

SO16085 An assessment of options for the redevelopment of train stations in the North of England Appendix C – Terms and Conditions

Terms and Conditions of Contract for Services

1 Interpretation

1.1 In this Agreement, the following words shall have the following meanings:

“Agreement” shall mean these terms and conditions, the Purchase Order, and (if applicable) the Award Letter;

“Award Letter” means the letter signed by the Customer and the Supplier which confirms the award of the contract and which may give details of the Services to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;

“Charges” means the charges for the Services as set out in the Purchase Order or Award Letter (as applicable);

“Crown” means the government of the United Kingdom including, but not limited to, government ministers, government departments, government offices and government agencies;

“DPA” means the Data Protection Act 1998;

“Expiry Date” means the date for expiry of this Agreement as set out in the Purchase Order or Award Letter;

“FOIA” means the Freedom of Information Act 2000;

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

“Key Personnel” any persons specified as such in the Purchase Order or Award Letter (as the case may be), or otherwise notified by the Customer to the Supplier in writing;

“Party/Parties” the Supplier and/or the Customer (as appropriate);

“Premises” shall mean have the meaning detailed in the Purchase Order or Award Letter (as applicable) or if such term is not defined it shall be the “Ship To” address;

“Purchase Order” means the Customer’s order for Services which has a unique PO number, and details the Services to be supplied by the Supplier to the Customer in accordance with the terms of this Agreement;

“Relevant Convictions” means a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or as otherwise advised by the Customer;

“Request for

Information” or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);

“Services” means the services to be provided by the Supplier to the Customer under this Agreement as specified in the Purchase Order or Award Letter (as applicable);

“Specification” means any specification for the Services produced by the Supplier and agreed with the Customer; or supplied to the Supplier by the Customer including any specification contained in the Purchase Order or Award Letter and any documents referred to therein which set out the quantity, description, quality and price of the Services;

“Staff” means all persons employed by the Supplier to perform its obligations under this Agreement together with the Supplier’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under this Agreement;

“Staff Vetting Procedures” shall mean the Customer’s procedures for the vetting of personnel as advised to the Supplier by the Customer;

“Term” shall mean the term set out in the Purchase Order or Award Letter unless extended or terminated earlier in accordance with the terms and conditions of this Agreement;

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

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

1.2 where a capitalised word is not defined in this Agreement it shall have the meaning given to it in the Purchase Order or Award Letter.

1.3 In this Agreement unless the context otherwise requires:

1.3.1 references to numbered clauses are references to the relevant clause in this Agreement;

1.3.2 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;

1.3.3 the headings to the clauses of this Agreement are for information only and do not affect the interpretation of this Agreement;

1.3.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;

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- 1.3.5 where the word 'including' is used in this Agreement, it shall be understood as meaning 'including without limitation'.

2 Basis of Contract

- 2.1 The Purchase Order constitutes an offer by the Customer to purchase Services from the Supplier in accordance with this Agreement.
- 2.2 The Agreement shall be deemed to be accepted on the earlier of: (a) the Supplier signing the Award Letter or Purchase Order; or (b) any act by the Supplier consistent with fulfilling the Purchase Order.

3 Supply of Services

- 3.1 In consideration of the amounts due under this Agreement, the Supplier shall, from the date set out in the Purchase Order or Award Letter, provide the Services to the Customer for the Term, in accordance with the terms and conditions with this Agreement.
- 3.2 In providing the Services, the Supplier shall:
- 3.2.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
- 3.2.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
- 3.2.4 ensure that the Services will conform with all descriptions and specifications set out in the Specification;
- 3.2.5 comply with all applicable laws; and
- 3.2.6 provide all equipment, tools and vehicles and such other items as are required to provide the Services.
- 3.3 On completion of the Services, or termination or expiry of this Agreement (whichever is the earlier) the Supplier shall vacate the Premises, remove his plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.
- 3.4 The Customer may inspect and examine the manner in

which the Supplier supplies the Services, at the Premises, during normal business hours, on reasonable notice.

4 Representations and Warranties

The Supplier warrants that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this Agreement, and that this Agreement is executed by a duly authorised representative of the Supplier.

5 Variation of the Services

The Customer reserves the right to vary the Services required, should this at any time become necessary. In the event of any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed between the Customer and the Supplier.

