

Ministry Of Justice

Dated: 1st January 2018

Agreement Relating to the Provision of Alcohol Testing

Clause	Heading	Option
36.5	Default, Disruption and Termination	Replace section 416 of the Income and Corporation Taxes Act 1988 with section 450 of the Corporation Tax Act 2010.

Form of Agreement

THIS AGREEMENT is made between the Secretary of State for Justice (“the Authority”) acting through his/her representatives in the Ministry of Justice (MoJ) and Medacx Limited, (“the Contractor”) having its main or registered office at Fredrick House, 56 Station Road, Hayling Island, Hampshire PO11 0EL together referred to as “the Parties”.

It Is Agreed That:

1. The Authority issued an Invitation to Tender on 10th October 2016 for the provision of Alcohol Testing Equipment and Services.
2. On the basis of the ITT and subsequent clarifications the Contractor submitted their tender dated 6th January 2017.
3. On the basis of the tender and agreement of subsequent clarifications and tender qualifications, the Authority has selected the Contractor to provide the Services.
4. This Form of Agreement (Section 1) together with the attached Sections 2 to 5 (inclusive) forms “the Contract” (as defined in Section 2).
5. The Contract effected at the time of signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.
6. Written representations or understandings agreed between the Parties following the signing of this Form of Agreement will also be deemed to form part of the Contract.
7. The Contract period will be 1st January 2018 to 31st December 2020. This agreement has the availability of the option to extend the contract for a further two year extension, if the “Authority” decides to take up this option.

Signed:

For the Contractor:

For the Authority:

Signature.....

Signature.....

Full Name.....

Full Name.....

Title

Title.....

Date

Date.....

Contents

Standard Terms

- 1 Definitions and Interpretations
- 2 Initial Contract Period
- 3 Contractor's Obligations
- 4 Authority's Obligations
- 5 Scope of Contract
- 6 Notices
- 7 Mistakes in Information
- 8 Conflicts of Interest
- 9 Prevention of Fraud and Prevention of Corruption

Payment and Contract Price

- 10 Contract Price
- 11 Payment and VAT
- 12 Recovery of Sums Due
- 13 Contract Price for an Extended Contract Term
- 14 Euro

Statutory Obligations and Regulations

- 15 Discrimination
- 16 The Contracts (Rights of Third Parties) Act 1999

Information

- 17 Authority Data
- 18 Protection of Personal Data
- 19 Freedom of Information
- 20 Confidentiality

- 21 Official Secrets Acts 1911-1989, Section 182 of the Finance Act 1989
- 22 Publicity, Media and Official Enquiries
- 23 Intellectual Property Rights
- 24 Monitoring
- 25 Audit

Control of the Contract

- 26 Assignment and Sub-Contracting
- 27 Waiver
- 28 Variation
- 29 Severability
- 30 Remedies Cumulative
- 31 Extension of the Contract Term
- 32 Entire Agreement
- 33 Counterparts

Liabilities

- 34 Liability, Indemnity and Insurance
- 35 Warranties and Representations

Default, Disruption and Termination

- 36 Termination on Change of Control and Insolvency
- 37 Termination on Default
- 38 Termination for Convenience
- 38A Termination for Procurement Reasons
- 39 Consequences of Expiry or Termination
- 40 Disruption
- 41 Recovery upon Termination
- 42 Force Majeure

Disputes and Law

43 Governing Law

44 Dispute Resolution

Schedules

46 Schedule A Services

47 Schedule B Goods

48 Schedule C Prisons

49 Schedule D Transfer of Undertakings

50 Schedule E Information Security

51 Schedule F Intellectual Property Rights

52 Schedule G Specification

53 Schedule H Pricing and Payment

54 Schedule I Commercially Sensitive Information

55 Schedule J Monitoring

56 Schedule K Training and Apprenticeships

57 Schedule L Confidential Contract Information Exceptions

58 Schedule M European Social Fund Schedule

59 Schedule N Administration Instructions

60 Schedule O Welsh Language

STANDARD TERMS

1. Definitions and Interpretations

1.1. Definitions

In these Conditions:

"Approval" means the written consent of the Authority.

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

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

"Authority Data" means

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Contractor by or on behalf of the Authority; or
 - (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

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

"Commencement Date" means the date specified in the Contract Letter.

"Basic Disclosure" means Disclosure Scotland's Basic Disclosure Certificate which contains details of convictions considered "unspent" under the Rehabilitation of Offenders Act 1974.

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

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

"Condition" means a condition of the Contract.

"Confidential Contract Information Exceptions" means the Information listed in the relevant Schedule.

"Confidential Information" means the Authority's Confidential Information and/or the Contractor's Confidential Information.

"Contract" means this written agreement between the Authority and the Contractor consisting of the Contract Letter, these terms and conditions, any attached Schedules and the Contractor's Tender.

"Contract Letter" means the letter identifying those documents which form the Contract.

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

- (a) the date of expiry of the Initial Contract Period; or
- (b) following an extension pursuant to clause 31 (Extension of the Contract Term), the date of expiry of the extended period(s);

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

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

"Contracting Authority" means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015.

"Contractor" means the person, firm or company with whom the Authority enters into the Contract and for the purposes of the Contract includes the Contractor's Personnel and where applicable the Key Personnel.

"Contractor's Confidential Information" means any information which has been designated as confidential by either party in writing or that ought reasonably to be

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

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

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

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

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

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

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

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

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

"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.

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

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

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

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

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

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

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

"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 the Contract Letter.

"Intellectual Property Rights" or "IPRs" 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 of any Regulatory Body with which the Contractor is bound to comply.

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

"Month" means a calendar month.

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

"Party" means a party to the Contract.

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

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

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

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

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

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

"Quality Standards" means the quality standards published by the British Standards Institute, the National Standards Body of the United Kingdom, the International Organisation for Standardisation 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 Authority detailed at clause 6 or at any other address given by the Authority to the Contractor for the submission of invoices.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly.

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

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

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

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

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

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

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

"Variation" has the meaning given to it in clause 28 (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.

1.2. Interpretation

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

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- (b) Words importing the masculine include the feminine and the neuter.
- (c) Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- (d) Reference to any statute, enactment, order, regulation or other similar instrument where appropriate shall be construed as referring to any subsequent amendment or re-enactment of the same.

- (e) References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted.
- (f) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".
- (g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. Initial Contract Period

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

3. Contractor's Obligations

3.1. The Contractor shall employ at all times a sufficient number of Contractor's Personnel to fulfil its obligations under the Contract. All Contractor's Personnel shall possess the qualifications and competence appropriate to the tasks for which they are employed. If and when so directed in writing by the Authority the Contractor shall within seven (7) days provide details of the qualifications and competence of any person employed or proposed to be employed by the Contractor in connection with the Contract and shall provide a copy of any certificate or qualification or competence that has been issued in respect of any such person.

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

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

3.3.1. any member of the Contractor's Personnel; or

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

3.4. If and when directed by the Authority, the Contractor shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably desire.

3.5. The Contractor's Personnel, engaged within the boundaries of a Government establishment, 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 contractors' personnel when at that establishment and when outside that establishment.

3.6. If the Contractor fails to comply with clause 3.4 above the Authority, (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown; and if the Contractor does not comply with the provisions of clause 3.4 within 2 Months of the date of a written notice from the Authority so to do then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

3.7. The Contractor shall bear the cost of any complying with any requirement of this clause.

3.8. The Contractor shall promptly inform and keep informed the Authority in writing of any industrial relations problems or other matters relating to the Contractor's Personnel which may affect the performance of the Contract.

3.9. The Contractor shall not employ any person where the Contractor knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the Contractor. The Contractor shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by the Contractor, whether in the nature of Social Security fraud, evasion of tax or otherwise.

3.10. The Contractor shall comply with the Authority's procedures for the vetting of Contractor's Personnel in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Contractors' Personnel Vetting Procedures.

3.11. At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned

with the Contract and giving such other particulars as the Authority may reasonably request.

3.12. The Authority may require the Contractor to ensure that any person employed in the provision of the Goods or Services has undertaken a Criminal Records Bureau check as per the Contractor's Personnel Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of the Goods or Services.

3.13. Where the Authority deems it necessary the Contractor shall provide a list of Personnel who will be undertaking regulated activity according to the Protection of Freedoms Act 2012. The Authority may in its sole discretion refuse access to its Premises by any member of the Contractor's Personnel who has not been subjected to the necessary checks by the Disclosure and Barring Service

3.14. The Contractor shall be subject to the provisions of the Schedules to this contract as applicable.

4. Authority's Obligations

4.1. Subject to reasonable notification by the Contractor of its requirements, the Authority shall give to the Contractor such instructions and/or decisions as pursuant to the Contract are required to be given by the Authority at such a time and in such a manner as shall enable the Contractor properly to perform the Contract.

4.2. The Authority shall supply or make available to the Contractor, without charge, such information as it is required to provide in accordance with the Specification in such time so as not to delay or disrupt the performance of the Contractor's duties under the Contract.

4.3. The Authority shall provide access to areas of land and building (including details of any restrictions) as stated in the Specification as it is reasonably able to do to enable the Contractor to carry out the Contract.

4.4. The Authority may provide site facilities to the Contractor for the carrying out of the Contract, which, if required, shall be as detailed and on such terms as set out in the Specification.

4.5. The Authority shall be subject to the provisions of the Schedules to this Contract as applicable.

5. Scope of Contract

5.1. At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent

between the Authority and the Contractor and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

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

6. Notices

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

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

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

7. Mistakes in Information

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

7.2. The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Goods or Services required by the Authority, the means of communication and access to the Authority's Premises, the supply and conditions affecting labour, the suitability of the Authority's Premises and the equipment necessary for the performance of the Contract, subject to all such matters being discoverable by the Contractor.

- 7.3. The Contractor acknowledges that it has:
- 7.3.1. made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
 - 7.3.2. raised all relevant due diligence questions with the Authority before the Commencement Date;
 - 7.3.3. satisfied itself that it has sufficient information to ensure that it can provide the Goods or Services; and
 - 7.3.4. entered into the Contract in reliance on its own due diligence alone.
- 7.4. Without prejudice to clause 7.3, the Contractor shall:
- 7.4.1. use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority are accurate; and
 - 7.4.2. notify the Authority immediately if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority.

8. Conflicts of Interest

- 8.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Contractor's Personnel is placed in a position where, in the reasonable opinion of the Authority:
- 8.1.1. there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract; or
 - 8.1.2. the behaviour of the Contractor or the Contractor's Personnel is not in the Authority's best interest or might adversely affect the Authority's reputation.

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

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

9. Prevention of Fraud and Prevention of Corruption

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

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

9.3. If the Contractor or its Personnel commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

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

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

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

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

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

PAYMENT AND CONTRACT PRICE

10. Contract Price

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

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

11. Payment and VAT

11.1. The Contractor shall submit invoices monthly in arrears. The Contractor shall ensure that each invoice contains all appropriate references, including the date of the invoice, the Contractor's name and address, the Contractor's banking details, the relevant purchase order number supplied by the Authority, the agreed payment and a detailed breakdown of the Goods or Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

11.2. The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable. Where the Contractor submits an invoice to the Authority in accordance with clause 11.1, the Authority shall consider and verify that invoice in a timely fashion.

11.3. The Authority shall pay all sums due to the Contractor under such an invoice within the period of thirty (30) days from the date on which the Authority has determined that the invoice is valid and undisputed. The Authority shall make payment by BACS and in accordance with Schedule H (Pricing and Payment). Where the Authority fails to comply with this clause 11.3 and there is undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of this clause 11.3 after a reasonable time has passed.

11.4. The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 11.4 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

11.5. The Authority may reduce payment in respect of any Goods or Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

11.6. The Contractor shall not suspend the supply of the Goods or Services unless the Contractor is entitled to terminate the Contract under clause 37.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

11.7. Where the Contractor (or a sub-contractor at any stage of remoteness from the Authority) enters into a sub-contract with a supplier or contractor made wholly or substantially for the purpose of performing (or contributing to the performance of) its obligations under the whole or any part of the Contract (or relevant sub-contract), it shall include within such a sub-contract:

11.7.1. a provision having the same effect as clause 11.2 of the Contract; and

11.7.2. a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards, a provision having the same effect as clause 11.2 of the Contract,

12. Recovery of Sums Due

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

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

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

13. Contract Price for an Extended Contract Term

13.1. The Contract Price shall be firm for the Contract Period. In the event that the Authority gives notice to extend the term of the Contract pursuant to clause 31, the Contract Price for the extended term shall be:

13.1.1. the price for the extended term as set out in or calculated in accordance with the Pricing and Payment Schedule; or

13.1.2. where no price for the extended term or calculation is set out in the Pricing and Payment Schedule, the Contract Price for the previous year indexed in accordance with the Office of National Statistics' Consumer Prices Index (or,

where this index ceases to exist, the index which replaces this index from time to time).

14. Euro

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

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

STATUTORY OBLIGATIONS AND REGULATIONS

15. Discrimination

15.1. In providing the Goods or Services the Contractor shall comply with the Equality Act 2010 and all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (the "Equalities Provisions").

15.2. The Contractor shall take all reasonable steps to procure the observance of the Equalities Provisions by those of its Personnel engaged in the provision of the Goods or Services.

15.3. The Contractor shall provide such information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with clause 15.2.

15.4. The Contractor shall notify the Authority immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Contractor or its sub-contractors under the Equalities Provisions.

15.5. In the event of any finding of unlawful discrimination being made against the Contractor or its sub-contractors under the Equalities Provisions during the period of this Contract, the Contractor shall inform the Authority of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authority to prevent repetition of the unlawful discrimination.

15.6. In the event of repeated findings of unlawful discrimination against the Contractor during the period of this Contract (whether arising from the same or different acts or omissions, and regardless of any steps it has taken in accordance with clause 15.5 above) the Authority shall be entitled to terminate the Contract with immediate effect.

15.7. If requested to do so by the Authority, the Contractor shall fully co-operate with the Authority at its own expense in connection with any investigation, legal proceedings, ombudsman inquiries or arbitration in which the Authority may become involved arising from any breach of the Authority's duties under the Equalities Provisions due to the alleged acts or omissions of the Contractor.

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

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

INFORMATION

17. Authority Data

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

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

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

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

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

18. Protection of Personal Data

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

18.2. The Contractor shall:

18.2.1. Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to

the Contractor during the Contract Period) and the Contractor shall at the very least comply with the provisions of the Information Security Schedule;

- 18.2.2. Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Goods or Services or as is required by Law or any Regulatory Body;
- 18.2.3. Implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected and in any event the measures shall not be of a lesser standard than that set out in Schedule E (Information Security);
- 18.2.4. Take reasonable steps to ensure the reliability of any Contractor's Personnel who have access to the Personal Data;
- 18.2.5. Obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors or affiliates for the provision of the Services;
- 18.2.6. Ensure that all Contractor's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 18;
- 18.2.7. Ensure that none of the Contractor's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 18.2.8. Notify the Authority (within five Working Days) if it receives:
 - 18.2.8.1. a request from a Data Subject to have access to that person's Personal Data; or
 - 18.2.8.2. a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 18.2.9. Provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
 - 18.2.9.1. providing the Authority with full details of the complaint or request;
 - 18.2.9.2. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;

- 18.2.9.3. providing the Authority with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Authority; and
- 18.2.9.4. providing the Authority with any information requested by the Authority;
- 18.2.10. Permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 25, the Contractor's data Processing activities (and/or those of its Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 18.2.11. Provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- 18.2.12. Not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - 18.2.12.1. the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - 18.2.12.2. any reasonable instructions notified to it by the Authority.
- 18.2.13. The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

19. Freedom of Information

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

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

19.2.1. Transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

19.2.2. Provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and

19.2.3. Provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

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

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

19.5. The Contractor acknowledges that (notwithstanding the provisions of this clause 19) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

19.5.1 in certain circumstances without consulting the Contractor; or

19.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where clause 19.5.1 applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

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

20. Confidentiality

20.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public. The Contractor shall assist and cooperate with the Authority to

enable the Authority to publish this Contract. Prior to publication the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- (a) national security;
- (b) personal data;
- (c) information protected by intellectual property law;
- (d) information which it is not in the public interest to disclose (under a Freedom of Information Act analysis)
- (e) third party confidential information;
- (f) IT security; or
- (g) prevention of fraud

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

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

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

20.3. Clause 20.2 shall not apply to the extent that:

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

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

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

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

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

20.4. The Contractor may only disclose the Authority's Confidential Information to the Contractor's Personnel who are directly involved in the provision of the Goods or Services any of the Authority's Confidential Information and need to know, and shall ensure that the Contractor's Personnel are aware of and shall comply with this clause 20.

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

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

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

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

20.7.2 to any consultant, contractor or other person engaged by the Authority or any entity specified in clause 20.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract, including for the avoidance of doubt any person conducting a Gateway review;

20.7.3 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

20.7.4 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions or for the purpose of the exercise of its rights under this Contract;

20.7.5 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract

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

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

20.8. The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 20.7 is made aware of the Authority's obligations of confidentiality.

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

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

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

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

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

22. Publicity, Media and Official Enquiries

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

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

23. Intellectual Property Rights

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

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

23.1.2.prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. Monitoring

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

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

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

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

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

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

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

25. Audit

25.1. The Contractor and its Personnel shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods or Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the

Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

25.2. The Contractor and its Personnel shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act of 1983.

CONTROL OF THE CONTRACT

26. Assignment and Sub-Contracting

26.1. Except where clauses 26.5 and 26.6 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

26.2. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

26.3. Where the Authority has consented to the placing of sub-contracts for the provision of services, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.

26.4. Alternatively, the Authority may require that, if the Contractor wishes to sub-contract any obligations under the Contract for the provision of services at any time it shall submit a list of sub-contractors to the Authority for approval. The Contractor shall obtain the Authority's prior written approval before changing any of the sub-contractors so approved. The Authority shall not unreasonably withhold or delay such approval.

26.5. Notwithstanding clause 26.1, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including any interest which the Authority incurs under clause 11). Any assignment under this clause 26.5 shall be subject to:

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

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

26.5.3.the Authority receiving notification under both clauses 26.6 and 26.7.

