



LUTTERWORTH TOWN COUNCIL

Christmas Lights Tender (ref. 2026)

INVITATION TO TENDER - PART THREE

TERMS AND CONDITIONS

These Terms and Conditions are an integral part of the Tender. Signature on the Form of Contract (in Part Four) indicates acceptance of these Terms and Conditions.

Tenderers wishing to amend these Terms and Conditions may be marked down or disqualified.

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- (A) *Lutterworth Town Council placed adverts via its website during November and December 2025 seeking expressions of interest from providers for the hire of Christmas Light displays around the town of Lutterworth.*
- (B) *The Authority invited potential providers to tender for the provision of services under the Restricted Procedure in the Regulations.*
- (C) *It is the Council's intention that there will be no obligation to award any contract resulting from this tender.*

IT IS AGREED as follows:-

INTERPRETATION

Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

"Authority"	means Lutterworth Town Council
"Award Criteria"	means the award criteria referred to in Part 1 of the Tender document
"Commencement Date"	means the date referred to in paragraph 1.2 below.
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential
"Consistent Failure"	means three or more Defaults in any 12 month period
"Contract"	means any one or more of the contracts arising from this tender between the Authority and the Provider
"Complaint"	means any formal complaint raised by the Authority in relation to the performance of the Contract
"Default"	means any breach of the obligations of the Provider (including fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of the Provider or the Staff in connection with or in relation to the subject matter of this Contract
"DPA"	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation
"Force Majeure"	means any of the following events: ▪ war, civil war, armed conflict or terrorism;

- nuclear, biological or chemical contamination (unless in any case the Provider or its Staff caused such contamination); or
- pressure waves caused by devices travelling at supersonic speeds

which directly cause either party to be unable to comply with all or a material part of its obligations under this Contract

"Good Industry Practice"

means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of business as the Provider under the same or similar circumstances

"Intellectual Property Rights"

means patents, inventions, trade marks, service marks, logos, design rights, applications for any of the foregoing, copyright, database rights, domain names, trade or business names, and other similar rights or obligations in any country (including but not limited to the United Kingdom) and the right to sue for passing off

"Law"

means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body

"Month"

means a calendar month and "Monthly" shall be similarly construed

"OJEU Notice"

means the advertisement issued by the Authority in the Official Journal of the European Union

"Parent Company"

means any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider. The term "Holding Company" shall have the meaning ascribed by Section 736 of the Companies Act 1985

"Parties"	means the Provider and the Authority
"Pre-Existing Intellectual Property Rights"	shall mean any Intellectual Property rights vested in or licensed to the Authority or the Provider prior to or independently of the performance by the Authority or Provider of their obligations under this Contract
"Pricing Matrices"	means the pricing matrices referred to in the Authority's Tender Document and "Pricing Matrix" shall mean a pricing matrix within the Pricing Matrices as the context requires
"Provider"	means the contractor to whom the Contract has been awarded
"Regulations"	means the Public Contracts Regulations 2006 as amended
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees 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 this Agreement or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly as the context requires
"Requests for Information"	shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations
"Sensitive Commercial Information"	means the subset of Confidential Information comprising information which is provided by the Provider to the Authority in confidence and/or which constitutes a trade secret
"Services"	means the services specified in the Provider's tender and also in the Service Level Agreement agreed between the Provider and the Authority
"Service Level Agreement"	means the written agreement between the Authority and the Provider listing details of the service delivery, key performance indicators, management information and such other matters as are agreed between

	the parties as a basis for management of the Contract
"Specific Change in Law"	means a change in Law which comes into effect after the date of this Contract that specifically relates to the business of the Authority and which would not affect a comparable supply of services of the same or similar nature to the supply of Services
"Staff"	means all persons employed by the Provider together with the Provider's servants, agents and sub-contractors used in the performance of the Contract
"Working Days"	means Monday to Friday inclusive, excluding English public and bank holidays
"Year"	means a calendar year

PART A: CONTRACT ARRANGEMENTS AND AWARD PROCEDURE
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1. TERM OF CONTRACT

- 1.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Term of the Contract unless:
- 1.1.1 It is extended under the terms of this Contract
 - 1.1.2 It is otherwise terminated in accordance with the terms of this Contract; or
 - 1.1.3 It is otherwise lawfully terminated.
- 1.2 The commencement date for the Contract shall be as follows unless agreed otherwise by the Parties:
- 1 November 2026.
- 1.3 Subject to **Clause** 1.1 above, the contract shall have a term of three years with a clause to be able to alter style or colour of lighting.