6 Charges and Payment

- 6.1 The Charges for the Services shall be as set out in the Purchase Order or Award Letter, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice the Customer as specified in the PO. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice including but not limited to the relevant purchase order number and a breakdown of the Services supplied in the invoice period.
- 6.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid PO number. Payments may be withheld or reduced by the Customer in the event of unsatisfactory performance without prejudice to the Customer's other rights and remedies under this Agreement.
- 6.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with this Agreement.
- 6.5 If there is a dispute as to the amount invoiced the Customer shall pay the undisputed amount.
- 6.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at a rate which shall compensate for such loss as has been directly caused by the late payment. The interest rate shall not be at a rate higher than the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 40.

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- 6.7 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement for a failure to pay undisputed sums in accordance with clause 15.2.

7 Recovery of Sums Due

Wherever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other agreement or contract with the Customer or with any department, agency or authority of the Crown. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part.

8 Property

- 8.1 The Customer shall provide the Supplier with reasonable access at reasonable times to the Premises for the purpose of providing the Services.
- 8.2 All equipment, tools and vehicles brought onto the Premises shall be at the Supplier's risk.
- 8.3 Any equipment provided by the Customer for the purpose of this Agreement shall remain property of the Customer and shall only be used for the purpose of carrying out this Agreement, and shall be returned promptly to the Customer on expiry or termination of this Agreement. The Supplier will reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier unless the Customer is notified otherwise in writing within seven days.

9 Key Personnel

- 9.1 Any Key Personnel shall not be released from supplying the Services without the Agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 9.2 Any replacements to the Key Personnel shall be subject to the agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the

responsibilities of that person in relation to the Services.

10 Inspection of premises

The Supplier is deemed to have inspected the Premises before submitting its tender so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the performance of its obligations under this Agreement.

11 Insurance

- 11.1 The Supplier shall effect and maintain (for the Term and for 1 year following the end of the Term), with a reputable insurance company, a policy or policies of insurance providing an adequate level of cover in respect of (i) all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under this Agreement; (ii) public liability insurance; and (iii) professional indemnity insurance.
- 11.2 The Supplier, shall give to the Customer, 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.
- 11.3 The insurance may be limited in respect of one claim (but not in any other respect) provided that any such limit shall be at least £2 million.

12 Intellectual Property Rights

- 12.1 All intellectual property rights in any materials (i) provided by the Customer to the Supplier for the purposes of this Agreement, shall remain the property of the Customer; and (ii) prepared by or for the Supplier solely for delivery of the Services under this Agreement, shall vest in the Customer. If, and to the extent, that such materials do not vest automatically in the Customer, the Supplier hereby assigns (with full title guarantee and free from all third party rights) all intellectual property rights in such materials to the Customer.
- 12.2 The Supplier hereby grants to the Customer a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any intellectual property rights that the Supplier owns, or has developed, prior to the Commencement Date of this Agreement and which the Customer reasonably requires in order to exercise its rights and take the benefit of this Agreement including the Services provided.
- 12.3 The Supplier shall indemnify, and keep indemnified, the Customer in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Customer as a result of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the

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acts or omission of the Supplier, its employees, agents or subcontractors.

13 Assignment and sub-contracting

- 13.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of this Agreement or any part thereof. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 13.2 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 13.3 Where the Customer has consented to the placing of sub-contracts copies of each sub-contract, shall at the request of the Customer, be sent to the Supplier to the Customer as soon as reasonably practicable.
- 13.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under this Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under this Agreement.

14 Term

- 14.1 This Agreement shall take effect on the date of the Purchase Order and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 14.2 below, or terminated in accordance with the terms and conditions of this Agreement.
- 14.2 The Customer may, by giving written notice to the Supplier not less than 3 months prior to the Expiry Date, extend this Agreement for a period of up to six (6) months. The provisions of this Agreement will apply throughout any such extended period.

