

Date:

## A Services Concession Contract

Between

The Lord Chancellor

And

Marsh Limited

**This contract is dated:**

**PARTIES:**

(1) THE LORD CHANCELLOR of 102 Petty France, London, SW1H 9AJ (the “**Authority**”);

**AND**

(2) MARSH LIMITED with registered company number 01507274 whose registered office is 1 Tower Place, London, EC3R 5BU (the “**Concessionaire**”)

(each a “**Party**” and together the “**Parties**”).

**WHEREAS**

- A. The Authority wishes to appoint the Concessionaire to supply surety bonds and associated services to Guardians of Missing Persons property and financial affairs (as defined in the Guardianship (Missing Persons) Act 2017 via a concession awarded pursuant to this contract.
- B. The Concessionaire represented to the Authority that it is capable of delivering the Services in accordance with the Authority's requirements set out in its Invitation to Tender and, in particular, the Concessionaire made representations to the Authority in its Tender in relation to its competence, professionalism and ability to provide the Services in an efficient and cost-effective manner.
- C. On the basis of the Concessionaire's tender, the Authority enters into this contract with the Concessionaire to provide the services.

**IT IS HEREBY AGREED**

**A GENERAL**

**A1 Definitions and Interpretation**

Unless the context otherwise requires the following terms shall have the meanings given to them below:

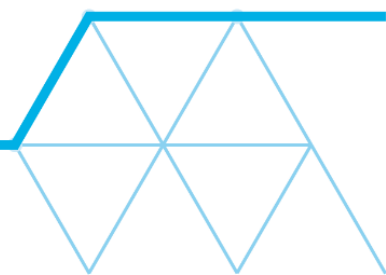
“**Act**” means the Guardianship (Missing Persons) Act 2017.

“**Affected Party**” means the Party seeking to claim relief in respect of a Force Majeure Event.

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time.

“**Approval**” and “**Approved**” means the prior written consent of the Authority.

“**Authorised Representative**” means the Authority representative named in a CCN as authorised to approve agreed Changes.



**“Authorised Deposit Taker”** means:

- (a) a person who has permission under Part 4 of the FSMA to accept deposits; and
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the FSMA, which has permission under paragraph 15 of that Schedule to accept deposits.

**“Authorised Insurance Company”** means:

- (a) a person who has permission under Part 4 of the FSMA to effect or carry out contracts of insurance;
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the FSMA, which has permission under paragraph 15 of that Schedule to effect or carry out contracts of insurance; and
- (c) a person who carries on insurance market activity (within the meaning given in section 316(3) of the FSMA).

**“BPSS”** means the Government’s Baseline Personnel Security Standard for Government employees.

**“CCN”** means a change control notice in the form set out in Schedule 3.

**“Change”** means a change in the Specification or any of the terms or conditions of the Contract.

**“Change in Law”** means any change in Law which affects the performance of the Services which comes into force after the Commencement Date.

**“Commencement Date”** means the date specified in clause A5.1.

**“Commercially Sensitive Information”** means information relating to:

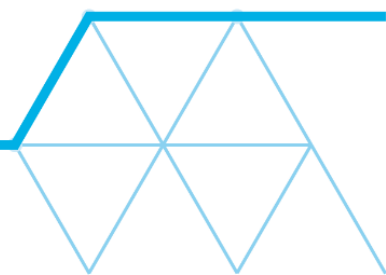
- (a) the Fees; and/or
- (b) the Concessionaire’s business and investment plans

which the Concessionaire has informed the Authority would cause the Concessionaire significant commercial disadvantage or material financial loss if it was disclosed.

**“Comparable Supply”** means the supply of services to another customer of the Concessionaire which are the same or similar to any of the Services.

**“Concession”** means the concession granted under the Contract to provide the Services to Guardians in accordance with the Specification.

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



- (a) was public knowledge at the time of disclosure otherwise than by breach of clause E3;
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Contract”** means these terms and conditions, the attached Schedules and any other documents the Parties expressly agree are included.

**“Contracting Authority”** means any contracting authority (other than the Authority) as defined in regulation 4 of the Public Contract Regulations 2015.

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

**“Controller”** means as it is defined in the GDPR.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and **“Crown Body”** is an emanation of the foregoing.

**“Data Loss Event”** means a breach of any system containing Personal Data that causes unauthorised access to Personal Data, actual or potential loss of Personal Data.

**“Data Protection Impact Assessment”** means an assessment by the Controller of the effect of the envisaged processing on the protection of Personal Data.

**“Data Protection Laws”** means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and the GDPR.

**“Data Subject”** means as it is defined in the GDPR.

**“Data Subject Request”** means a request made by a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access his or her Personal Data.

**“Default”** means any breach of the obligations or warranties of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.



**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

**“EEA”** means the European Economic Area.

**“EIR”** means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“End Date”** means the date specified in clause A5.1.

**“Extension”** has the meaning given in clause A5.2.

**“Fees”** means the fees the Concessionaire will charge Guardians for Services set out in Schedule 2.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under that 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 Event”** means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Concessionaire or the Staff or any other failure in the Concessionaire’s supply chain.

**“FSMA”** means the Financial Services and Markets Act 2000.

**“GDPR”** means the General Data Protection Regulation (Regulation (EU) 2016/679).

**“General Anti-Abuse Rule”** means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid NICs.

**“General Change in Law”** means a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Concessionaire) or which affects or relates to a Comparable Supply.

**“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.

**“Government”** means Her Majesty’s government of the United Kingdom.

**“Guardian”** means a person appointed by the High Court of England and Wales pursuant to the Act.

**“Halifax Abuse Principle”** means the principle explained in the CJEU Case C-255/02 Halifax and others.

**“HMRC”** means HM Revenue & Customs.

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

**“ITT”** means the invitation to tender issued by the Authority in relation to the Contract.

**“ITEPA”** means the Income Tax (Earnings and Pensions) Act 2003.

**“Law”** means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Concessionaire is bound to comply.

**“Losses”** means losses, liabilities, damages, costs, fines and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise.

**“Material Breach”** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses D1, E1, E2, E3, E7 or I4.

**“MI Reports”** mean the management information reports described in Schedule 1.

**“Month”** means calendar month.

**“NICs”** means National Insurance Contributions.

**“Occasion of Tax Non-Compliance”** means:

- (a) any tax return of the Concessionaire submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
  - i) a Relevant Tax Authority successfully challenging the Concessionaire under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or



legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- ii) the failure of an avoidance scheme which the Concessionaire was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Concessionaire submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

**“OPG”** means Office of the Public Guardian, an executive agency of the Ministry of Justice.

**“Personal Data”** means as it is defined in the GDPR.

**“Process”** means as it is defined in the GDPR.

**“Prohibited Act”** means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
  - i) induce that person to perform improperly a relevant function or activity; or
  - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- (c) an offence:
  - i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act;
  - ii) under legislation or common law concerning fraudulent acts; or
  - iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization (ISO) 9001:2015, 22301:2012, 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 Concessionaire would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

**“Regulations”** means the Concession Contracts Regulations 2016 (SI 2016/273) (as amended).

**“Regulatory Body”** means a government department 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.

**“Regulator Correspondence”** means any correspondence from the Information Commissioner's Office, or any successor body, in relation to the Processing of Personal Data under the Contract.

