

the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier'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) any person engaged by the Supplier shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- (i) in the 3 years (or period of existence if the Supplier 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
- (k) 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 Supplier 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 Supplier hereby waives and releases the Authority in respect thereof absolutely.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Insolvency and Change of Control

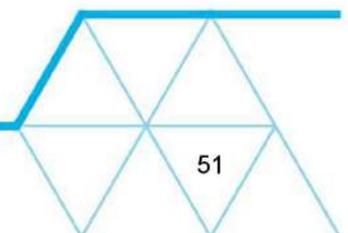
H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Supplier if the Supplier is a company and in respect of the Supplier:

- (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 Supplier if the Supplier 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 Supplier's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier'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 Supplier'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 Supplier shall notify the Authority immediately following a merger, take-over, change of control, change of name or status including where the Supplier 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 Supplier 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 Supplier if the Supplier 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 Supplier if the Supplier 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.

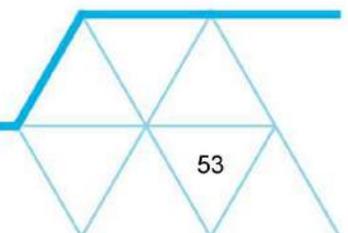
H1.6 References to the Insolvency Act 1986 in clause H1.5 (a) are references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Default

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

- (a) the Supplier 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 Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Supplier 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.



H2.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such notice, the Supplier may terminate the Contract with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C2.1 or to a Force Majeure Event.

H3 Termination on Notice

The Authority may terminate the Contract at any time by giving 90 days' notice to the Supplier

H4 Other Grounds

H4.1 The Authority may terminate the Contract if:

- (a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;
- (b) the Supplier was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract;
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU; or
- (d) the Supplier has not, in performing the Services, complied with its legal obligations in respect of environmental, social or labour law.

H5 Consequences of Expiry or Termination

H5.1 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 Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Term.

H5.2 If the Contract is terminated under clause H2 the Authority shall make no further payments to the Supplier (for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause H5.

H5.3 If the Authority terminates the Contract under clauses H3 or H4 the Authority shall make no further payments to the Supplier except for Services supplied by the Supplier prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract does not affect the continuing rights, remedies or obligations of the Authority or the Supplier under clauses C1 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection and Privacy), E3 (Official Secrets Acts and Finance Act), E4 (Confidential Information), E5 (Freedom of Information), E7 (Intellectual Property Rights), E8 (Audit), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery), H8 (Retendering and Handover), H9 (Exit Management), H10 (Knowledge Retention), I6 (Remedies Cumulative), and I12 (Governing Law and Jurisdiction).

H6 Disruption

- H6.1 The Supplier 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.
- H6.2 The Supplier 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.
- H6.3 If there is industrial action by Staff, the Supplier shall seek Approval for its proposals to continue to perform its obligations under the Contract.
- H6.4 If the Supplier's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, the Contract may be terminated with immediate effect by the Authority.
- H6.5 If the Supplier is unable to deliver the Services owing to disruption of the Authority's normal business, the Supplier may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.
- H6.6 The Supplier will document a Business continuity and disaster recovery plan, following award of the contract as set out in Schedule 9 (Business continuity and disaster recovery).

H7 Recovery

- H7.1 On termination of the Contract for any reason, the Supplier shall at its cost:
 - (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;

- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier in good working order;
- (c) immediately vacate any Authority Premises occupied by the Supplier;
- (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and
- (e) 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 Supplier to conduct due diligence.

H7.2 If the Supplier does not comply with clauses H7.1 (a) and (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its suppliers or Sub-Contractors where any such items may be held.

H8 Retendering and Handover

H8.1 Within 21 days of being requested by the Authority, the Supplier 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.

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

H8.3 The Authority shall require that all potential suppliers 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.

H8.4 The Supplier 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 Supplier is required to provide under clause H8.1.

H8.5 The Supplier shall allow access to the Premises in the presence of an authorised representative, to any person representing any potential supplier whom the Authority has selected to tender for the future provision of the Services.