15 Termination

- 15.1 Without prejudice to any other right or remedy it might have, the Customer may terminate this Agreement by written notice to the Supplier with immediate effect if:
- 15.1.1 the Customer gives the Supplier three (3) month's written

notice

- 15.1.2 the Supplier is in material breach of any obligation which is not capable of remedy;
- 15.1.3 the Supplier repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;
- 15.1.4 the Supplier is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
- 15.1.5 the Supplier undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988; or
- 15.1.6 the Supplier becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.1.6) in consequence of debt in any jurisdiction.
- 15.2 The Supplier may terminate this Agreement if the Customer has not paid any undisputed amounts within 90 days of them falling due.
- 15.3 Termination or expiry of this Agreement shall not affect the continuing rights under clauses 2, 3.2, 3.3, 8, 11, 12, 16, 23, 24, 25, 29, 31, 38 and 40.

16 Consequences of termination/expiry

- 16.1 Upon termination or expiry of this Agreement, the Supplier shall:
- 16.1.1 give all reasonable assistance to the incoming supplier of the Services.
- 16.1.2 return all relevant documents, information and data to the Customer as soon as reasonably practicable.

17 Variation

This Agreement cannot be varied except in writing signed by a duly authorised representative of both the parties.

18 Prevention of Corruption

- 18.1 The Supplier shall comply with, and shall ensure that its Staff or anyone acting on the Supplier's behalf comply with the applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010.
- 18.2 The Supplier shall not offer or give, or agree to give, to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for

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having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Customer or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract.

18.3 The Supplier warrants that it has not paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body in connection with the Agreement.

18.4 If the Supplier, its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by clauses 18.1 or 18.3, the Customer may:

18.4.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

18.4.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of those clauses.

19 Prevention of Fraud

19.1 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

19.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

19.3 If the Supplier or its Staff commits fraud in relation to this or any other contract with the Crown (including the Customer) the Customer may:

19.3.1 terminate this Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

19.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this

clause.

20 The Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties.

21 Health and Safety

21.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Agreement.

21.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

21.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

22 Discrimination

22.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Human Rights Act 1998 and the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

22.2 The Contractor shall take all reasonable steps to secure the observance of clause 22.1 by all Staff.

23 Data Protection Act

23.1 The Supplier shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Agreement.

23.2 Notwithstanding the general obligation in clause 23.1, where the Supplier is processing Personal Data (as defined by the DPA) as a Data Processor for the Customer (as defined by the DPA) the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

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23.2.1 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;

23.2.2 promptly notify the Customer of any breach of the security measures to be put in place pursuant to this clause; and

23.2.3 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the DPA.

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

24.1 The Supplier shall comply with, and shall ensure that its Staff comply with, the provisions of:

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

24.2 In the event that the Supplier or its Staff fail to comply with this clause, the Customer reserves the right to terminate the Agreement by giving notice in writing to the Supplier.

25 Freedom of Information

25.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

25.2 The Supplier shall and shall procure that any sub-contractors shall transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

- (a) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five Working Days (or such other period as the Customer may specify) of the Customer's request; and
- (b) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations 2004.

25.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other

provision in this Agreement and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004.

25.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

25.5 The Supplier acknowledges that (notwithstanding the provisions of this clause 25 and the provisions of clause 32) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations 2004 to disclose information concerning the Supplier or the Services in certain circumstances:

- (a) without consulting the Supplier; or
- (b) following consultation with the Supplier and having taken their views into account;

provided always that where clause 25.5(a) applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

25.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

26 Publicity, Media and Official Enquiries

26.1 Without prejudice to the Customer's obligations under the FOIA, neither Party shall make any press announcement or publicise this Agreement or any part thereof in any way, except with the prior written consent of the other Party.

26.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause 26.1.

27 Security

27.1 The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with all security requirements of the Customer while on the Premises, and shall ensure that all Staff comply with such requirements.

27.2 Where additional data security measures are required, as indicated in the Purchase Order, the Supplier shall comply with the security measures contained in the Annex (Security) in full

28 Supplier's Staff

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28.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

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

28.2 The Supplier shall take the steps reasonably required by the Customer to prevent unauthorised persons from being admitted to the Premises. If the Customer gives the Supplier notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Supplier shall take all reasonable steps to comply with such notice and if required by the Customer the Supplier shall replace any person removed under this clause with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

28.3 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Agreement to the Premises, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Customer may reasonably request.

28.4 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

28.5 If the Supplier fails to comply with clause 28.2 within 2 months of the date of the request and in the reasonable opinion of the Customer such failure may be prejudicial to the interests of the Crown then the Customer may terminate the Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

28.6 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with clause 28.2 shall be final and conclusive.