**“Relevant Requirements”** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

**“Relevant Tax Authority”** means HMRC or, if applicable, a tax authority in the jurisdiction in which the Concessionaire is established.

**“Replacement Concessionaire”** means any third party contractor appointed by the Authority to provide any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**“Request for Information”** means a request for information under the FOIA or the EIR.

**“Restricted Country”** means:

- a) any country outside the EEA; and
- b) any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC.

**“Returning Employees”** means those persons agreed by the Parties to be employed by the Concessionaire (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Term.

**“Services”** means the services set out in Schedule 1 (including any modified or alternative services) that the Concessionaire is required to provide in respect of the Contract.

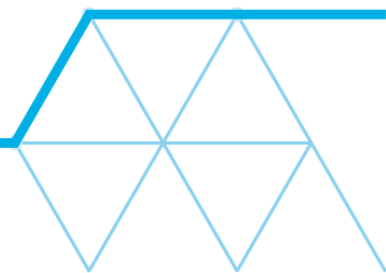
**“Specific Change in Law”** means a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

**“Specification”** means the description of the Services to be provided under the Contract as set out in Schedule 1 including, where appropriate, the Quality Standards.

**“SSCBA”** means the Social Security Contributions and Benefits Act 1992.

**“Staff”** means all persons employed by the Concessionaire to perform its obligations under the Contract together with the Concessionaire's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

**“Sub-Contract”** means a contract between two or more suppliers, at any stage of remoteness from the Authority in a sub-contracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.





**“Surety Bond”** means an on-demand guarantee and indemnity which is provided to a Guardian in writing by an Authorised Insurance Company or an Authorised Deposit Taker as required by and in accordance with the Public Guardians Regulations 2007.

**“Tender”** means the Concessionaire’s tender submitted in response to the ITT for offers to supply the Services.

**“Term”** means the period from the Commencement Date to the End Date or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

**“TFEU”** means the Treaty on the Functioning of the European Union.

**“Treaties”** means the TFEU and the Treaty on European Union.

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

**“TUPE Information”** means the information set out in clause B3.1.

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

*In the Contract, unless the context implies otherwise:*

- (a) the singular includes the plural and vice versa unless the context requires otherwise;
- (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) references to a person include natural persons, a company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) the Schedules form an integral part of the Contract and have effect as if set out in full in the body of the Contract. A reference to the Contract includes the Schedules;
- (h) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;



- (i) references to the Contract are references to the Contract as amended from time to time; and
- (j) the definitions of Authorised Deposit Taker and Authorised Insurance Company are to be read with:
  - (a) section 22 of the FSMA;
  - (b) any relevant order under section 22 of the FSMA; and
  - (c) Schedule 2 to the FSMA.

## **A2 Authority Obligations**

Save as otherwise expressly provided, the Authority's obligations under the Contract are the Authority's obligations in its capacity as a contracting counterparty and nothing in the Contract operates as an obligation upon, or in any other way fetters or constrains, the Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Concessionaire.

## **A3 Concessionaire's Status**

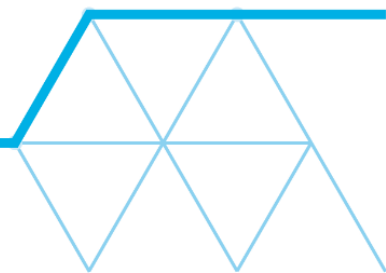
- A3.1 The Concessionaire is an independent contractor and nothing in the Contract creates a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party is authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Contract.
- A3.2 The Concessionaire shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead another person to believe that the Concessionaire is acting as the agent or employee of the Authority.

## **A4 Mistakes in Information**

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

## **A5 Term**

- A5.1 The Services will commence on 29 July 2019 (the "**Commencement Date**") and the Contract will end on 28 July 2021 (the "**End Date**") unless it is terminated early in accordance with the Contract.
- A5.2 The Authority may extend the term of the Contract in one-year periods until 28 July 2023 ("**Extension**"). The terms of the Contract will apply throughout the period of any Extension.



## **B. THE SERVICES CONCESSION**

### **B1 Basis of the Contract**

- B1.1 In consideration of the Concessionaire being granted the right by the Authority to operate the Concession, the Concessionaire shall supply the Services and perform its obligations under the Contract.
- B1.2 The Concessionaire shall operate the Concession:
- (a) in a timely and professional manner;
  - (b) in accordance with the Specification; and
  - (c) in accordance with the timescales and KPIs listed in Schedule 1.
- B1.3 The Concessionaire shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - (b) in accordance with Good Industry Practice; and
  - (c) in compliance with all applicable Laws.
- B1.4 The Concessionaire 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 no quality standards have been specified in the Contract, the Concessionaire shall agree the relevant quality standard with the Authority prior to the commencement of supply of the Services, and, in any event, the Concessionaire shall operate the Concession in accordance with the Law and Good Industry Practice.
- B1.5 The Concessionaire shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Concessionaire shall ensure that those Staff are properly managed and supervised.
- B1.6 During the Term, the Concessionaire shall:
- (a) at all times have all licences, approvals and consents necessary to enable the Concessionaire and Staff to operate the Concession in accordance with this Contract;
  - (b) provide all premises, facilities and resources (or procure the provision of the same) necessary for the operation of the Concession; and
  - (c) not, in operating the Concession, in any manner endanger the safety or convenience of the public.



- B1.7 The Authority shall not be a party to any contract entered into between a Guardian and the Concessionaire and shall not act as an agent or employee of the Concessionaire in relation to such contract.
- B1.8 The terms and conditions contained in the Contract apply to the exclusion of any other terms and conditions the Concessionaire seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- B1.9 The Concessionaire hereby acknowledges that the Authority does not guarantee an exclusive right to provide a Surety Bond to all Guardians who may need one. Guardians may choose to use acquire a Surety Bond from the Concessionaire or any other provider of Surety Bonds available.

## **B2 Due Diligence**

Save as the Authority may otherwise direct, the Supplier is deemed to have completed due diligence in relation to all matters connected with the performance of its obligations under the Contract before submitting its Tender.

## **B3 Employment**

- B3.1 No later than 12 Months prior to the end of the Term, the Concessionaire shall fully and accurately disclose to the Authority all information the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment/engagement terminates at the end of the Term, save for any operation of Law;
  - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B3.1 (a);
  - (c) the terms and conditions of employment/engagement of the Staff referred to in clause B3.1 (a), their job titles and qualifications;
  - (d) their immigration status;
  - (e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
  - (f) details of all collective agreements with a brief summary of the current state of negotiations with any such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- B3.2 At intervals determined by the Authority (which shall not be more frequent than once every 30 days) the Concessionaire shall give the Authority updated TUPE Information.
- B3.3 Each time the Concessionaire supplies TUPE Information to the Authority it warrants its completeness and accuracy and the Authority may assign the benefit of this warranty to any Replacement Concessionaire.