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

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

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

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

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

26.11. If the rights and obligations of the Authority under the Contract are assigned, novated or otherwise disposed of pursuant to clause 26.9 to a body which is not a Contracting Authority, or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

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

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

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

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

27. Waiver

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

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

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

28. Variation

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

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

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

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

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

29. Severability

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

as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

29.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

30. Remedies Cumulative

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

31. Extension of the Contract Term

31.1. The Authority may by giving such notice as is specified in the Contract Letter, extend the term of the Contract beyond the Initial Contract Period for such period(s) as may be specified in the Contract Letter.

31.2. Without prejudice to its rights pursuant to clause 31.1, the Authority may at any time by giving written notice to the Contractor of not less than three (3) Month(s), extend the term of the Contract (whether or not it has exercised a right to extend pursuant to clause 31.1) for such period(s) as may be specified in the notice. The Authority shall be entitled to exercise its right to extend the term of the Contract pursuant to this clause 31.2 more than once, provided that the aggregate of the extensions made pursuant to this clause 31.2 shall not exceed one (1) year.

31.3. The provisions of the Contract will apply throughout any extended period(s) pursuant to clauses 31.1 and/or 31.2.

32. Entire Agreement

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

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

- (1) the Contract Letter;
- (2) the Special Conditions;
- (3) the Schedules;

- (4) the Standard Terms and Conditions of the Contract;
- (5) the Contractor's Tender; and
- (6) any other document referred to in the Contract Letter.

33. Counterparts

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

LIABILITIES

34. Indemnity and Insurance

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

34.1.1. death or personal injury caused by its negligence; or

34.1.2. Fraud; or

34.1.3. fraudulent misrepresentation; or

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

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

34.3. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of any Authority Personnel or the breach by the Authority of its obligations under the Contract.

34.4. Subject always to clause 34.1, the aggregate liability of either Party for Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall unless agreed to the contrary not exceed £5,000,000.

34.5. Subject always to clause 34.1 in no event shall either Party be liable to the other for:

34.5.1. loss of profits, business, revenue, goodwill; and/or

34.5.2. loss of savings (whether anticipated or otherwise); and/or

34.5.3. indirect or consequential loss or damage.

34.6. The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

34.7. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as specified in the Specifications Schedule in respect of risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

34.8. The Contractor shall hold and shall ensure that all sub-contractors hold employer's liability insurance in respect of all eligible workers engaged in providing the Services in accordance with any legal requirement from time to time in force.

34.9. The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.

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

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

35. Warranties and Representations

35.1. The Contractor warrants and represents that:-

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

- 35.1.2. in entering the Contract it has not committed any Fraud;
- 35.1.3. as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- 35.1.4. no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 35.1.5. it is not subject to any contractual obligations, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 35.1.6. no proceeding or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 35.1.7. it owns, or has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 35.1.8. in the three (3) years prior to the date of the Contract:
- 35.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- 35.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- 35.1.9. it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

DEFAULT, DISRUPTION AND TERMINATION

36. Termination on Change of Control and Insolvency

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

- 36.1.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 36.1.2. a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding up is passed (other than as part of, and exclusively for the purpose of, a bona fide reorganisation or amalgamation); or
 - 36.1.3. a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 36.1.4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 36.1.5. an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 36.1.6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 36.1.7. being a "small company" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 36.1.8. any event similar to those listed in clause 36.1.1 to 36.1.7 occurs under the law of any other jurisdiction.
- 36.2. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:
- 36.2.1. an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
 - 36.2.2. a debt relief order or a debt restriction order has been made in respect of him; or
 - 36.2.3. a petition is presented and not dismissed within fourteen (14) days or order made the Contractor's bankruptcy; or
 - 36.2.4. a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- 36.2.5. the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 36.2.6. a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- 36.2.7. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005.
- 36.3. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:
- 36.3.1. a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with or assignment for the benefit of its creditors; or
- 36.3.2. it is for any reason dissolved; or
- 36.3.3. a petition is presented for its winding up or for the making of any administrative order, or an application is made for the appointment of a provisional liquidator; or
- 36.3.4. a receiver, or similar officer, is appointed over the whole or any part of its assets; or
- 36.3.5. the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- 36.3.6. any of the following occurs in relation to any of its partners:
- 36.3.6.1. an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of his creditors; or
- 36.3.6.2. a petition is presented for his bankruptcy; or
- 36.3.6.3. a receiver, or similar officer, is appointed over the whole or any part of his assets.
- 36.4. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:

- 36.4.1. a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- 36.4.2. it is for any reason dissolved; or
- 36.4.3. an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
- 36.4.4. any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
- 36.4.5. a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- 36.4.6. a receiver, or similar officer, is appointed over the whole or any part of its assets; or
- 36.4.7. it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 36.4.8. a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986
- 36.4.9. References to the Insolvency Act 1986 in clause 36.4.1 shall be construed as references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 36.5. The Contractor shall notify the Authority immediately of a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("change of control"). Where in the reasonable opinion of the Authority the change is likely to result in an adverse effect on the provision of the Goods or Services the Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
- 36.5.1. being notified that a change of control has occurred; or
- 36.5.2. where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where an Approval was granted prior to the change of control.

37. Termination on Default

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

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

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

37.1.3. the Default is a material breach of the Contract.

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

37.3. If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 12.1.

38. Termination for Convenience

38.1. The Authority shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Contractor.

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

38A. Termination for Procurement Reasons

38A.1 The Authority shall have the right to terminate the Contract at any time by giving one (1) Month's written notice to the Contractor where:

38A.1.1 this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;

38A.1.2the Contractor, at the time this Contract was awarded, was in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure; or

38A.1.3this Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaty on the European Union, the Treaty on the Functioning of the European Union and Directive 2014/24 that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union.

39. Consequences of Expiry or Termination

39.1. Where the Authority terminates the Contract under clause 37 and then makes other arrangements for the supply of Goods or Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 38, no further payments shall be payable by the Authority to the Contractor (for Goods or Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

39.2. Subject to clause 34, where the Authority terminates the Contract under clause 38, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 38.

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

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

- 39.3.2. when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- 39.3.3. is a claim by the Contractor for loss of profit, due to early termination of the Contract.
- 39.4. In the event of any termination or expiry of the Contract:
- 39.4.1. the Authority shall be entitled to obtain a refund of the Contract Price paid by the Authority in respect of any part of the Contract which has not been performed by the Contractor;
- 39.4.2. the Contract Price shall be reduced on a pro rata basis where any part of the Contract is terminated, and the remaining parts of the Contract shall continue to be performed for the remainder of the Contract Period;
- 39.4.3. the Contractor shall return to the Authority all Property and all other items belonging to the Authority in its possession (save for copies required by the Contractor for statutory audit or archive purposes);
- 39.4.4. subject to the payment of the appropriate portion of the Contract Price the Contractor shall provide the Authority with a copy of all deliverables undertaken to date (whether completed or not) in its state at that time and, at the Authority's option, return or destroy all other copies in the Contractor's possession or control; and
- 39.4.5. the Contractor shall at the Authority's request novate any agreements between the Contractor and any third parties that are relevant to the receipt of the Goods or Services by the Authority.
- 39.5. Upon expiry or termination of all or any part of the Contract, the Contractor shall provide all reasonable assistance and information to the Authority (and to any Replacement Contractor appointed by the Authority) if requested, to the extent necessary to effect an orderly assumption of the Goods or Services by the Authority or the Replacement Contractor.
- 39.6. Save as otherwise expressly provided in the Contract:
- 39.6.1. termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 39.6.2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 9 (Prevention of Fraud and Prevention of Corruption), 11 (Payment and VAT), 12 (Recovery of

Sums Due), 16 (Rights of Third Parties), 17 and 18 (Authority Data and Protection of Personal Data), 19 (Freedom of Information), 20 (Confidentiality), 21 (Official Secrets Acts 1911-1989), 23 (Intellectual Property Rights), 25 (Audit), 30 (Remedies Cumulative), 34 (Liability, Indemnity and Insurance), 35 (Warranties and Representations), 39 (Consequences of Expiry or Termination), 41 (Recovery upon Termination), 43 (Governing Law), 44 (Dispute Resolution) and clause A12 of the Special Conditions (Professional Indemnity).

40. Disruption

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

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

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

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

40.5. If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

41. Recovery upon Termination

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

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

41.1.2 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor for the

purposes of the Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

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

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

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

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

42. Force Majeure

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

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

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

shall inform the other of the period for which it is estimated that such failure or delay shall continue.

DISPUTES AND LAW

43. Governing Law

43.1. Subject to the provisions of clause 44, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

44. Dispute Resolution

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

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

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

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

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

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

44.5.2. the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of

all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.

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

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

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

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

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

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

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

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

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

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

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

44.7.2.1 that the dispute is referred to arbitration; and

44.7.2.2. providing details of the issues to be resolved;

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

44.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

44.7.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 44.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

44.7.6. the arbitration proceedings shall take place in London and in the English language; and

44.7.7. the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

SCHEDULES

SCHEDULE A

SERVICES SCHEDULE

SPECIAL CONDITIONS: PROVISION OF THE SERVICES

Definitions and Interpretations

In these Conditions:

"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.

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

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

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

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

"Quality Standards" means the quality standards published by the British Standards Institute, the National Standards Body of the United Kingdom, the International Organisation for Standardisation 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.

"Service Credits" means any service credits payable by the Contractor for failure to meet the Service Levels, as referenced in the Contract Letter and the Specification Schedule.

"Service Levels" means the service levels to be met by the Services as referenced in the Contract Letter and set out in the Specification Schedule.

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

The Services

The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the Tender and the provisions of the Contract in consideration of the payment of the Contract Price. The Contractor shall perform the Services in accordance with all applicable Service Levels referenced in the Specification or the Tender. The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

Subject to the Authority providing written consent in accordance with clause A3.2 (Provision and Removal of Equipment) below, timely supply of the Services shall be required, and shall meet the requirements stated in the Specification Schedule, and in relation to commencing the supply of the Services within the time agreed or on a specified date.

Provision and Removal of Equipment

The Contractor shall provide all the Equipment necessary for the supply of the Services.

The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor. The Contractor shall provide for the haulage or carriage to and the removal from the Premises of Equipment when no longer required at its sole cost.

The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably possible:

remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and

replace such item with a suitable substitute item of Equipment.

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

Key Personnel

The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.

The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

Any replacements of the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

The Authority shall not unreasonably withhold its agreement under clause A4.2 or clause A4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

Licence to Occupy Premises

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

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

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

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

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

Offers of Employment

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that Party's prior written consent unless the employment pertained to an advertised position where appointment was made following fair and open competition.

Environmental Requirements

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority'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.

Health and Safety

The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Contract.

While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Contractor's Personnel and other persons working on those Premises.

The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc., Act 1974 and any other Law relating to health and safety, which may apply to the Contractor's Personnel and other persons working on the Premises in the performance of the Contract.

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 Authority on request.

Remedies in the event of Inadequate Performance

Where a complaint is received about the standard of the Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 37 (Termination on Default) of the General Terms.

In the event that the Authority is of the reasonable opinion that the Contractor is in Default in relation to the performance of the Services in accordance with the Contract, then the Authority may:

recover Service Credits for any Default; or

withhold from payment or recover from the Contractor any payment attributable to the Default or non conforming Services, which shall be paid or reimbursed on rectification of the Default to the reasonable satisfaction of the Authority.

In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 37 (Termination on Default) of the General Terms, do any of the following:

without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;

without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or

terminate, in accordance with clause 37 (Termination on Default) of the General Terms, the whole of the Contract.

Without prejudice to its rights under clause 12 (Recovery of Sums Due) of the General Terms, the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

In the event that:

the Contractor fails to comply with clause A9.5 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

the Contractor persistently fails to comply with clause A9.5 above;

the Authority may terminate the Contract (or that part of the Contract) with immediate effect by notice in writing.

The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

Care of Property

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

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

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.

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

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

Service Levels

In the event that the Services do not meet the Service Levels, the Contractor shall automatically, without prejudice to any other rights and remedies of the Authority, credit the Authority with Service Credits as calculated in accordance with the Contract. The Authority shall claim the Service Credits within six Months of the end of the Month in which it has been credited with them by the Contractor.

Where applicable the Contractor shall automatically credit the Authority with Service Credits in accordance with the Payment and Pricing Schedule. Service Credits shall be shown as a deduction from the amount due from the Authority to the Contractor in the next invoice then due to be issued under the Contract. If no invoice is due to be issued then the Contractor shall issue a credit note against the previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 10 Working Days of issue.

Where Service Credits are provided as a remedy for Default in respect of the relevant Services it shall be the Authority's exclusive financial remedy except where:

A11.3.1 the Specification otherwise provides;

A11.3.2 the aggregate number of Defaults (whether the Default relates to the same or to different parts of the Services) exceeds the number stipulated in the Specification;

A11.3.3 the failure to perform the Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, or wilful default; or

A11.3.4 the Default results in:

A11.3.4.1 corruption or loss of data; or

A11.3.4.2.the Authority becoming entitled to terminate (whether or not the Authority exercises that right) the Contract for the Contractor's Default pursuant to clauses 36 and 37 of the General Terms.

Professional Indemnity

[Professional Indemnity – usually only required for specialist advisers especially those who must be members of professional organisations. See Procurement Website for Clause]

SCHEDULE B

GOODS SCHEDULE

SPECIAL CONDITIONS: THE GOODS

Definitions and Interpretations

In these Conditions:

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

"**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 and the Tender; 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 and the Tender, each set of installation works.

The Specification

The Contractor shall supply and, where relevant, install the Goods in accordance with the Specification and the Tender and with all applicable provisions of the Contract.

The Goods

If requested by the Authority, the Contractor shall either provide the Authority with samples of Goods or performance demonstrations of Goods for evaluation and approval at the Contractor's cost and expense.

The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

Delivery

Subject to the Prisons Schedule, the Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification, to the Premises or location agreed. Unless otherwise specified, deliveries shall only be accepted during normal business hours.

Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods have been removed from the transporting vehicle at the Premises and accepted by the Authority. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

Time of delivery shall be as stated in the Specification Schedule and if the Contractor fails to deliver the Goods within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to the Authority 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 Authority 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 Authority.

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

Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.

Unless otherwise stated in the Specification, there shall be no charge for delivery of the Goods to the Premises or for packaging used by the Contractor. Returnable packaging will only be returned at the Contractor's risk and expense.

Risk and Ownership

Subject to clause B4 above, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause B7 below) pass to the Authority when delivery is completed to the Authority's reasonable satisfaction.

Ownership of the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause B7 below), pass to the Authority at the time of delivery (or payment, if earlier).

Non Delivery

Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority shall, (provided that the Authority has been advised in writing of the dispatch of the Goods), within ten (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 to deliver substitute Goods within the timescales specified by the Authority.

Inspection, Rejection and Guarantee

The Authority 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, including further testing and inspection if reasonably required by the Authority. No failure to make complaint at the time of such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods in accordance with clause B7.2 below.

The Authority 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 Authority of such Goods. If the Authority rejects any of the Goods pursuant to this clause the Authority may (without prejudice to other rights and remedies) either:

have the Goods promptly, and in any event within five (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 in whole or in part 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 Authority in obtaining other goods in replacement provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Authority 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 B7.2.

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

The Contractor hereby guarantees the Goods for a period of 24 Months or such other period as may be agreed between the Parties from the date of delivery against faulty materials or workmanship. If the Authority shall within that period or within twenty-five (25) Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge

Any Goods rejected or returned by the Authority as described in clause B7.2 shall be returned to the Contractor at the Contractor's risk and expense.

Labelling and Packaging

On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be accompanied by an advice note with the contract number (or other reference number if appropriate) and the net weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

The Goods shall be accompanied by a delivery note showing the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

Training

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

Contract Performance

The Contractor shall ensure that:

the Goods conform in all respects with the Specification and, where applicable, with any sample or performance demonstration approved by the Authority;

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 Authority.

Manner of Carrying out the Installation Work

Subject to the Prisons Schedule, the Contractor shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Authority's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Authority 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.

Any access to, or occupation of, the Premises which the Authority 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 of the Contractor's Personnel as is necessary for that purpose. The Contractor shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on the Premises as the Authority may reasonably request.

When the Contractor reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority 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 Authority's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.

If the Authority rejects the Installation Works in accordance with clause B11.3.2, the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the Installation Works do not, within [5] Working Days, meet the requirements set out in the Specification, the Authority may terminate the Contract with immediate effect by notice in writing.

The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Authority in accordance with clause B11.3.1. 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 Authority of the Installation Works.

Throughout the Contract Period, the Contractor shall:

have at all times all licences, approvals and consents necessary to enable the Contractor and Contractor's Personnel 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.

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 Contractor's Personnel.

Liquidated Damages

If the Contractor fails to deliver the Goods by the date(s) agreed, stipulated in the Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "**Agreed Delivery Date**"):

the Contractor shall pay the Authority a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered to the Authority, equal to such percentage of the Contract Price for the relevant Goods as the Authority shall stipulate in the Specification ("**Liquidated Damages Threshold**"). Subject to clause B12.3, during the period in which liquidated damages are payable under this Condition B12.1.1 ("**Liquidated Damages Period**") the liquidated damages payable in accordance with this clause B12.1.1 shall be the Authority's only remedy for any loss or damage suffered or incurred by the Authority in relation to the failure by the Contractor to deliver the Goods by the Agreed Delivery Date; and

where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Authority shall be entitled to:

claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and

without prejudice to clause B12.1.2(i), the Authority shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Contractor.

The Contractor shall not be obliged to pay any sums pursuant to clause B12.1.1 if and to the extent the failure by the Contractor to deliver the Goods by the Agreed

Delivery Date directly results from the Authority's Default provided that the Contractor notifies the Authority immediately of such circumstances in sufficient detail to enable the Authority to remedy the situation. Except as set out in this clause B12.2, no payment or concession to the Contractor by the Authority or other act or omission of the Authority shall in any way affect its rights to liquidated damages pursuant to clause B12.1 or be deemed to be a waiver of the right of the Authority to recover any damages unless such waiver has been expressly made in writing by the Authority.