2. SCOPE OF CONTRACT

- 2.1 This Contract governs the provision of the Services by the Provider to the Authority.
- 2.2 The Contract shall include the agreed Pricing Schedule submitted by the Provider.

3. AWARD CRITERIA

- 3.1 The criteria used by the Authority in evaluating this tender are shown in Part 1 of the tender documentation.

PART B: PROVIDER'S GENERAL OBLIGATIONS

4. WARRANTIES AND REPRESENTATIONS

4.1 The Provider warrants and represents to the Authority that:

4.1.1 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 to perform this Contract and that this Contract is executed by a duly authorised representative of the Provider;

4.1.2 as at the date hereof, all information contained in its tender for the Services remains true, accurate, and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Contract;

4.1.3 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Contract;

4.1.4 it has not caused or induced any person to enter such agreement referred to in **Clause** 4.1.3 above;

4.1.5 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Contract;

4.1.6 it has not committed any offence under the Bribery Act 2010;

4.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, or, to the best of its knowledge 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 this Contract which may be entered with the Authority;

4.1.8 it is not subject to any contractual obligation, compliance with which will be likely to have a material adverse effect on its ability to perform its obligations under this Contract which may be entered with the Authority;

4.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of their knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, authority or similar officer in relation to any of the Provider's assets or revenue; and

4.1.10 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Contract and the use of the Services by the Authority; and

4.1.11 in the **three (3) years** prior to the date of this Contract:

- (a) 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;
- (b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
- (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Provider's position as an ongoing business concern or its ability to fulfil its obligations under this Contract.

5. CORRUPT GIFTS AND CONSIDERATIONS

5.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority 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 for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Provider is drawn to the criminal offences under the Bribery Act 2010.

5.2 Where the Provider or the Staff or any person acting on the Provider's behalf, engages in conduct prohibited by **Clause** 5.1 above in relation to this Contract or any other contract with the Authority, the Authority has the right to:

5.2.1 terminate the Contract in accordance with **Clause** 19.1 and recover from the Provider the amount of any loss suffered by the Authority resulting from the termination; or

5.2.2 recover in full from the Provider any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Contract has been terminated.

5.3 In exercising its rights or remedies under **Clause** 5.2 above, the Authority shall act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act.

6. CONTRACT CAPACITY

- 6.1 The Provider shall at all times during the Term of the Contract, maintain capacity and the organisational and technical ability to provide the Services in accordance with this Contract.

7. CONFLICTS OF INTEREST

- 7.1 The Provider shall take appropriate steps to ensure that neither the Provider nor the Staff is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority under the provisions of this Contract.
- 7.2 The Provider shall promptly notify and provide full particulars to the Authority if such conflict referred to in **Clause 7.1** above arises or is reasonably foreseeable to arise.

8. SAFEGUARD AGAINST FRAUD

- 8.1 The Provider shall safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Provider or its Staff. The Provider 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. STATUTORY REQUIREMENTS

- 9.1 The Provider shall notify the Authority upon request of all statutory provisions and approved safety standards applicable to the provision and performance of the Services.
- 9.2 The Provider shall be responsible for obtaining all licences, consents or permits to fulfil all statutory provisions and approved safety standards required for the performance of this Contract.
- 9.3 The Provider shall inform the Authority if the Services under that Contract are hazardous to health or safety and of the precautions that should be taken in respect thereto.
- 9.4 The Provider shall take all measures necessary to comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff in the performance of this Contract.