- B3.4 The Authority may use TUPE Information it receives from the Concessionaire 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 Term. The Concessionaire shall provide the Replacement Concessionaire with such assistance as it shall reasonably request.
- B3.5 If TUPE applies to the transfer of the Services on termination or partial termination of the Contract, the Concessionaire indemnifies and keeps indemnified the Authority, the Crown and any Replacement Concessionaire against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Concessionaire may suffer or incur as a result of or in connection with:
- (a) the provision of TUPE Information;
  - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to EU Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Concessionaire or any Sub-Contractor in respect of any Returning Employee on or before the end of the Term;
  - (c) any failure by the Concessionaire or any Sub-Contractor 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 Authority or a Replacement Concessionaire to comply with its duties under regulation 13 of TUPE;
  - (d) 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 Returning Employees arising from or connected with any failure by the Concessionaire or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
  - (e) any claim by any person who is transferred by the Concessionaire to the Authority and/or a Replacement Concessionaire whose name is not included in the list of Returning Employees.
- B3.6 If the Concessionaire is aware that TUPE Information has become inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date and accurate TUPE Information.
- B3.7 This clause B3 applies during the Term and indefinitely thereafter.
- B3.8 The Concessionaire undertakes to the Authority that, during the 12 Months prior to the end of the Term the Concessionaire shall not (and shall procure that any Sub-Contractor shall not) without Approval (such Approval not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Concessionaire and the Staff 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);



- (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- (c) transfer away, remove, reduce or vary the involvement of any other Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the delivery of the Services by the Concessionaire, (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services); or
- (d) 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.

## **C PAYMENT**

### **C1 Fees**

- C1.1 The Concessionaire shall provide Services via the Concession at its own cost and expense and the Authority shall have no obligation under the Contract in respect of any payment for Services or for any liability if the Concessionaire is unable to recover its costs in operating the Concession including supplying Services. Risk in the operation of the Concession vests in the Concessionaire.
- C1.2 The amounts charged to Guardians for the provision of Services by the Concessionaire shall not exceed the Fees.
- C1.3 Any revenue received from the operation of the Concession may be retained by the Concessionaire. The Concessionaire shall be responsible for the payment of any taxes, including VAT if applicable, and shall comply with the provision of clause E7.
- C1.4 Subject to clause F4 the Fees shall apply for the Term including any Extension.

## **D. STATUTORY OBLIGATIONS**

### **D1 Fraud and Bribery**

- D1.1 The Concessionaire represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:
  - (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- D1.2 The Concessionaire shall not during the Term:



- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Concessionaire shall, during the Term:

- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Concessionaire shall immediately notify the Authority in writing if it becomes aware of any breach of clauses D1.1 and/or D1.2, or has reason to believe that it has or any of the Staff have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Concessionaire notifies the Authority pursuant to clause D1.4, the Concessionaire shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, records and/or any other relevant documentation.

D1.6 If the Concessionaire is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

- (a) require the Concessionaire to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract terminates).





## **D2 Equality**

D2.1 The Concessionaire shall:

- (a) perform its obligations under the Contract in accordance with:
  - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
  - ii) the Authority's equality and diversity policy as given to the Concessionaire from time to time;
  - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

## **D3 Health and Safety**

D3.1 The Concessionaire shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Authority's health and safety policy while at Authority premises.

D3.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at Authority premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Concessionaire shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

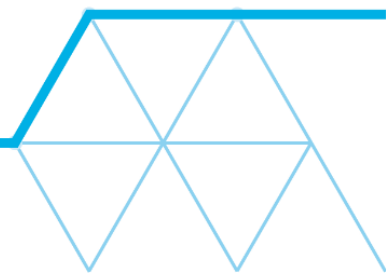
## **D4 Modern Slavery Act**

D4.1 The Concessionaire shall, and procure that each of its Sub-Contractors shall, comply with:

- (a) all applicable laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 ("**Slavery Act**"); and
- (b) the Authority's anti-slavery policy as provided to the Concessionaire from time to time ("**Anti-slavery Policy**").

D4.2 The Concessionaire shall:

- (a) implement due diligence procedures for its Sub-Contractors and other participants in its supply chains, to ensure that there is no slavery or trafficking in its supply chains;





- (b) respond promptly to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;
- (c) prepare and deliver to the Authority each year, an annual slavery and trafficking report setting out the steps it has taken to ensure that slavery and trafficking is not taking place in any of its supply chains or in any part of its business;
- (d) maintain a complete set of records to trace the supply chain of all Services provided to the Authority in connection with the Contract; and
- (e) implement a system of training for its employees to ensure compliance with the Slavery Act.

D4.3 The Concessionaire represents, warrants and undertakes on an ongoing basis during the Term that:

- (a) it conducts its business in a manner consistent with all applicable laws, regulations and codes including, the Slavery Act and all analogous legislation in place in any part of the world;
- (b) its responses to all slavery and trafficking due diligence questionnaires issued to it by the Authority from time to time are complete and accurate;
- (c) neither the Concessionaire nor any of its Staff or any other persons associated with it:
  - i) has been convicted of any offence involving slavery and trafficking; or
  - ii) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence in connection with slavery and trafficking.

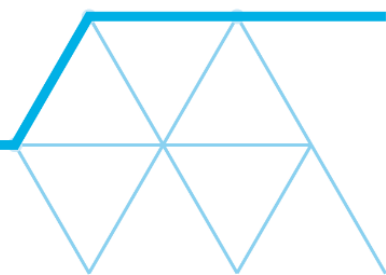
D4.4 The Concessionaire shall notify the Authority as soon as it becomes aware of:

- (a) any breach, or potential breach, of the Anti-Slavery Policy; or
- (b) any actual or suspected slavery or trafficking in a supply chain which is connected with the Contract.

D4.5 If the Concessionaire notifies the Authority pursuant to clause D4.4, it shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with the Contract.

D4.6 If the Concessionaire is in Default under clauses D4.2 or D4.3 the Authority may by notice:

- (a) require the Concessionaire to remove from performance of the Contract any Staff or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate the Contract.



## **E PROTECTION OF INFORMATION**

### **E1 Data Protection and Privacy**

E1.1 The Concessionaire shall:

- (a) (and shall procure that all its Staff) comply with any notification requirements under Data Protection Laws and both Parties will duly observe all their obligations under Data Protection Laws which arise in connection with the Contract;
- (b) in conjunction with the Authority, in its own right and in respect of the Services, make all necessary preparations to ensure it is compliant with Data Protection Laws; and
- (c) provide the Authority with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations in this clause E1.

E1.2 Notwithstanding the obligation in clause E1.1, the Concessionaire shall:

- (a) prior to the processing of any Personal Data and if requested by the Authority provide a Data Protection Impact Assessment to the Authority which shall include;
  - i. a systematic description of the envisaged processing operations and the purpose of the processing;
  - ii. an assessment of the necessity and proportionality on the processing operations in relation to the Services;
  - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data
- (b) implement and maintain 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;
- (c) process the Personal Data only to the extent and in such manner as is necessary for the provision of the Concessionaire's obligations under the Contract or as required by Law or any Regulatory Body;
- (d) maintain a record of all categories of processing activities carried out pursuant to the Contract containing, where applicable, any transfers of Personal Data to Restricted Countries or an international organisation.