Notwithstanding clause B12.1.1, the Contractor does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Authority, whether or not such performance or re-performance gives rise to additional costs for the Contractor and the cost of re-performance shall be borne solely by the Contractor and shall not be re-charged to the Authority whether by way of costs, reimbursement or otherwise.

Having given careful consideration to this matter, all monies payable by the Contractor under clause B12.1.1 are considered by the Parties to be a genuine pre-estimate of the losses which the Authority will incur in relation to the Contractor's failure to deliver the Goods by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Authority in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Authority might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Contractor waives absolutely any entitlement to challenge the enforceability in whole or in part of this clause B12. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

Each Party confirms that (a) it has taken specific legal advice on the effect of this clause and (b) based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this clause will be unenforceable for any reason.

SCHEDULE C

PRISONS SCHEDULE

SPECIAL CONDITIONS: PRISONS

Access to Authority Premises

Where the Contractor's Personnel are required to have a pass for admission to the Premises the Authority shall, subject to satisfactory completion of approval procedures, arrange for passes to be issued. Contractor's Personnel who cannot produce a proper pass when required to do so by any of the Authority's personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Authority's Premises or required to leave those premises if already there.

The Contractor shall promptly return any pass if at any time the Authority so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Contract. The Contractor shall promptly return all passes on completion or earlier termination of the Contract.

Contractor's Personnel attending the Premises may be subject to search at any time. Strip searches shall only be conducted on the specific authority of the Authority under the same rules and conditions applying to the Authority's personnel. The Contractor is referred to the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008. The Contractor is also referred to the definition of misconduct contained in the said Rules and clause 3 of the General Terms and Conditions.

Security

Whilst on the Premises the Contractor's Personnel shall comply with all security measures implemented by the Authority in respect of staff and other persons attending those premises. The Authority shall provide copies of its written security procedure to the Contractor on request. The Contractor and all members of the Contractor's Personnel shall be prohibited from taking any photographs on the Premises unless the Authority has given prior Approval and an Authority representative is present so as to have full control over the subject matter of each photograph to be taken. No such photograph shall be published or otherwise circulated without the Authority's prior written approval.

The Authority shall have the right to carry out any search of Contractor Personnel or of vehicles used by the Contractor at the Premises.

The Contractor shall co-operate with any investigation relating to security which is carried out by the Authority or by any person who is responsible to the Authority for security matters, and when required by the Authority shall:

take all reasonable measures to make any Contractor's Personnel identified by the Authority available to be interviewed by the Authority, or by a person who is responsible to the Authority for security matters, for the purposes of the investigation. Contractor's Personnel shall have the right to be accompanied by and to be advised or represented by the other person whose attendance at the interview is acceptable to the Authority; and

subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Authority or by a person who is responsible to the Authority for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Contractor from performing the Contract. The Authority shall have the right to retain any such material for use in connection with the investigation and, so far as possible, shall provide the Contractor with a copy of any material retained.

Offender Management Act 2007

Nothing in the Contract shall be deemed to provide any authorisation to the Contractor in respect of any provision of the Offender Management Act 2007. The Contractor in providing the Goods or Services will comply with the provisions of PSO 1100 as published by the Authority from time to time.

SCHEDULE D

TRANSFER OF UNDERTAKINGS SCHEDULE

SPECIAL CONDITIONS: TUPE

[The Schedule is suitable only for re-competition contracts from one private contractor to another private contractor where no public or ex-public sector staff are engaged. Tailored legal and actuarial advice should be obtained for public to private contracts, and private to private contracts involving public sector or ex-public sector staff.]

Definitions and Interpretations

In these Conditions:

"**Acquired Rights Directive**" means the EU Acquired Rights Directive 2001/23/EC.

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

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

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

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

"**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No. 246).

Relevant Transfer on the Commencement Date

The Parties hereby acknowledge that, pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**"), there will be a relevant transfer on the Commencement Date and the contracts of ("**the Transferring-In Employees**") will take effect as if originally made between the Contractor and the employees (save for those who object pursuant to Regulation 4(7) of TUPE).

Indemnity in respect of Transferring-In Employees

The Authority shall indemnify and keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contractor may suffer or incur as a result of or in connection with:

any claim or demand by any Transferring-In Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Authority in respect of any Transferring-In Employee on or before the Commencement Date;

any failure by the Authority to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Contractor to comply with its duties under Regulation 13 of TUPE;

any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring-In Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.

Payments to Employees

The Authority shall be responsible for all emoluments and outgoings in respect of the Transferring-In Employees (including, without limitation, all wages, bonuses, commission, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Commencement Date (including bonuses or commission which are payable after the Commencement Date but attributable in whole or in part to the period on or before the Commencement Date), and will indemnify and keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contractor may incur in respect of the same.

The Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring-In Employees (including, without limitation, all wages, bonuses, commission, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, subscriptions and any other pre-payments which are payable before the Commencement Date but which are attributable in whole or in part to the period after the Commencement Date) and will indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, damages, costs and expenses and other liabilities which the Authority may incur as a result of the same.

Disclosure of Information

Not later than twelve (12) Months prior to the end of the Contract Period or such other period as may be specified by the Authority, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Contractor's Personnel including the following Re-tendering Employment Information:

the total number of Transferring-Out Employees;

current salary;

length of service;

hours of work;

arrangements for overtime;

factors that may affect redundancy entitlement;

outstanding industrial injury or other claims;

probationary periods;

periods of notice for termination of employment;

current pay agreement and any agreed settlement yet to come into effect;

age;

gender;

immigration status;

annual leave entitlement;

sick leave entitlement;

maternity/paternity leave arrangements;

special leave entitlement;

season ticket loans, provision of cars and other contractual or customary benefits, if applicable;

pension arrangements;

location and any contractual provisions relating to location;

nature of job;

percentage of time spent in providing the Services;

any disciplinary action taken by the Contractor against a Transferring-Out Employee within the previous two (2) years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;

any grievance procedure taken by a Transferring-Out Employee against the Contractor within the previous two (2) years where the Employment Act 2002 (Dispute Resolution) Regulations 2004 applied;

any court or tribunal case, claim or action:

brought by a Transferring-Out Employee against the Contractor within the previous two (2) years;

that the Contractor has reasonable grounds to believe a Transferring-Out Employee may bring against a new Contractor arising out of the Transferring-Out Employee's employment with the Contractor; and

any collective agreement which will have effect after a transfer of employment in relation to the Transferring-Out Employees, pursuant to TUPE.

At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty (30) days) and immediately prior to the end of the Contract Period the Contractor shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to clause D5.1.

At the time of providing the information disclosed pursuant to clauses D5.1 and D5.2, the Contractor shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.

The Authority may use the information it receives from the Contractor pursuant to clauses D5.1 and D5.2 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.

The Contractor shall indemnify and keep indemnified and hold the Authority and the Crown (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:

the provision of information pursuant to clause D5.1; and

any claim or demand by any Transferring-Out Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any sub-contractor in respect of any Transferring-Out Employee on or before the end of the Contract Period; and

any failure by the Contractor or any sub-contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and

any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any

Transferring-Out Employees arising from or connected with any failure by the Contractor or any sub-contractor to comply with any legal obligation to such trade union, body or person; and

any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Transferring-Out Employees.

If the Contractor becomes aware that the information it provided pursuant to clause D5.1 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.

This clause applies during the Contract Period and indefinitely thereafter.

The Contractor undertakes to the Authority that, during the twelve (12) Months prior to the end of the Contract Period the Contractor shall not (and shall procure that any sub-contractor shall not) without the prior consent of the Authority (such consent not be unreasonably withheld or delayed):

amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Contractor's Personnel (other than where such amendment or variation has previously been agreed between the Contractor and the Contractor's Personnel in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

terminate or give notice to terminate the employment or engagement of any of the Contractor's Personnel (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);

transfer away, remove, reduce or vary the involvement of any of the Contractor's Personnel from or in the provision of the Services (other than where such transfer or removal:

was planned as part of the individual's career development;

takes place in the normal course of business; and

will not have any adverse impact upon the delivery of the Services by the Contractor;

PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services);

recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

The Contractor will comply with the provisions of ss.257-258 Pensions Act 2004 and s.12 Pension Schemes Act 1993 ("**the Acts**") to the extent applicable, and with the provisions of The Transfer of Employment (Pension Protection) Regulations 2005

("the Regulations"). The Contractor will indemnify the Authority for any failure by the Contractor to comply with the Acts and the Regulations against any claims for loss or damage which may be made against the Authority as an organisation as a result of the Contractor's failure. The Contractor further undertakes that it warrants to the Authority that the Contractor has thoroughly researched its obligations under the Acts and the Regulations, and has taken appropriate actuarial and financial advice as may be necessary to ensure compliance with the Acts and the Regulations; and that the Contractor has made an estimate of the costs which will be incurred by it as a result of complying with its obligations under the Acts and the Regulations and that those estimated costs are included in the Contractor's tender price.

The Authority shall be entitled to assign the benefit of the indemnities contained in paragraph 5.5 to any Future Service Provider.

Disclosure of Information by Authority

Not later than three (3) Months prior to the anticipated transfer of Transferring-In staff the Authority shall fully and accurately disclose to the Contractor all information that the Contractor may reasonably request in relation to the Authority's Personnel including the following:

the total number of Transferring-In Employees;

current salary;

length of service;

hours of work;

arrangements for overtime;

factors that may affect redundancy entitlement;

outstanding industrial injury or other claims;

probationary periods;

periods of notice for termination of employment;

current pay agreement and any agreed settlement yet to come into effect;

age;

gender;

immigration status;

annual leave entitlement;

sick leave entitlement;

maternity/paternity leave arrangements;

special leave entitlement;

season ticket loans, provision of cars and other contractual or customary benefits, if applicable;

pension arrangements;

location and any contractual provisions relating to location;

nature of job;

percentage of time spent in providing the Services;

any disciplinary action taken by the Authority against a Transferring-In Employee within the previous two (2) years;

any grievance procedure taken by a Transferring-In Employee against the Authority within the previous two (2) years;

any court or tribunal case, claim or action:

brought by a Transferring-In Employee against the Authority within the previous two (2) years;

that the Authority has reasonable grounds to believe a Transferring-In Employee may bring against a new Contractor arising out of the Assigned Employee's employment with the Authority; and

any collective agreement which will have effect after a transfer of employment in relation to the Transferring-In Employees, pursuant to TUPE.

At intervals to be stipulated by the Contractor (which shall not be more frequent than every thirty (30) days) and immediately prior to the start of the Contract Period the Authority shall deliver to the Contractor a complete update of all such information which shall be disclosable pursuant to clause G6.1.

At the time of providing the information disclosed pursuant to clauses D6.1 and D6.2, the Authority shall warrant the completeness and accuracy of all such information and shall indemnify and keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contractor or may suffer or incur as a result of or in connection with: the provision of information pursuant to clause D6.1.

SCHEDULE E

INFORMATION SECURITY SCHEDULE

SPECIAL CONDITIONS: INFORMATION SECURITY

Section I: Process measures to manage information risk

The Contractor must:

identify, keep and disclose to the Authority upon request a record of those members of the Contractor's Personnel and any sub-contractors with access to or who are involved in handling Authority Data ("users"); and

provide to the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected personal data and ICT security incidents and its procedures for reducing risk and raising awareness; and

immediately report information security incidents to the Authority. Significant actual or potential losses of personal data may be shared with the Information Commissioner and the Cabinet Office by the Authority.

Section II: Specific minimum measures to protect personal information

The Contractor must be particularly careful to protect Authority Data whose release or loss could cause harm or distress to individuals. The Contractor must:

handle all such Authority Data as if it were confidential while it is processed or stored by the Contractor or its sub-contractors, applying the measures in this Schedule.

When Authority Data is held on paper it must be kept secure at all times, locked away when not in use or the premises on which it is held secured. If Authority data held on paper is transferred it must be by an approved secure form of transfer with confirmation of receipt. When Authority Data is held and accessed on ICT systems on secure premises, the Contractor must apply the minimum protections for information set out in the Specification, or equivalent measures, as well as any additional protections as needed as a result of the Authority's risk assessment. Where in exceptional circumstances equivalent measures are adopted the Contractor must obtain the Authority's prior approval in writing.

Wherever possible, Authority Data should be held and accessed on paper or ICT systems on secure premises protected as above. This means the Contractor should avoid the use of removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such data where possible. Where the Authority agrees that this is not possible the Contractor should work to the following hierarchy, recording the reasons why a particular approach has been adopted in a particular case or a particular business area:

best option: hold and access data on ICT systems on secure premises:

second best option: secure remote access, so that data can be viewed or amended without being permanently stored on the remote computer. This is possible for Authority Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the Authority;

third best option: secured transfer of Authority Data to a remote computer on a secure site on which it will be permanently stored. Both the Authority Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent. Protectively marked Authority Data must not be stored on privately owned computers unless they are protected in this way;

in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.

Where the Authority agrees that it is not possible to avoid the use of removable media, the Contractor should apply all of the following conditions:

-

the Authority Data transferred to the removable media should be the minimum necessary to achieve the business purpose, both in terms of the numbers of people covered by the Authority Data and the scope of Authority Data held. Where possible only anonymised Authority Data should be held;

the removable media should be encrypted to a standard or at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;

user rights to transfer Authority Data to removable media should be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the Contractor and the Authority; and

the individual responsible for the removable media should handle it – themselves or if they entrust it to others – as if it were the equivalent or a large amount of their own cash.

Where the Authority agrees that the second condition of encryption in paragraph 5 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Authority Data should only be recorded, moved, stored and monitored with strong controls.

All material that has been used for confidential Authority Data should be subject to controlled disposal. The Contractor must:

destroy paper records containing protected personal data by incineration, pulping or shredding so that reconstruction is unlikely; and

dispose of electronic media that has been used for protected personal data through secure destruction, overwriting, erasure or degaussing for re-use.

The Contractor must have appropriate mechanisms in place in order to comply with the Authority's requirements as set out in this Schedule, including adequate training in handling confidential data for the Contractor's Personnel.

The Contractor must:

put in place arrangements to log activity of data users in respect of electronically held protected personal information, and for managers to check it is being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity must be shared with the Authority and be available for inspection by the Information Commissioner's Office on request;

minimise the number of users with access to the Authority Data.

Annex A

Minimum scope of Authority Data which is protected personal data

In the absence of specific instructions from the Authority, all the data identified in the table below is data whose release or loss in the Authority's view could cause harm or distress to individuals. The Contractor and its sub-contractors must treat the information identified below as protected personal data.

1. one or more of the pieces of information which can be used along with public domain information to identify and individual	combined with	2. information about that individual whose release is likely to cause harm or distress
<p>Name/addresses (home or business or both)/post code/e-mail/telephone numbers/ driving licence number/date of birth</p> <p>[Note that driving licence number is included in this list because it directly yields date of birth and first part of surname]</p>		<p>Sensitive personal data as defined by s.2 of the Data Protection Act, including records relating to the criminal justice system, and group membership</p> <p>DNA or fingerprints/bank, financial or credit card details/mother's maiden name/National Insurance number/Tax, benefit or pension records/health records/employment record/school attendance or records/material relating to social services including child protection and housing</p>

Protected personal data could be information contained in a database with 1000 or more entries containing facts mentioned in box 1, or an electronic folder or drive containing 1000 or more records about individuals. Again, this is a minimum standard. Information on smaller numbers of individuals may warrant protection because of the nature of the individuals, nature or source of the information, or extent of information.

SCHEDULE F

INTELLECTUAL PROPERTY RIGHTS SCHEDULE

SPECIAL CONDITIONS: INTELLECTUAL PROPERTY RIGHTS

[Insert Content here]

SCHEDULE G

SPECIFICATION SCHEDULE

Alcohol Testing Specification – Equipment and Services Required

Table of Contents

Alcohol Testing Specification

- 1.0 Background and Introduction
- 2.0 Scope / Requirement
- 3.0 Stock Management
- 4.0 Service Levels
- 5.0 Changes in Specification
- 6.0 Contract Management
- 7.0 Access to Premises
- 8.0 Authority Quality Assurance
- 9.0 Sub-Contractors and Supply Chain
- 10.0 Contingency Arrangements
- 11.0 Access to Framework
- 12.0 Limitations to the Contract

Annex A: NOMS Specification for breath alcohol screening devices

Annex B: Home Office Type Approval Procedures for breath alcohol screening devices

Annex C: Alcohol Testing for prisoners – Manual of Guidance

Annex D: PI 32 2014 Approved Premises Manual

Annex E Specification for electronic components

Specification of Requirements

1. Background and Introduction

- 1.1. The Authority wishes to procure an on-site point of contact Breath Alcohol Screening Testing System including all necessary consumables such as (mouthpieces, print rolls, printer ink) for use both within the custodial setting and in the community by providers of probation services – namely the National Probation Service (NPS), and Community Rehabilitation Companies CRC's) and NOMS Approved Premises in England and Wales.
- 1.2. The supply of equipment will in some cases enable testing to commence, in other circumstances the supply of equipment will be to replace existing equipment that is not compliant with the specification and/or to replace existing equipment that has failed or cannot be repaired. It is therefore not possible to determine volume of sales.
- 1.3. This specification does **not** cover alcohol testing for prison officers or providers of probation services staff.
- 1.4. The Authority requires all Breath Alcohol Screening Testing Devices to be of a type approved by the Secretary of State for the Home Office as used by the Police. Full details of the type approval procedures for breath alcohol screening devices can be found at Annex B¹. There is no requirement for confirmatory testing.
- 1.5. Over the life of the contract the range of alcohol detecting devices may be expanded or changed by the Authority in responses to any changes in policy or legislation – for example (transdermal ankle tags) for those prisoners released into the community with a condition to test for sobriety or other innovative alcohol detecting devices.
- 1.6. The current specification for breath alcohol screening testing in prisons is attached. Bidders are invited to provide innovative solutions for how to best deliver the service provided that the main requirements are met.
- 1.7. The system will include all ancillary equipment and any related consumables.

Breath Alcohol Screening Devices

- 1.8. Breath alcohol testing was introduced into Great Britain in October 1967. With the Road Safety Act 1967. This has been replaced by the Road Traffic Act 1988. Similar provisions covering other modes of transport are included in the Transport and Works Act 1992 and the Railways and Transport Safety Act 2003. All three Acts require Breath Alcohol Screening Devices to be of a type approved by the Secretary of State for the Home Office.