28.7 The Supplier shall comply with Staff Vetting Procedures in

respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

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

29 Audit

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

30 Transparency

The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not confidential. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives his consent for the Customer to publish the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.

31 Conflicts of Interest

31.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the agreement or contract.

31.2 The Supplier shall promptly notify the Customer and provide the Customer with full particulars or as much detail as it is able to in circumstances where any conflict referred to in clause 31.1 above arises or is reasonably foreseeable.

31.3 The Customer reserves the right to terminate the agreement or contract immediately by giving notice in writing to the Supplier and/or take such other steps it deems necessary where, in the reasonable

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opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of this agreement or contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

31.4 This clause 31 shall apply:

- (a) During the period of the agreement or contract; and
- (b) For a period of two (2) years following the end of the agreement or contract period or such other period as agreed in the Purchase Order.

32 Confidentiality

(Subject to clause 24 and 25) each Party shall keep confidential and not disclose, and shall procure that his employees and the employees of any sub-contractor keep confidential and do not disclose, any information of a confidential nature obtained by him (concerning the other Party) by reason of this Agreement except information which (a) is in the public domain otherwise than by reason of a breach of this provision; (b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; (c) was in a Party's possession without restriction as to its disclosure prior to receiving such information from the other Party; (d) is required to be disclosed by law (including under the FOIA and Environmental Information Regulations), or for the purposes of audit or regulatory requirements; (e) is necessary for a Party to disclose for the purposes of the performing its obligations under this Agreement (but only to the extent it is necessary to do so); (f) the other Party has given its specific express prior written consent can be disclosed; (g) in the case of the Customer, disclosed to any other government department provided that such government department shall comply with confidentiality provisions in respect of such disclosed information which are no less onerous than this clause 32. The provisions of this clause 32 shall apply during the continuance of this Agreement and after its expiry or termination howsoever arising.

33 Compliance with Value Added Tax and Other Tax Requirements

- 33.1 The Supplier shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.
- 33.2 Failure to comply may constitute a material breach of this

Agreement and the Customer may exercise the rights and provisions conferred by clause 14.

- 33.3 The Supplier shall furnish to the Customer the name, and if applicable, the Value Added Tax registration number and relevant Income Tax reference number(s) of any agent, supplier or sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or sub-contractor. Upon a request by the Customer, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor.

34 Force Majeure

Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party (those circumstances excluding any industrial action occurring within the Supplier's organisation). The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate this Agreement by written notice to the other Party.

35 Entire agreement

This Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

36 Waiver

Any waiver or relaxation either party, or wholly of any of the conditions of the Agreement shall be valid only if it is communicated to the other party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

37 Agency, partnership etc

This Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in this Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

38 Remedies cumulative

Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement (whether under this Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

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39 Severance

If any provision of this Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this Agreement.

be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

40 Dispute Resolution

40.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement. If the dispute cannot be resolved by the parties within a reasonable period, the dispute may, by agreement between the parties, be referred to a neutral adviser or mediator ("the Mediator") chosen by agreement between the parties. If they are unable to agree a Mediator or if the chosen Mediator is unable or unwilling to act either party shall be able to apply an appropriate mediation provider to appoint a Mediator. Within 10 Working Days of appointing the Mediator, the parties will meet with the Mediator to agree a procedure for negotiations.

40.2 All negotiations connected with the dispute will be conducted in confidence and without prejudice to the rights of the parties in any further proceedings. The parties agree to be bound by any written agreement once signed by both parties. If the parties fail to appoint a Mediator, or fail to reach agreement within one month of the Mediator being appointed, either party may exercise any remedy that it has under this Agreement.

41 Notices

41.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail or air mail, or by facsimile or e-mail (confirmed by first class mail or air mail), to the address of the relevant Party set out in the Purchase Order or Award Letter, or such other address or facsimile number as that Party may from time to time notify to the other Party in accordance with this clause.

41.2 Notices sent as above shall be deemed effectively given on the day when in ordinary course of the means of transmission, it would first be received by the addressee in normal business hours.

42 Governing Law and Jurisdiction

The validity, construction and performance of this Agreement, and all contractual and non contractual matters arising out of it, shall

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