H8.6 If access is required to the Supplier's Premises for the purposes of clause H8.5, the Authority shall give the Supplier 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Supplier's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

- H8.7 The Supplier 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.
- H8.8 Within 10 Working Days of being requested by the Authority, the Supplier 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.

H9 Exit Management

- H9.1 On termination of the Contract the Supplier shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Supplier in accordance with the procedure set out in clauses H9.2 to H9.13.
- H9.2 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 Supplier 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.
- H9.3 The following commercial approach shall apply to the transfer of the Services if the Supplier:
- (a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or
 - (b) reasonably incurs additional costs, the Parties shall agree a Change to the Price based on the Supplier's rates either set out in Schedule 2 or forming the basis for the Price.
- H9.4 When requested to do so by the Authority, the Supplier shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.
- H9.5 Within one Month of receiving the software licence information described in clause H9.4, the Authority shall notify the Supplier of the licences it wishes to be transferred and the Supplier shall provide for the approval of the Authority a plan for licence transfer.
- H9.5 Upon termination of the Contract for any reason, if there is a Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or such Replacement Supplier to the extent necessary to effect an orderly transition of the Service.
- H9.6 Where the Authority requires a continuation of all or any of the Services following the expiry or termination of the Contract, either by performing them itself or by engaging a Replacement Supplier to perform them, the Supplier shall cooperate fully with the Authority and any Replacement Supplier and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

- H9.7 This cooperation shall include allowing full access to existing accounts and closed records within the Authority retention period (as set by the Authority and notified to the Supplier from time to time) to include all reports, collection and enforcement case records, call centre and administration notes on systems and copies of correspondence and complaints and any other information necessary to achieve an effective transition without disruption to routine operational requirements.
- H9.8 All open and closed records referred to in para H9.7 shall be transferred back to the Authority upon request in an agreed accessible/readable format in order that they may be transferred to a Replacement Supplier either:
- a. On request
 - b. At expiry or termination of the contract
- H9.9 The Supplier shall not less than 7 Working Days following the end of the Contract provide final MI performance and SLA reports, including all fully updated case records.
- H9.10 The Supplier shall not less than 30 days prior to the expiry or termination of the Contract provide an itemised list to the Authority of all Warrants and Orders, by category, that are in its possession to include details of the issuing court and the stage of execution (application pending, granted, awaiting lapse of appeal period) where the case is still open.
- H9.12 The Supplier shall also provide separate lists of all Attachment of Earnings applications, Interim Charging Order applications and Final Charging Order applications not yet granted and Final Charging Orders awaiting lapse of appeal period in order to allow the Replacement Supplier to obtain the consent of the issuing court to continue to undertake execution activity as appropriate.
- H9.13 After the confirmed transfer by the Parties of all records and compliance by the Supplier with all obligations contained in this clause H9, all data relating to the Services will be permanently deleted from all Supplier systems, and MI repositories / warehouses within 7 days and the Supplier shall inform the Authority CM of the deletion in writing without delay.

H10 Knowledge Retention

The Supplier shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Supplier 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 Supplier 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 Supplier 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 Supplier and the commercial director of the Authority.
- 11.2 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.
- 11.3 If the dispute cannot be resolved by the Parties pursuant to clause 11.1 either Party may refer it to mediation pursuant to the procedure set out in clause 11.5.
- 11.4 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 Supplier and the Staff shall comply fully with the requirements of the Contract at all times.
- 11.5 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 11.6.
- 11.6 Subject to clause 11.2, the Parties shall not institute court proceedings until the procedures set out in clauses 11.1 and 11.3 have been completed save that:

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 11.7;
- (b) if the Supplier 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 Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with clause 11.7; and
- (c) the Supplier may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 11.7, to which the Authority may consent as it sees fit.

11.7 If any arbitration proceedings are commenced pursuant to clause 11.6:

- (a) the arbitration is governed by the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Supplier (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 11.7 (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 11.7 (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.