Alcohol Testing in Prison

- 1.9. The first specification for Home Office approved Breath Alcohol Screening Device Testing was introduced into prisons in 2004. Prisoners are not permitted to drink any alcohol (ethanol) at all whilst in prison custody. The particular problems arising from misuse of alcohol within prison may include a breach of good order and discipline and risks to health. The Prison Service has a duty of care to those held in custody.

¹ The HO specification for type approval for breath alcohol testing devices is currently under review. The Authority will adopt any changes made by the Home Office.

- 1.10. Breath Alcohol Screening Testing is used by Prison Officers where there is reasonable suspicion that a prisoner has consumed alcohol, has been in possession of alcohol or is intoxicated whilst in prison custody or as part of a risk assessment – for example where a job involves being part of an outside working or a prisoner has to use industrial machinery or where a high degree of trust is to be granted.
- 1.11. There are two rules pertaining to consumption of alcohol by prisoners:
- “is intoxicated as a consequence of consuming any alcoholic beverage” and;
 - “consumes any alcoholic beverage whether or not provided to him by another person”.
- 1.12. The first rule can be used when a prisoner is in prison custody and can include a prisoner who has recently returned from a period of release on temporary licence (ROTL). The second rule can only be used when a prisoner is in prison custody.
- 1.13. Since consumption of alcohol whilst in Prison custody is an offence against prison discipline – and can have serious consequences for a prisoner – a high level of certainty is required before action can be taken. As a consequence NOMS has set a cut of level of 9 µg of ethanol per 100 millilitres of breath before the presence of breath alcohol can be used as evidence that the prisoner has been drinking.
- 1.14. Breath testing apparatus will need to demonstrate a high level of reliability. Thus the equipment selected for use by NOMS will be based on an electronic screening device approved for use by the police service under part V of the Railways and Transport Safety Act 2003.
- 1.15. The Service Provider must be entirely familiar with the Alcohol Testing Manual of Guidance (attached at Annex C²). Alcohol testing services must be compatible with procedures and practices as set out in this guidance. Where proposals for service provision require variation in existing procedures and practice or are incompatible with any aspect of existing procedures and practice, this must be clearly stated and must include justification/explanation for the variance and an assessment of the consequences – beneficial and/or adverse so that innovative approaches can be properly reflected through a revised framework.

Alcohol Testing in the Community

- 1.16. Providers of probation services need to manage risk of harm especially in relation to offenders whose criminal behaviour was linked to alcohol. Testing may assist in the management of the risk of reoffending and risk of harm that these offenders present.
- 1.17. Offenders under statutory supervision in the community may presently be tested for alcohol by providers of probations services in the following circumstances:
- **Where an offender is resident in an Approved Premises** on reasonable suspicion of alcohol use and where there is concern about possible outcomes (such as where alcohol is a known disinhibiting factor in previous offending or there is a likelihood of disorder in the hostel. Residents with a previous history of alcohol-related offending can be tested randomly;

² This document is currently under review

- **Following release from prison on licence.** There is no statutory provision to allow offenders released on licence to be required to comply with an alcohol screening test so alcohol testing in this context can only be undertaken with the offender's consent; and
- If subject to an **alcohol abstinence and monitoring requirement (AAMR)** of a community order or suspended sentence of imprisonment. An AAMR requires the offender to abstain from alcohol or not exceed a specified level of alcohol for a fixed time period of up to 120 days; and be monitored using an electronic tag or breathalyser to ensure compliance. Offenders do not need to consent to the terms of the AAMR or their alcohol consumption being monitored. Availability of the AAMR is presently restricted to where a Piloting Order has been issued by the Justice Secretary of State. However, this may change should secondary legislation be implemented.

1.18. Since consumption of alcohol can have serious consequences for an offender – a high level of certainty is required before action can be taken. As a consequence NOMS has set a cut-off level of 9 µg of ethanol per 100 millilitres of breath before the presence of breath alcohol is used as evidence that an offender has been drinking.

1.19. The service providers will require a full understanding of the relevant Probation Instructions and the Approved Premises Manual (see Annex D). Where proposals for service provision require variation in existing procedures and practice or are incompatible with any aspect of existing procedures and practice this must be stated clearly so that innovative approaches can be properly reflected through a revised policy

Policy & Procedures

1.20. The systems will be used in prison establishments and by providers of probation services throughout England and Wales.

1.21. At commencement the systems must be capable of screening for at the specified cut-off level required by the Authority as set out in NOMS breath alcohol screening devices specification (see Annex A).

1.22. Procedures for alcohol testing are generally based on police roadside alcohol screening testing standards and protocols (see Annex B), the NOMS Alcohol Testing for Prisoners (see Annex C) and PI 32 2014 (see Annex D). Although prison and community alcohol testing requirements may compare to police roadside testing, they may vary from time-to-time.

2. Scope/Requirement

The requirements set out below covers the range of supply and service requirements to facilitate breath alcohol screening testing within prison establishments and breath alcohol screening testing in the community throughout England and Wales.

Testing Device

2.1. Both prison establishments and providers of probation services require the on-site collection of breath alcohol samples using a portable breath alcohol screening device. The Service Provider will supply and deliver to the nominated sites, in a flexible way that reflects value for money, all equipment and related consumables necessary to conduct breath alcohol screening testing on a call-off basis.

- 2.2. Breath testing apparatus will need to demonstrate a high level of reliability. Thus the equipment selected for use by NOMS will be based on an electronic screening device approved for use by the police service under Part V of the Railways and Transport Safety Act 2003.
- 2.3. The equipment must also be:
- Robust for use in a prisons/provider of probation services operational environment;
 - The reliability and accuracy of the equipment must be demonstrable;
 - The equipment must be simple to use without the need for extensive training to operate it; and
 - The equipment must also have the ability to retain calibration over a six-month period operating at ambient temperature.
- 2.4. The breath alcohol screening device must meet the technical specification in Annex A, with the cut-offs stated in addition to Annex B which sets out the baseline technical capability of the device. If the device contains any electronic components then it must also meet the specification set out in Annex E.

General Requirements of Breath Testing Device

- 2.5. The core component of the breath test system is the breath-testing instrument that collects a sample of breath and analyses the alcohol concentration that it contains. For the purposes of NOMS this should be an electronic screening device that:
- Has been approved by the Secretary of State for the Home Office for use under the provisions of the Road Traffic Act 1988;
 - Is qualified for approval under Part V of the Railways and Transport Safety Act 2003; and
 - The successful device shall meet in full the requirement to gain Secretary of State for the Home Office approval.
- 2.6. In addition or including – the successful device shall be capable of measuring the alcohol concentration in a specimen of breath with a precision of +/-2 micrograms% or better at breath alcohol concentrations of 20 micrograms%.
- 2.7. The device should operate in both digital and/or indicating mode and it will be essential for the “Referred for Treatment” indication to be set to 9 µg of ethanol per 100 millilitres of breath **without** modification to the approved version of the software.
- 2.8. Each test shall be carried out using a new individually wrapped sterile mouthpiece.
- 2.9. There shall be one level of access to the functions of the breath alcohol screening test device that are accessible when the equipment is in operational use this will be:
- Operator - the default condition that allows a user to conduct breath tests.

- 2.10. The successful service provider will outline clearly the waiting times necessary for alcohol breath testing device use, which describes the minimum time before testing takes place when a prisoner/offender must avoid smoking, eating, drinking or any other activity likely to compromise the test, and also specify where necessary any substances which in particular must not be ingested and the time period during which such substances must be avoided.

Calibration

- 2.11. Breath testing devices will require a calibration check at six monthly intervals. The calibration of the device will need to remain stable for six months as a minimum and evidence will need to be produced to the Authority to demonstrate this.
- 2.12. Calibration checks on alcohol screening devices will be carried out by NOMS independent Quality Assurance provider who are UKAS accredited.
- 2.13. The successful device will stop working and prevent a test being conducted when a calibration check is due. The supplier should provide evidenced of the storage capacity of the device.

Product Interference

- 2.14. The successful device must have also have demonstrated a high level of immunity to radio frequency interference particularly in the band used by the TETRA radios used by the police and other emergency services. Successful completion of the EMC tests set out in FSS-BTS-3/02 shall be evidence that this requirement has been met.

Computer

- 2.15. The breath testing device should be interfaced with a computer which should be attached to a portable printer. It is preferable that the breath alcohol testing device, hand-held computer, card reader and printer along with all necessary interconnecting leads are contained in a robust case. Full details of the specification required can be found at Annex A and E. The successful device will not allow prison officers or providers of probation services staff to delete any test results data.

Health and Safety and Waste Disposal

- 2.19. The device should be designed as far as possible to ensure the safety of both the operator and the user of the device. Particular attention should be made to the design and use of electrical connections as well as the materials chosen for mouthpiece construction.
- 2.20. Service Providers should ensure that the health and safety implications of the use of all proposed articles used in the alcohol testing process are fully outlined and any identified risk minimised, including the disposal of any waste generated as result of conducting a screening test.

- 2.21. For breath alcohol screening, the sample collection shall be undertaken in such a way as to minimise the possibility of contracting any infectious disease and minimise the possibility of coming into direct contact with the individual from whom the sample has been collected or the operator of the breath alcohol screening device.
- 2.22. All equipment and consumables should be designed so that waste is minimised. Attention should be paid to both the equipment and the design of any packaging associated with the equipment. As far as possible components should be made from biodegradable materials.
- 2.23. The provision of packaging for the equipment shall be in accordance with the EC Packaging & Packaging Waste Directive (94/62/EC) 'The Packaging Directive' which is concerned with minimising the creation of packaging waste material and promotes energy recovery, re-use and recycling of packaging. In the UK this is implemented through the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012 and the Packaging (Essential Requirements) (Amendment) Regulations 2009.
- 2.24. All equipment, packaging and other materials supplied should comply with Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), and Directive 2006/121/EC amending the Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, and the Marketing and Use Directive 76/769/EC. Note in particular the obligation to register substances and to inform customers of the presence of Substances of Very High Concern in articles.

Technical Support and Assistance for Breath Alcohol Screening Devices

- 2.25. The Service Provider will supply technical support for users on demand, between the hours of 7am and 7pm Monday to Friday excluding Bank Holidays. The enquiry shall be responded to within 5 minutes of the call, either by answering the call or providing a call back service or on the first day of business after the call was received.
- 2.26. This should include as a minimum:
 - 2.26.1. Kit operation
 - 2.26.2. Product failure
 - 2.26.3. Specificity/product interference
 - 2.26.4. Interpretation of results
 - 2.26.5. Ad hoc queries regarding medical information.
- 2.27. The Service Provider must provide an email inbox to which enquiries may be sent outside the hours of 7am and 7pm and on Bank Holidays. Out-of-hour queries must be answered within 2 hours of resuming business.
- 2.28. A Frequently Asked Questions (FAQ) page must be provided to support the operators which is accessible to operators, for example via secure website link.
- 2.29. The Service Provider must provide a full range of customer and technical support where, without limitation the Authority or sites at which the breath alcohol screening

tests are undertaken reports a problem with a device, computer, printer or other related consumables, the Service Provider must:

- 2.29.1. Diagnose the cause of the problem with the device(s) within 24 hours of receiving the report from and, following diagnosis;
 - 2.29.2. Replace any faulty hardware within 24 hours of diagnosis;
 - 2.29.3. Repair/replace any damaged equipment within 24 hours of diagnosis.
- 2.30. Prisons establishments and providers of probation services (CRC's and NPS) must be provided with sufficient and timely supplies of breath alcohol testing devices when requested so as not to hinder the alcohol testing programme. All alcohol testing devices must be sent directly to the site of the participating prison establishment and providers of probation services.
- 2.31. Alcohol testing can be carried out in any prison or by providers of probation services in Approved Premises in England and Wales. There are currently 122 prison establishments in England and Wales and 119 Approved Premises however, the Authority does not guarantee any volume of sales.

Training

- 2.32. The Service Provider will provide the necessary means to provide training on the use of the alcohol screening devices, computer, printer and consumables to all prison staff, approved premises staff and other operators on the use of the breath alcohol screening device in order to take breath alcohol samples.
- 2.33. Proposals should include training sessions delivered, on request, at sites in England and Wales but also include any other methods that will facilitate cost effective onward training by users: e.g. literature, video clips and e-learning. This should be comprehensive and cover all aspects of the use of breath alcohol testing system and how it fits into to the complete alcohol testing process.
- 2.34. Training will be provided to a maximum of 12 staff per course. Prison Service, National Probation Service approved premises, NOMS regional training centers, Community Rehabilitation Centre premises or individual prison establishments may be used to host the training course.
- 2.35. It is not possible for the Authority to specify the amount of training which will be required but it is envisaged that an initial number of operators will attend training sessions and will then cascade the learning across the prison estate and in providers of probation services premises. The additional training support, e-learning, etc. will be supplementary to this. Due to the natural attrition of personnel it will be necessary for training to be offered throughout the lifetime of the contract. The Service Provider must be capable of providing such training as required by the Authority.
- 2.36. If the introduction of a new alcohol screening system requires re-training of prison officers during the lifetime of the contract, the training must be provided at no additional cost to the Authority.

Interpretation of Results

- 2.37. It is an offence against Prison Rules to consume alcohol whilst in prison custody and where there is an additional requirement not to consume alcohol whilst on Release on

Temporary Licence (ROTL). The presence of alcohol in the breath is evidence that a prisoner has been drinking. However, if disciplinary proceedings are contemplated then evidence is required to show beyond reasonable doubt that the prisoner has been drinking. To achieve this, the limit above which there is considered to be incontrovertible evidence that some alcoholic drink has been consumed has been set at 9 micrograms of alcohol in 100 millilitres of breath – normally written as 9 µg% or 9µg/100ml.

- 2.38. If the result is greater than 9µg/100ml, the prisoner will be told that he has provided a positive test and can be charged accordingly. If the result is between 7 and 9µg/100ml, the prisoner will be warned about his or her future behaviour.
- 2.39. The Approved Premises Rules require residents to undergo drug and alcohol testing when required to do so by staff. Testing for alcohol is based on a clear link to alcohol-related offending. Alcohol testing will normally only apply where a resident's licence prohibits alcohol consumption, where alcohol is a known disinhibiting factor in previous offending, or where there is a likelihood of disorder.
- 2.40. The fact that a person has been misusing alcohol is not, in itself, a bar to admission to an Approved Premises. It is one of a number of risk factors that must be considered.
- 2.41. A positive test result of 9µg/100ml and/or an admission of substance misuse should lead to a referral into treatment alongside the offender's willingness to co-operate with programmes and regimes designed to control, reduce or eliminate the misuse.

Expert Witness Support

- 2.42. If a result is challenged the breath alcohol screening device will immediately be withdrawn from use and sent to the NOMS Quality Assurance Provider for forensic examination to assess whether the kit had been used within the defined parameters. If required, the Service Provider must make available the services of expert witnesses whether at adjudication or court hearing/judicial review to defend the use of the product. The provider of equipment will therefore need to liaise closely with the NOMS Quality Assurance advisors.

Innovation

3. Stock Management

- 3.1. The Service Provider will put in place a stock management system which maximises efficiency of stock usage and minimises waste.
- 3.2. The Service Provider will specify on the packaging of the alcohol breath test screening device and all associated consumables the recommended storage conditions.
- 3.3. The Service Provider shall manage the minimum levels of stockholding necessary to meet expected demand. By keeping strict management records the Service Provider will develop an ordering profile to provide efficient stock rotation bearing in mind the lead time for manufacturing and quality control procedures.
- 3.4. Should the Authority become aware of a future increase in the use of alcohol breath testing devices it would endeavour to inform the Service Provider so that accommodation could be made for an increase in production.

4. Service Levels

- 4.1. The Service Provider shall be required to dispatch any order from nominated sites for goods specified within the contract within 5 working days of receiving the call-off order during normal office hours.
- 4.2. The Service Provider shall ensure that any faulty hardware or equipment is repaired or replaced within 24 hours of notifications.
- 4.3. The Service Provider shall ensure that all help desk calls placed within the agreed office hours (7am to 7pm) shall be responded to within 5 minutes of the call, either by answering the call or providing a call back service.

5. Changes in Specification

- 5.1. The Service Provider must obtain the written permission of the Authority's representative(s) before altering or changing any aspect of the specification set out in this document. Any proposed changes in policy or new legislation must be demonstrable to be improvements to the alcohol breath testing screening devices or services and demonstrate compatibility with Home Office type approval.
- 5.2. The Authority reserves the right to seek independent advice in its consideration of alterations or changes proposed by the Service Provider. The Authority also reserves the right to require any alteration or change proposed by the Service Provider to be evaluated by an independent party nominated by the Authority and the costs of the evaluation to be paid for by the Service Provider.
- 5.3. The Authority welcomes input from the Service Provider as to updates on new Home Office Approved Devices and other new related alcohol testing technology as they arise throughout the life of the contract.

6. Contract Management

- 6.1. The Service Provider will provide a dedicated contract liaison who will act as an interface between NOMS Health and Wellbeing Substance Misuse Co-commissioning Team, MoJ Procurement Directorate and the Service Provider. Named contacts will be available between 0900 hours and 1700 hours Monday to Friday and for outside of these hours an answering machine service and/or email address will be made available.
- 6.2. Regular meetings, likely to be monthly mobilisation at the start of the new contract then at least quarterly, will be held between the Authority and the Service Provider, which as a minimum, will be used to review:
 - 6.2.1. customer satisfaction;
 - 6.2.2. delivery performance;
 - 6.2.3. volume of sales;
 - 6.2.4. product performance;
 - 6.2.5. help-line issues;
 - 6.2.6. staff training requirements and performance;
 - 6.2.7. opportunities for improvement;

- 6.2.8. research and development - new technical advances in the field
- 6.3. This meeting will cover all aspects of service provision and will normally be based on quarterly quality Assurance reports from the Authority's Quality Assurance adviser.
- 6.4. When requested, the Service Provider's representative(s) and Authority's representative(s) shall attend review meetings at 102 Petty France, London, SW1H 9AJ or other venue nominated by the Authority.
- 6.5. The Service Provider will provide a monthly report in a format to be agreed. Such reports shall be provided within 5 working days of the end of each Month and shall contain the following information for each individual user site, total by user area and overall total for all user sites:
 - 6.5.1. quantity of alcohol screening devices, computers, printers and consumables ordered/supplied and to who with dates of order and delivery costs;
 - 6.5.2. percentage of orders delivered within the agreed delivery date;
 - 6.5.3. number and nature of calls made to the help-line, with date and time of calls, date and time of remedy and nature of help provided; and
 - 6.5.4. details of returned articles – to include description of article, quantity ordered and returned, date and reason for return.
- 6.6. This report shall also show cumulative annual data showing volumes of articles ordered and total gross costs (excluding VAT and any early payment discount available) within each operational contract year.
- 6.7. All enquires made by the media to the customer liaison must be forwarded immediately to NOMS and will be dealt with by them solely. Contact with solicitors can only be made after prior approval by the appropriate NOMS team as outlined in 6.1 above. All contacts with prisoners/offenders in the community will be similarly referred to the appropriate NOMS team.