10. ENVIRONMENTAL REQUIREMENTS

- 10.1 The Provider shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services provided under Contract to the Authority. Without prejudice to the generality of the foregoing, the Provider shall promptly

provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.

- 10.2 The Provider shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this **Clause 10** by the Provider.

11. NON-DISCRIMINATION

- 11.1 The Provider shall not unlawfully discriminate within the meaning and scope of those provisions of the Equality Act 2010 which are in force at the time or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment and / or service provision.

- 11.2 The Provider shall take all reasonable steps to secure the observance of the provisions of **Clause 11.1** by its employees, staff, agents and sub-contractors employed in the execution of this Contract. This will include appropriate, timely and regular training of all employees, staff, agents and sub contractors.

- 11.3 Equal Opportunities

The Contractor shall keep his equal opportunities policy in force for the duration of the Contract to comply with statutory obligations. Any findings of unlawful discrimination against the Contractor during the three years prior to the commencement of the Contract shall be reported to the Authority, together with details of the steps taken to avoid repetition.

- 11.4 Protection of Children and Vulnerable Adults

The Authority and its staff, elected members and volunteers should undertake reasonable care that contractors doing work on behalf of the Council are monitored appropriately. Any Contractor or sub-contractor engaged by the Council in areas where their staff are likely to come into contact with children or vulnerable adults should have their own equivalent Children and Vulnerable Adult Safeguarding Policy, or failing this, comply with the terms of the Authority's policy.

Where there is potential for contact with children or vulnerable adults it is the responsibility of the Authorised Officer to check that the correct DBS checks have been satisfactorily completed by the Contractor including in respect of any sub-contractors and agency staff employed by the Contractor.

PART C: PROVIDER'S INTELLECTUAL PROPERTY OBLIGATIONS

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Save as granted under this Contract, neither the Authority nor the Provider shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 12.2 The Provider shall procure that the provision of the Services and the performance of the Provider's responsibilities hereunder shall not infringe any Intellectual Property Rights of any third party.
- 12.3 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services or the performance of the Provider's responsibilities hereunder, except to the extent that such liabilities have resulted directly from the Authority's failure properly to observe its obligations under this **Clause 12**.
- 12.4 The Provider shall promptly notify the Authority if any claim or demand is made or action brought against the Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability of the Services hereunder.
- 12.5 The Authority shall promptly notify the Provider if any claim or demand is made or action brought against the Authority to which **Clause 12.3** or **Clause 12.4** may apply. The Provider shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Authority hereby agrees to grant to the Provider exclusive control of any such litigation and such negotiations.
- 12.6 The Authority shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which **Clause 12.3** may apply or any claim or demand made or action brought against the Provider to which **Clause 12.4** may apply. The Provider shall reimburse the Authority for all costs and expenses (including, legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 12.7 If a claim or demand is made or action brought to which **Clause 12.3** may apply, or in the reasonable opinion of the Provider is likely to be made or brought, the Provider may at its own expense and within a reasonable time either:

- 12.7.1 modify any or all of the Services without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted items or services and such substitution shall not increase the burden on the Authority; or
- 12.7.2 procure a licence to use the Services on terms that are reasonably acceptable to the Authority.
- 12.8 In the event that the Provider has availed itself of its rights to modify the Services or to supply a substitute service or services pursuant to **Clause** 12.7.1 or to procure a licence under **Clause** 12.7.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the Provider shall have no further liability thereafter under this **Clause** 12 in respect of the said claim, demand or action.
- 12.9 In the event that a modification or substitution in accordance with **Clause** 12.7.1 is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with **Clause** 12.7.2 the Authority shall be entitled to delete the relevant Service from being available in relation to the relevant Price Matrices where applicable.
- 12.10 This **Clause** 12 sets out the entire financial liability of the Provider with regard to the infringement of any Intellectual Property Right by the availability of the Services hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.
- 12.11 The Authority warrants that the Provider's use of any third party item supplied directly or indirectly by the Authority in accordance with any instructions given by the Authority in connection with the use of such item shall not cause the Provider to infringe any third party's Intellectual Property Rights in such item.