12 Force Majeure

- 12.1 Subject to this clause 12, a Party may claim relief under this clause 12 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 Supplier in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier is 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 Supplier.

- 12.2 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.
- 12.3 If the Supplier is the Affected Party, it is not entitled to claim relief under this clause 12 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent supplier of services similar to the Services, operating to the standards required by the Contract.
- 12.4 Subject to clause 12.5, 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 Supplier 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:
- (a) 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 is not 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 or H2.3; and
 - ii) neither Party is liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with the Contract it is entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the Contract during the occurrence of the Force Majeure Event.
- 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 12 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 12.7.

13 Notices and Communications

13.1 Subject to clause 13.3, 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 11, 12 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]

Address: Legal Aid Agency
7th Floor, Piccadilly Gate
Store Street
Manchester
M1 2WD ; and

Email: [REDACTED]

(b) For the Supplier:

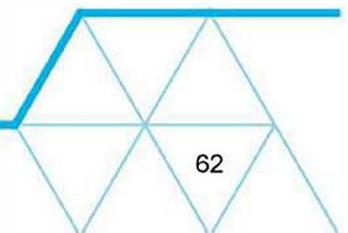
Contact Name: [REDACTED]

Address: Rossendales,
Wavell House
Holcombe Road
Rossendale
BB4 4NB; and

Email: [REDACTED]

14 Conflicts of Interest

14.1 The Supplier shall take appropriate steps to ensure that neither the Supplier 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



Supplier and the duties owed to the Authority under the Contract. The Supplier 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 Supplier 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 Supplier and the duties owed to the Authority under the Contract. The actions of the Authority pursuant to this clause 14 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

15 Rights of Third Parties

- 15.1 Clauses B10.5 and E8.3 confer benefits on persons named in them (together "**Third Party Provisions**") and each person a "**Third Party Beneficiary**") other than the Parties and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**").
- 15.2 Subject to clause 15.1, a person who is not a Party has no right under the 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.
- 15.3 No Third-Party Beneficiary may enforce or take steps to enforce any Third-Party Provision without Approval.
- 15.4 Any amendments to the Contract may be made by the Parties without the consent of any Third-Party Beneficiary.

16 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.

17 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 13 (Notices and Communications).
- 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.

18 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.

19 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.

110 Change in Law

110.1 The Supplier 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 Price 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 110.1(b)), the Supplier 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 Price or the Contract; and
 - (ii) relief from compliance with the Supplier's obligations is required;
- (b) provide the Authority with evidence:
 - (i) the Supplier 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 Price or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in clause 110.1(b)) shall be implemented in accordance with clause F4.

111 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.

112 Governing Law and Jurisdiction

Subject to clause 11 (Dispute Resolution) 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 Supplier 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.

IN WITNESS of which the Contract is duly executed by the Parties on the date which appears at the head of page 1.

SIGNED for and on behalf of the
Secretary of State for Justice

Signature:

Name (block capitals):

Position:

Date:

SIGNED for and on behalf of the Marston
(Holdings) Limited

Signature:

Name (block capitals):

Position:

Date:

Schedule 1 (Specification)

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1. Introduction

- 1.1 The Supplier is required to provide national debt collection and enforcement services (the Services) in relation to monies owed by means tested defendants who are in receipt of legal aid in respect of a case to be heard, or a case that has been heard and resulted in a conviction, in the Crown Court. The Services covers all Crown Courts in England and Wales.
- 1.2 The Supplier will be responsible for the collection and enforcement of Legal Aid Contributions which requires case management, collection, enforcement and refund of monies where appropriate. Collected payments will be remitted to the Authority and enforcement costs charged back to the Defendant whilst the Supplier ensures they keep individuals fully engaged throughout the lifetime of the debt.
- 1.3 The services will be procured through open competition advertised in Contracts Finder and OJEU. The requirements fall under the Light Touch Regime as per 2015 Public Contracts Regulations but will follow a process similar to the Open Procedure to ensure full transparency.
- 1.4 The Supplier is deemed to have satisfied himself as regards the nature and scope of the Services to be performed. No future claims by the Supplier for additional payments will be allowed on the grounds of misunderstanding or misinterpretation due to lack of knowledge of the requirements as set out in this document.
- 1.5 The Ministry of Justice (MoJ) will not reimburse any parties bidding or associated costs in relation to this contract.