7. Access to Premises

- 7.1. Following award of Contract/Framework the Authority may wish to visit the premises of the Service Provider (premises involved in both the production and assembly/supply of items).
- 7.2. Such visits may be on a random and/or unannounced basis and may also follow any failure to meet any element of the service specification. The Service Provider will ensure unfettered access and will make available all documentary evidence concerned with the production and supply of the articles at no additional cost to the Authority.
- 7.3. Specifically, the Service Provider will provide full access to the Authority's providers of Quality Assurance testing, to all alcohol testing machines and other alcohol testing devices such that alcohol testing devices and their performance may be independently tested and analysed as mandated by the Authority.

8. Authority Quality Assurance

- 8.1. Service Providers must be aware that the Authority utilises an independent external QA provider to ensure that the alcohol testing services are meeting all requirements

and that the alcohol testing devices are Home Office approved and fully meet the Authority's specification. The Service Provider is required to comply with all reasonable requests of the QA provider. All such requests will be met at the expense of the Service Provider.

- 8.2. The role of the QA provider is to check that the calibration of the breath alcohol testing devices remain in spec to ensure that the correct results are being provided and any other elements of the service provision in order to provide assurance that the provider is meeting contractual requirements.
- 8.3. The Service Provider may be required from time to time to provide the Authority with alcohol testing devices as part of the Authority Quality Assurance programme; these shall be charged to The Authority.
- 8.4. In order to guarantee independence, Service Providers are required to provide an undertaking that no conflict of interest shall exist.
- 8.5. Should the Service Provider wish to or be requested by the Authority to introduce a new alcohol testing device (in response to the changing needs of the Authority), samples of these will be provided by the Service Provider to the Authority's Quality Assurance provider free of charge and will also have undergone prior Home Office approval .

9. Welsh Language Requirements

- 9.1. Full instructions on the use of breath alcohol testing screening devices must be provided in the Welsh language.

10. Sub-Contractors and Supply Chain

- 10.1. The Service Provider is expected to provide full details of the supply chain, including full details of their procurement policies and processes, bidder's appraisals, quality management of suppliers, current suppliers pertinent to this requirement, lead times and contingency plans.
- 10.2. Proposals must make clear the intention to sub-contract any elements of the services, including the internal QA process and full details of the proposed sub-contractors must be provided.

11. Contingency Arrangements

- 11.1 The proposal must include a detailed protocol setting out the contingency arrangements to provide a seamless and continuous service. This should include (though not inclusively) failure of power supplies, failure of testing equipment, shortage of essential reagents and consumables, transport disruption. Catastrophic failure should also be addressed.
- 11.2 If the contingency plan involves use of another facility or facilities, that facility or those facilities must comply demonstrably and fully with all aspects of this specification.
- 11.3 The Authority shall be notified immediately of disruption to service and catastrophic failure and must approve any contingency plans.

12. Access to the Framework

- 12.1 Under the terms of the framework/call off contract, which is an agreement or other arrangement between two or more contracting authorities, the framework may be used, with the agreement of NOMS, by other government departments or local representatives thereof.
- 12.2 For example, in pursuance of their role as commissioners of drug treatment services in prisons, NHS England (and their contracted providers) and Local Health Boards in Wales may arrange with NOMS to use the NOMS call off contract and in the community for example, for alcohol treatment requirement testing, local authorities and Directors of Public Health in pursuance of their role as commissioner of alcohol treatment services in their localities, may arrange with NOMS to use the NOMS call off contract.

13. Innovation and Research

- 13.1 The Bidder should set out in detail what dedicated resource and budgets for research and development they have. The Authority is keen to keep up-to-date with evidenced based testing for alcohol and welcomes any innovative proposals that meet the Authority's requirements.

Annex A: Specification for breath alcohol testing screening devices

This Annex details the core specification of (i) the breath alcohol testing screening devices and (ii) Home Office type approval procedures for breath alcohol screening devices (iii) electronic components (computer software and printers) and (iv) any associated consumables. It is divided into five parts which deal with the four individual aspects:

- i. General requirements of the breath alcohol testing devices;
- ii. Home Office Type Approval Procedures for Breath Alcohol Screening Devices
- iii. General requirements of electronic components (computer software and printers); and
- iv. General requirements of associated consumables
- v. Innovation and Research

Responses to each of these sections will be scored (see also Evaluation Criteria and Scoring Methodology, Bidders should therefore ensure their submission includes a response to each requirement. These sections give a broad indication of a Bidder's ability to meet the requirements and will be considered in conjunction with the detailed information requested in the Technical Questionnaire and the questions contained in the Invitation to Tender. Any copies of certificates or other documentation required should be provided

Part 1: General Requirements of the breath alcohol screening device

A1: breath alcohol screening devices: alcohol testing will be undertaken by prison staff in prison establishments and by providers of probation services in approved premises using equipment supplied by the Service Provider. Testing devices will need to demonstrate a high level of reliability. Therefore the equipment selected for use by NOMS will be based on an electronic screening device approved for use by the Secretary of State for the Home Office for use under the provisions of the Road Traffic Act 1988 and is qualified for approval under part V of the Railways and Transport Safety Act 2003

A2: In addition or including – the successful device shall be capable of measuring the alcohol concentration in a specimen of breath with a precision of +/- 2 micrograms% or better at breath alcohol concentrations of 20 micrograms%.

A3: The successful device will also be: robust for use in prisons' and provider of probation services operational environments; the reliability and accuracy of the equipment must be demonstrable; the equipment must be simple to use without the need for extensive training to operate it; and the equipment must also have the ability to retain calibration over a six-month period as a minimum operating at ambient temperature and evidence should be produced to demonstrate this.

A4: The successful device should be capable of measuring the alcohol concentration in a specimen of breath. The device should operate in both digital and/or indicating mode and it is desirable if the 'Referred for Treatment' indication can be set to 9 µg/100 millilitres of breath **without** modification to the approved version of the software.

A5: There shall be one level of access to the functions of the breath-test device that are accessible when the equipment is in operational use this will be:

- Operator – the default condition that allows a user to conduct breath tests.

A6: calibration checks - Breath testing devices will require a calibration check at six monthly intervals. The calibration of the device will need to remain stable for six months as a minimum and evidence will need to be produced to the Authority to demonstrate this.

Calibration checks on alcohol screening devices will be carried out by NOMS independent Quality Assurance provider who are UKAS accredited.

The successful device will stop working and prevent a test being conducted when a calibration check is due.

A8: Product interference: The successful device must have demonstrated a high level of immunity to radio frequency interference particularly in the band use by the TETRA radios used by the police and other emergency services. Successful completion of the EMC tests sets out in FSS-BTS-3/02 shall be evidence that this requirement has been met.

Computer

A9: The breath alcohol screening device should be interfaced with computer. The combined system should have the following features:

- Be capable of being operated independently of the computer. In this configuration the breath-testing device may be used for screening offenders suspected of consuming alcohol; and
- When connected to the computer the controlling software shall guide the user through the procedure for collecting data and conducting a breath test. Data entry may be by keyboard or a touch screen display preferably at the option of the user.

A10: The computer shall also be capable of recording the following information:

- The date, time and location of the test. The date and time shall be automatically generated by the computer system. A default location – HM Prison.....or location of providers of probation services shall be held in memory;
- The name of the person conducting the test;

- The name of the person corroborating the procedure should this be required;
- The Offender's age, gender and ethnicity;
- The result of the breath test;
- A free text field of 250 characters for the operator's notes or comments;
- The computer should have the ability to store the results of all tests. These results shall be capable of being reviewed. The ability to view, download and delete records shall be restricted to those with appropriate access rights. Records should be downloaded before the memory can be cleared;
- The computer shall inform the operator when the memory is approaching capacity. Once capacity has been reached the system shall prevent further tests being conducted; and
- The computer system shall be capable of interrogating the breath-test apparatus and establishing when the next calibration check is due. When a check is imminent the system shall warn the operator. If the calibration check is not concluded, the system shall prevent further tests being undertaken.
- The device shall prevent prison officers and providers of probation services staff to delete any data. The Service Provider should also supply information on the storage capacity of the breath alcohol screening device.

Printer and Print-out

A11: The hand-held computer shall be attached to a portable printer. At the end of a test cycle the system shall produce a print-out which shall include:

- The date, time and location of the test;
- The name of the person conducting the test;
- The name of the person corroborating the procedure;
- The name and number of the prisoner/name of offender who is subject to the test;
- The age, gender and ethnicity of the offender who is subject to the test;
- The result of the breath test;
- Whether the prisoner/offender was referred into/back into treatment;
- Any text in the notes and comments field; and
- Spaces labelled to include: operators signature, corroborating officer's signature if required and prisoner/offender's signature.

The system shall be capable of printing multiple copies of this report. .

Case

A12: It is preferable that the breath-testing device, hand-held computer, card reader and printer along with all necessary interconnecting leads shall be contained in a robust case.

The complete unit shall be capable of operating from an internal battery or 240 volt 50Hz mains supply. The case shall include the adapters and chargers that make this possible, or an alternative, which offers consistency in standards.

Manuals

A13: An operator manual shall be provided. This document shall give detail of the principles of which the equipment works and shall give clear simple guidance on the operation of the equipment. A short summary guide preferably laminated should also be provided.

Supply

A14: The supplier will supply the equipment from stock to the prison or the premises of providers of probation services within 5 working days of receipt of an order (which may be sent by fax or emailed).

Service and Maintenance

A15: The supplier shall agree to service the breath testing devices as and when required but within 48 hours of receipt of the equipment. If for any reason this timeframe cannot be met the supplier shall supply an alternative device of equal specification to the prison establishment or the premises of providers of probation services. The supplier should provide the establishment/provider of probation services with a service plan/level agreement.

Training

A16: The Service Provider will provide the necessary means to provide training on the use of the alcohol screening devices, computer, printer and consumables to all prison staff, approved premises staff and other operators on the use of the breath alcohol screening device in order to take breath alcohol samples.

A17: Proposals should include training sessions delivered, on request, at sites in England and Wales but also include any other methods that will facilitate cost effective onward training by users: e.g. literature, video clips and e-learning. This should be comprehensive and cover all aspects of the use of the alcohol screening device system and how it fits into to the complete alcohol testing process.

A18: Training will be provided to a maximum of 12 staff per course. Prison Service, National Probation Service approved premises, NOMS regional training centers, Community Rehabilitation Centre premises or individual prison establishments may be used to host the training course.

A19: It is not possible for the Authority to specify the amount of training which will be required but it is envisaged that an initial number of operators will attend training sessions

and will then cascade the learning across the prison estate and in approved premises. The additional training support, e-learning, etc. will be supplementary to this. Due to the natural attrition of personnel it will be necessary for training to be offered throughout the lifetime of the contract. The Service Provider must be capable of providing such training as required by the Authority.

A20: If the introduction of a new alcohol screening system requires re-training of prison officers during the lifetime of the contract, the training must be provided at no additional cost to the Authority.

A21: External quality assurance: The Service Provider should supply in full the internal quality assurance procedures in place for the manufacture and servicing of all the alcohol testing devices offered to NOMS and to CRCs.

A22: All equipment shall comply with the essential requirements of all applicable EC Directives and be CE marked as appropriate. Copies of the Manufacturer's Declarations of Conformity for CE marking shall be supplied with operational equipment

A23: Information to be supplied with the equipment: Each item of equipment shall be supplied with accompanying instructions including instructions for installation, operation, maintenance, calibration, safe disposal of the equipment and safe disposal of any hazardous parts and materials in or used with the equipment.

A24: Simplicity of Operation: The alcohol testing device, computer, printer and any associated consumables shall be simple to use and designed to be used by non-specialist personnel who have undertaken appropriate training.

A25: Resistance to shock, impact, fluids and fluid pressure: The alcohol screening device shall be robust and shock/impact resistant. Equipment shall not cause a hazard and shall remain fully functional when and after it is subjected to shock and impact likely to occur in normal use.

A26: Health and Safety: The device should be designed as far as possible to ensure the safety of both the operator and the user of the device. Particular attention should be made to the design and use of electrical connections as well as the materials chosen for mouthpiece construction. The equipment shall be supplied complete with operating instructions, health and safety instructions in addition to the advice for the disposal of waste.

All equipment, packaging and other materials supplied should comply with Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), and Directive 2006/121/EC amending the Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, and the Marketing and Use Directive 76/769/EC. Note in particular the obligation to register substances and to inform customers of the presence of Substances of Very High Concern in articles.

A27: Volume requirements: The sample collection mechanisms shall incorporate a system to unequivocally inform the operator that the required volume of breath has been collected.

A28: Product Use: The alcohol screening device shall be easy to use and employ a single step operation. Operators without technical qualifications must be able to use the products effectively and with the proposed level of training.

A29: Portability: The alcohol screening device and all equipment necessary to perform the on-site test and record the result shall be hand-held, operable and transportable by a single person.

A30: Quality Control: The alcohol screening device shall incorporate a mechanism which provides verification that the alcohol screening device and all associated components necessary to complete the on-site test are functioning correctly each time it is used.

A31: Waste: The alcohol screening device shall be designed in such a way as to minimise waste. Particular attention should be paid to both the individual components of the kit and the design of any packaging associated with the alcohol screening device. As far as possible, components shall be made from biodegradable materials.

The provision of packaging for the equipment shall be in accordance with the EC Packaging & Packaging Waste Directive (94/62/EC) 'The Packaging Directive' which is concerned with minimising the creation of packaging waste material and promotes energy recovery, re-use and recycling of packaging. In the UK this is implemented through the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012 and the Packaging (Essential Requirements) (Amendment) Regulations 2009.

A32: Assurance: It is expected that relevant BS and ISO accreditation will have been attained for product manufacture, transport and storage, and where appropriate, copies of all relevant certificates will be submitted as part of this tender process. The Authority particularly welcomes the provision of independent external evaluation studies of proposed products, as well as in-house evaluation data.

Part (iv) General requirements for consumables:

A33: The device should be designed as far as possible to ensure the safety of both the operator and the user of the device. Particular attention should be made to the design and use of electrical connections as well as the materials chosen for mouthpiece construction.

A34: Service Providers should ensure that the health and safety implications of the use of all proposed articles used in the alcohol testing process are fully outlined and any identified risk minimised, including the disposal of any waste generated as result of conducting a screening test.

A35: All equipment and consumables should be designed so that waste is minimised. Attention should be paid to both the equipment and the design of any packaging associated with the equipment. As far as possible components should be made from biodegradable materials.

A36: The provision of packaging for the equipment shall be in accordance with the EC Packaging & Packaging Waste Directive (94/62/EC) 'The Packaging Directive' which is concerned with minimising the creation of packaging waste material and promotes energy recovery, re-use and recycling of packaging. In the UK this is implemented through the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012 and the Packaging (Essential Requirements) (Amendment) Regulations 2009.

A37: All equipment, packaging and other materials supplied should comply with Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), and Directive 2006/121/EC amending the Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, and the Marketing and Use Directive 76/769/EC. Note in particular the obligation to register substances and to inform customers of the presence of Substances of Very High Concern in articles.

Part (vi) – Innovation and Research

A38: The Bidder should set out in detail what dedicated resource and budgets for research and development they have. The Authority is keen to keep up-to-date with evidenced based testing for alcohol and welcomes any innovative proposals that meet the Authority's requirements.

Part 2 : Home Office Type Approval Procedures for Breath Alcohol Screening Devices

It is a specific requirement that the alcohol screening device should have been Home Office approved. Therefore the requirements specified below must be satisfied. Note that Annex A and Annex E **are additional requirements for NOMS.**



Home Office
BUILDING A SAFE, JUST
AND TOLERANT SOCIETY

Breath Alcohol Screening Devices

A guide to type-approval procedures for
breath alcohol screening devices used for
law enforcement in Great Britain



THE FORENSIC SCIENCE SERVICE®

Change Record

Date	Author	Description	Change Ref
30/06/2004	D Rudram	Published Version	1.0

Revisions are shown with a single line on the left edge of the paragraph after release of version 1 of this document.

Summary

Breath alcohol testing was introduced into Great Britain in October 1967 with the Road Safety Act 1967. This has been replaced by the Road Traffic Act 1988. Similar provisions covering other modes of transport are included in the Transport and Works Act 1992 and the Railways and Transport Safety Act 2003. All three Acts require Breath Alcohol Screening Devices to be of a type approved by the Secretary of State.

This document contains a description of the technical requirements to be met for consideration for Type Approval for new Breath Alcohol Screening Devices for police use in Great Britain, and is intended to be a reference for manufacturers wishing to develop new devices. The document contains details concerning the construction of Breath Alcohol Screening Devices, their operation and the methods of testing prior to submission to the Secretary of State for consideration for Type Approval. This is a functional requirement for products that may be manufactured by any process.

This document is written as a Guide for the type-approval procedure to be followed for new Breath Alcohol Screening Devices. Any appropriate technology capable of providing the functionality required in this guide may be used.

Any requirements for goods or materials to comply with this Guide shall be satisfied by compliance with either a British Standard or other named international standard. Alternative approaches that provide an equivalent level of assurance will be accepted (see paragraph 1.6 below).

Electromagnetic Compatibility (EMC)

Devices supplied for evaluation and subsequent use in Great Britain must comply with the mandatory requirements for Electromagnetic Compatibility (EMC) as given in the European Directive 89/336/EEC dated 1989.