PART D: PROVIDER'S INFORMATION OBLIGATIONS

13. PROVISION OF MANAGEMENT INFORMATION

- 13.1 The Provider shall, at no charge to the Authority, submit management information to the Authority in accordance with the provisions of the Authority's Service Level Agreement throughout the Term of the Contract.
- 13.2 The Authority may share the management information supplied by the Provider with any Contracting Body.
- 13.3 The Provider shall, at no charge to the Authority, submit management information to the Authority in accordance with the provisions of the Service Level Agreement agreed between the Authority and the Provider throughout the Term of the Contract.

14. RECORDS AND AUDIT ACCESS

- 14.1 The Provider shall keep and maintain until twelve years after the termination or expiry (whichever is the earlier) of this Contract, full and accurate records and accounts of the operation of this Contract including the Services provided under it, the Contracts entered into with Authority and the amounts paid by the Authority.
- 14.2 The Provider shall keep the records and accounts referred to in **Clause 14.1** above kept in accordance with good accountancy practice and shall be audited by qualified auditors as and when required to support published annual accounts.
- 14.3 The Provider shall on request afford the Authority and its representatives such access to such records and accounts as may be required by the Authority from time to time.
- 14.4 The Provider shall provide such records and accounts together with copies of the Provider's published accounts during the Term to the Authority and its internal and external auditors on reasonable written notice.

15. CONFIDENTIALITY

- 15.1 Each Party:
- 15.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- 15.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written

consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

15.2 The Provider shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:

15.2.1 is given only to such of its staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;

15.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Contract.

15.3 The Provider shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.

15.4 The provisions of **Clauses** 15.1 to 15.3 shall not apply to any Confidential Information received by one Party from the other:

15.4.1 which is or becomes public knowledge (otherwise than by breach of this clause);

15.4.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

15.4.3 where acquired from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

15.4.4 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to **Clause** 17.

15.5 Nothing in this clause shall prevent the Authority:

15.5.1 disclosing any Confidential Information for the purpose of:

(a) the examination and certification of the Authority's accounts; or

(b) any examination pursuant to Sections 44 and 46 of the Local Audit and Accountability Act 2014 of the

economy, efficiency and effectiveness with which the Authority has used its resources; or

15.5.2 disclosing any Confidential Information obtained from the Provider:

- (a) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- (b) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

15.6 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

16. DATA PROTECTION

16.1 The Provider shall (and shall procure that any of its Staff involved in the operation of the Contract) comply with any notification requirements under the DPA

16.2 Notwithstanding the general obligation in **Clause** 16.1, where the Provider is processing personal data (as defined by the DPA) as a data processor for the Authority (as defined by the DPA) the Provider shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in schedule 1 to the DPA; and

- 16.2.1 provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Provider is complying with its obligations under the DPA;
 - 16.2.2 promptly notify the Authority of any breach of the security measures required to be put in place pursuant to **Clause 16.1**; and
 - 16.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the DPA.
- 16.3 The provisions of this clause shall apply during the Term and indefinitely after its expiry or termination

17. FREEDOM OF INFORMATION

- 17.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Provider's expense) to enable the Authority to comply with these Information disclosure requirements.
- 17.2 The Provider shall and shall procure that its sub-contractors shall:-
- 17.2.1 transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
 - 17.2.2 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 requesting that Information; and
 - 17.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 17.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 17.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - 17.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Provider respond directly to a

Request for Information unless expressly authorised to do so by the Authority.

17.4 The Provider acknowledges that the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:

17.4.1 without consulting with the Provider, or

17.4.2 following consultation with the Provider and having taken its views into account.