2. Background

- 2.1 The Legal Aid Agency (“LAA” or “the Authority”) was created by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, as an Executive Agency of the MoJ, and it runs the legal aid scheme in England and Wales. The LAA ensures that eligible individuals receive the legal advice, assistance and representation they need to deal with a wide range of problems. The LAA works in partnership with solicitors and not for profit organisations to ensure that these services are provided to individuals most in need.
- 2.2 Legal Aid expenditure was approximately £1.7 billion in 2016/17, of which, approximately £858 million was spent on Criminal Legal Aid.
- 2.3 Means testing Defendant eligibility for legal aid was successfully introduced in the magistrates’ court in October 2006, realising substantial savings. Means testing was then implemented in the Crown Court in 2010.
- 2.4 The introduction of Crown Court Means Testing (CCMT) in 2010 underpinned the Government’s commitment to the principle that those who can afford to pay for their defence should do so. It ensures that the best use is made of taxpayers’ money and that limited resources can be utilised where most needed. The scheme ensures that Defendants appearing in Crown Court cases pay contributions from income or capital or both towards their legal representation at an appropriate level to their financial circumstances.
- 2.5 The LAA has continually realised improvements to collection rates in relation to its CCMT Debt Collection and Enforcement Services since its inception in 2010. Gross collections (including secured debt) over the previous 7 years combined are the equivalent of 61% of the current outstanding Debt Book (which also includes secured debt)
- 2.6 Means testing in the criminal courts is governed by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Financial Eligibility for criminal legal aid and relevant thresholds for criminal legal aid are outlined in the Criminal Legal Aid (Financial Resources) Regulations 2013. Contributions from Defendants for their criminal legal aid are governed by the Criminal Legal Aid (Contribution Orders) Regulations 2013 and the Criminal Legal Aid (Motor Vehicle Order) Regulations 2013.
- 2.7 The Government consulted upon the effectiveness of Crown Courts Means Testing scheme in October 2012 and issued its response to the consultation in March 2013¹. The proposals set out in the consultation paper sought to ensure that defendants comply fully with the requirements of the scheme so that a comprehensive and accurate assessment of financial liability can be undertaken, as well as reinforcing existing measures to support more effective collection of contributions. As a result of this consultation process, a number of measures came into force 1st April 2013, as set out in the Regulations.
- 2.8 The Criminal Legal Aid (Motor Vehicle Orders) Regulations 2013 also came into force 30th July 2013. These regulations enhance upon the enforcement options available and grant the power to the Lord Chancellor to apply to the court for a Vehicle Clamping Order and a Vehicle Sale Order where an overdue amount is unpaid by an individual in receipt of criminal legal aid.
- 2.9 The Department for Work and Pensions (DWP) has aimed to simplify the welfare system by introducing Universal Credit. This benefit is currently being progressively rolled out, in a managed way, from October 2013. This transition will be gradual and is expected to be completed by 2020.

¹ <https://consult.justice.gov.uk/digital-communications/crown-court-means-testing>

- 2.10 Defendants in the Crown Court in receipt of Universal Credit are currently passported and will receive criminal legal aid. However, the MoJ has recently consulted on potential changes to legal aid eligibility criteria in the light of the wider national roll-out of Universal Credit. The MoJ are currently considering the LAA's policy with regards to passporting clients on Universal Credit and a response to the consultation, documenting the LAA's intention, is to be published in due course².
- 2.11 In the future, the MoJ may seek to join wider initiatives aimed at consolidating departmental and/or cross-government debt, e.g. Debt Market Integrator. The MoJ will monitor developments in relation to these related projects and will explore options to join these initiatives when upon reaching an operational and steady state.