In addition, all devices supplied for evaluation and subsequent use by police in Great Britain must comply with FSS Report BAU 03-02.

The Forensic Science Service produced this document on behalf of the Home Office and enquiries relating to it should be addressed to:

Breath Alcohol Unit
Forensic Science Service
109 Lambeth Road
London SE1 7LP

Guide to Type Approval Procedures for Breath Alcohol Screening Devices

Contents

1. Introduction.....	1
2. Type Approval Procedure.....	2
3. General Requirements	3
4. Definitions.....	4
5. General Technical Specification	5
6. Metrological Characteristics.	9
Annex A. Test Scheme for Device Response to Physical Interference	9
Annex B. Test Scheme for Device Response to Alcohol Vapour Samples	13



1 Introduction

1.1 The Organisation Internationale de Métrologie Légale (OIML) has issued International Recommendation R126 that applies to Evidential Breath Testing Instruments and a separate Guide to Type Approval Procedures for Evidential Breath Analysis Instruments¹ based on that recommendation has been published.

1.2 This document applies to devices used as Breath Alcohol Screening Devices that are used in Great Britain for the initial detection of alcohol in breath samples in order to assist the police.

1.3 The type approval procedure consists of a number of technical performance tests that are carried out on devices supplied by the manufacturers or their appointed agents. The performance tests are detailed in Annex A and Annex B below.

1.4 The purpose of this document is to define requirements for the construction of Breath Alcohol Screening Devices, their operation and the means and methods employed in testing them. This document is a guide to manufacturers and their appointed agents but will be updated from time to time to take account of developments and amended versions of this guide will be issued when appropriate.

1.5 The following national and international standards or specifications are referred to in this document:

- i. ISO 9001-2000 - Quality management systems. Requirements
- ii. BS EN ISO/IEC 17025:2000 – General requirements for the competence of testing and calibration laboratories.
- iii. BS EN 50081-1:97 - Electromagnetic compatibility. Generic emission standard.
- iv. BS EN 50082-1:97 - Electromagnetic compatibility. Generic immunity standard.
- v. BS EN 55022:1998, CISPR 22:1997 - Information technology equipment. Radio disturbance characteristics. Limits and methods of measurement
- vi. BS EN 60068-1:1995 - Environmental testing. General and guidance.
- vii. BS EN 60068-2-30:1999, Environmental testing. Test Db - Damp Heat, Cyclic
- viii. BS EN 60068-2-27:1993, Environmental Testing. Test Ea - Shock
- ix. BS EN 60068-2-7:1993, Environmental Testing. Test Fc - Vibration (Sinusoidal)
- x. EC 89/336/EEC dated 1989, European Council (EC) Directive on Electromagnetic Compatibility (EMC)
- xi. EC 95/54/EEC Dated 1995, European Council (EC) Vehicle Directive
- xii. FSS-BAU-3/02, EMC Immunity Test Procedures for Breath Alcohol Measuring Devices
- xiii. OIML International Document D11, General Requirements for Electronic Measuring Devices (Draft Document - 2003)
- xiv. IEC 61000-4-1 (2000-04), Electromagnetic compatibility - Testing and measurement techniques - Overview of IEC 61000-4 series

1.6 Any requirement for goods or materials to comply with a specified standard shall be satisfied by compliance with:

- i. a relevant standard or code of practice of a national standards body or equivalent body of any Member State of the European Community, - or
- ii. any relevant international standard recognised for use in any Member State of the European Community, - or
- iii. a relevant technical specification acknowledged for use as a standard by a public authority of any Member State of the European Community, - or
- iv. traditional procedures of manufacture of a Member State of the European Community where these are the subject of a written technical description sufficiently detailed to permit assessment of the goods or materials for the use specified, - or

1. A Guide to Type Approval Procedures for Evidential Breath Testing Instruments.

- v. a specification sufficiently detailed to permit assessment for goods or materials of an innovative nature (or subject to innovative processes of manufacture such that they cannot comply with a recognised standard or specification) and which fulfil the purpose provided by the specified standard,

if the proposed standard, code of practice, technical specification or procedure of manufacture provides, in use, equivalent levels of safety, suitability and fitness for purpose.

2 Type Approval Procedure

2.1 A manufacturer, or any person in a position to fulfil the duties regarding type approval (simply referred to as a manufacturer in the rest of the document), should in the first instance make a request in writing to:

Road Crime Section (RCS)
Home Office
50 Queen Anne's Gate
LONDON SW1H 9AT

2.2 Before submission for formal type approval a device will under go user trials by one or more police forces. The Association of Chief Police Officers (ACPO) Road Policing will arrange these trials at the request of Road Crime Section (RCS). User trials will only be arranged if the device is thought to have potential for police use and will be designed to assess the suitability of the device in operational conditions. This assessment may not be required for re-testing of already approved devices that have been modified or updated.

2.3 For devices which satisfy the assessment by police forces, manufacturers shall supply free of charge to the Forensic Science Service (FSS) - the Home Office designated testing laboratory - Breath Alcohol Testing Devices of the type intended for sale, for testing purposes. These devices shall be returned to the manufacturers on completion of the evaluation. The FSS is accredited by the United Kingdom Accreditation Service (UKAS).

2.4 On completion of the type approval testing the manufacturers shall supply free of charge to the Forensic Science Service two devices identical to the final type approved device. These devices will be held by the FSS as exemplar devices, and may be used to test any modifications to the type-approved device, before recommending the proposed change for type approval.

2.5 The manufacturers shall provide the following at the time of testing:

- i. A handbook or a set of written instructions for the use of the device operator.
- ii. A handbook or a set of written instructions for the use of the device supervisor.
- iii. A written technical description of the device's operation.
- iv. A full circuit diagram with all the circuit components clearly indicated.
- v. Details of the internal analytical unit used by the device.
- vi. Source and object code for the embedded software.
- vii. Details of the test and validation programme that the software has undergone. This system shall be certified to the ISO9001-2000 standard

2.6 The Home Office or its agents shall accept no liability for breakage or damage.

2.7 Laboratory testing of electronic breath screening devices shall comprise two categories. These are Response to Physical Testing (Annex A) and Response to Alcohol Vapour Samples (Annex B). The manufacturers are expected to bear the full costs of the test laboratories evaluation work.

Note - The results of checks and tests carried out by the bodies and laboratories of other countries, including in particular those in conformity with EN ISO/IEC 17025 shall be taken into and suitability for purpose equivalent to the results of tests carried out in the United Kingdom,

and where bodies offer suitable and satisfactory guarantees of technical and professional competence and independence.

2.8 When the assessments at Annex A have been satisfactorily completed and the full report has been issued, the manufacturers shall supply sufficient devices, as specified in paragraph B.2 below, to the Breath Alcohol Unit of the Forensic Science Service.

The assessment made there shall be for the tests involving response to Alcohol Vapour Samples (Annex B below).

2.9 Reports on devices that successfully complete the testing procedure in the two categories set out in paragraph 2.7 above, and the police assessment (where necessary), shall be submitted by the FSS to RCS, Home Office. RCS shall consider obtaining the agreement of the Secretary of State to formal type approval for police use in Great Britain.

2.10 RCS, Home Office shall prepare a supporting agreement for signature by the supplier and Home Office officials on behalf of the Secretary of State for the Home Department. For the purposes of type approval, the agreement shall require the manufacturers:

- i. Not to change the approved device in any way without the agreement of the Secretary of State.
- ii. To ensure that the type and serial number of each device is clearly identified by an indelible marking.
- iii. To ensure that the serial number is unique to each device.
- iv. To ensure that any repair and calibration facility relating to the device is certified to the ISO9001-2000 and open to inspection by the Home Office, any UK Police Force, the FSS or UKAS.
- v. To ensure that any update of the operating instructions shall be sent to all users including the Home Office.
- vi. To label with a version number of any software or firmware
- vii. Deposit documentation detailing the program with the Home Office free of charge. This documentation to include:
 - Source and object code for the software
 - The relevant check sums for the software.
- viii. Any changes to the software shall be given a new version number.
- ix. To supply free of charge to the Home Office a full circuit diagram of the device with all the circuit components clearly indicated.
- x. To supply free of charge to the Forensic Science Service, on behalf of the Home Office two exemplar devices, identical to the type approved device.

This agreement must be signed by the manufacturer prior to the Secretary of State signing the formal type approval document. The Home Office and the Forensic Science Service undertake to keep all information provided confidential in so far as that undertaking does not conflict with any duty of disclosure in a criminal prosecution.

2.11 The manufacturer shall make provision for expert witnesses for court cases with regard to the operation and performance of the device.

2.12 Assistance with police training in respect of the device's operation shall be made available by the manufacturer or his agent.

3 General Requirements

3.1 The device should be designed as far as possible to ensure the safety of both the operator and the user of the device. Particular attention should be made to the design and use of electrical connections as well as the materials chosen for mouthpiece construction.

3.2 The manufacturer shall ensure that when devices are supplied for police use in Great Britain, following initial calibration of new devices or recalibration of factory repaired devices, they meet the requirements of this document.

3.3 Calibration of approved devices in operational use shall be carried out by a trained and competent person.

3.4 All equipment used for calibrations (including ethanol standards), having a significant effect on the accuracy or validity of the result of calibration shall be calibrated before use. Such calibrations shall be traceable to recognised national or international standards. Traceability shall be evidenced by calibration certificates bearing the UKAS Accreditation Mark or equivalent

3.5 Any repair and subsequent recalibration shall be carried out by the manufacturers or their appointed agents, who shall keep accurate records, which shall be open to inspection by the Home Office and/or UKAS.

4 Definitions

4.1 Screening Device

A hand held device designed to detect the presence and measure the concentration of alcohol in 'end expiratory air' (e.g. as determined by measurement of the volume given) and to provide an indication of the level of alcohol in the specimen by means of lights or an alphanumeric display.

4.2 End Expiratory Air

A breath sample containing air from the end of a forced expiration from the lungs.

4.3. Operating Position

The state of the device in which it is able to take and analyse a specimen of breath at the frequency normally expected in service. It shall be clearly apparent when the device is in this state. In this position the device shall meet the metrological requirements of this guide.

4.4. Adjustment or Verification to a Standard

Adjusting or verifying the device using:

- (a) a certified standard ethanol/air mixture having a relative humidity of at least 90% and a temperature of $34 \pm 0.5^{\circ}\text{C}$

or

- (b) a certified dry ethanol/air mixture;

providing it can be demonstrated on the device that the results from both (a) and (b) are equivalent.

4.5 Liquid Simulator

A device for producing a standard mixture of gases having a relative humidity of at least 90% and a temperature of $34 \pm 0.5^{\circ}\text{C}$. This device may comprise a suitably constructed vessel containing an aqueous ethanol solution of known, suitable, concentration maintained at a constant temperature of $34 \pm 0.2^{\circ}\text{C}$. Air is passed through the solution so as to generate the ethanol/air mixture required for device testing or calibration.

4.6 Gas Simulator

A device for providing a standard mixture of dry gas. This device may comprise a gas cylinder filled with air or an inert gas such as nitrogen containing a known, suitable, concentration of ethanol under pressure to be maintained at ambient temperature, fitted with a suitable dispensing regulator. The simulator gas shall be stable for at least two years and the gas cylinder shall be clearly marked with the date that its contents are no longer warranted to meet this requirement.

4.7 Units of Measurement

For devices manufactured for use in Great Britain the concentration of ethanol in the sample shall be expressed in $\mu\text{g}/100\text{ml}$ when the device is in test mode. In normal mode the results of measurements may be presented in a form that indicates whether they are above or below the legal limit.

4.8. Normal Mode

In normal mode the device shall be capable of automatically taking a sample of the breath presented to it. The result of measurement of the ethanol content of the sample may be presented in two ways:

- Indicating format where the ethanol content of the sample is presented in the format ZERO, PASS, AIR-FAIL (customer option), WARN, or FAIL either by a system of lights, or characters on an alpha-numeric display.
- Digital format where the ethanol concentration is expressed numerically in $\mu\text{g}/100\text{ml}$.

It shall be permissible for a device to operate in Indicating and Digital mode simultaneously. For devices manufactured for police use in Great Britain it shall not be possible for the display to be converted from indicating format to digital format in normal mode. In normal mode there shall be no provision for manual sampling of the breath specimen.

4.9 Test Mode

In test mode the device shall display the result of a measurement in numerical format and in units of $\mu\text{g}/100\text{ml}$ rounded down to integer values. The device shall have provision for manual sampling of the vapour presented to it when conducting calibration adjustment or verification operations as well as metrological tests.

5 General Technical Specification

Breath Alcohol Testing is carried out in Great Britain for the purpose of determining whether or not a subject has a breath alcohol concentration above the legal limit at present in force. Results of these tests are not presented evidentially, but are used to justify further action by the police.

5.1 Measuring Range

Devices shall be capable of measuring Alcohol Concentrations in the range 0 to $200\mu\text{g}/100\text{ml}$. In normal mode - indicating format devices shall indicate the result in bands corresponding to the states of ZERO, PASS, AIR-FAIL, WARN, or FAIL. The point of change shall be:

- WARN to FAIL - one scale interval above the legal limit for Breath Alcohol Concentration as specified in the Road Traffic Act 1988 (ie $36\mu\text{g}/100\text{ml}$).
- AIR-FAIL to WARN - around $30\mu\text{g}/100\text{ml}$.
- PASS to AIR-FAIL - one scale interval above the legal limit for Breath Alcohol Concentration as specified in Part 5 of the Railways and Transport Safety Act 2003 (ie $10\mu\text{g}/100\text{ml}$).
- ZERO to PASS - around $3\mu\text{g}/100\text{ml}$

For a temperature range of 0 - 40°C

5.2. Scale Interval

The scale interval for calibration, verification, or metrological testing shall be $1\mu\text{g}/100\text{ml}$.

5.3 Display

The result of a measurement shall be displayed in digital format with a scale interval of $1\mu\text{g}/100\text{ml}$ and/or in indicating format as ZERO, PASS, AIR FAIL, WARN, or FAIL either by a system of coloured lights or characters on an alpha-numeric display. The alpha-numeric

display may show either the entire word or the appropriate initial letter, the choice being made by the manufacturer.

5.4. Measuring Conditions

5.4.1 The general environmental conditions under which the device shall be capable of use are as follows:

- i. ambient temperature 0°C to 40°C
- ii. ambient relative humidity (RH) 30% to 90%
- iii. atmospheric pressure (AP) 86-106kPa (BS EN60068)

If the manufacturer specifies operating conditions different to those stated the device shall be tested to those conditions.

5.4.2 In normal operation the device shall indicate the breath test result as soon as it has been determined, by the means set out in 5.3 above.

5.4.3 The device shall monitor the continuity of exhalation and the volume passed in order to identify an acceptable specimen for analysis. The device shall give a signal if the acceptable volume is not achieved and shall terminate the sampling at that point, after which the device may reset automatically and indicate readiness to accept a further attempt. Manufacturers may at their discretion set a limit for the number of attempts to provide a specimen for analysis from any one subject.

5.4.4 The device shall indicate when it is ready to accept a breath specimen. Measurement of the alcohol content of a breath specimen shall not be possible when the device is not ready to make a measurement.

5.4.5 When the device is ready to accept a breath specimen a period of not less than 3 minutes or greater than 10 minutes shall be allowed for a satisfactory specimen to be provided after which time the device may automatically switch off.

5.5. Acceptance Limits

The acceptance limits for verification testing (calibration checking) using a calibration standard containing 35µg/100ml alcohol in air (see 5.7) shall be 32.0 - 37.9µg/100ml rounded down to integer values for devices in police use. When a device has been newly calibrated the acceptance limits shall be 34.0 - 36.9µg/100ml rounded down to integer values.

5.6. Return to Zero

The device shall verify that the detector is free of alcohol before indicating that it is ready to accept a specimen of breath. The device shall also verify that all alcohol has been cleared from the detector after a specimen has been analysed before indicating that it is ready to accept a further specimen.

5.7. Adjustment to a Standard (Calibration)

The device shall be calibrated using certified standards with an ethanol concentration of 35 ± 0.5 µg/100ml, from either:

- (a) a liquid simulator producing a vapour with a relative humidity of at least 90% at a temperature of $34 \pm 0.5^\circ$
- or
- (b) a dry gas mixture

provided that it can be shown on the device that the results from both (a) and (b) are equivalent. This adjustment shall normally be carried out within the temperature range 15 - 35°C, or any other wider range specified by the manufacturer.

5.8. Verification of Adjustment (Calibration Check)

It shall be possible to verify for maintenance and legal metrological control that the device is correctly adjusted. The sample source shall be the same as for adjustment (see 5.7) and the results shall lie between 32.0 and 37.9 μ g/100ml rounded down to integer values in normal use. If the verification test gives readings outside this range then the device shall be re-calibrated to 35 μ g/100ml. When the device is newly adjusted the verification results shall lie between 34.0 and 36.9 μ g/100ml rounded down to integer values.

5.9. Safety and Security

5.9.1 General comments

The device should be designed as far as possible to ensure the safety of both the operator and the user of the device. Particular attention should be made to the design and use of electrical connections as well as the materials chosen for mouthpiece construction.

5.9.2 Hygiene

The device shall be capable of use under satisfactorily hygienic conditions. It shall be possible to change the mouthpiece for each test and the mouthpieces shall be supplied new and individually wrapped.

5.9.3 Electrical Safety

The device shall be capable of operating within the requirements of Electrical Safety legislation

5.9.4 Means of Adjustment

The means by which the device is adjusted shall not be accessible to the routine user of the device.

5.9.5 Mode of Operation Change

The means used to change from the normal mode of operation to another mode of operation shall not be accessible to the routine user of the device.

5.9.6 Memory

Where a long term memory facility is provided the minimum data that must be stored for each test or attempted test shall be:

- i. Date & time
- ii. Type of test (moving traffic, suspected alcohol, collision)
- ii. Result of the test in μ g/100ml or an indication that the test was not completed
- iii. Any indication given by the device (ie PASS, WARN, FAIL etc)
- iv. Was the test an RTA screening test or for some other purpose

Additional information may be stored if requested by users. All memory functions must work properly. If the memory is full the device shall prevent any more tests being carried out until the data has been recovered and the memory cleared. The operator shall be given a warning that the memory is approaching capacity. The contents of the memory shall not be accessible to the routine user of the device.