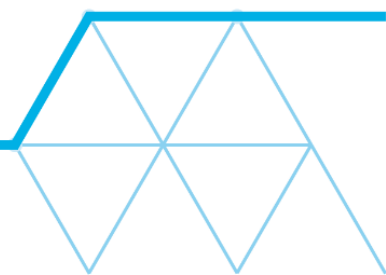


- (e) take all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that Staff:
  - i) are aware of and comply with the Concessionaire's obligations in clauses E1 and E3;
  - ii) are subject to appropriate confidentiality undertakings;
  - iii) are informed of the confidential nature of the Personal Data; and
  - iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (f) not disclose or transfer the Personal Data to, or allow the processing of Personal Data by any Sub-Contractor and/or Affiliates for the provision of the Services without appropriate approval;
- (g) notify the Authority within 48 hours if it:
  - i) receives from a Data Subject (or third party on their behalf): a Data Subject Request (or purported Data Subject Request); a request to rectify, block or erase any Personal Data; or any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - ii) receives any Regulator Correspondence or any other any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Contract; or
  - iii) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.

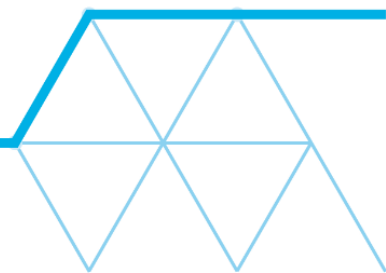
E1.3 The Concessionaire shall cooperate with and assist the Authority (within the timescales reasonably required by the Authority) in relation to either Party's obligations under Data Protection Laws or any complaint, communication or request made pursuant to clause E1.2, including by promptly providing:

- (a) full details and copies of the complaint, communication or request;
- (b) if applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Request within the relevant timescales set out in the Data Protection Laws; and
- (c) assistance following a Data Loss Event as required by the Authority including with respect to the conduct of a data protection impact assessment and the Authority's consultation with the Information Commissioner's Office.

E1.4 The Concessionaire shall, if requested by the Authority, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause E1 and provide to the Authority copies of all documentation relevant to such compliance including, processing records, procedures, guidance, training and manuals.



- E1.5 The Concessionaire shall allow the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E8 (Audit), the Concessionaire's processing activities (and/or those of Staff) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Concessionaire is in full compliance with its obligations under the Contract.
- E1.6 The Concessionaire shall not Process or otherwise transfer any Personal Data in or to any Restricted Country without Approval. If, after the Commencement Date, the Concessionaire or any Sub-Contractor wishes to process and/or transfer any Personal Data in or to any Restricted Country, the Concessionaire shall, in seeking Approval, submit such information as the Authority requires in order to enable it to consider the request and acknowledges that such consent may be given subject to conditions which will, if appropriate, be incorporated into the Contract at the Concessionaire's cost and expense using the Change Control Procedure.
- E1.7 If there is a Data Loss Event the Concessionaire shall:
- (a) notify the Authority immediately and in any event no later than 12 hours after becoming aware of a Data Loss Event, describing the event including the type and approximate number of Data Subjects concerned and the types and approximate number of Personal Data records concerned;
  - (b) cooperate fully with Authority investigations into the Data Loss Event;
  - (c) provide immediate access to the Concessionaire's premises and systems for the purposes of any investigation under clause E1.5;
  - (d) take all necessary actions to remedy the causes of the Data Loss Event and to ensure the protection of Personal Data from any further loss;
  - (e) not make any public statement of any kind without Approval; and
  - (f) if appropriate, assist the Authority to notify the Information Commissioner within 72 hours of becoming aware of the Data Loss Event.
- E1.8 The Concessionaire shall:
- (a) comply with Data Protection Laws and not perform its obligations in such a way as to cause the Authority to breach any of its obligations under the Data Protection Laws;
  - (b) use reasonable endeavours to assist the Authority to comply with any of its obligations under the Data Protection Laws;
  - (c) not perform its obligations in a way which causes the Authority to breach any of its obligations under the Data Protection Laws to the extent the Concessionaire is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations; and



- (d) indemnify the Authority against all Losses incurred by the Authority arising from the Concessionaire's Default under this clause E1 and/or any failure by the Concessionaire or any Sub-Contractor to comply with their respective obligations under the Data Protection Laws.

E1.9 This clause E1 applies during the Term and indefinitely after its expiry.

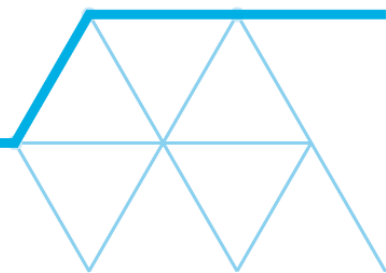
## **E2 Official Secrets Acts and Finance Act**

E2.1 The Concessionaire shall comply with:

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

## **E3 Confidential Information**

- E3.1 Except to the extent set out in this clause E3 or if disclosure or publication is expressly allowed elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other Party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E3.2 The Concessionaire hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.
- E3.3 If required by the Authority, the Concessionaire shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in a form approved by the Authority. The Concessionaire shall maintain a list of the non-disclosure agreements completed in accordance with this clause E3.3.
- E3.4 If requested by the Authority, the Concessionaire shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Concessionaire shall ensure that Staff, professional advisors and consultants are aware of the Concessionaire's confidentiality obligations under the Contract.
- E3.5 The Concessionaire may disclose the Authority's Confidential Information only to Staff who are directly involved in providing the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E3.6 The Concessionaire shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- E3.7 Clause E3.1 shall not apply to the extent that:



- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E3.8 Nothing in clause E3.1 prevents the Authority disclosing any Confidential Information obtained from the Concessionaire:

- (a) for the purpose of the examination and certification of the Authority's accounts;
- (b) for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (a) to Parliament and Parliamentary committees;
- (d) to any Crown Body or any Contracting Authority and the Concessionaire hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
- (e) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E3.8 (d) and (e) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E3.9 The Authority shall use reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Concessionaire's Confidential Information is disclosed pursuant to clause E3.6 is made aware of the Authority's obligations of confidentiality.

E3.10 If the Concessionaire does not comply with clauses E3.1 to E3.8 the Authority may terminate the Contract immediately on notice.

E3.11 To ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Concessionaire shall maintain adequate



security arrangements that meet the requirements of professional standards and best practice.

**E3.12 The Concessionaire shall:**

- (a) immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches;
- (b) use best endeavours to recover such Confidential Information or data however it may be recorded;
- (c) co-operate with the Authority in any investigation as a result of any breach of security in relation to Confidential Information or data; and
- (d) at its own expense, alter any security systems at any time during the Term at the Authority's request if the Authority reasonably believes the Concessionaire has failed to comply with clause E3.11.

**E4 Freedom of Information**

**E4.1** The Concessionaire acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.

**E4.2** The Concessionaire shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall:

- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR; and
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

**E4.3** The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the FOIA and/or the EIR.

**E5 Publicity, Media and Official Enquiries**

**E5.1** Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, without the written consent of the other Party.





E5.2 The Concessionaire shall use reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E5.1.