17.5 The Provider shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

17.6 The Provider acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with **Clause 17.4**.

18. PUBLICITY

18.1 The Provider shall not make any press announcements or publicise this Contract in any way without the Authority's prior written consent. The Provider shall ensure the observance of the provisions of this **Clause 18** by the Staff.

18.2 The Authority shall be entitled to publicise this Contract in accordance with any legal obligation upon the Authority, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

18.3 The Provider shall not do anything to cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

PART E: TERMINATION AND SUSPENSION

19. TERMINATION

19.1 Termination on Corruption

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in such notice where the conduct prohibited in **Clause 5.1** has occurred.

19.2 Termination on Default

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in such notice where the Provider commits a Default and:

19.2.1 the Provider has not remedied the Default to the satisfaction of the Authority within **25 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

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

19.2.3 the Default is a material breach.

19.3 Termination on Consistent Failure

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in such notice where a Consistent Failure has occurred.

19.4 Termination on loss of Ability or Capacity

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in such notice where there has been, in the Authority's opinion, a loss of ability or capacity.

19.5 Termination on Financial Standing

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in such notice where in the reasonable opinion of the Authority, there is a material detrimental change in the financial standing and/or the credit rating of the Provider which impacts on the Provider's ability to supply Services under this Contract.

19.6 Termination on Insolvency

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in such notice where one of the following insolvency events occurs in relation to the Provider:

- 19.6.1 the Provider is an individual or a firm and a petition is presented for the Provider's bankruptcy, or a criminal bankruptcy order is made against the Provider or any partner in the firm, or the Provider or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Provider's or firm's affairs; or
- 19.6.2 the Provider is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- 19.6.3 where the Provider is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 19.6.4 any similar event occurs under the law of any other jurisdiction.

19.7 Termination on Legislative Change

The Authority may terminate the Contract by serving notice on the Provider in writing with effect from the date specified in the event of significant legislative changes to the statutory functions or powers of the Authority such that the provisions of this Contract are or will be rendered incapable of operation.

19.8 Termination by the Authority or the Provider

The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving **three (3) Months'** written notice to the Provider.

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

20. SUSPENSION OF PROVIDER'S APPOINTMENT

- 20.1 Without prejudice to the Authority's rights to terminate the Contract in **Clause 19**, the Authority may suspend the Provider's appointment to supply Services to the Authority where a right to terminate the Contract arises in accordance with **Clause 19**.

21. CONSEQUENCES OF TERMINATION AND EXPIRY

- 21.1 Notwithstanding the service of a notice to terminate the Contract, the Provider shall continue to fulfil its obligations under the Contract until the date of expiry or termination of the Contract or such other date as required under this **Clause 21**.
- 21.2 Within **ten (10) Working Days** of the date of termination or expiry of the supply of Services under this Contract, the Provider shall return to the Authority any data and Confidential Information belonging to the Authority in the Provider's possession, power or control, either in its then current format or in a format nominated by the Authority (in which event the Authority will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Authority, save that it may keep one copy of any such data or information for a period of up to **twelve (12) Months** to comply with its obligations under the Contract, or such period as is necessary for such compliance.
- 21.4 The Authority shall be entitled to require access to data or information arising from the provision of the Services from the Provider until the expiry of a period of **twelve (12) Months** following termination or expiry of the Contract
- 21.5 The provisions of:
- 21.5.1 **Clause 4** (Warranties and Representations)
 - 21.5.2 **Clause 5** (Corrupt Gifts and Considerations)
 - 21.5.3 **Clause 11.2** (Non-Discrimination)
 - 21.5.4 **Clauses 12.2 to 12.5** (Intellectual Property Rights)
 - 21.5.5 **Clause 13** (Provision of Management Information)
 - 21.5.6 **Clause 14.1, 14.3 and 14.4** (Records and Audit Access)
 - 21.5.7 **Clause 15** (Confidentiality)
 - 21.5.8 **Clause 16** (Data Protection)
 - 21.5.9 **Clause 17** (Freedom of Information)

21.5.10 **Clause** 18.1 and Clause 18.2 (Publicity)

21.5.11 **Clause** 21 (Consequences of Termination and Expiry)

21.5.12 **Clause** 22 (Liability)

21.5.13 **Clause** 23 (Insurance)

21.5.14 **Clause** 32 (Waiver)

21.5.15 **Clause** 36 (Dispute Resolution)

(and without limitation to the foregoing, any other provision of the Contract which by its terms is to be performed or observed notwithstanding termination or expiry or which is expressed to survive termination or expiry) shall survive the termination or expiry of the Contract, together with any other provision which is either expressed to or by implication is intended to survive termination.

PART F: LIABILITY AND INSURANCE
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22. LIABILITY

- 22.1 Neither the Authority nor the Provider excludes nor limits liability to the other for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 or for fraud or fraudulent misrepresentation.
- 22.2 The Provider shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract 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 Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. This clause shall not apply to the extent that the Provider is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

23. INSURANCE

- 23.1 The Provider shall affect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Provider under this Contract including death or personal injury, or loss of or damage to property.
- 23.2 The Provider shall affect and maintain the following insurances for the duration of the Contract in relation to the performance of the Contract:
- 23.2.1 public and products liability insurance with a minimum limit of indemnity of **£10,000,000 (ten million pounds)** GBP for each individual claim or such higher limit as the Authority may reasonably require (and as required by law) to cover all risks in the performance of this Contract from time to time;
 - 23.2.2 employers' liability insurance with a minimum limit of indemnity of **£10,000,000 (ten million pounds)** GBP for each individual claim or such higher limit as the Authority may reasonably require (and as required by law) to cover all risks in the performance of this Contract from time to time;
 - 23.2.3 professional indemnity insurance with a minimum limit of indemnity of **£10,000,000 (ten million pounds)** GBP for each

individual claim or such higher limit as the Authority may reasonably require (and as required by law) from time to time.

- 23.3 Any excess or deductibles under such insurance (referred to in **Clause 23.1** and **Clause 23.2**) shall be the sole and exclusive responsibility of the Provider.
- 23.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities arising under the Contract.
- 23.5 The Provider shall produce to 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 premiums due under those policies.
- 23.6 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the Contract then the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 23.7 The Provider shall maintain the insurances referred to in **Clause 23.1** and **Clause 23.2** a minimum of **12 (twelve) years** following the expiration or earlier termination of the Contract.

PART G: OTHER PROVISIONS

24. ASSIGNMENT AND SUB-CONTRACTING

24.1 The Contract is personal to the Provider and the Provider shall not assign, novate, or otherwise dispose of the Contract or any part thereof without the previous consent in writing of the Authority.

24.2 The Authority shall be entitled to:

24.2.1 assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to any Contracting Authority; or

24.2.2 novate the Contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Authority;

provided that such assignment, novation or disposals shall not increase the burden of the Provider's obligations under the Contract.

24.3 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own in the performance of the Contract.

24.4 The Provider shall send copies of each sub-contract entered into the performance of the Contract upon request by the Authority.

24.5 The Provider shall not use the services of self-employed individuals for the performance of the Contract without prior approval of the Authority.

25. VARIATIONS TO THE CONTRACT

25.1 The Contract may not be varied except by written agreement signed by duly authorised officers of the Authority and the Provider.

26. FORCE MAJEURE

26.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event.

26.2 Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of **six (6) Months**, (notwithstanding

Clause 27.1) either Party may terminate the Contract by notice in writing with immediate effect.

- 26.3 Any failure or delay by the Provider in performing its obligations under the Contract which results from any failure or delay by the Staff shall be regarded as due to Force Majeure only if the relevant Staff concerned is itself impeded by Force Majeure from complying with an obligation to the Provider.
- 26.4 **Clause 26** does not affect the Authority's rights under **Clause 21**.
- 26.5 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in **Clause 27.3** it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 26.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

27. CHANGE IN LAW

- 27.1 The Provider shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Contract nor be entitled to an increase in prices in the Pricing Matrices and/or any charges payable by the Provider as the result of:-
- 27.1.1 a General Change in Law; or
- 27.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.
- 27.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in **Clause 27.1.2**), the Provider shall notify the Authority of the likely effects of that change, including:
- 27.2.1 whether any change is required to the Services, the rates in the Pricing Matrices or the Contract; and
- 27.2.2 whether any relief from compliance with the Provider's obligations is required, including any obligation to achieve any milestones or to meet any Service Level Agreement requirements at any time.