6 Metrological Characteristics.

6.1 Error Limits

The result of each test made within the normal operating temperature range (paragraph 5.4.1) shall not differ from the expected result by more than $\pm 10\%$. If the manufacturer specifies a temperature range greater than the normal 0 - 40°C range specified in this guide

the device shall be tested to that range and any readings taken at temperatures outside the normal limits shall not differ from the expected result by more than $\pm 20\%$.

6.2 Rounding

The device shall determine the result of each test to the nearest $0.1\mu\text{g}/100\text{ml}$ and shall report the result of each test rounded down to the nearest integer when in test mode or normal mode - digital format and the appropriate band when in normal mode - indicating format.

6.3. Repeatability

The results from a repeatability test using a vapour sample having an ethanol concentration $5\mu\text{g}/100\text{ml}$ higher than the legal limit shall be within the required $\pm 10\%$ of the expected value, and shall also indicate FAIL for each sample.

6.4. Periodic Verification / Recalibration

The calibration of the device shall be verified at the intervals accepted by police forces - normally 1 month and no longer than 6 weeks - and shall be recalibrated by a device supervisor if the result of this verification lies outside the limits laid down in paragraph 5.8. If a calibration check is overdue the device shall prevent any more tests being carried out until a calibration check is done. The operator shall be given a warning that the date for a calibration check is approaching. Manufacturers shall recalibrate any device that has been serviced by them before the device is returned to the police.

6.5. Markings

A screening device that conforms to this specification shall be marked legibly with the following: -

- The name of the manufacturer or supplier
- The name of the device and model type
- The serial number of the device
- The version number of the software installed
- The specified legal limits that devices are approved for.

Annex A

Test Scheme for Device Response to Physical Interference

A1 Introduction

This scheme sets out the tests required to assess the performance of a screening device in accordance with the recommendations of the Organisation Internationale de Métrologie Légal (OIML, Draft Document D11) and the requirements of the European Community (EC) directive on Electromagnetic Compatibility 89/336/EEC. It gives laboratory tests for assessing the effects of changes in physical conditions on the performance of screening devices that are self-powered.

NOTE - All electronic equipment for use in Great Britain must comply with the requirements of European Community (EC) EMC Directive 89/336/EEC dated 1989. The tests can be found in the standards BS/EN 50081-1 and BS/EN 50082-1.

A2 Display

For these tests the device shall provide a digital readout of test results rounded down to integer values. The vapour sample to be used for these tests shall be 35µg/100ml ethanol in air and 9µg/100ml ethanol in air. Breath test conditions shall be in accordance with the manufacturer's instructions.

A3 Maximum Error

The result of any breath test performed as part of this scheme shall exhibit an error of no more than ±10% relative to the applied vapour sample, or ±2µg/100ml for an applied 9µg/100ml vapour sample.

A4 Physical Influence Factors

A4.1 Procedure

The effect of each factor shall be determined in turn with all other factors being at their reference level. The effects shall not be combined. In performing the tests in this scheme a full breath test using the standard vapours shall be carried out. Wherever possible, this breath test shall be a normal test that allows all aspects of the normal operation of the device to be verified. Each vapour shall be applied to the device twice for each influence factor. Tests shall be run at the reference point and the extreme points of each condition listed.

A4.2 Ambient Temperature

Reference Condition:	20°C
Extreme Values	0°C and 40°C

The device under test (IUT) shall be placed in the test chamber at the reference temperature and a breath test shall be carried out as described in paragraph A4.1 above. The temperature shall then be reduced to the minimum specified and the IUT allowed to stabilise for at least 3 hours. Steps shall be taken to avoid condensation at the lower temperature. A breath test shall be carried out as specified in paragraph A4.1 above. The temperature shall then be raised to the maximum level in not less than 1 hour to minimise the risk of condensation occurring and the IUT allowed to stabilise for at least 3 hours. A breath test shall then be carried out as described in paragraph A4.1 above.

A4.3 Ambient Relative Humidity

Reference condition	Ambient RH in the testing laboratory
Extreme conditions	(a) 30% relative humidity at 5°C (b) 90% relative humidity at 40°C

The IUT shall be placed in the test chamber at the reference condition and a breath test shall be carried out as described in paragraph A4.1 above. The humidity and temperature shall

be reduced to the minimum specified. A breath test as described in paragraph A4.1 shall be carried out. The humidity shall then be increased to the maximum specified. The temperature shall be increased to the maximum specified in not less than 1 hour while maintaining the humidity level at maximum. A breath test as described in paragraph A4.1 shall then be carried out.

A4.4 Atmospheric Pressure

Reference condition	101.3kPa
Extreme conditions	86 and 106kPa

The IUT shall be placed in the test chamber and breath tests as described in paragraph A4.1 shall be carried out at the reference and extreme conditions in turn

A4.5 Total Hydrocarbon Content of Atmosphere (as Methane)

Reference condition	2ppm
Extreme condition	5ppm

Special atmosphere gas samples are required for this test. For the reference test the IUT shall be connected to the sample vapour bottle and gas container bag containing the reference atmosphere (2ppm methane) using a change-over valve. A breath test as described in paragraph A4.1 shall be carried out.

The gas container bag shall then be purged and filled with the extreme level gas (5ppm methane) and a repeat breath test shall be carried out as described in paragraph A4.1. The result shall be compared with the reference atmosphere test.

A5 Physical Disturbance Factors

A5.1 Procedure

Testing under this section shall be carried out to conform with IEC 61000-4 and in accordance with OIML Doc 11 (General Requirements for Electronic Measuring Devices 2003).

A5.2 Vibration

This test should be made with reference to BS EN 60068-2 Test Fc - Sinusoidal Vibration.

The device shall be subjected to vibration as follows:

Frequency	10Hz to 150Hz
Sweep rate	1 octave/minute
RMS Acceleration	9.8m/s ²
Axes	3 perpendicular

If any resonant frequencies are observed then a vibrational test shall be carried out at each observed frequency for a period of 30 minutes followed by inspection for obvious damage and a breath test as described in A4.1.

If no resonant frequencies are observed then a vibrational test shall be made consisting of 20 sweeps at the test conditions above, after which the device shall be inspected for obvious damage and a breath test as described in A4.1 shall be carried out.

This test shall be carried out on a device without its carrying case.

A5.3 Mechanical Shock

This test shall be carried with reference to BS EN 60068-2 Test Ea - Shock and is intended to test the device's reaction to general rough handling.

The device shall be subjected to mechanical shock consisting of 1000 shocks in each of 3 perpendicular directions at a frequency of 2Hz. The device shall be rigidly mounted on a suitable surface. Each shock shall comprise a 10G severity, 6 milliseconds duration, half

sine pulse. At the end of the test the device shall be inspected for obvious damage and a breath test as described in A4.1 shall be carried out.

This test shall be carried out on a device without its carrying case.

A5.4 Impact

This test shall be carried out with reference to BS EN 60068-2 Test Ea - Shock and is intended to simulate the effect of an impact on a device carried loose in a motor vehicle.

The device shall be subjected to 3 mechanical shocks of 50G severity, 11 milliseconds duration, half sine pulse in each of the 6 directions to give a total of 18 shocks. At the end of the test the device shall be inspected for obvious damage and a breath test as described in A4.1 shall be carried out.

This test shall be carried out with the device in its carrying case.

A5.5 Electrostatic Discharge

This test shall comprise 8kV air discharges both positive and negative from a 150pF capacitor through a 330ohm resistor onto the casing of the device. A total of 10 positive and 10 negative discharges shall be applied separated by at least 10 seconds onto areas of the casing where discharge occurs.

After the test the device shall be inspected for obvious damage and a breath test as described in A4.1 shall be carried out.

A5.6 Immunity to Radiated Electric Fields

This test shall be carried out to meet the requirements of FSS BAU 3-02.

The device shall operate normally throughout the test.

A5.7 Test of Radiated Electric Field Emissions

This test shall be carried out to meet the requirements of EN50081-1 and the European Community requirements on EMC as in European Directive 89/336/EEC in accordance with EN55022. Measurements of radiated emissions from the device shall be made over the frequency range 27 - 1000MHz at a distance of 10m.

A5.8 Storage Ambient Conditions

- | | | | |
|----|-------------|-------------|---------|
| 1) | Cold | Temperature | 0°C |
| | | Duration | 2 Hours |
| 2) | Hot | Temperature | +70°C |
| | | Duration | 6 Hours |

The two conditions shall be tested separately with the device power OFF. The chamber conditions should be such as to inhibit condensation at all times.

After each separate test the device shall be allowed to stabilise at 20°C for 1 hour after which a breath test as described in A4.1 shall be carried out.

A5.9 Damp Heat (Cyclic)

This test is set out in BS EN 60068-2 Test Db - Damp Heat and exposes the device to temperatures of 25°C and 55°C with high humidity. The test is intended to induce condensation on the Device Under Test. The test shall be performed with power OFF and the device out of its carrying case.

- i. Place device in test chamber and set to 25°C and 95% RH
- ii. Raise temperature from 25°C to 55°C over a period of 3 hours while maintaining 95% RH
- iii. Maintain at 55°C and 93% Relative Humidity for 9 hours

- iv. Reduce temperature from 55°C to 25°C over a period of 3 hours while maintaining 95% RH
- v. Maintain at 25°C and 95% Relative Humidity for 9 hours

The test cycle shall be performed twice after which the device shall be allowed to stabilise at 20°C and ambient RH for 1 hour. A breath test as described in paragraph A4.1 above shall then be carried out.

Annex B

Test Scheme for Device Response to Alcohol Vapour Samples

B1 Introduction

This testing schedule details the laboratory evaluation of a screening device prior to submission to the Home Office for consideration for type approval. The evaluation shall consist of a check to verify that the device conforms to the manufacturer's published specification and a series of tests designed to determine its reaction to rapid and intermittent testing, the operating temperature range, calibration stability, and user acceptability. Materials supplied for use in calibrating the device are also tested for their accuracy and reliability.

B2 Number of Devices

The number of devices required for evaluation is as follows:

- (i.) 6 indicating and 10 digital readout devices
or
- (ii.) 12 devices which have both indicating and digital readout systems for display of the result

NOTE - Devices approved for police use in Great Britain shall NOT be supplied in a form that allows them to be easily converted from Indicating to Digital format.

B3 Re-evaluation

Devices submitted for re-evaluation following modification shall undergo a reduced programme of tests related to the nature of the modification. If considered appropriate a modified device shall undergo a full assessment.

B4 Test Schedule

B4.1 Rapid Testing

B4.1.1 Higher Limit

The aim of rapid testing of a screening device is to assess the accuracy and repeatability of each individual reading at two different alcohol vapour concentrations; the memory effect arising from tests involving two different, widely separated, concentrations; the hysteresis effect of two different but close concentrations; and the fatigue effect on the detector of a large number of tests separated by a short period of time.

The device shall be tested with the following pairs of alcohol vapours.

- i. High Pair
 - Sample 1 90µg/100ml BrAC followed by
 - Sample 2 35µg/100ml BrAC check sample
- ii. Low Pair
 - Sample 1 25µg/100ml BrAC followed by
 - Sample 2 35µg/100ml BrAC check sample

The test shall consist of 25 pairs of samples at approximately 5 minute intervals to give a total of 50 samples per sequence. Each pair shall be tested twice on separate days to give a grand total of 200 tests over 4 testing days. At the indicated frequency of testing, a check on the calibration of the device is made at approximately 10-minute intervals.

For this test 3 devices shall be used, either 2 indicating and one digital display or 3 combined indicating and digital display together.

NOTE - The check level of 35µg/100ml breath alcohol concentration (BrAC) is the current legal limit for drink drive offences in Great Britain. If this level changes at some time in the future, the vapour concentrations used for this test will change to reflect the new limit.

B4.1.2 Rapid Testing (Lower limit)

The device shall be tested with the following pair of alcohol vapours.

- Sample 1 35µg/100ml BrAC followed by
- Sample 2 9µg/100ml BrAC check sample

The test shall consist of 25 pairs of samples at approximately 5 minute intervals to give a total of 50 samples per sequence. The pair shall be tested twice on separate days to give a grand total of 100 tests over 2 testing days. At the indicated frequency of testing, a check on the accuracy of the device at the lower level is made at approximately 10-minute intervals.

For this test 3 devices shall be used, either 2 indicating and one digital display or 3 combined indicating and digital display together.

NOTE - The check level of 9µg/100ml breath alcohol concentration (BrAC) is the current legal limit for certain air transport staff in Great Britain. If this level changes at some time in the future, the vapour concentrations used for this test will change to reflect the new limit.

B4.2 Intermittent Testing

Intermittent testing is performed 4 times over a 6 hour period at approximately 2 hour intervals using 3 different devices as detailed in 'Rapid Testing' (see paragraph B.4.1 above), and using the same vapour samples namely a low combination pair and a high combination pair on different days.

A total of 32 tests are performed over 4 testing days for each device. The tests assess the performance of the device under conditions of infrequent use.

B4.3 Repeatability Testing

B4.3.1 Higher Limit

This test consists of a series of 50 tests using an alcohol vapour concentration of 40µg/100ml, and the same devices as used for rapid testing. This is designed to show that an indicating device will record FAIL for all tests and a digital device will record values above the legal limit in the Road Traffic Act 1988 and related legislation for all tests.

B4.3.2 Lower limit

This test consists of a series of 50 tests using an alcohol vapour concentration of 12µg/100ml, and the same devices as used for rapid testing. This is designed to show that an indicating device will record AIR-FAIL for all tests and a digital device will record values above the legal limit in part 5 of the Railways & Transport Safety Act 2003 for all tests.

B4.4 Operating Temperature Testing

B4.4.1 Procedure

This test shall be carried out at a series of temperatures each of which is stable throughout the test. The test samples shall be 35µg/100ml ethanol in air and 9µg/100ml ethanol in air generated from liquid simulators maintained at a temperature of $34 \pm 0.2^{\circ}\text{C}$.

Five of the digital devices available for testing shall be used and 3 measurements of each vapour strength shall be made with each device for each temperature condition. This gives a total of six results for each temperature condition. The temperature condition is a combination of Calibration Temperature and Operating Temperature.

The test is designed to show that the device will operate correctly within the stated limits for the various calibration and operating temperature conditions.

B4.4.2 Calibration Temperature

The device shall normally be capable of being calibrated between temperatures of +15°C and +35°C. The manufacturer may define a different temperature range for calibration purposes.

For operating temperature testing the device shall be calibrated at the extremes of its range as well as at room temperature (19 - 22°C)

B4.4.3 Operating Temperature

The device shall be capable of operating over the temperature range 0°C to +40°C with an accuracy of $\pm 10\%$ for a 35 $\mu\text{g}/100\text{ml}$ vapour sample, or $\pm 2\mu\text{g}/100\text{ml}$ for an applied 9 $\mu\text{g}/100\text{ml}$ vapour sample. The manufacturer may state an extended operating range for the device that shall operate to an accuracy of at least $\pm 20\%$ for a 35 $\mu\text{g}/100\text{ml}$ vapour sample, or $\pm 2\mu\text{g}/100\text{ml}$ for an applied 9 $\mu\text{g}/100\text{ml}$ vapour sample over this extended temperature range.

B5 In Vivo Test

An in-vivo test shall be carried out which is designed to test the ability of a device to work with real subjects. The tests shall be arranged by or on behalf of the manufacturer and supervised by the Forensic Science Service.

Three volunteers will be selected, none of whom who will have been involved in the type-approval of Breath Alcohol Screening Devices, to carry out the test as described below.

Prior to the commencement of the test the volunteers will be given sufficient alcohol to ensure that their breath alcohol concentration approximates to 40 $\mu\text{g}/100\text{ml}$. Each subject shall be tested on the device under test and then on an approved evidential breath analysis instrument. The results of the two tests shall not differ by more than $\pm 10\%$. This sequence of tests shall be repeated every 15 minutes until the result on the device under test is less than 20 $\mu\text{g}/100\text{ml}$.

B6 Simulator Supplies

The manufacturer's means of calibration shall be tested.

Any solution for use in a liquid simulator shall be analysed to accurately establish the value of the ethanol in air vapour produced by a liquid simulator maintained at $34 \pm 0.2^\circ\text{C}$.

Any dry gas cylinder shall be checked against a liquid simulator containing a new standard simulator solution.

The device, set to display a digital reading of the result of the test, shall be calibrated using the means provided by the manufacturer and the calibration shall be checked by presenting samples from a liquid simulator containing a new standard solution.

B7 Calibration Stability

Two devices set to record digital results are calibrated using the means of calibration provided by the manufacturer and a 35 $\mu\text{g}/100\text{ml}$ ethanol in air vapour from a liquid simulator is used to check the calibration. The devices' response to a 35 $\mu\text{g}/100\text{ml}$ ethanol in moist air vapour are then checked at approximately 2 week intervals for at least 3 months from the date of calibration so as to check the manufacturer's claims regarding calibration stability. On each occasion a total of 5 tests are performed on each device using a new standard solution in the liquid simulator.

B8 General Device Functions

In addition to the breath analysis requirements, checks shall be made on general device functions to ensure that the device performs in accordance with the manufacturer's information.

Annex D

REDACTED

Annex E - Additional Requirements for Electronic Components

It is a specific requirement that the alcohol screening tool should be interfaced with a computer and a printer. Therefore the requirements specified below must be satisfied. Note that **these are in addition to those requirements specified in Annex A and Annex B**. This section is divided into three parts:

- i. Requirements of the alcohol Screening Devices
- ii. Quality control and assurance
- iii. Response to physical interference factors

Part 1: The Alcohol Screening Devices

B1: The Devices: The process of analysing a sample using the devices shall be as simple as possible. Attention should focus on providing suitable ingress protection for all electrical components, especially electronic readers and printers (if applicable). The devices should be spill resistant such that they continue to function if subjected to minor spillage of aqueous liquids. The device shall display a message to indicate to the operator that they are ready to accept a sample. The device shall have robust interconnectors, and the device will conform to all applicable parts of published standard BS EN 61010-1:2010.