## **E6 Audit**

E6.1 The Concessionaire shall:

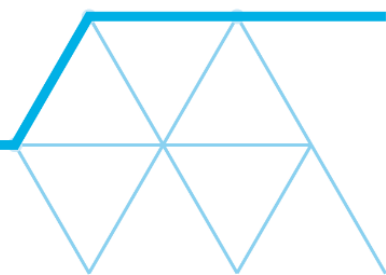
- (a) keep and maintain until 6 years after the end of the Term, or after the last Surety Bond has expired, whichever is the later, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, and all Fees received from Guardians;
- (b) on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract;
- (c) make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Concessionaire in relation to the Services;
- (d) allow authorised representatives of the Authority and/or the National Audit Office to examine the Concessionaire's records and documents relating to the Contract and provide such copies and oral or written explanations as may reasonably be required; and
- (e) allow 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) and other information as the Comptroller and Auditor General may reasonably require 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 Concessionaire shall provide such explanations as are reasonably required for these purposes.

## **E7 Tax Compliance**

E7.1 If, during the Term, an Occasion of Tax Non-Compliance occurs, the Concessionaire shall:

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:
  - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
  - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

E7.2 If the Concessionaire or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Concessionaire shall:





- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Concessionaire or any Staff.

## F. CONTROL OF THE CONTRACT

### F1 Contract Performance

- F1.1 The Concessionaire shall immediately inform the Authority if any of the Services are not being or are unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- F1.2 On or around 12 Months from the Commencement Date and each anniversary of the Commencement Date thereafter, the Authority may carry out a review of the performance of the Concessionaire (a **"Review"**). Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to):
  - a) the Concessionaire's delivery of the Services;
  - b) whether the Services provide Guardians with best value for money and consideration of any changes which may need to be made to the Services; and
  - c) a review of future requirements in relation to the Services.
- F1.3 The Concessionaire shall provide at its own cost any assistance reasonably required by the Authority to perform Reviews including the provision of data and information.
- F1.4 The Authority may produce a report (a **"Review Report"**) of the results of each Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Concessionaire's obligations under the Contract.
- F1.5 The Authority shall give the Concessionaire a copy of the Review Report (if applicable). The Authority shall consider any Concessionaire comments and may produce a revised Review Report.
- F1.6 The Concessionaire shall, within 10 Working Days of receipt of the Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Review Report.
- F1.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Concessionaire's failure to meet its obligations under the Contract identified by the Review Report, or those which result from the Concessionaire's failure to meet the Authority's expectations notified to the Concessionaire or of which the



Concessionaire ought reasonably to have been aware) shall be implemented at no extra cost to the Authority.

F1.8 The Concessionaire shall comply with the requirements set out in Schedule 1.

## **F2 Remedies**

F2.1 If the Authority reasonably believes the Concessionaire has committed a Material Breach it may, without prejudice to its rights under clause H2, do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Concessionaire has demonstrated to the Authority's reasonable satisfaction that the Concessionaire will be able to supply the Services in accordance with the Specification;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate the Contract in accordance with clause H2.

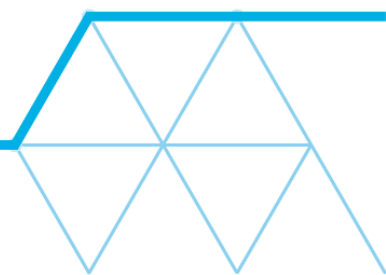
F2.2 If the Authority reasonably believes the Concessionaire has failed to supply all or any part of the Services in accordance with the Contract, professional or Good Industry Practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Concessionaire notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F2.3 If the Concessionaire has been notified of a failure in accordance with clause F2.2 the Authority may direct the Concessionaire to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no charge to the Authority within the specified timescale.

F2.4 If the Concessionaire has been notified of a failure in accordance with clause F2.2, it shall:

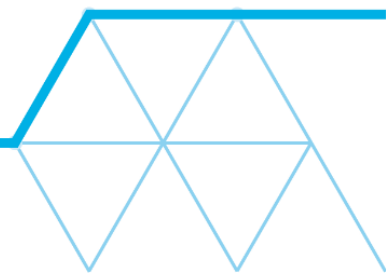
- (a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and
- (b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F2.4 and the progress of those measures until resolved to the satisfaction of the Authority.

F2.5 If, having been notified of any failure, the Concessionaire fails to remedy it in accordance with clause F2.4 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Concessionaire.



### **F3 Transfer and Sub-Contracting**

- F3.1 Except where both clauses F3.6 and F3.7 apply, the Concessionaire shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such actions shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract does not relieve the Concessionaire of any of its obligations or duties under the Contract.
- F3.2 The Concessionaire is responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Concessionaire shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- F3.3 The Concessionaire shall ensure that Sub-Contractors retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with clause E9 (Audit). If any Sub-Contractor does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Concessionaire on the basis of such documents or work carried out by the Sub-Contractor.
- F3.4 If the Authority has consented to the award of a Sub-Contract, the Concessionaire shall ensure that:
- (a) the Sub-Contract contains:
    - i) a right for the Concessionaire to terminate the Sub-Contract if the relevant Sub-Contractor does not comply with its legal obligations in data protection, environmental, social or labour law; and
    - ii) obligations no less onerous on the Sub-Contractor than those on the Concessionaire under the Contract in respect of data protection in clause E1
  - (b) the Sub-Contractor includes a provision having the same effect as set out in clause F3.4 (a) in any Sub-Contract which it awards; and
  - (c) copies of each Sub-Contract are sent to the Authority immediately after their execution.
- F3.5 Subject to clause F3.6, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
  - (b) any other body established or authorised by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority,



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

- F3.6 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F3.7, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.
- F3.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F3.5 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"**):
- (a) the rights of termination of the Authority in clauses H1 and H2 are available to the Concessionaire in respect of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Concessionaire.
- F3.8 The Authority may disclose to any Transferee any Confidential Information of the Concessionaire which relates to the performance of the Concessionaire'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 Concessionaire'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.
- F3.9 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 Contract.

#### **F4 Change**

- F4.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Change subject to the terms of this clause F4.
- F4.2 The Authority may request a Change by notifying the Concessionaire in writing of the Change and giving the Concessionaire sufficient information to assess the extent of the Change and consider whether any change to the Fees is required in order to implement the Change within a reasonable time limit specified by the Authority. If the Concessionaire accepts the Change it shall confirm it in writing.
- F4.3 If the Concessionaire is unable to accept the Change or where the Parties are unable to agree a change to the Fees, the Authority may:
- (a) allow the Concessionaire to fulfil its obligations under the Contract without the Change; or
  - (b) terminate the Contract immediately except where the Concessionaire has already delivered all or part of the Services or where the Concessionaire can show evidence of



substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2.

- F4.4 A Change takes effect only when it is recorded in a CCN validly executed by both Parties.
- F4.5 The Concessionaire is deemed to warrant and represent that the CCN has been executed by a duly authorised representative of the Concessionaire in addition to the warranties and representations set out in clause G2.
- F4.6 Clauses F4.4 and F4.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Change in order to address the emergency. In an emergency, Changes may be approved by a different representative of the Authority. However, the Authorised Representative may review such a Change and require a CCN to be entered into on a retrospective basis which may itself vary the emergency Change.