27.3 As soon as practicable after any notification in accordance with **Clause 27.2** the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Provider can mitigate the effect of the Specific Change of Law, including:

27.3.1 providing evidence that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

27.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Provider before it occurred;

27.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

27.3.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the prices in the Pricing Matrices.

28. RIGHTS OF THIRD PARTIES

28.1 The Contract shall not create any rights, under the Contracts (Rights of Third Parties) Act 1999 or otherwise, that shall be enforceable by anyone other than the Authority and/or the Provider.

29. STATUTORY INVALIDITY

29.1 The Authority and the Provider expressly agree that should any limitation or provision contained in the Contract be held to be invalid under any particular statute or law, or any rule, regulation or bye-law having the force of law, it shall to that extent be deemed to be omitted but, if the Authority or the Provider thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

30. SEVERABILITY

30.1 Subject to the provisions of **Clause 29**, 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 hereof shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated.

30.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Authority and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

31. REMEDIES CUMULATIVE

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

32. WAIVER

- 32.1 The failure of the Provider or the Authority to insist upon strict performance of any provision of the Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract.
- 32.2 A waiver of any default shall not constitute a waiver of any other default.

33. ENTIRE AGREEMENT

- 33.1 The Contract constitutes the entire understanding between the Authority and the Provider relating to the subject matter.
- 33.2 Neither the Authority nor the Provider has relied upon any representation or promise except as expressly set out in the Contract.
- 33.3 **Clauses** 34.1 and 34.2 shall not apply to any representations made by the Provider as part of the tender process.
- 33.4 Without prejudice to the generality of the foregoing, save as expressly provided in the Contract and with the exception of statements made fraudulently, the Authority gives no promise, warranty, undertaking or representation to the Provider.

34. NOTICES

- 34.1 Except as otherwise expressly provided, no 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 sending such communication.
- 34.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given **two (2) Working Days** after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the

other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

35. COMPLAINTS HANDLING AND RESOLUTION

- 35.1 Without prejudice to any rights and remedies that a complainant may have at law, including under the Contract, and without prejudice to any obligation of the Provider to take remedial action under the provisions of the Contract, the Provider shall use all reasonable endeavours to resolve the Complaint and in so doing, shall deal with the complaint fully, expeditiously and fairly.
- 35.2 Within **three (3) Working Days** of a request by the Authority, the Provider shall provide full details of a Complaint to the Authority, including details of steps taken to its resolution.

36. DISPUTE RESOLUTION

- 36.1 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 finance director (or equivalent) of each Party.
- 36.2 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.
- 36.3 If the dispute cannot be resolved by the Parties pursuant to **Clause 36.1** the dispute shall be referred to mediation pursuant to the procedure set out in **Clause 36.5** unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Provider does not agree to mediation.
- 36.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Provider shall (and shall ensure the Staff) comply fully with the requirements of the Contract at all times.
- 36.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 36.5.1 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 **10 Working Days** after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within **10 Working Days** from the date of the proposal to appoint a Mediator or within **10 Working Days** of notice to

either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.

- 36.5.2 The Parties shall within **10 Working Days** of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 36.5.3 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.
- 36.5.4 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.
- 36.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. 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.
- 36.5.6 If the Parties fail to reach agreement in the structured negotiations within **60 Working Days** of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

37. LAW AND JURISDICTION

- 37.1 Subject to the provisions of Clause 36 the Authority and the Provider accept the exclusive jurisdiction of the English courts and agree that the Contract is to be governed by and construed according to English law.