B2: The Tests: The devices shall provide a result which clearly indicates the presence or absence of alcohol at the cut-offs specified in Annex A. The devices shall display the results to the operator in both digital and/or indicating mode which is clearly visible in all lighting conditions, which is easy-to-interpret by non-specialist personnel who have undergone appropriate training in the use of the device.

B3: CE marking - All equipment should comply with the essential requirements of all applicable EC Directives and be CE marked as appropriate. Copies of the Manufacturer's Declarations of Conformity for CE marking should be supplied with the equipment.

B4: Information to be supplied with the equipment - Each item of equipment will be supplied with accompanying instructions including instructions for installation, operation, setting, calibration, adjustment, repair, safe disposal of the equipment and safe disposal of any hazardous parts and materials in or used with the equipment.

B5: Mains electricity or rechargeable battery power: It shall be possible to power the devices and all equipment necessary to perform a test and record the result from both the mains electricity supply and a rechargeable battery. When utilising battery power, the devices shall provide the operator with ample warning that the battery requires charging (providers to specify low battery warning time). The charge status of the battery shall be available to the operator on request. The equipment shall conform to BS EN 61010-1:2010 Clauses 13.2.2 'Batteries and battery charging' and 11.5 'Battery electrolyte'. In addition, instructions should be supplied for safe removal and disposal of batteries.

B6: Peripheral Equipment: Any external cables required to link the devices to peripheral equipment necessary to perform and record the result of an on-site test shall be of minimum practicable length. Where a device is fitted with a printer, the results of the test shall be printed on completion of the test. The record of the result (the 'printout' if applicable) shall remain readable for a minimum period of 3 months. The ability to view, download and delete records shall be restricted to those with appropriate access rights. Records shall be downloaded before the memory can be cleared.

B7: Software: Software shall use the 24 hour clock and perform correctly throughout boundary conditions such as dates (leap year) and changes between British Summer Time / Greenwich Mean Time. Upgrades to software may be permissible by the Authority after manufacture.

B8: Robust interconnector devices - The equipment shall conform to the requirements of Annex A in this Specification in addition to the requirements of BS EN 61010-1:2010.

B9: Mechanical resistance to shock and impact: Equipment shall not cause a hazard and will remain fully functional when and after it is subjected to shock and impact likely to occur in normal use. Equipment shall have adequate mechanical strength, components shall be reliably secured, and electrical connections shall be secure.

1.1 In addition to the requirements set out in Annex A and B, conformity with this requirement is checked by performing the tests as are applicable that are specified in published standard BS EN 61010-1:2010 'Safety requirements for electrical equipment for measurement, control and laboratory use – Part 1: General requirements' Clauses 8 'Resistance to mechanical stresses', 8.2 'Enclosure rigidity test', 8.2.1 'Static test' and 8.3.2 'Drop test for hand-held equipment and direct plug in equipment' only, and when the equipment is out of any external casing or enclosure and connected with all accessories and ready for use.

1.2 After completion of the tests, the equipment shall pass the voltage tests in BS EN 61010-1:2010 Clause 6.8 'Procedure for voltage tests' without humidity preconditioning and is inspected to check that:

- i. parts which are hazardous or hazardous live have not become accessible;
- ii. enclosures shall show no cracks that are visible or which could cause a hazard
- iii. clearances between parts are not less than their permitted values and the insulation of any internal wiring or other parts remains undamaged;
- iv. barriers have not been damaged or loosened;
- v. no moving parts are exposed;
- vi. there has been no damage which could cause the spread of fire or harmful substances;
- vii. there has been no leakage of fluid which could cause incorrect operation of the device

1.3 Damage to the finish, small dents which do not reduce creepage distances or clearances below the values specified in BS EN 61010-1:2010, and small chips which do not adversely affect the protection against electric shock or moisture or ingress of objects and dust are ignored. There shall be no breakage of any part or attachment to the equipment and the equipment will remain fully functional. Note that these requirements are additional to the requirements of published standard BS EN 61010-1:2010.

B10: Interference: The EMC limits specified for Class B equipment should be applied; as for use in a Police Station or similar office arenas.

B11: Health and Safety: The equipment should conform to the applicable parts of published standard BS EN 61010-1:2010 Clause 11 'Protection against hazards from fluids' and Clause 11.6 'Specially protected equipment' as for equipment with a stated degree of protection from ingress of fluids, objects and dust as IP 54 according to published standard BS EN 60529:1992 'Degrees of protection provided by enclosures' (IP code).

1.4 Conformity is checked after applying the specified tests and appropriate treatment in BS EN 61010-1:2010 and BS EN 60529:1992. After this the equipment shall pass the voltage test of Clause 6.8 for electrical and electronic equipment without humidity preconditioning and Clause 6.3.1 'Values in normal condition' as applicable of BS EN 61010-1:2010. In addition to those requirements the equipment will remain fully functional.

1.5 The equipment should also conform as appropriate with the requirements of BS EN 61010-1:2010 Clauses 12 'Protection against radiation, including laser sources, and against sonic and ultrasonic pressure' and 13 'Protection against liberated gases, explosion and implosion' as far as they are applicable.

1.6 The Service Provider of the equipment should declare that the requirements of the Physical Agents (EMF) Directive 2004/40/EC are not applicable to the equipment supplied.

B12: Waste and Substances: Electrical and electronic equipment should comply with the Waste from Electrical and Electronic Equipment (WEEE) Directive 2002/96/EC and with the Restriction of the use of certain Hazardous Substances in electrical and electronic equipment (RoHS) Directive 2011/95/EC.

Part 2: Quality Control and Assurance

B13: Quality Control: The device shall incorporate a mechanism which enables the operator to perform a validation check before each test to verify that the device and all its associated components are working. It shall be possible to perform a regular test to check that the device is correctly calibrated.

B14: Quality Assurance: It shall be possible to perform a self-check of all electrical devices before each test to ensure that they are functioning correctly.

Part 3: Response to Physical Interference

In addition to fulfilling the requirements of the physical interference tests outlined in Annex A and Annex B, an alcohol screening device which incorporates any electronic components must also satisfy the conditions detailed in this section. The provider of the device should clearly indicate the range of conditions and state the optimum conditions within which the device will operate. Providers should provide evidence to substantiate the range of operating conditions of the device which they have specified.

B15: Power Supply: The equipment shall conform to the requirements of BS EN 61010-1:2010. Marking of the equipment shall conform with BS EN 61010-1:2010 Clause 5 'Marking and documentation'. The equipment and the accessories with which it is supplied will comply with BS EN 61010-1:2010 Clause 5.1.2 'Identification'.

1.1 The equipment will comply with BS EN 61010-1:2010 Clause 5.1.3 'Mains supply'. In particular the equipment shall be rated to include and be marked with the following information:

- i. nature of supply
 - ii. a.c.: rated mains frequency 50Hz and the symbol for the a.c. nature of the supply IEC 60417 – 5032.
- 1.2 If the equipment is rated for an external d.c. supply then the d.c. inlet shall be marked with the correct polarity of supply and the symbol for the d.c nature of the supply IEC 60417 – 5031
- 1.3 The rated values of the supply voltages or the rated ranges of the supply voltages; i.e. 230V or 220 – 240V and $\pm 10\%$ permissible fluctuations and, if appropriate, the value of the specified external d.c. voltage supply, the rated fluctuations and the polarity of the connections.
- 1.4 The maximum rated power in Watts or Volt-Amperes or the maximum rated input current for a.c. and any d.c. supplies with all accessories or plug in modules connected.
- 1.5 The equipment shall not be provided with different input voltages which can be set by the operator.
- 1.6 The equipment shall not be provided with accessory mains socket outlets.

B16: Internal batteries: If the internal batteries are replaceable by the operator there shall be marking in or on the battery compartment to indicate the type, rating, polarity, provider and provider's type reference for replacement batteries. This information shall be included in the instructions for use supplied with the equipment. It shall be possible to remove internal batteries from the equipment before disposal of the equipment and to facilitate safe disposal of the batteries.

B17: Resistance to Dust and Moisture: The requirement for resistance to dust and moisture shall be as specified in published standard BS EN 60529:1992 'Degrees of protection provided by enclosures (IP code)' for IP code 54. That is limited ingress of dust is permitted with no harmful deposit and protection against access to hazardous parts with wire, and also protected against water splashed from all directions with limited ingress permitted. The equipment shall be tested without any external covers fitted and connected as for normal use. After the treatment and the tests specified the equipment will remain fully functional.

B18: Electrostatic Discharge: The requirement for electrostatic discharge is as specified in published standard BS EN 61326-1:2006 'Electrical equipment for measurement, control and laboratory use – EMC requirements – Part 1: General requirements'. Annex A levels of 4kV contact and 8kV air discharge should be applied. After the treatment and the tests specified carried out on the equipment without any external covers fitted and connected as for normal use the equipment will remain fully functional.

B19: Emissions Screening: The tests shall be carried out to meet the European Community requirements on EMC as in European Commission Directive 2004/108/EC in accordance with published standard BS EN 61326-1:2006 for Class B equipment.

B20: Immunity to Radiated Electric Fields: The test shall be carried out to meet the European Community requirements on Electromagnetic Compatibility (EMC) as in European Commission Directive 2004/108/EC in accordance with the requirements in Table 1 of BS EN 61326-1:2006 but with an additional requirement that radiated immunity is tested in the frequency range 2 to 2.7 GHz at a field strength of 1V/m.

In addition, the device shall be exposed to the specific electromagnetic fields designed to check for immunity against TETRA waveforms as detailed in EMC Immunity Test Procedures for Breath Alcohol Measuring Devices FSS-BAU-03/02.

B21: Temperature, humidity, supply voltage and pollution range within which device shall operate: The equipment should be designed to be safe and to be fully functional at least under the following conditions:

- i. indoor use;
 - ii. atmospheric pressure 860 hPa to 1060 hPa
 - iii. temperature from 5 °C to 40 °C;
 - iv. maximum relative humidity 80% for temperatures up to 31°C decreasing linearly to 50% relative humidity at 40 °C
- 1.7 Where there is a connection to the electricity supply mains supply fluctuations up to $\pm 10\%$ of the nominal voltage;
- 1.8 Transient voltages typically present on the mains supply. That includes in this case impulse withstand (overvoltage) category II of IEC 60364-4-44 'Electrical

installations of buildings – protection for safety – protection against voltage disturbances and electromagnetic disturbances’;

- 1.9 Rated pollution degree 2 as specified in BS EN 61010-1:2010, Clause 3.6.6.2 ‘Pollution degree 2’. That is normally only non-conductive pollution such as dust occurs occasionally; however, a temporary conductivity caused by condensation must be expected
- 1.10 Note that these requirements are in addition to published standard BS EN 61010-1:2010

B22: Vibration: The test shall be carried out on a device without its carrying case. The equipment shall conform to the requirements of vibration endurance conditioning bus sweeping tests as specified in IEC 60068-2-6

- 1.11 The apparatus is fastened in its intended positions of use and connected as for use to the vibration generator by means of straps around the equipment enclosure and the enclosures of its accessories connected to the equipment by its supplied connectors. The connectors and interconnecting cables are not fastened to the vibration generator. The direction of vibration is vertical, and the severity is specified in Table 4.

Table 4 Vibration severity

Duration	30 minutes
Amplitude	0.35 mm
Frequency range	10 Hz ... 55Hz ... 10 Hz
Sweep rate	Approximately 1 octave per minute

After the test, the apparatus shall show no damage in the sense of this specification, in particular, no connection or part shall have loosened, the loosening of which might impair safety or the equipment remaining fully functional.

Tender Response

REDACTED

SCHEDULE H

PRICING AND PAYMENT SCHEDULE

SPECIAL CONDITIONS: PRICING AND PAYMENT

REDACTED

SCHEDULE I

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

SPECIAL CONDITIONS: COMMERCIALLY SENSITIVE INFORMATION

[Insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive. Pursuant to clause 24, where this is Management Information provided by the Contractor to the Authority and the Cabinet Office, it may be disclosed by them to Contracting Authorities.]

SCHEDULE J

MONITORING SCHEDULE

SPECIAL CONDITIONS: MONITORING AND MANAGEMENT INFORMATION

Section 1: Authority's Monitoring Requirements

Section 2: Management Information to be supplied to the Authority and the Cabinet Office

Appendix B

Line Item Amount

Invoice Line Description

Invoice Line Number

Currency Code

Order Date

VAT Inclusion Flag

VAT Rate

List Price

Number of Items

Unit of Purchase**

Unit of Purchase Quantity

Price per Unit

Supplier Product / Service Code

Product description

Product / Service Level 1(Product or Service Name)

Product / Service Level 2

Product / Service Level 3

Product / Service Level 4

Product / Service Level 5

UNSPSC Code

Taxonomy Code

Taxonomy Name

Geographical

Project Code

Project description

Project Start Date

Project Delivery Date (Estimate and Actual)

Total project cost

Project Stage

SCHEDULE K

TRAINING SCHEDULE

Special Conditions: Training and Apprenticeships

[Clauses to be used selectively and appropriately depending on the organisation of the Contractor. Where the statutory Apprentice scheme is not suitable, the term “Trainee” may be used instead.]

Definitions and Interpretations

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

[“Trainee” means a worker who is employed by the Contractor under a contract of employment which provides for a scheme to allow the worker to obtain a National Vocational Qualification [or enter here industry-wide recognised qualification] through paid study away from the workplace, and to obtain the competencies listed in the Annex to this schedule by working under the direction of experienced workers.]

The Contractor shall take all reasonable steps to employ Apprentices [Trainees], and report to the Authority the numbers of Apprentices [Trainees] employed and wider skills training provided, during the delivery of this Contract.

The Contractor shall take all reasonable steps to ensure [insert % up to 5% or 1 in 20] of the employees, or that a similar specified proportion of hours worked in delivering the Contract, (which may include support staff and sub contractors) are to be delivered by an employee on an Apprentice [Trainee] programme.

The Contractor is required to make available to its employees working on the Contract, information about the Government’s Apprenticeship programme available at www.apprenticeships.org.uk, and wider skills opportunities provided by local authorities.

The Contractor shall provide any appropriate further skills training opportunities for employees delivering the Contract.

The Contractor shall provide a written report detailing the following measures in the [monthly] contract management reporting and be prepared to discuss Apprentices [Trainees] at contract management meetings:

The number of people during the reporting period employed on the Contract, including support staff and subcontractors;

The number of Apprentices [Trainees] and number of new Apprentices [Trainees] directly initiated through the procurement process;

The percentage of all employees which are Apprentices [Trainees];

Explanation from the contractor as to why the Contractor has not achieved the specified percentage target of Apprentices [Trainees];

Actions being taken to increase the number of Apprentices [Trainees];

Other training and skills development being undertaken by employees in relation to the Contract, including:

work experience placements for 14 to 16 year olds

work experience and work trial placements for other ages.

student sandwich and gap year placements

graduate placements

vocational training

skills training

on-site training provision and facilities.

Annex [for Trainee only]

On completion of the training scheme the Trainee will be able to:

[competencies]

SCHEDULE L

CONFIDENTIAL CONTRACT INFORMATION EXCEPTIONS SCHEDULE

L1. Pursuant to clause 20.1, the Authority declares that the following categories of contract information are exceptions to the contract information to be published and the information falling within these categories is to be considered Confidential Information:

(a)

(b)

(c)

SCHEDULE M

EUROPEAN SOCIAL FUND SCHEDULE

SPECIAL CONDITIONS: PUBLICITY AND AUDIT REQUIREMENTS

M1. Where the Authority identifies duties to be undertaken by the Contractor under this Contract that are supported directly or indirectly by the European Social Fund, the Contractor shall comply with this Schedule in relation to those duties.

M2. The Contractor shall comply with Articles 8 and 9 of the European Commission Regulation number 1828/2006 (“the Regulation”). The Contractor shall include equivalent reference to the Ministry of Justice and the National Offender Management Service as that given to the European Social Fund in all materials relevant to compliance with those Articles.

M3. The statement to be used in compliance with Article 9 (c) of the Regulation shall be “Investing in jobs and skills”.

M4. The Contractor shall make financial records and supporting documents to comply with the standards described in Article 15 of the Regulation. The duration for which these records and supporting documents are maintained by the Contractor shall be at least twelve (12) years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the parties.

M5. The Contractor shall co-operate with the Authority and other bodies in connection with audits conducted pursuant to Article 16 of the Regulation.

M6. The Contractor shall provide sufficient relevant information to the Authority to allow it to comply with Article 7.2 (d) of the Regulation when demanded with reasonable notice.

M7. Where the Contractor sub-contracts any duties referred to in paragraph M1 the Contractor shall ensure that it imposes on its sub-contractors equivalent compliance obligations to which it is subject by this Schedule.

M8. The Contractor shall give due regard to the “Guidance for providers and sub-contractors for Publicity requirements for NOMS/ESF Funded Projects” issued by NOMS from time to time, and shall make this Guidance available to its subcontractors.

M9. The Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of the Contractor’s failure to comply with this schedule.

SCHEDULE N

Welsh Language

N1. The Contractor shall at all times comply with the Welsh Language Act 1993 and the Authority's Welsh Language scheme (as amended from time to time) as if it were the Authority to the extent that the same relate to the provision of Services.

N2. The Contractor shall deliver the services (identified in the specification) through the medium of English or Welsh (on an equal basis) or (in accordance with the Contractor's specific proposals to deliver Welsh language requirements set out in the specifications).

N3. The Contractor shall be responsible for promoting the delivery of services in Welsh or English to the service user and shall use all reasonable steps to achieve this.

N4. The Contractor shall be responsible for monitoring the level of take up for the service through the medium of Welsh and English and shall report to the Authority on a quarterly basis by providing the following information in writing:

- (i) The number of users requiring the service in Welsh and English
- (ii) The percentage increase/decrease from the previous report
- (iii) The allocation of staff to deliver the services in Welsh and English

N5. Any changes in service delivery made or anticipated by the Contractor as a consequence of the above and if relevant, the timescale for their implementation.

N6. Any complaints of difficulties indicated by service users or staff of the contractor in delivering the services in compliance with Welsh language obligations during the report period (and any advice or guidance that is required by the Contractor in delivering such services).