² <https://www.gov.uk/government/consultations/legal-aid-financial-eligibility-and-universal-credit>

3. Objectives

- 3.1 The objective of this contract is to ensure the MoJ outsources quality and value for money Debt Collection and Enforcement Services to support Crown Courts Means Testing (CCMT) collection of criminal legal aid contributions from those who can afford to pay.
- 3.2 The MoJ and LAA (the Authority) operate in an environment of continuous improvement. To this end, the Supplier should also;
- Work strategically and collaboratively with the Authority to assist in achieving ongoing increase in performance and targets.
 - Work innovatively in collaboration with the Authority in order to identify areas for improvement in the Services.

4. Definitions

Capital Contribution Order (CCO)

A letter confirming the amount of capital contribution is required. This is calculated based on Final Defence Costs (see below); balancing any monies paid to date and whether any outstanding costs remain. This is issued by the Supplier and upon completion on capital and equity check, confirming available assets and is undertaken either by the Authority, the Supplier or both.

Hardship Review

Applicants can apply to have their eligibility reviewed if they are assessed ineligible or are subject to an income contribution and they feel they have higher than usual outgoings or expenditure that has not been taken into account.

Income Contribution Order (ICO)

A letter confirming the amount of monthly contribution required during proceedings. This is issued by the Legal Aid Agency and is based on the applicant's household disposable income.

Income Evidence Sanction (IES)

This sanction can be supplied if the supporting income evidence is not provided to the Authority within 21 days of request. This is issued by the Legal Aid Agency and is set at either £900 or one twelfth of an applicant's disposable income whichever is the higher.

Final Contribution

The contribution required following conviction, where the applicant has combined capital and equity assets over £30,000 and the Income Contributions (if any) have not covered the costs of the case.

Final Defence Cost

Total costs of a case including both litigators and advocates fees.

Judicial Apportionment

An order to apportion the costs an applicant must pay in respect of their legal aid costs. This is issued by the Crown Court in accordance with Regulation 26 The Criminal Legal Aid (Contribution) Regulations 2013.

Aged Debt

A case where all available enforcement options have been considered/undertaken within economic reason but the liability remains outstanding.

5. Overview of Scheme

5.1 The table below outlines both the existing means testing scheme in the Crown Court:

Type of Case	Scheme	Notes
<p>Pre Conviction –</p> <p>Criminal Proceedings in the Crown Court – committed, sent, or transferred for trial</p>	<p>Income Contribution Order –</p> <p>Defendants liable for an income-based contribution will either pay for the life of the case or six months, whichever is the shortest. Defendants who pay on time every month will only be required to make five payments. The contribution is 90% of household disposable income and the minimum monthly contribution will be is £255. This may also be limited to the maximum income contribution that is set dependant on the type of case.</p> <p>Where Defendants fail to provide sufficient evidence to support the details provided in their legal aid application, an uplift in the sums due via an Income Evidence Sanction will be applied by Authority until the evidence is received –</p> <p>All Defendants who are acquitted will be refunded any monies paid with 2% interest.</p>	<p>Pre-conviction –</p> <p>Defendants will be means tested by the Authority under regulations (footnote 3) and they will either be:</p> <ul style="list-style-type: none"> • Passported³ through scheme • Subject to income based contribution⁴ • Not liable for income based contribution <p>A hardship route is available for Defendants who wish to have their particular financial circumstances taken into account. A Change in Financial Circumstances route also applies.</p> <p>These changes to liabilities will mean that Supplier will need to administer and issue notifications when there are changes and varying debt liabilities</p>
<p>Post Conviction –</p> <p>Sentenced by Crown Court and found guilty or partially guilty</p>	<p>Capital Contribution Order –</p> <p>When there is still a financial liability outstanding after conviction then recovery of the balance will be made from capital/equity.</p> <p>Recoveries of post conviction debt can still be enforced against the pre conviction Income Contribution scheme if these are still outstanding at the point of conviction</p>	<p>Post-conviction –</p> <p>Convicted or part-convicted Defendants will also be liable for case costs at the end of their case if they have capital/equity after an allowance/threshold of £30,000 and is deducted from total assets and savings.</p> <p>A hardship route is available for Defendants who wish to have their particular financial circumstances taken into account. A Change in Financial Circumstances route also applies.</p> <p>These changes to liabilities will mean that Supplier will need to administer and issue</p>