## **G LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

- G1.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) 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;
  - (d) any breach of clauses D1, E1 or E2; or
  - (e) any liability to the extent it cannot be limited or excluded by Law.
- G1.2 Subject to clause G1.3, the Concessionaire indemnifies the Authority fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of:
- (a) the supply, or the late or purported supply, of the Services;
  - (b) the performance or non-performance by the Concessionaire of its obligations under the Contract;
  - (c) the presence of the Concessionaire or any Staff on Authority premises, including in respect of any death or personal injury, loss of or damage to property;
  - (d) financial loss arising from any advice given or omitted to be given by the Concessionaire, or any other loss which is caused directly by any act or omission of the Concessionaire; or



(e) any act or omission of a Guardian or the Concessionaire pursuant to a contract between a Guardian and the Concessionaire.

G1.3 The Concessionaire is not responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

G1.4 The Authority may recover from the Concessionaire the following losses incurred by the Authority to the extent they arise as a result of a Default by the Concessionaire:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Concessionaire for the remainder of the Term and or replacement deliverables which shall include any incremental costs associated with the Replacement Concessionaire and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.5 Subject to clauses G1.1 and G1.4, neither Party is liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.6 Unless otherwise specified by the Authority, the Concessionaire shall, with effect from the Commencement Date for such period as necessary to enable the Concessionaire to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Concessionaire, arising out of the Concessionaire's performance of its obligations under the Contract including:

- (a) professional indemnity insurance in the sum of not less than £25,000,000 (twenty five million pounds) for any advice given by the Concessionaire to a Guardian;
- (b) cover for death or personal injury, loss of or damage to property or any other loss; and
- (c) employer's liability insurance in respect of Staff.

Such insurance policies shall be maintained for the duration of the Term and for a minimum of 6 years following the end of the Term.



- G1.7 The Concessionaire 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 premiums due under those policies.
- G1.8 If the Concessionaire does not have and maintain the insurances required by the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Concessionaire.
- G1.9 The provisions of any insurance or the amount of cover shall not relieve the Concessionaire of any liabilities under the Contract.
- G1.10 The Concessionaire shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Concessionaire, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Concessionaire is an insured, a co-insured or additional insured person.

## **G2 Warranties and Representations**

- G2.1 The Concessionaire warrants and represents on the Commencement Date and for the Term that:
- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Concessionaire;
  - (b) in entering the Contract it has not committed any fraud;
  - (c) all information contained in the Tender or other offer made by the Concessionaire to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is 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 an adverse effect on its ability to perform its obligations under the Contract;
  - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
  - (f) no proceedings or other steps have been taken and not discharged (or, to the best of its knowledge, are threatened) for the winding up of the Concessionaire 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 Concessionaire's assets or revenue;





- (g) 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;
- (h) in the 3 years (or period of existence if the Concessionaire has not been in existence for 3 years) prior to the date of the Contract:
  - i) 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;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) 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;
- (j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and
- (j) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

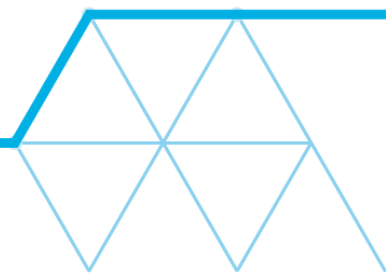
G2.2 The Concessionaire confirms that in entering into the Contract it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on behalf of the Authority in connection with the subject matter of the Contract except those expressly set out in the Contract and the Concessionaire hereby waives and releases the Authority in respect thereof absolutely.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Insolvency and Change of Control**

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire is a company and in respect of the Concessionaire:

- (a) 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;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;





- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) 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;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1 (a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire is an individual and:

- (a) 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 Concessionaire’s creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Concessionaire’s bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Concessionaire’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) he 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;
- (e) 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 Concessionaire’s assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Concessionaire shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Concessionaire undergoes a change of control within the meaning of section 1124 of the Corporation Taxes Act 2010



(“**Change of Control**”). The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control

but is not permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire is a partnership and:

- (a) 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
- (b) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (c) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (d) 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
- (e) any of the following occurs in relation to any of its partners:
  - i. 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;
  - ii. a petition is presented for his bankruptcy; or
  - iii. a receiver, or similar officer is appointed over the whole or any part of his assets;
- (f) any event similar to those listed in clauses H1.4 (a) to (e) occurs under the law of any other jurisdiction.

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Concessionaire if the Concessionaire is a limited liability partnership and:

- (a) 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;
- (b) 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;



- (c) 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;
- (d) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (e) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (f) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (g) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clauses H1.5 (a) to (g) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5 (a) are references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## **H2 Default**

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Concessionaire commits a Default and:

- (a) the Concessionaire has not remedied the Default to the satisfaction of the Authority within 20 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Concessionaire, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Concessionaire is liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

## **H3 Termination on Notice**

The Authority may terminate the Contract, in whole or in part, at any time and without compensation to the Concessionaire, by giving 3 Months' notice in writing to the Concessionaire.

## **H4 Consequences of Expiry or Termination**



- H4.1 If the Authority terminates the Contract under clause H2 and makes other arrangements for the supply of the Services the Authority may recover from the Concessionaire the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.
- H4.2 Save as otherwise expressly provided in the Contract:
- (a) termination (including partial termination) or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination (including partial termination) or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination (including partial termination) or expiry; and
  - (b) termination (including partial termination) of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Concessionaire under clauses D1 (Prevention of Fraud and Bribery), E1 (Data Protection and Privacy), E3 (Official Secrets Acts and Finance Act), E4 (Confidential Information), E5 (Freedom of Information), E6 (Audit), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery), H7 (Retendering and Handover), H8 (Exit Management), H9 (Knowledge Retention), I6 (Remedies Cumulative), I1 (Governing Law and Jurisdiction) and Schedule 1.

## **H5 Disruption**

- H5.1 The Concessionaire 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.
- H5.2 The Concessionaire shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 If there is industrial action by Staff, the Concessionaire shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Concessionaire's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.
- H5.5 If the Concessionaire is unable to deliver the Services owing to disruption of the Authority's normal business, the Concessionaire may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Concessionaire as a direct result of such disruption.

## **H6 Recovery**

- H6.1 On termination of the Contract for any reason, the Concessionaire shall at its cost:



- (a) immediately return to the Authority all Confidential Information and Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Concessionaire and/or the completion of any work in progress; and
- (c) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Concessionaire to conduct due diligence.

H6.2 If the Concessionaire does not comply with clause H6.1 (a), the Authority may recover possession thereof and the Concessionaire grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Concessionaire or its suppliers or Sub-Contractors where any such items may be held.

## **H7 Retendering and Handover**

H7.1 Within 21 days of being requested by the Authority, the Concessionaire shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

H7.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

H7.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H7.4 The Concessionaire indemnifies the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Concessionaire is required to provide under clause H7.1.

