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
- a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.



- The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider]to provide guidance on a suitable procedure.
- 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.
- If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 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.
- If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 9.2.6.

9.2.6. Subject to clause 9.2.2, the Parties shall not institute court proceedings until the procedures set out in clauses 9.2.1 and 9.2.3 have been completed save that:

- the Client 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 9.2.7.
- if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 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 clause 9.2.7.
- the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause 9.2.7, to which the Client may consent as it sees fit.

9.2.7. In the event that any arbitration proceedings are commenced pursuant to clause 9.2.6:

- the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- the Client shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
  - a) that the dispute is referred to arbitration; and
  - b) providing details of the issues to be resolved;
- the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 9.2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under clause 9.2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- the arbitration proceedings shall take place in London and in the English language; and
- the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.