³ Defendants who are either under 18 or on a passporting benefit will not be required to contribute towards their legal aid costs, either during the case or at the end if convicted. Please refer to Regulation 9. (1), (2) and (3) of the Criminal Legal Aid (Contribution Orders) Regulations 2013.

⁴ Where the Defendant's disposable annual income exceeds £3,398.

		notifications when there are changes and varying debt liabilities
Appeals	<p>Defendants will be means assessed, with an additional allowance of £500 deducted from their disposable income⁵. Total contribution will be a fixed fee depending on the outcome/type of appeal:</p> <ul style="list-style-type: none"> ● Unsuccessful appeal against conviction £500 ● Outcome of appeal is unsuccessful but sentence is reduced £250 ● Unsuccessful appeal against sentence £250 ● Successful appeal – zero contribution 	If unsuccessful the defendant pays either £500 or £250 depending on type of appeal or outcome. This is collectable at the conclusion of the appeal.

5.2 At the post-conviction stage, the Supplier will need to perform Capital and Equity (K&E) checks on some Defendants who have not yet had their Capital and Equity checked by the Authority at pre-trial. As financial circumstances can change between the time of the Legal Aid application and the conviction/conclusion of the case at the Crown Court, the Supplier will be required to validate these cases to confirm whether they now have the means to contribute towards a post-conviction Capital Contribution Order. This is an administrative process that will require the Supplier to utilise several commercially available products in order to validate the capital and equity declaration made by the applicant and to have up to date addresses to enable further evidence to be requested, where necessary. The services for which the Supplier should have at their disposal includes but is not limited to the Land Registry and commercial credit checks

5.3 The Authority currently have a fortnightly data share in place with Her Majesty's Prisons and Probation Service to obtain the most up to date prisoner locations and addresses which can be shared with contracted Service Provider

5.4 Where the applicant has told the Authority they have Capital and Equity over £30k, the Authority will validate these. The Supplier will however be required to validate Capital and Equity means from those applicants who have declared insufficient Capital and Equity between £0.1 and £30k.

5.5 In accordance with the Criminal Legal Aid (Contribution Orders) Regulations, the individual in receipt of criminal legal aid is also liable for any enforcement costs (see Annex C) incurred, and this amount is added to any amount payable by that individual. The Supplier must adopt an appropriate and proportionate approach towards enforcement action at all times.

5.6 The relevant Regulations, underpinning the scope of the scheme, can be located here:

⁵ This is to allow for any costs incurred in the magistrates' court, where Defendants have paid privately for representation

- The Criminal Legal Aid (Financial Resources) Regulations 2013 – <http://www.legislation.gov.uk/uksi/2013/471/contents/made>
- The Criminal Legal Aid (Contribution Orders) Regulations 2013 – <http://www.legislation.gov.uk/uksi/2013/483/contents/made>
- The Criminal Legal Aid (Motor Vehicle Orders) Regulations 2013 – <http://www.legislation.gov.uk/uksi/2013/1686/contents/made>

5.7 For historical cases, the following Regulations will also still apply:

- The Criminal Defence Service (Contribution Orders) Regulations 2009 – <http://www.legislation.gov.uk/uksi/2009/3328/contents/made>
- The Criminal Defence Service (Contribution Orders) (Amendment) Regulations 2010 – <http://www.legislation.gov.uk/uksi/2010/142/contents/made>

5.8 Further information relating to the scope of legal aid and means testing can be located on the Justice website:

<http://www.justice.gov.uk/legal-aid/assess-your-clients-eligibility/means-testing-in-the-courts>