H7.5 The Concessionaire shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation includes allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

H7.6 Within 10 Working Days of being requested by the Authority, the Concessionaire shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.



## H8 Exit Management

- H8.1 On termination (including partial termination) of the Contract the Concessionaire shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Concessionaire if required by the Authority, in accordance with the procedure set out in clause H8.2.
- H8.2 If the Authority requires a continuation of all or any of the Services on expiry or termination of the Contract, either by performing them itself or by engaging a third party to perform them, the Concessionaire shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

## H9 Knowledge Retention

The Concessionaire shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge, information and/or data transfer from the Concessionaire to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Concessionaire shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Concessionaire shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

# I GENERAL

## I1 Dispute Resolution

- I1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Concessionaire and the commercial director of the Authority.
- I1.2 Nothing in this dispute resolution procedure prevents the Parties seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I1.3 If the dispute cannot be resolved by the Parties pursuant to clause I1.1 either Party may refer it to mediation pursuant to the procedure set out in clause I1.5.
- I1.4 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 Concessionaire and the Staff shall comply fully with the requirements of the Contract at all times.
- I1.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement of 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 to appoint a Mediator;

- (b) 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. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) 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;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) 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; and
- (f) if the Parties fail to reach agreement within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I1.6.

I1.6 Subject to clause I1.2, the Parties shall not institute court proceedings until the procedures set out in clauses I1.1 and I1.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Concessionaire requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7;
- (b) if the Concessionaire intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority has 21 days following receipt of such notice to serve a reply on the Concessionaire requiring the dispute to be referred to and resolved by arbitration in accordance with clause I1.7; and
- (c) the Concessionaire may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause I1.7, to which the Authority may consent as it sees fit.

I1.7 If any arbitration proceedings are commenced pursuant to clause I1.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Concessionaire (the “**Arbitration Notice**”) stating:

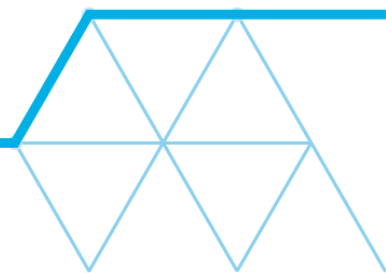




- (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (b) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I1.7 (b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator is binding on the Parties in the absence of any material failure to comply with such rules;
- (c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause I1.7 (a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the arbitration proceedings shall take place in London and in the English language; and
- (f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## **I2 Force Majeure**

- I2.1 Subject to this clause I2, a Party may claim relief under clause G1 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Concessionaire in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Concessionaire.
- I2.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- I2.3 If the Concessionaire is the Affected Party, it is not entitled to claim relief under this clause I2 to the extent that consequences of the relevant Force Majeure Event:
  - (a) are capable of being mitigated by any of the Services, but the Concessionaire has failed to do so; and/or
  - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.
- I2.4 Subject to clause I2.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.





- 12.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Concessionaire is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 12.6 If, as a result of a Force Majeure Event
- an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
- i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1; and
  - ii) neither Party shall be liable for any Default arising as a result of such failure.
- 12.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.
- 12.8 Relief from liability for the Affected Party under this clause I2 ends as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and is not dependent on the serving of a notice under clause I2.7.

### **I3 Notices and Communications**

- 13.1 Subject to clause I3.3, where the Contract states that a notice or communication between the Parties must be “written” or “in writing” it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email or by communication via Bravo.
- 13.2 If it is not returned as undelivered a notice served in:
- (a) a letter is deemed to have been received 2 Working Days after the day it was sent; and
  - (b) an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day
- or when the other Party acknowledges receipt, whichever is the earlier.
- 13.3 Notices pursuant to clauses I1, I2 or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.
- 13.4 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under the Contract:

**(a) For the Authority:**

Contact Name: **redacted on the grounds of the protection of personal data**



Address: Ministry of Justice, 1st Floor, 5 Wellington Place, Leeds, LS1 4AP

Email: **redacted on the grounds of the protection of personal data**

**(b) For the Concessionaire:**

Contact Name: **redacted on the grounds of the protection of personal data**

Address: Tower Place, Lower Thames Street, London, EC3R 5BU

Email: **redacted on the grounds of the protection of personal data**

## **I4 Conflicts of Interest**

- 14.1 The Concessionaire shall take appropriate steps to ensure that neither the Concessionaire nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concessionaire and the duties owed to the Authority under the Contract. The Concessionaire will notify the Authority immediately giving full particulars of any such conflict of interest which may arise.
- 14.2 The Authority may terminate the Contract immediately by notice and/or take or require the Concessionaire to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Concessionaire and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause I4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **I5 Rights of Third Parties**

A person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 ("CRTPA") to enforce the Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the CRTPA and does not apply to the Crown.

## **I6 Remedies Cumulative**

Except as expressly provided in 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 are not an election of such remedy to the exclusion of other remedies.

## **I7 Waiver**

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



17.2 No waiver is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause I3.

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

## **I8 Severability**

If any part of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such part shall be severed and the remainder of the Contract shall continue in full effect as if the Contract had been executed with the invalid, illegal or unenforceable part eliminated.

## **I9 Entire Agreement**

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

## **I10 Change in Law**

110.1 The Concessionaire is neither relieved of its obligations to supply the Services in accordance with the terms and conditions of the Contract nor entitled to an increase in the Fees as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

110.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause I10.1(b)), the Concessionaire shall:

- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including whether any:
  - (i) Change is required to the Services, the Fees or the Contract; and
  - (ii) relief from compliance with the Concessionaire's obligations is required; and
- (b) provide the Authority with evidence:
  - (i) that the Concessionaire has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors; and
  - (ii) as to how the Specific Change in Law has affected the cost of providing the Services.

110.3 Any variation in the Fees or relief from the Concessionaire's obligations resulting from a Specific Change in Law (other than as referred to in clause I10.1(b)) shall be implemented in accordance with clause F4.

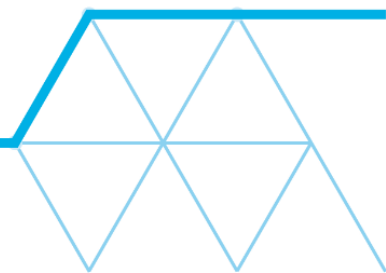


## **I11 Counterparts**

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

## **I12 Governing Law and Jurisdiction**

Subject to clause I1, the Contract, including any matters arising out of or in connection with it, are governed by and interpreted in accordance with English Law and are subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction does not limit the right of the Authority to take proceedings against the Concessionaire in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction does not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.



## SCHEDULE 1 – SPECIFICATION

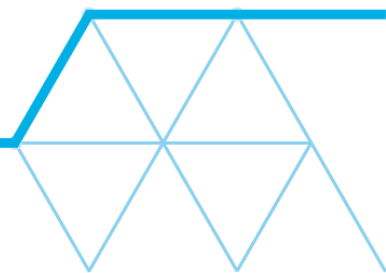


### Schedule 1 -

| Ref  | Descriptor   | Metric  | Target                                   |
|------|--|---|--|
| KPI1 | <p>The Concessionaire shall resolve OPG or High Court queries within 2 Working Days.</p> <p>The Concessionaire shall aim to resolve the majority of such queries on first contact.</p>   | <p>Time taken to resolve OPG or High Court queries:</p> <ul style="list-style-type: none"><li>• Same day</li><li>• Next Working Day</li><li>• More than 2 Working Days</li></ul>  | 2 Working Days                           |
| KPI2 | <p>The Concessionaire shall provide the MI Reports to OPG and the High Court by the 5<sup>th</sup> Working Day of each Month.</p>  | <p>Working Day on which OPG and High Court receive MI Reports (including number of days early or late).</p>   | 5 <sup>th</sup> Working Day of the Month |
| KPI3 | <p>The Concessionaire shall process all Surety Bonds received that have been completed fully and correctly by Guardians with the corresponding premium payment within 2 Working Days of receipt of the aforementioned documentation.</p> | <p>Time taken to process correctly completed Surety Bond applications:</p> <ul style="list-style-type: none"><li>• Same day</li><li>• Next Working Day</li><li>• More than 2 Working Days</li></ul> <p>Number of cases where Surety Bonds could not be issued within the agreed timescales, including the time outstanding and cause.</p> | 2 Working Days                           |
| KPI4 | <p>The Concessionaire shall part process all Surety Bond applications received that require a referral back to the Guardian due to forms not being completed, signed or premium payments of cheques being incorrect; to write</p>        | <p>Time taken to process incorrectly completed Surety Bond applications:</p> <ul style="list-style-type: none"><li>• Same day</li></ul>   | 2 Working Days                           |



|      |   |  |   |
|------|---|--|---|
|      | to the Guardian within 2 Working Days of receipt of the application confirming the remedial action required to enable the application to be completed.  | <ul style="list-style-type: none"> <li>• Next Working Day</li> <li>• More than 2 Working Days</li> </ul> <p>Number of cases where Surety Bonds could not be issued within the agreed timescales, including the time outstanding and cause.</p>   |   |
| KPI5 | The Concessionaire shall part process all Surety Bonds received that require a referral back to the OPG due to investigations discovering a County Court Judgement, Bankruptcy Order, Debt Relief Order or Individual Voluntary Arrangement, and ensure they are sent back within 2 Working Days of discovery. No further action will be undertaken by the Concessionaire until instructions are received from the OPG regarding the action required. | <p>Time taken to return applications requiring a referral back to the OPG:</p> <ul style="list-style-type: none"> <li>• Same day</li> <li>• Next Working Day</li> <li>• More than 2 Working Days</li> </ul>  | 2 Working Days                          |
| KPI6 | Any claims cheques received from the Insurer as a result of the Surety Bond being made forfeit by the High Court will be sent out according to instructions received within 2 Working Days of receipt.  | Time taken to issue cheques received from the insurer as a result of the Surety Bond being called in by the High Court.  | 2 Working Days                          |
| KPI7 | All complaints managed in accordance with a documented complaints procedure and any complaints citing the Concessionaire for poor service will account for no more than 0.1% of the live Surety Bonds.  | <p>Percentage of live Surety Bonds with complaints citing the Concessionaire for poor service.</p> <p>Time taken for complaints to be resolved:</p> <ul style="list-style-type: none"> <li>• Same day</li> <li>• Next Working Day</li> <li>• More than 2 Working Days</li> </ul> <p>Volume of unresolved complaints and reasons why they remain outstanding.</p> | No more than 0.1% of live Surety Bonds. |



## SCHEDULE 2 – FEES AND CONCESSIONAIRE’S TENDER RESPONSE

### Attached tender response redacted on the grounds of commercial confidentiality

1. The surety value and length of appointment of a Guardian is set by the High Court. The maximum length of a Guardian’s appointment is 4 years but may be renewed, and the Surety Bond will also remain in force for the run-on period after termination of the appointment, or for such period as the court may specify. All Surety Bonds must remain in force until discharged by the court, or expire in accordance with the Surety Bond agreement at the end of the run-on periods as specified in Regulation 37 of The Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (as amended), as long as this is specified in the Surety Bond agreement.
2. All premium costs will be borne by the missing person’s estate. The Authority will not fund the Surety Bonds.
3. Surety Bond premiums will be priced as a single percentage of the Surety Bond value. The premium charged must be the same for lay and professional Guardians.
4. The Concessionaire will charge the percentage rates in each of the following years (years of the Surety Bond being in place) as per the pricing structure table below:

### Redacted on the grounds of commercial confidentiality

For example: if a Surety Bond starts in September 2019, the Guardian would pay the Year 1 premium. If the Surety Bond is renewed on its anniversary i.e. not discharged, the Year 2 premium would be charged for the second year. This pattern would continue up to ‘Year 4’.

5. Where a Surety Bond has a value of £21,000 (as set by the High Court), the Concessionaire shall offer a Guardian the option of either an annual premium (as detailed at 4 above) or a single one off premium payment option which covers the lifetime of the guardianship. The price of the single one-off premium which covers the lifetime of the guardianship shall be set at **redacted on the grounds of commercial confidentiality**.







## SCHEDULE 3 - CHANGE CONTROL

### Contract Change Notice ("CCN")

|  |  |
|--|--|
| <b>CCN:</b><br><b>Contract Reference Number &amp; Title</b><br><b>Change Title</b><br><b>Number of Pages</b> |  |
|--|--|

WHEREAS the Concessionaire and the Authority entered into a Contract to provide the Services dated (the "**Original Contract**") and now wish to amend the Original Contract.

IT IS AGREED as follows

1. The Original Contract is amended as set out in this CCN:

|   |                             |   |
|---|-----------------------------|---|
| Change Requestor / Originator                     |                             |   |
| Summary of Change                                 |                             |   |
| Reason for Change                                 |                             |   |
| Revised Contract Value                            | Original Contract Value     | £ |
|   | Previous Contract Changes   | £ |
|   | Contract Change Note<br>[x] | £ |
|   | New Contract Value          | £ |
| Revised Fees Schedule                             |                             |   |
| Revised Specification (See Annex [x] for Details) |                             |   |
| Revised Term                                      |                             |   |
| Change in Contract Manager(s)                     |                             |   |
| Other Changes                                     |                             |   |

2. Save as amended in the CCN all other terms of the Original Contract remain effective.
3. The CCN takes effect from the date on which both Parties sign below.

**IN WITNESS** of which this CCN has been duly executed by the Parties.

**SIGNED** for and on behalf of the  
Lord Chancellor  
Signature:  
Name (block capitals):  
Position:  
Date:

**SIGNED** for and on behalf of [xx]  
Signature:  
Name (block capitals):  
Position:  
Date:

**IN WITNESS** of which the Contract is duly executed by the Parties on the date which appears at the head of page 1. The Parties confirm that an electronic signature is a valid means of establishing the authenticity and/or integrity of the Contract.

**SIGNED** for and on behalf of the Lord  
Chancellor

Signature:

Name (block capitals):

Position:

Date:

**SIGNED** for and on behalf of Marsh  
Limited

Signature:

Name (block capitals):

Position:

Date:

