

## COMMERCIAL IN CONFIDENCE

Thermo Fisher Scientific  
Standard House  
One Elmstead  
Leatherlands  
P2 GE

Our Ref: CEAS21  
Date: 17 January 2022

Dear Sirs

### **Award of contract for the supply of CEFAS21-78 Liquid chromatography High-Resolution Mass Spectrometry system (Services)**

Following your tender proposal for the supply of the Services to **The Secretary of State for Environment, Food and Rural Affairs** acting as part of the Crown through the **Centre for Environment, Fisheries and Aquaculture Science** ("the Customer") we are pleased to award this contract to you.

This letter **Award Letter** and its schedules set out the terms of the contract between the Customer and Thermo Fisher Scientific **Contractor** for the provision of the Services.

Unless the context otherwise requires capitalised expressions used in this Award Letter have the same meanings as in the terms and conditions of contract attached to this Award Letter **Conditions**.

If there is a conflict between this Award Letter and the Conditions this Award Letter shall prevail. Please do not attach any Contractor terms and conditions to this Agreement as they will not be accepted by the Customer and may delay the process.

For the purposes of the Agreement the Customer and the Contractor agree as follows

The Services shall be performed at the suppliers premises or alternative locations deemed as required.

The specification of the Services to be supplied is as set out in Schedule 1 taken from the procurement documents released.

The Terms shall commence on 1<sup>st</sup> April 2022 or the date after final installation and commission has been completed and the End of Date shall be 12 months later anticipated as 31<sup>st</sup> March 2023.

The address for notices of the Parties are



accepted. Please refer to quote the reference number above in any future communications relating to this contract.

Yours faithfully



**Emma Roberts**

Procurement Manager

Procurement Team Ceas

Paefield Road, Lloeston, Shropshire, RU0 0T

Tel 01502 520000 Email [e.a.roberts@ceas.co.uk](mailto:e.a.roberts@ceas.co.uk)

We accept the terms set out in this Award Letter and the Conditions.

SIGNED for and on behalf of CEAS



Signature

Name in block capitals EMMA ROBERTS

Position PROCUREMENT MANAGER

Date 01.01.2022

SIGNED for and on behalf of THERMO FISHER SCIENTIFIC



Signature

Name in block capitals STEVE DEWSBURY

Position Sales Order Processing Manager

Date 05.01.2022

# **Contract for the Provision of Goods and Services to provide an LC-HR Mass Spectrometer to Cefas**

**December 2021**

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# SECTION 1

## FORM OF CONTRACT

### PARTIES:

1 The Secretary of State for Environment, Food and Rural Affairs of Seacole Building, 2 Marsden Street, London, SW1P 3D acting through **The Centre for Environment, Fisheries and Aquaculture Science** of Paigfield Road, Lowestoft, Suffolk, IP11 0T the “**Authority**”

### AND

2 The holder of Scientific Staff Grade of the Civil Service of the Government of the United Kingdom, registered in England and Wales under number 150 (the “**Contractor**”)

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

### WHEREAS

Following a competitive tender process, the Authority wishes to appoint the Contractor to provide certain services and goods and the Contractor agrees to provide those services and goods in accordance with these terms and conditions.

### NOW IT IS HEREBY AGREED as follows:

#### 1. TERMS OF CONTRACT

1.1 The “**Contract**” comprises the following:

Section 1	Form of Contract
Section 2	Terms and Conditions
Schedule 1	Specification
Schedule 2	Prices
Schedule 3	Change Control
Schedule 4	Commercially Sensitive Information

1.2 The Contract/Warrant period starts on 1<sup>st</sup> April 2022 or the date after which full installation and commission has been completed (the “**Commencement Date**”) and ends on 1<sup>st</sup> March 2023 (the “**End Date**”) unless it is terminated early or extended in accordance with the

# Contents

SECTION 1.....	1
FORM OF CONTRACT.....	1
Contents .....	1
SECTION 2.....	1
TERMS AND CONDITIONS .....	1
A. GENERAL PROVISIONS.....	2
B. THE SERVICES.....	11
C. PAYMENT.....	20
D. STATUTORY OBLIGATIONS .....	21
E. PROTECTION OF INFORMATION .....	21
F. CONTROL OF THE CONTRACT .....	21
G. LIABILITIES .....	22
H. DEFAULT/DISRUPTION AND TERMINATION .....	22
I. DISPUTES AND LAW .....	25
SCHEDULE 1 SPECIFICATION .....	25
SCHEDULE 2 PRICING .....	25
SCHEDULE 3 CHANGE CONTROL.....	26
SCHEDULE 4 COMMERCIALLY SENSITIVE INFORMATION.....	26



# SECTION 2

## TERMS AND CONDITIONS

### CONTENTS

A1	Definitions and Interpretation
A2	The Authority's Obligations
A3	Contractor's Status
A4	Notices and Communications
A5	Mistakes in Information
A6	Conflicts of Interest
B1	Specification
B2	Standards
B3	Delivery
B4	Risk and Ownership
B5	Non-Delivery
B6	Labelling and Packaging
B7	Training
B8	Provision and Removal of Equipment
B9	Goods Delivery
B10	Service Delivery
B11	Key Personnel
B12	Contractor's Staff
B13	Inspection of Premises
B14	Licence to Occupy Premises
B15	Protections
B16	Others of Equipment
B17	Equipment Provisions
C1	Price
C2	Payment and VAT
C3	Recovery of Sums Due
C4	Price During Extension
D1	Prevention of Fraud and Bribery
D2	Discrimination
D3	Rights of Third Parties
D4	Health and Safety
D5	Environmental Requirements
E1	Authorised Data
E2	Data Protection
E3	Official Secrets Acts and Finance Act
E4	Confidential Information
E5	Freedom of Information
E6	Publicity Media and Official Enquiries
E7	Security
E8	Intellectual Property Rights
E9	Audit
E10	Tax Compliance
F1	Failure to Meet Requirements
F2	Monitoring Contract Performance

11	Remedies for inadequate performance
12	Transfer and Subcontracting
15	Waiver
16	Variation
17	Severability
18	Remedies Clause
19	Entire Agreement
20	Counterparts
G1	Liability, Indemnity and Insurance
G2	Warranties and Representations
G3	Force Majeure
31	Termination on Insolvency and Change of Control
32	Termination on Default
33	Termination on Notice
34	Other Termination Grounds
35	Consequences of Event of Termination
36	Disruption
37	Recovery upon Termination
38	Retendering and Handover
39	Exit Management
40	Exit Procedures
I1	Governing Law and Jurisdiction
I2	Dispute Resolution

# A GENERAL PROVISIONS

## A1 Definitions and Interpretation

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

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

**“Affiliate”** means in relation to a body corporate an other entity which directly or indirectly Controls is Controlled by or is under direct or indirect control of that body corporate from time to time.

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

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

**“Authority Data”** means:

- (a) the data, text, drawings, diagrams, images or sounds together with any data base made up of any of these which are embodied in any electronic, magnetic, optical or tangible media and which are provided to the Contractor by or on behalf of the Authority or which the Contractor is required to generate, process, store or transmit pursuant to the Contract;

- (b) any Personal Data for which the Authority is the Controller.

**“Authority Premises”** means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Subcontractors for provision of the Services.

**“Authority Software”** means software which is owned by or licensed to the Authority other than under or pursuant to the Contract and which is or will be used by the Contractor for the purposes of providing the Services.

**“Authority System”** means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority or a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

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

**“Delta”** means the Authority’s procurement system.

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

**“Commencement Date”** means the date set out in paragraph 1.3 of the Form of Contract.

**“Commercially Sensitive Information”** means the information listed in Schedule 1 comprising the information of a commercially sensitive nature relating to

(a) the Price

(b) details of the Contractor’s business and investment plans

which the Contractor has indicated to the Authority that if disclosed by the Authority would cause the Contractor significant commercial disadvantage or material financial loss.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential whenever it is conveyed or on whatever media it is stored including in or on the disclosure of which it would or could be liable to prejudice the commercial interests of any person or trade secrets or Intellectual Property Rights of either Party and all Personal Data. Confidential Information shall not include information which

(a) was public knowledge at the time of disclosure other than as a result of disclosure

(b) was in the possession of the receiving Party without restriction as to its disclosure before receiving it from the disclosing Party

(c) is received from a third party who lawfully acquired it without restriction as to its disclosure

(d) is independently developed without access to the Confidential Information.

**“Contract”** has the meaning given in paragraph 1.1 of the Form of Contract.

**“Contract Period”** means the period from the Commencement Date to:

(a) the End Date

(b) following an Extension the end date of the Extension

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

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

**“Contractor Software”** means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 1.

**“Contractor System”** means the information and communications technology system used by the Contractor in delivering the Services including the Software of the Contractor Equipment and related calling and including the Authority System.

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

**“Controller”** has the meaning given in the GDPR.

**“Copyright”** means as it is defined in s.1 of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

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

**“Data Loss Event”** means an event that results or is a result in unauthorised access to Personal Data held by the Contractor under this Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract including an Personal Data Breach.

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

**“Data Protection Legislation”** means the GDPR, the LED and any applicable national legislation in the Law as amended from time to time of the DPA 2018 to the extent that it relates to processing of personal data and privacy and all applicable Law about the processing of personal data and privacy.

**“Data Protection Officer”** has the meaning given in the GDPR.

**“Data Subject”** has the meaning given in the GDPR.

**“Data Subject Request”** means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“Database Rights”** means as rights in databases are defined in s.3A of Part 1 Chapter 1 of the Copyright, Designs and Patents Act 1988.

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

**“DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of an specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 6 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 6 of the Finance Act and as extended to ICS of the National Insurance Application of Part 6 of the Finance Act 2004 regulations 2012 SI 2012/1000 made under section 1(2A) of the Social Security Administration Act 1992.

**“DPA 2018”** means the Data Protection Act 2018.

**“EIR”** means the Environmental Information Regulations 2004 (SI 2004/3231) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“End Date”** means the date the Contract ends set out in paragraph 1. of the for of Contract.

**“Equipment”** means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

**“Extension”** has the meaning given in paragraph 1. of the for of Contract.

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

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

**“Form of Contract”** means Section 1 of the Contract.

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

**“General Anti-Abuse Rule”** means:

(a) the legislation in Part 5 of the Finance Act 2013 and

(b) any further legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid ICS.

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

**“Goods”** means any goods supplied by the Contractor or by a Sub-Contractor under the Contract as specified in Schedule 1 including any modified or alternative goods.

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

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

“**ICT Environment**” means the Authority System and the Contractor System.

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

“**Initial Contract Period**” means the period from the Commencement Date to the End Date.

“**Intellectual Property Rights**” means patents, utility models, inventions, trademarks, service marks, logos, design rights, whether registered or otherwise, applications for an office belonging to copyright, database rights, domain names, plant variety rights, non-registered trade or business names, oral rights and other similar rights or obligations, whether registered or not in an country including but not limited to the United Kingdom and the right to sue for passing off.

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

“**Key Personnel**” mean those persons named in the Specification as key personnel.

“**Know-How**” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data or drawings, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, processes, catalogues and process descriptions and scientific approaches and methods).

“**Law**” means an law, statute, subordinate legislation, within the meaning of section 21 of the Interpretation Act 1979, enforceable right, within the meaning of section 2 of the European Communities Act 1972, regulation, order, regulation, policy, and/or guidance or code of practice, judgment of a relevant court of law or directives or requirements of an Regulatory Body, or any of the relevant Part is bound to comply.

“**LED**” means Law Enforcement Directive (Directive (EU) 2016/680).

“**Malicious Software**” means any software program or code intended to destroy, interfere with, corrupt or cause undesired effects on program files, data or other information, executable code or application software across whether or not its operation is immediate or delayed and whether the malicious software is introduced deliberately or without knowledge of its existence.

“**Material Breach**” means a breach including an anticipatory breach that is serious in the widest sense of having a serious effect on the benefit of the Authority or could otherwise derive from a

substantial portion of the Contract or

any of the obligations set out in clauses A.1, D1, E1, E2, E3, E4, E5, E6 or E10.

“**Month**” means calendar month.

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

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

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

or legislation that have an effect equivalent or similar to the General Anti-Avoidance Rule or the Anti-Avoidance Principle

ii the failure of an avoidance scheme which the Contractor was involved in and which was or should have been notified to the Relevant Tax Authority under the DOTAS or an equivalent or similar regime and/or

iii an attempt of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax-related offences which is not spent at the Completion Date or to a civil penalty for fraud or evasion.

**“Personal Data”** has the meaning given in the GDPR.

**“Personal Data Breach”** has the meaning given in the GDPR.

**“Premises”** means the location where the Services are to be supplied as set out in the Specification.

**“Price”** means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract as set out in Schedule 2 for the full and proper performance of the Contractor of its obligations under the Contract.

**“Processor”** has the meaning given in the GDPR.

**“Prohibited Act”** means:

a to directly or indirectly offer, promise or give any person acting for or engaged with the Authority a financial or other advantage to

i induce that person to perform in improper performance a relevant function or activity or

ii reward that person for its improper performance of a relevant function or activity

iii to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for its improper performance of a relevant function or activity in connection with the Contract

c an offence

i under the Bribery Act 2010 or any legislation repealed or revoked by the Scotland Act

ii under legislation or common law concerning fraudulent acts or

iii the defrauding, attempting to defraud or conspiring to defraud the Authority

d any activity, practice or conduct which would constitute one of the offences listed under the above specific activity, practice or conduct has been carried out in the UK.

**“Protective Measures”** means appropriate technical and organisational measures which shall include, as a minimum, using and encrypting Personal Data ensuring confidentiality, integrity, availability and resilience of systems and services ensuring that availability and access to Personal Data can be restored in a timely manner after an incident and regularly assessing and evaluating the effectiveness of the security measures adopted which including those outlined in Schedule 4.

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

**“Purchase Order”** means the document in which the Authority specifies the Services which are to be supplied to the Contractor under the Contract.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom or the International Organisation for Standardisation or other reputable or equivalent body and their successor bodies that a skilled and experienced operator in the same trade, industry or business sector as the Contractor could reasonably and ordinarily be expected to comply with and as set out in the order detailed in Schedule 1.

**“Receipt”** means the physical or electronic arrival of the invoice at the address specified in clause A.1 or at another address given to the Authority to the Contractor for the submission of invoices from time to time.

**“Regulations”** means the Public Contract Regulations 2015 (SI 2015/102).

**“Regulatory Body”** means a government department and regulatory, statutory and other entities, committees or boards and bodies which either under statutory powers, regulations, codes of practice or otherwise are entitled to regulate, investigate or influence the matters dealt with in the Contract or any other affairs of the Authority.

**“Relevant Conviction”** means a conviction that is relevant to the nature of the Services or as listed to the Authority and/or relevant to the work of the Authority.

**“Relevant Requirements”** means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued to the Secretary of State for Justice pursuant to section 1 of the Bribery Act 2010.

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

**“Replacement Contractor”** means any third party supplier appointed to the Authority to supply any goods and/or services which are substantially similar to any of the Services in substitution for any of the Services following the termination or partial termination of the Contract.

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

**“Results”** means any guidance, specifications, reports, studies, instructions, tools, plans, data, drawings, data bases, patents, patterns, models, designs or other material which is

a) prepared for or by the Contractor for use in relation to the performance of its obligations under the Contract or

b) the result of or done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services.

**“Returning Employees”** means those persons agreed by the Parties to be employed by the Contractor and/or any Sub-Contractor or employed in the supply of the Services immediately before the end of the Contract Period.

**“Security Policy Framework”** means the HMG Security Policy Framework (available from the Cabinet Office’s Government Security Secretariat) as updated from time to time.

**“Services”** means the services set out in Schedule 1 (including any modified or alternative services)



**“Specification”** means the description of the Services to be supplied under the Contract as set out in Schedule 1 including where appropriate the use of Personnel the Premises and the Quality Standards.

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

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

**“Sub-Contract”** means a contract between 2 or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain made wholly or substantially for the purpose of performing or contributing to the performance of) the whole or any part of the Contract and **“Sub-Contractor”** shall be construed accordingly.

**“Sub-processor”** means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract.

**“Tender”** means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services.

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

**“Third Party IP Claim”** has the meaning given to it in clause E8.7 (Intellectual Property Rights).

**“Third Party Software”** means software which is proprietary to an third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 1.

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

**“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2002.

**“TUPE Information”** means the information set out in clause B17.1.

**“Valid Invoice”** means an invoice containing the information set out in clause C2.5.

**“Variation”** means a variation to the Specification the Price or any of the terms or conditions of the Contract.

**“VAT”** means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1990.

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

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

(a) the singular includes the plural and vice versa

(b) words importing the masculine include the feminine and the neuter

(c) reference to a clause is a reference to the whole of that clause unless stated otherwise

- references to a person include an individual □□ □□□□□□ corporate □□□□□□ □□□□□□ association □□□□ □□□□□□ or other legal entity or central Government □□□□
- the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- Readings are included for ease of reference only and shall not affect the interpretation or construction of the Contract
- a reference to an Law includes a reference to that Law as amended □□□□□□□□□□ consolidated or re-enacted from time to time and
- references to the Contract are references to the Contract as amended from time to time.

## A2 The Authority’s Obligations

- A2.1 Save as otherwise expressly provided the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterpart and nothing in the Contract shall operate as an obligation upon or in any other manner to bind or constrain the Authority in any other capacity and the exercise of the Authority of its duties and powers in any other capacity shall not lead to an liability whatsoever arising on the part of the Authority to the Contractor.

## A3 Contractor’s Status

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

## A4 Notices and Communications

- A4.1 Subject to clause A4.2 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 or first class post or recorded delivery or special delivery or email or communication via Delta.
- A4.2 If it is not returned as undelivered a notice served
- in a letter is deemed to have been received 2 Working Days after the date it was sent and
  - in an email is deemed to have been received 2 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.

A4.1 Notices pursuant to clauses G or Force Majeure or 2 Dispute Resolution or to terminate the Contract or any part of the Services are valid only if served in a letter and recorded deliver or special deliver.

A4.2 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.

for the Authority

Contact name: Emma Roberts

Address: Ceasars Parkfield Road, Loughborough, Leicestershire LE11 1Y and

Email: procurement@ceasars.co.uk

for the Contractor

Contact name: Ashley Jane Gaces

Address: Telford Science Centre, Telford, Shropshire TF1 1TH and  
P2 GE and

Email: tenders@td.telford.gov.uk

## A5 Mistakes in Information

A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority and the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

## A6 Conflicts of Interest

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor 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 Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority of it without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately on notice and/or take or require the Contractor to take such other steps it deems necessary in the Authority's reasonable opinion if there is or may be an actual conflict or a potential conflict between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not be deemed to affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

# B. THE SERVICES

## B1 Specification

B1.1 In consideration of the Contractor supplying the Services and the Goods the Contractor shall be paid the Price.

## **B2 Samples**

B2.1 If requested by the Authority the Contractor shall provide the Authority with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.

B2.2 The Contractor shall ensure that the Goods are fully compatible with and conform to the extent specified in the Specification.

B2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of the Contractor's obligations under the Contract.

## **B3 Delivery**

B3.1 Unless otherwise stated in the Specification where the Goods are delivered by the Contractor the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. If the Goods are collected by the Authority the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

B3.2 Except where otherwise provided in the Contract delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.

B3.3 An access to the Premises and an labour and equipment that may be provided by the Authority in connection with delivery shall be provided without acceptance by the Authority of any liability whatsoever to the extent permitted by law.

B3.4 Where access to the Premises is necessary in connection with delivery or installation of the Goods the Contractor and its Sub-Contractors shall at all times comply with the security requirements of the Authority.

B3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

B3.6 The Authority is under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice to the Contractor to remove them within 5 Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery including but not limited to the costs of moving and storing the Goods, failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Authority.

B3.7 Unless expressly agreed to the contrary the Authority shall not accept delivery of installations. However, if the Authority does specify or agree to delivery of installations, delivery of an installation later than the date specified or agreed for its delivery shall constitute a breach of the contract and entitle the Authority to terminate the whole or any part of the Contract without further liability to the Authority.

B3.8 The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably

require for supervision and execution. In this clause B3 Services include planning or reliability or in connection with the supply of the Services.

B3.1 If reasonably requested to do so by the Authority the Contractor shall coordinate its activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.

B3.10 Title supply of the Goods and Services is of the essence of the Contract including in relation to completing the supply of the Services within the time agreed or on a specified date. If the Contractor fails to deliver the Goods or Services within the time promised or specified in the Specification the Authority is released from any obligation to accept and pay for the Goods or Services as applicable and terminate the Contract in either case without prejudice to any other rights and remedies of the Authority.

## **B4 Risk and Ownership**

B4.1 Subject to clauses B4.5 and B4.6 risk in the Goods shall without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1) pass to the Authority at the time of delivery.

B4.2 Ownership in the Goods shall without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under clause F1), pass to the Authority at the time of delivery or earlier.

## **B5 Non-Delivery**

B5.1 On dispatch of any consignment of the Goods the Contractor shall send the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume.

B5.2 If the Authority has been informed in writing of the dispatch of the Goods and having been placed in transit the Goods are not delivered to the Authority on the due date for delivery the Authority shall within 10 Working Days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered and may request the Contractor to deliver substitute Goods free of charge within the timescales specified by the Authority or terminate the Contract in accordance with clause B3.10.

## **B6 Labelling and Packaging**

B6.1 The Contractor shall ensure that the Goods are labelled and packaged in accordance with the Contract.

B6.2 The Contractor shall comply with the Packaging or Packaging Waste Directive 2002/EC implemented in the UK by the Packaging (Essential Requirements) Regulations 2002. The container in which the Goods are held shall be labelled with the Contractor's name, the net, gross and tare weights and contain a description of its contents. All containers of hazardous Goods and all documents relating thereto shall bear prominent and adequate warnings.

B6.3 The Contractor is responsible for the removal and disposal of all packaging materials from the Premises within the period specified by the Authority and at no cost to the Authority.

B6.4 If no period for collection and disposal is specified by the Authority the Contractor shall collect the packaging from the Premises no later than 10 Working Days from the date of delivery of the Goods. The Authority shall be entitled to dispose of any packaging materials which have not been collected by the Contractor within those 10 Working Days or such other period specified by the Authority for collection. The Contractor shall be responsible

for the payment of any costs incurred by the Authority in connection with its collection and disposal of that packaging material.

#### **B1.5 The Contractor shall**

- a) use packaging capable of being recovered for further use or recycling. Packaging materials shall be easily separable and into recyclable parts consisting of one material e.g. cardboard/ceramic/astic/tile
- b) reuse the packaging and where reuse is not practicable recycle the materials in the manufacture of crates/pallets/cases/cartons/cushioning and other forms of packaging where these fulfil other packaging specifications
- c) make available use of materials taken from renewable sources/recycled materials are not suitable or not readily available
- d) if using wooden pallets or timber derived products for the packaging and storage of Goods comply with the UK timber procurement policy and the provisions in clause D5
- e) review packaging specifications periodically to ensure that no unnecessary limitations on the use of recycled materials exist and
- f) if requested to do so provide the Authority with a description of the product packaging and evidence to satisfy the Authority that it is reusing/recycling and reviewing its use of packaging. The evidence should provide robust compliance with BS EN 13430 on recyclability or BS EN 13420 on reusability or equivalent.

### **B7 Training**

- B7.1 Included in the Specification the Price includes the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Specification.

### **B8 Provision and Removal of Equipment**

- B8.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.
- B8.2 The Contractor shall not deliver any Equipment to or begin any work on the Premises without obtaining Approval.
- B8.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the damage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.
- B8.4 Unless otherwise agreed Equipment brought onto the Premises will remain the property of the Contractor.
- B8.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.

- B1.1 The Contractor shall maintain all Equipment in a safe serviceable and clean condition.
- B1.2 The Contractor shall, at the Authority's written request at its own expense and as soon as reasonably practicable
- a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous or not supplied in accordance with the Contract and
  - b) replace or repair it with a suitable substitute item of Equipment.
- B1.3 Within 20 Working Days following the end of the Contract Period the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean safe and tidy condition. The Contractor shall take good and adequate care of those Premises and any fixtures and fittings in the Premises which is caused by the Contractor or Staff.

## B9 Goods Delivery

- B9.1 The Contractor shall perform its obligations under the Contract
- a) with appropriately experienced qualified and trained personnel with all due skill care and diligence
  - b) in accordance with Good Industrial Practice and
  - c) in compliance with all applicable Laws.
- B9.2 The Contractor shall ensure the Goods
- a) conform in all respects with the Specification and where applicable with any sample approved by the Authority
  - b) operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification
  - c) conform in all respects with all applicable Laws and
  - d) are free from defects in design materials and workmanship and are fit and sufficient for all the purposes for which such goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority

## B10 Service Delivery

- B10.1 The Contractor shall at all times comply with the Quality Standards and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industrial Practice.
- B10.2 The Contractor shall ensure that all Staff providing the Services do so with all due skill care and diligence and shall possess such qualifications skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

B10.1 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice the Authority shall inspect the installation and shall be giving notice to the Contractor

a) accept the installation or

bb) reject the installation and inform the Contractor why, in the Authority's reasonable opinion the installation does not satisfy the Specification.

B10.2 If the Authority rejects the installation pursuant to clause B10.1 the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the installation does not meet in 2 Working Days or such other period agreed by the Parties satisfy the Specification the Authority may terminate the Contract with immediate effect without notice.

B10.5 The installation shall be completed when the Contractor receives a notice issued by the Authority in accordance with clause B10.1a. Notwithstanding acceptance of an installation in accordance with clause B10.1a the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B10.6 During the Contract Period the Contractor shall

a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation

bb) provide all tools and equipment for and procure the provision of all tools and equipment necessary for completion of the installation and

cc) not in delivering the Services in any manner endanger the safety or convenience of the public.

## B11 Key Personnel

B11.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.

B11.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority except on reason of long term sickness, maternity leave, maternity leave or termination of employment or other similar extenuating circumstances.

B11.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B11.4 The Authority shall not unreasonably withhold its agreement under clauses B11.2 or B11.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B11.5 The Authority may advise notice to the Contractor as to it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.



## B12 Contractor's Staff

B12.1 The Authority shall advise the Contractor in writing to admit or not to admit to remain on, the Authority's Premises:

(a) an employee of the Contractor

(b) an person employed or engaged by an employee of the Contractor

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable.

B12.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned in the Contract and giving such other particulars as the Authority may reasonably request.

B12.3 The decision of the Authority as to whether an person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B12.2 shall be final.

B12.4 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority's Site or the Authority's Data have been cleared in accordance with the BPSS.

## B13 Inspection of Premises

B13.1 Save as the Authority may otherwise direct the Contractor is deemed to have inspected the Premises before submitting its Tender and to have conducted due diligence in relation to all matters connected with the performance of its obligations under the Contract.

## B14 Licence to Occupy Premises

B14.1 Land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.

B14.2 The Contractor shall permit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Contractor shall cooperate and ensure that its Staff cooperate with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

B14.3 Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake approved modification promptly and without delay.

B14.4 The Contractor shall (and shall ensure that any Staff on the Authority's Premises shall) observe and comply with its security regulations and requirements including those relating to security arrangements as applicable in force from time to time for the conduct of personnel when on the Authority's Premises as determined by the Authority.

B14.5 The Contract does not create a tenancy or an estate in favour of the Contractor or its Staff and no such tenancy or estate shall come into being and not constitute an interest granted pursuant to the Contract. The Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

## **B15 Property**

- B15.1 All Property is and shall remain the Property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter and premises of the Contractor during normal business hours on reasonable notice to recover and secure Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Subcontractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- B15.2 The Property shall be deemed to be in good condition when received or on delivery to the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- B15.3 The Contractor shall maintain the Property in good order and condition including fair wear and tear and shall use the Property solely in connection with the Contract and for no other purpose without Authority approval.
- B15.4 The Contractor shall ensure the security of all the Property whilst in its possession either on the premises or elsewhere during the supply of the Services in accordance with the Authority's reasonable security requirements as required from time to time.
- B15.5 The Contractor shall be liable for all loss or damage to the Property unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately following a fire or any defects appearing in or losses or damage occurring to the Property.

## **B16 Offers of Employment**

- B16.1 Except in respect of an transfer of Staff under TPE or the Contract Period and for 12 Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the Services and/or the Contract without Authority approval.

## **B17 Employment Provisions**

- B17.1 Not later than 12 Months prior to the end of the Contract Period the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
- (a) the total number of Staff whose employment shall terminate at the end of the Contract Period save for an operation of Law
  - (b) the age, gender, salary or other remuneration, tenure, pay settlements and redundancy and pensions entitlement of the Staff referred to in clause B17.1 (a)
  - (c) the terms and conditions of employment of the Staff referred to in clause B17.1 (a) their job titles and qualifications
  - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened and

the details of all collective agreements and a series of the current state of negotiations and an assessment of details of an current industrial disputes and claims for recognition of a trade union.

B1.2 At intervals determined by the Authority the Contractor shall not be more frequent than once every 90 days the Contractor shall give the Authority updated TPE Information.

B1.3 Each time the Contractor supplies TPE Information to the Authority it shall warrant its completeness and accuracy and the Authority shall assign the benefit of this warrant to an Replacement Contractor.

B1.4 The Authority shall use TPE Information it receives from the Contractor for the purposes of TPE and/or an retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably require.

B1.5 If TPE applies to the transfer of the Services on termination of the Contract the Contractor shall indemnify and keep indemnified the Authority the Crown and an Replacement Contractor against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities of the Authority or the Crown or an Replacement Contractor as a result or in connection with

a) the provision of TPE Information

aa) an claim or demand and an Returning Employee whether in contract, tort, under statute or otherwise in each case arising directly or indirectly from an act, default or omission of the Contractor or an S Contractor in respect of an Returning Employee on or before the end of the Contract Period

ac) an failure of the Contractor or an S Contractor to comply with its obligations under regulations 1 or 1 of TPE or an award of compensation under regulation 15 of TPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under regulation 1 of TPE

ad) an claim including an individual employee entitled under or consequent on such a claim to a trade union or other body or person representing an Returning Employees arising from or connected with an failure of the Contractor or an S Contractor to comply with an legal obligation to such trade union, body or person and

ae) an claim of an person who is transferred from the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.

B1.6 If the Contractor becomes aware that TPE Information it provided was become inaccurate or misleading it shall notify the Authority and provide the Authority with up to date TPE Information.

B1.7 This clause B1 applies during the Contract Period and indefinitely thereafter.

B1.8 The Contractor undertakes to the Authority that during the 12 Months prior to the end of the Contract Period the Contractor shall not and shall procure that an S Contractor shall not without Authority's consent Authority not to be unreasonable withheld or delayed

a) a amend or vary or report to a amend or vary the terms and conditions of employment or engagement including for the avoidance of doubt a an Statutory

where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business and where an such amendment or variation is not in any way related to the transfer of the Services

the Contractor shall terminate or give notice to terminate the employment or engagement of any Staff member other than in circumstances in which the termination is for reasons of misconduct or lack of capability

the Contractor shall ensure that any transfer or variation of the Services involves the Staff member or in the provision of the Services other than where such transfer or re-organisation is planned as part of the individual's career development; (ii) takes place in the normal course of business and (iii) will not have an adverse impact on the delivery of the Services. The Contractor shall ensure that any transfer, re-organisation or variation is not in any way related to the transfer of the Services

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

## C PAYMENT

### C1 Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2.

### C2 Payment and VAT

C2.1 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 2.

C2.2 The Authority shall, in addition to the Price and following receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall submit the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to submit VAT on an invoice, the Authority will not at any later date be liable to pay the Contractor any additional VAT.

C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

C2.5 Valid Invoices shall include

(a) the Contractor's full name, address and title of the Contract;

(b) if Goods are included in the Specification, the name and quantity of the Goods delivered including batch numbers

(c) the Purchase Order number

**and, if requested by the Authority**

(d) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;

- e) the name of the individuals to whom the timesheet relates and hourly rates for each
- f) identification of each individual are Contractor's staff and which are Scaff Contractors
- g) the address of the Premises and the date on which work was undertaken
- h) the time spent working on the Premises by the individuals concerned
- i) details of the time of work undertaken by the individuals concerned
- j) details of plant or materials operated and on stand
- k) separate identification of time spent travelling and/or meal or rest breaks and
- l) where appropriate details of journeys made and distances travelled.

- C2.9 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.
- C2.10 The Authority shall not pay for plant which is not in use during a meal or rest break.
- C2.11 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning, changing, washing in preparation for or return from a meal or rest break.
- C2.12 Timesheets must include a minimum of 0 minutes break for each shift of work a minimum of 5 minutes break in a shift of between 4 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.
- C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing with the Authority and overhead costs shall include but not be limited to facilities, utilities, insurance, transport, office overheads, indirect staff costs and other costs not specifically and directly ascribed solely to the provision of the Services.
- C2.11 If Schedule 2 expressly provides that the Authority shall be charged for plant which is on standstill then in circumstances where plant has waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standstill charge of 0 of agreed rates shall be made in respect of such relevant periods if supported by timesheets.
- C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.
- C2.13 The Authority shall not pay a standstill rate if plant is on standstill because no work was being carried out on the Premises at that time or no operator or other relevant staff were available unless the standstill is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).
- C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses 10.2 and/or 11 and the Contractor shall mitigate such costs as far as is reasonably possible for example by re-utilising Staff, plant, materials and services on other contracts.
- C2.15 The Contractor shall claim expenses only if they are clearly identified supported by original receipts and Approved.

- C2.1□ If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.
- C2.1□ If an overpayment has been made or the payment or an amount is not supported by a Valid Invoice the Authority shall recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.
- C2.1□ The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:
- [finance.ceas.co.uk](http://finance.ceas.co.uk) or Transactions Team Ceas Laboratory Parkfield Road  
Lloeston S60 0RT.
- C2.1□ If a payment of an undisputed amount is not made by the Authority by the due date then the Authority shall pay the Contractor interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- C2.20 The Contractor shall ensure that a provision is included in all Subcontracts which requires payment to be made of all sums due to SubContractors within 30 days of the receipt of a valid invoice.
- C2.21 The Contractor shall indemnify the Authority on a continuing basis against any liability including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.22 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause 2.1 or failure to pay undisputed sums of money.
- C2.2□ The Authority shall not pay an invoice which is not a Valid Invoice.

### C3 Recovery of Sums Due

- C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract, the Authority shall unilaterally deduct that sum from any sum then due or payable at any later time and recover due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.
- C3.2 Any overpayment by either Party of the Price or of VAT or otherwise shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall pay all payments due to the Authority without any deduction or set-off or counterclaim or discount or late payment or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C3.1 All payments due shall be made within a reasonable time unless otherwise specified in the Contract in cleared funds to a bank or building society account as the recipient Party may from time to time direct.

#### C4 Price During Extension

C4.1 Subject to Schedule 2 and clause 11.1 Variation, the Price shall apply for the Initial Contract Period and until the end date of an Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

## D. STATUTORY OBLIGATIONS

### D1 Prevention of Fraud and Bribery

D1.1 The Contractor represents and warrants that neither it nor to the best of its knowledge and belief have at any time prior to the Commencement Date

(a) committed a Prohibited Act or been or will be notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act and/or

(b) been listed in an government department or agency as being debarred/suspended/proposed for suspension or debarment or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

D1.2 The Contractor shall not during the Contract Period

(a) commit a Prohibited Act and/or

(b) do or suffer anything to be done which would cause the Authority or any of its employees/consultants/contractors/subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur an liability in relation to the Relevant Requirements.

D1.3 The Contractor shall during the Contract Period

(a) establish, maintain and enforce and require that its Subcontractors establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act and

(b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

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

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act

(b) been listed in an government department or agency as being debarred/suspended/proposed for suspension or debarment or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act and/or

the Contractor received a request or demand for an undue financial or other advantage or an undue in connection with the performance of the Contract or otherwise suspects that an person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4 the Contractor shall respond promptly to the Authority's enquiries, cooperate with an investigation and allow the Authority to audit any books, records and/or any other relevant documentation.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2 the Authority may give notice

that require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default or

may immediately terminate the Contract.

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

## D2 Discrimination

D2.1 The Contractor shall

that perform its obligations under the Contract in accordance with

i) all applicable equality Law whether in relation to race, sex, gender, reassignment, age, disability, sexual orientation, religion or ethnicity, pregnancy, maternity or otherwise;

ii) the Authority's equality and diversity policy as given to the Contractor from time to time;

iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable Law; and

may take all necessary steps and in order the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal or the Equality and Human Rights Commission or any successor organisation.

## D3 Rights of Third Parties

D3.1 The provisions of clauses B1.5 and E.1 confer benefits on persons named in such provisions (together "Third Party Provisions") other than the Parties (each person a "Third Party Beneficiary") and are intended to be enforceable by Third Party Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act 1999 ("CRTPA").

D3.2 Subject to clause D3.1 a person who is not a Party has no right under the CRTPA to enforce any provisions of 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.



- D3.1 No Third Party Beneficiary shall enforce or take steps to enforce any Third Party Provision without Authority Approval.
- D3.2 Any amendments to the Contract shall be made by the Parties without the consent of any Third Party Beneficiary.

## D4 Health and Safety

- D4.1 The Contractor shall perform its obligations under the Contract in accordance with
- a) all applicable Law regarding health and safety and
  - b) the Authority's health and safety policy while at the Authority's Premises.
- D4.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

## D5 Environmental Requirements

- D5.1 The Contractor shall in the performance of the Contract have due regard to the Authority's environmental, sustainable and ethical procurement policies ("**Environmental Policies**") which require the Authority to
- a) conserve energy, water, food, paper and other resources and reduce waste
  - b) phase out the use of ozone depleting substances
  - c) minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment
  - d) minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and where such substances are necessary to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority
  - e) reduce fuel emissions wherever possible
  - f) maximise the use of recovered materials and recycled materials are not suitable or not readily available to maximise the use of materials taken from renewable sources and
  - g) promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, etc.)
- D5.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain
- a) ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, hydrochloroethane or any other damaging substances and/or

GHGs and other gaseous and non-gaseous substances with a high global warming potential

Unless given written permission from the Authority to do so.

D5.1 The Contractor shall conserve energy and water, reduce carbon emissions and other greenhouse gases, minimise the use of substances damaging or hazardous to health and the environment and reduce waste and/or encourage resources more efficiently and recycling and composting and respecting biodiversity.

D5.2 If required from the Authority the Contractor shall provide the Authority with information about its compliance with its obligations under clause D5.1.

D5.5 The Contractor shall ensure that its Staff are aware of the Authority's Environmental Policies.

D5.6 The Contractor shall comply with the minimum environmental standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority or on behalf of the Contractor under the Contract.

D5.7 The Contractor shall

a) identify and risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity and loss of water quality which may disrupt and/or affect the supply of the Services; and

b) risks which have been identified enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events including ensuring the necessary awareness, raising, evaluation, preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services.

## E PROTECTION OF INFORMATION

### E1 Authority Data

E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 The Contractor shall not store, copy, disclose or use the Authority Data except as necessary for the performance of the Contractor's obligations under this Contract or as otherwise expressly authorised in writing from the Authority.

E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.

E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

- E1.5 The Contractor shall ensure secure practices of all Authority Data and shall ensure that up-to-date backups are stored securely off-site. The Contractor shall ensure that such backups are made available to the Authority immediately upon request.
- E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data including backup data is a secure system that complies with the Security Policy Framework.
- E1.7 If Authority Data is corrupted, lost or significantly degraded as a result of the Contractor's Default so as to be unusable the Authority shall
- a) require the Contractor at the Contractor's expense to restore or procure the restoration of Authority Data and the Contractor shall do so promptly and/or
  - b) itself restore or procure the restoration of Authority Data and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or significantly degraded in any way or for any reason then the Contractor shall notify the Authority immediately and in order the Authority of the remedial action the Contractor proposes to take.

## E2 Data Protection

- E2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation the Authority is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 5. The only processing that the Contractor is authorised to do is listed in Schedule 5 of the Authority and shall not be determined by the Contractor.
- E2.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- E2.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance shall at the discretion of the Authority include
- a) a systematic description of the envisaged processing operations and the purpose of the processing
  - b) an assessment of the necessity and proportionality of the processing operations in relation to the Services
  - c) an assessment of the risks to the rights and freedoms of Data Subjects and
  - d) the measures envisaged to address the risks including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- E2.4 The Contractor shall in relation to any Personal Data processed in connection with its obligations under this Contract
- a) process that Personal Data only in accordance with Schedule 5 unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law

ensures that it has in place Protective Measures which are appropriate to protect against a Data Loss Event which the Authority can reasonably expect not to fail to reflect shall not amount to approval of the Authority of the adequacy of the Protective Measures having taken account of the

- i) nature of the data to be protected
- ii) risk that might result from a Data Loss Event
- iii) state of technological development and
- iv) cost of implementing appropriate measures

c) ensure that

- i) the Staff do not process Personal Data except in accordance with this Contract and in particular Schedule 5
- ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they
  - A) are aware of and comply with the Contractor's duties under this clause;
  - B) are subject to appropriate confidentiality undertakings with the Contractor or an SRO processor
  - C) are informed of the confidential nature of the Personal Data and do not misdisclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract and
  - D) have undergone adequate training in the use, care, protection and handling of Personal Data and

d) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled

- i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer whether in accordance with the GDPR Article 44 or LED Article 44 as determined by the Authority
- ii) the Data Subject has enforceable rights and effective legal remedies
- iii) the Contractor complies with its obligations under the Data Protection Legislation providing an adequate level of protection to any Personal Data that is transferred or if it is not so it undertakes its best endeavours to assist the Authority in meeting its obligations and
- iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data

e) at the written direction of the Authority delete or return Personal Data and any copies of it to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

E2.5 Subject to clause E2. the Contractor shall notify the Authority immediately in relation to any Personal Data processed in connection with its obligations under this Contract if

- a) receives a Data Subject Request for Corrected Data Subject Request
- b) receives a request to rectify, delete or erase any Personal Data
- c) receives any other request, complaint or communication relating to either Parties obligations under the Data Protection Legislation
- d) receives any communication from the Information Commissioner or any other regulator or authority
- e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or expected to be required by Law or
- f) becomes aware of a Data Loss Event.

E2.1 The Contractor's obligation to notify under clause E2.5 shall include the provision of further information to the Authority in cases as details become available.

E2.2 Taking into account the nature of the processing the Contractor shall provide the Authority with all assistance in relation to either Parties obligations under Data Protection Legislation in relation to any Personal Data processed in connection with its obligations under this Contract and any complaint, communication or request made under Clause E2.5 and insofar as possible within the timescales reasonably required by the Authority including for or in providing

- a) the Authority with all details and copies of the complaint, communication or request
- b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation
- c) the Authority at its request with any Personal Data it holds in relation to a Data Subject
- d) assistance as requested by the Authority following any Data Loss Event
- e) assistance as requested by the Authority in respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

E2.3 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff unless

- a) the Authority determines that the processing is not occasional
- b) the Authority determines the processing includes special categories of data as referred to in Article 9 of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR or
- c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- E2. The Contractor shall allow for audits of its Personal Data processing activities by the Authority or the Authority's designated auditor.
- E2.10 Each Party shall designate its own Data Protection Officer in accordance with the Data Protection Legislation.
- E2.11 Before allowing an SaaS processor to process any Personal Data related to this Contract the Contractor must
- a) notify the Authority in writing of the intended SaaS processor and processing;
  - b) obtain the written consent of the Authority;
  - c) enter into a written agreement with the SaaS processor which give effect to the terms set out in this clause E2 such that the data is transferred to the SaaS processor and
  - d) provide the Authority with such information regarding the SaaS processor as the Authority may reasonably require.
- E2.12 The Contractor shall remain liable for all acts or omissions of any of its SaaS processors.
- E2.13 The Authority may at any time on not less than 30 Working Days' notice, revise this clause replacing it with an applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme which shall automatically be incorporated as an addendum to this Contract.
- E2.14 The Parties agree to take account of any non-binding guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E2.15 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

### E3 Official Secrets Acts and Finance Act

- E3.1 The Contractor shall comply with the provisions of
- a) the Official Secrets Acts 1911 to 1964 and
  - b) section 12 of the Finance Act 1993.

### E4 Confidential Information

- E4.1 Except to the extent set out in this clause E4 or in disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.
- E4.2 The Contractor hereby gives its consent for the Authority to publish the whole Contract with it and information which is Confidential Information belonging to the Authority redacted including from time to time agreed changes to the Contract to the general public.
- E4.3 In accordance with the Authority the Contractor shall ensure that Statutory professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection

of the Contract in substantial part or attached in Schedule 1 and applicable incorporating the requirements of clause E2.11. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E1.1.

E1.2 If requested by the Authority the Contractor shall give the Authority a copy of the list and subsequently on request by the Authority copies of each of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

E1.5 The Contractor shall only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E1.6 The Contractor shall not and shall procure that the Staff do not use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E1.7 Clause E1.1 shall not apply to the extent that

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

E1.8 Nothing in clause E1.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor

a) for the purpose of the examination and certification of the Authority's accounts;

b) for the purpose of an examination pursuant to section 11 of the National Audit Act 1983 of the economy, efficiency and effectiveness of the Authority as used its resources;

c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information shall further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority;

d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E1.1(c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- E4.9 Notwithstanding in clauses E4.1 to E4.8 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.
- E4.10 The Authority shall use all reasonable endeavours to ensure that an government department, Contracting Authority, third party or Subcontractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.9 is made aware of the Authority's obligations of confidentiality.
- E4.11 If the Contractor does not comply with clauses E4.1 to E4.9 the Authority may terminate the Contract immediately on notice to the Contractor.
- E4.12 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E4.13 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data whenever it is able to be recovered. The Contractor will cooperate with the Authority in an investigation as a result of any breach of security in relation to Confidential Information or data.
- E4.14 The Contractor shall at its own expense alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

## **E5 Freedom of Information**

- E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR.
- E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and shall
- (a) give the Authority a copy of all Information in its possession or control in the form that the Authority requires within 5 Working Days or such other period as the Authority may specify in the Authority's request
  - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR and
  - (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority
- E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

## **E6 Publicity, Media and Official Enquiries**



- E1.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations or any other applicable requirements as to transparency neither Parties shall make any press announcement or publicise the Contract or any part thereof in any manner except with the written consent of the other Party.
- E1.2 The Contractor shall use its reasonable endeavours to ensure that its Staff/Professional advisors and consultants comply with clause E1.1.

## E7 Security

- E1.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with its security requirements.
- E1.2 The Authority shall give the Contractor upon request copies of its written security procedures.
- E1.3 The Contractor shall as an ongoing obligation during the Contract Period use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- E1.4 Notwithstanding clause E1.3 Malicious Software is found the Parties shall cooperate to reduce the effect of the Malicious Software and participate in Malicious Software cases loss of operational efficiency or loss or corruption of the Authority Data assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- E1.5 Any cost arising out of the actions of the Parties taken in compliance with clause E1 shall be borne by the Parties as follows:
- a) If the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data whilst the Authority Data was under the control of the Contractor, and
  - b) If the Authority where the Malicious Software originates from the Authority Software or Authority Data whilst the Authority Data was under the control of the Authority.

## E8 Intellectual Property Rights

- E1.1 All Intellectual Property Rights in:
- a) the Results, or
  - b) any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is provided to or made available to the Contractor by or on behalf of the Authority together with the Results, the "IP Materials"
- shall vest in the Authority save for Copyright and Database Rights which shall vest in the Maker of the Work, and the Contractor shall not and shall ensure that the Staff shall not use or disclose any IP Materials without Approval save to the extent necessary for performance of the Contractor's obligations under the Contract.
- E1.2 The Contractor hereby assigns

a) to the Authority in full title guarantee all Intellectual Property Rights (save for Copyright and Database Rights) which shall consist in the IP Materials created in accordance with clauses E.1(a) and (b). This assignment shall take effect on the date of the Contract or in the case of rights arising after the date of the Contract as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor and

bb) to Her Majesty the Queen in full title guarantee all Copyright and Database Rights which shall consist in the IP Materials created in accordance with clauses E.1 (a) and (b).

and shall execute all documents and do all acts as are necessary to execute these assignments.

E.2 The Contractor shall

a) waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract

bb) ensure that the third party owner of any Intellectual Property Rights that are or will be used to perform the Services grants to the Authority a non-exclusive licence or itself a licensee of those rights shall grant to the Authority an authorised sublicense to use reproduce modify develop and maintain the Intellectual Property Rights in the same. Such licence or sublicense shall be non-exclusive perpetual royalty free worldwide and irrevocable and shall include the right for the Authority to sublicense transfer novate or assign to other Contracting Authorities the Crown the Relevant Contract or to any other third party supplying goods and/or services to the Authority (“Indemnified Persons”)

c) not infringe any Intellectual Property Rights of any third party in supplying the Services and

dd) during and after the Contract Period indemnify and be indemnified the Authority and the Indemnified Persons from and against all actions suits claims demands losses charges damages costs and expenses and other liabilities which the Authority or Indemnified Persons may suffer or incur as a result of or in connection with any breach of this clause E.3 except to the extent that an actual claim results directly from

i) items or materials based upon designs supplied by the Authority or

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

E.3 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority or Indemnified Person for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority

E.4.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim demand and or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights whether by the Authority the Contractor or Indemnified Person arising from the performance of the Contractor’s obligations under the Contract (“Third Party IP Claim”), provided that the Contractor shall at all times

a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations

iii) take due and proper account of the interests of the Authority and

c) not settle or compromise any claim without Authority not to be unreasonable, withheld or delayed

E8.1 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including but not limited to legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause E8.1 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.1(d) and ii)

E8.2 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.3 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made the Contractor shall notify the Authority and an relevant Indemnified Person at its own expense and subject to Authority not to be unreasonable, withheld or delayed shall not be prejudice to the rights of the Authority under clauses E8.1 and G2.1 (g) use its best endeavours to

a) modify any or all of the Services without reducing the performance or functionality of the same or substitute alternative services of equivalent performance and functionality so as to avoid the infringement or the alleged infringement or

iii) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E8.1(a) or (iii) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately in notice to the Contractor.

E8.4 The Contractor grants to the Authority and irrevocably to the Authority to a Replacement Contractor a royalty free irrevocable worldwide non-exclusive licence with a right to sublicense to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority or the Replacement Contractor reasonably requires in order for the Authority to exercise its rights under and receive the benefit of the Contract including without limitation the Services

## E9 Audit

E9.1 The Contractor shall keep and maintain until 3 years after the end of the Contract Period or as long a period as may be agreed between the Parties and accurate records of the Contract including the Services supplied under it all expenditure incurred by the Authority and all payments made to the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2 The Contractor agrees to make available to the Authority free of charge whenever requested copies of audit reports obtained by the Contractor in relation to the Services.

E1.1 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as are reasonable required.

E1.2 The Contractor and its agents shall permit the Comptroller and Auditor General and his appointed representatives access free of charge during normal business hours on reasonable notice to all such documents including computerised documents and data and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness of the Authority as used its resources. The Contractor shall provide such explanations as are reasonable required for these purposes.

## E10 Tax Compliance

E10.1 In during the Contract Period an Occasion of Tax Non-Compliance occurs the Contractor shall

(a) notify the Authority in writing of such fact within 5 Working Days of its occurrence and promptly give the Authority

(i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring together with any mitigating factors it considers relevant and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

E10.2 If the Contractor or an State are liable to be taxed in the UK or to pay ICS in respect of consideration received under the Contract the Contractor shall

(a) at all times comply with ITEPA and all other statutes and regulations relating to income tax and SSCBA and all other statutes and regulations relating to ICS in respect of that consideration and

(b) indemnify the Authority against any income tax ICS and social security contributions and any other liability deducted contribution assessment or claim arising from or made in connection with the provision of the Services by the Contractor or an State

## F. CONTROL OF THE CONTRACT

### F1 Failure to meet Requirements

F1.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements and this is not as a result of a default by the Authority the Contractor shall at its own expense rectify and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority

F1.2 The Authority may give notice to the Contractor rectify any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority rectifies any of the Goods pursuant to this clause the Authority shall be entitled to exercise to its other rights and remedies either

a) have such Goods repaired free of charge and in an event it is in 5 Working Days either repaired by the Contractor or replaced by the Contractor if the Goods are conform in all respects with the approved sample or with the Specification and the deliveries shall not be deemed to have taken place until such repair or replacement has occurred.

the Contractor shall treat the Contract as discharged by the Contractor's breach and obtain a refund (if a claim for the Goods has already been made) from the Contractor in respect of the Goods concerned together with a claim for an additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement.

1.1 The Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 1.2.

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

1.5 The Contractor hereby guarantees the Goods against defects in materials or workmanship for such period as shall be specified in the Specification or if no period is specified for a period of 12 months from the date of delivery. If the Authority shall within such period or within 25 Working Days thereafter give notice to the Contractor of a defect in any of the Goods as shall have arisen during such period under proper and normal use, the Contractor shall be bound to remedy to an extent of its rights and remedies such that the Authority shall have no further remedy for such defects whether by repair or replacement as the Authority shall elect free of charge.

1.6 Any Goods rejected or returned by the Authority as described in clause 1.2 shall be returned to the Contractor at the Contractor's risk and expense.

## F2 Monitoring of Contract Performance

2.1 The Contractor shall immediately inform the Authority if any of the Services are not being or are unable to be performed for the reasons for non-performance and corrective action and the date on which that action will be completed.

2.2 At or around 12 Months from the Commencement Date and each anniversary of the Commencement Date thereafter being a "Review Date" the Authority shall carry out a review of the performance of the Contractor "Checkpoint Review". Without prejudice to the generality of the foregoing the Authority shall in respect of the period under review consider such items as (but not limited to): the Contractor's delivery of the Services; the Contractor's contribution to innovation in the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.

2.3 The Contractor shall provide at its own cost an assistance reasonably required by the Authority to carry out such Checkpoint Review including the provision of data and information.

2.4 The Authority shall produce a report as a "Checkpoint Review Report" of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is an shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract.

- 2.5 The Authority shall give the Contractor a copy of the Checkpoint Review Report in accordance. The Authority shall consider any Contractor comments and shall produce a revised Checkpoint Review Report.
- 2.6 The Contractor shall within 10 Working Days of receipt of the Checkpoint Review Report revised as appropriate provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified in the Checkpoint Review Report.
- 2.7 Actions required to resolve shortcomings and implement improvements either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or otherwise the Contractor ought reasonably to have taken shall be implemented at no extra charge to the Authority.

### F3 Remedies for inadequate performance

- 3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may without prejudice to its rights under clause 2 Termination on Default and of the following:
- a) without terminating the Contract itself suspend or procure the suspension of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;
  - b) without terminating the whole of the Contract terminate the Contract in respect of part of the Services only where there is a corresponding reduction in the Price shall be made and thereafter itself suspend or procure a third party to supply such part of the Services;
  - c) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or
  - d) terminate the Contract in accordance with clause 2.
- 3.2 Without prejudice to its right under clause C Recoverable Sums Due the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the suspension of all or part of the Services by the Authority or a third party to the extent that such costs exceed the amount which would otherwise have been payable to the Contractor for such part of the Services.
- 3.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract or professional or industry practice which could reasonably be expected of a competent and situated qualified person or an legislative or regulatory requirement the Authority may give the Contractor notice specifying the nature in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.
- 3.4 If the Contractor has been notified of a failure in accordance with clause 3.3 the Authority may
- a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

□□□ it hold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

□□.5 If the Contractor has been notified of a failure in accordance with clause □□, it shall

a) use all reasonable endeavours to immediately initiate the impact of such failure to the Authority and to prevent such failure from recurring and

□□□ immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause □□.5 and the progress of those measures until resolved to the satisfaction of the Authority.

□□.□ If having been notified of an failure the Contractor fails to remedy it in accordance with clause □□.5 it is in the time specified by the Authority the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

## **F4 Transfer and Sub-Contracting**

□□.1 Except where clauses □□.□ and □□.□ state otherwise the Contractor shall not transfer, charge, assign, subcontract or in any other way dispose of the Contract or any part of it without Authority. All such documents shall be evidenced in writing and shown to the Authority on request. Subcontracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

□□.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. It is appropriate the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

□□.□ The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 5 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E4 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

□□.□ If the Authority has consented to the award of a Sub-Contract the Contractor shall ensure that

a) the Sub-Contract contains a right for the Contractor to terminate the Sub-Contract if the relevant Sub-Contractor does not comply in the performance of its contract with legal obligations in environmental, social or labour law

□□□ the Sub-Contractor includes a provision having the same effect as set out in clause □□.□ in any Sub-Contract which it awards and

b) copies of each Sub-Contract shall at the request of the Authority be sent by the Contractor to the Authority immediately.

□□.5 If the Authority believes there are

a) compelling grounds for excluding a Sub-Contractor pursuant to regulation 5 of the Regulations the Contractor shall replace or not appoint the Sub-Contractor or

non-competitor grounds or excluding a Subcontractor pursuant to regulation 5 of the Regulations the Authority shall require the Contractor to replace or not appoint the Subcontractor and the Contractor shall comply with such requirement.

Notwithstanding clause 11 the Contractor shall assign to a third party (the “Assignee”) the right to receive payment of the Price or an part thereof due to the Contractor including an interest which the Authority incurs under clause C2 (Payment and VAT). An assignment under this clause shall be subject to:

a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C (Recovery of Sums Due);

b) all related rights of the Authority under the Contract in relation to the recovery of sums due not paid; and

c) the Authority receiving notification under both clauses 10 and 11.

If the Contractor assigns the right to receive the Price under clause 11 the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date on which the assignment becomes effective.

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

The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval.

10 Subject to clause 11 the Authority shall assign, novate or otherwise dispose of its rights and obligations under the Contract or an part thereof to:

a) an Contracting Authority;

b) an other body established or authorised by the Crown or under statute in order substantially to perform an other functions that had previously been performed by the Authority;

c) an private sector body which substantially performs the functions of the Authority;

provided that an such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under the Contract.

11 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not subject to clause 12 affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority in the remainder of this clause not such bodies being referred to as the “Transferee”;

a) the rights of termination of the Authority in clauses 1 and 2 shall be available to the Contractor in respect of the Transferee; and



the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof without the prior consent in writing of the Contractor.

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

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

## F5 Waiver

5.1 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 shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

5.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A Notices and Communications.

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

## F6 Variation

6.1 If, after the Commencement Date, the Authority's requirements change the Authority shall request a Variation subject to the terms of this clause.

6.2 The Authority shall request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.

6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price the Authority shall

a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification;

b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached the matter shall be dealt with under the Dispute Resolution procedure detailed in clause 12 Dispute Resolution.

11.1 No Variation will take effect unless and until it is recorded in a validly executed CC. Execution of a CC shall be made via electronic signature as described in clause 1.2 of Section 1 of the Contract.

11.5 A CC takes effect on the date on which both Parties communicate acceptance of the CC to the Contractor shall be deemed to warrant and represent that the CC has been executed by a duly authorised representative of the Contractor in addition to the warranties and representations set out in clause G2.

11.6 The provisions of clauses 11.1 and 11.5 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a CC to be entered into on a retrospective basis which may itself vary the emergency Variation.

## F7 Severability

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason, an appropriate court of competent jurisdiction shall sever and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed without the invalid, illegal or unenforceable provision eliminated.

## F8 Remedies Cumulative

F8.1 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 shall not be deemed an election of such remedy to the exclusion of other remedies.

## F9 Entire Agreement

F9.1 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.

## F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.

# G LIABILITIES

## G1 Liability, Indemnity and Insurance

G1.1 Either Party shall be liable for

(a) death or personal injury caused by its negligence

(b) fraud or fraudulent misrepresentation

c) an obligation in the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982

c) an obligation under D1-E1-E2 or E3

d) an obligation under the

e) an obligation to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.1 and G1.3 the Contractor shall indemnify the Authority and be the Authority indemnified jointly against all claims proceedings demands charges actions damages costs expenses and other liabilities which arise out of the supply or the late or interrupted supply of the Services or the performance or non-performance of the Contractor of its obligations under the Contract or the presence of the Contractor or an Station on the premises including in respect of an death or personal injury loss or damage to property financial loss arising from an advice given or omitted to be given by the Contractor or another loss which is caused directly or indirectly by an act or omission of the Contractor.

G1.1 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed 125% of the total Contract value.

G1.1 The Contractor shall not be responsible for an injury loss damage cost or expense in and to the extent that it is caused by the negligence or willful misconduct of the Authority or the Authority of its obligations under the Contract.

G1.5 The Authority shall recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor

a) an additional operational and/or administrative costs and expenses incurred by the Authority including costs relating to time spent on or on behalf of the Authority in dealing with the consequences of the Default

b) an wasted expenditure or charges

c) the additional costs of procuring a Replacement Contractor or the re-award of the Contract Period and or replacement deliveries which shall include an incremental costs associated with the Replacement Contractor and/or replacement deliveries above those which could have been made under the Contract

d) an compensation or interest paid to a third party by the Authority and

e) an fine or penalty incurred by the Authority pursuant to Law and an costs incurred by the Authority in defending any proceedings which result in such fine or penalty

G1.1 Subject to clauses G1.1 and G1.5 neither Party shall be liable to the other for an

a) loss of profits turnover business opportunities or damage to goodwill in each case whether direct or indirect or

b) indirect special or consequential loss.

G1.1 Unless otherwise specified by the Authority the Contractor shall not be affected by the Commencement Date or such period as necessary to enable the Contractor to comply with its obligations herein take out and maintain with a reliable insurance company a policy

or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract including death or personal injury or loss of or damage to property or another loss. Such policies shall include cover in respect of any financial loss arising from an advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a period of 12 months following the end of the Contract.

- G1. The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- G1. The Contractor shall give the Authority on request copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place together with receipts or other evidence of payment of the latest premium due under those policies.
- G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- G1.12 The Contractor shall not take any action or fail to take any reasonable action or to the extent that it is reasonable in its power to prevent anything to occur in relation to the Contractor which would entitle an insurer to refuse to pay an claim under an insurance policy in which the Contractor is an insured or a co-insured or additional insured person.

## **G2 Warranties and Representations**

- G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that
- (a) it has all capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor
  - (b) in entering the Contract it has not committed any fraud
  - (c) as at the Commencement Date all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition that it will advise the Authority of any fact, matter or circumstance of which it becomes aware which would render such information to be false or misleading
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or to the best of its knowledge and belief pending or threatened against it or any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract
  - (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract
  - (f) no proceedings or other steps have been taken and not discharged nor to the best of its knowledge are threatened or the winding up of the Contractor or for its dissolution

- or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- g) it does 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) an person engaged by the Contractor shall be engaged on terms which do not entitle the to an Intellectual Property Right in any IP Materials
- i) in the years or period of existence where the Contractor has not been in existence or 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 government 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.

### G3 Force Majeure

- G3.1 Subject to the remaining provisions of this clause G3 a Party shall be relieved under this clause G3 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 Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, subcontractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, subcontractor or supplier is itself excused by a Force Majeure Event from complying with an obligation to the Contractor.
- G3.2 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 an action the Affected Party proposes to take to mitigate its effect.
- G3.3 If the Contractor is the Affected Party it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event
- a) are capable of being mitigated by an offer of Services that the Contractor has failed to do so and/or
  - b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services operating to the standards required by the Contract.
- G3.4 Subject to clause G3.5 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 and 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.

G1.5 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 Contractor 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.

G1.6 In the event 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 shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause 2.1 or 2.2 and

(ii) neither Party shall be liable for any Default arising as a result of such failure

(b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price for a proportional payment only to the extent that the Services or part of the Services continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

G1.7 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.

G1.8 Release of liability for the Affected Party under this clause G shall end 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 shall not be dependent on the serving of notice under clause G1.1

## H DEFAULT, DISRUPTION AND TERMINATION

### H1 Termination on Insolvency and Change of Control

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

(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or any other composition scheme or arrangement with or without assignment of 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 and 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 or 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 12 of the Insolvency Act 1986
- g) being a "small company" within the meaning of section 2 of the Companies Act 1985 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986 or
- h) an event similar to those listed in 1.1(a) to (g) occurs under the law of any other jurisdiction.

1.2 The Authority may terminate the Contract with immediate effect on notice and without compensation to the Contractor where the Contractor is an individual and

- a) an application for an interim order is made pursuant to sections 252-254 of the Insolvency Act 1986 or a proposal is made for an composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy;
- c) a receiver or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver or similar officer over the whole or any part of its assets
- d) the Contractor is unable to pay its debts or has no reasonable prospect of doing so in either case within the meaning of section 2 of the Insolvency Act 1986
- e) a creditor or encumbrancer attaches or takes possession of or a distress execution, sequestration or other legal process is levied or enforced on or sued against the whole or any part of the Contractor's assets and such attachment or process is not discharged within 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) an event similar to those listed in clauses 1.2(a) to (g) occurs under the law of any other jurisdiction.

1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, takeover, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 112 of the Corporation Taxes Act 2010 ("Change of Control") The

Authority may terminate the Contract with immediate effect on notice and without compensation to the Contractor within 3 Months of

a being notified that a Change of Control has occurred or

bbb there is no notification has been made by the date that the Authority receives a notice of the Change of Control

It shall not be permitted to terminate where Approval has been granted prior to the Change of Control.

1.1 The Authority may terminate the Contract with immediate effect on notice and without compensation to the Contractor where the Contractor is a Partnerships and

a a proposal is made for a voluntary arrangement within Article 1 of the Insolvent Partnerships Order 1994 or a proposal is made for another composition scheme or arrangement or assignment or for the benefit of its creditors or

bbb it is for any reason dissolved or

c a petition is presented for its winding up or for the making of an administration order or an application is made for the appointment of a provisional liquidator or

d a receiver or similar officer is appointed over the whole or any part of its assets or

e the Partnerships is deemed unable to pay its debts within the meaning of section 222 or 224 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994 or

fff an offence following occurs in relation to any of its Partners

i an application for an interim order is made pursuant to sections 252-254 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement or assignment or for the benefit of its creditors

ii a petition is presented for its bankruptcy or

iii a receiver or similar officer is appointed over the whole or any part of its assets

g an event similar to those listed in clauses 1.1a to 1.1f occurs under the law of any other jurisdiction.

1.5 The Authority may terminate the Contract with immediate effect on notice and without compensation to the Contractor where the Contractor is a limited liability Partnerships 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 or assignment or for the benefit of its creditors

bbb it is for any reason dissolved

c an application is made either for the appointment of an administrator or for an administration order or an administrator is appointed or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986



- dd an event is taken into account in determining that it is or is not other than as part of and exclusively for the purpose of a bona fide reconstruction or amalgamation in Part IV of the Insolvency Act 1986
- ee 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 in Part IV of the Insolvency Act 1986
- fff a receiver or similar officer is appointed over the whole or any part of its assets or
- gg it is or becomes unable to pay its debts within the meaning of section 12 of the Insolvency Act 1986
- hhh a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986 or
- ii an event similar to those listed in clauses 1.5(a) to (c) occurs under the law of any other jurisdiction.

1.1 References to the Insolvency Act 1986 in clause 1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

## H2 Termination on Default

2.1 The Authority may terminate the Contract with immediate effect on notice if the Contractor commits a Default and

aa the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority after issue of a notice specifying the Default and requesting it to be remedied

bbb the Default is not in the opinion of the Authority capable of being remedied or

cc the Default is a Material Breach

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

2.3 If the Authority fails to pay the Contractor undisputed sums of money, then the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such undisputed sums within 30 Working Days of the date of such notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C.1 (Recovery of Sums Due) or to a Force Majeure Event.

## H3 Termination on Notice

3.1 The Authority may terminate the Contract at any time by giving 30 days' notice to the Contractor.

## H4 Other Termination Grounds

5.1 The Authority may terminate the Contract on written notice to the Contractor if

a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 2 of the Regulations

b) the Contractor has at the time the Contract was awarded in one of the situations specified in regulation 5 of the Regulations including as a result of the application of regulation 5(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 Contractor 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 25 of the TEU or

d) the Contractor 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

5.1 If the Authority terminates the Contract under clause 2 and makes other arrangements for the supply of the Services the Authority shall recover from the Contractor the cost reasonably incurred in making those other arrangements and an additional expenditure incurred by the Authority to bring to the remainder of the Contract Period.

5.2 If the Contract is terminated under clause 2 the Authority shall make no further payments to the Contractor for Services supplied by the Contractor prior to termination and in accordance with the Contract until 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.

5.3 If the Authority terminates the Contract under clauses 3 or 4 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract until where the payment has yet to be made by the Authority.

5.4 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 expiry and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry and

b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Costs), D1 (Prevention of Fraud and Bribery), E2 (Data Protection), E3 (Official Secrets Acts 1911 to 1989), Section 1(2) of the Finance Act 1985, E4 (Confidential Information), E5 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), E8 (Remedies), G1 (Liability, Indemnity and Insurance), G5 (Consequences of Expiry or Termination), H1 (Recovery) and H2 (Termination) and I1 (Governing Law and Jurisdiction).

## H6 Disruption

- 6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or another contractor employed by the Authority.
- 6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action or other such action by its own employees or others which affects or might affect its ability at any time to perform its obligations under the Contract.
- 6.3 If there is industrial action on the Site, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 6.4 If the Contractor's proposals referred to in clause H6.4 are considered insufficient or unacceptable by the Authority acting reasonably then the Contract shall be terminated with immediate effect by the Authority's notice.
- 6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor shall request a reasonable allowance of time and in addition the Authority will reimburse an additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## H7 Recovery upon Termination

- 7.1 On termination of the Contract for any reason, the Contractor 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 has obtained or produced in the course of providing the Goods and Services;
  - b) immediately deliver to the Authority all Property including materials, documents, information and access facilities provided to the Contractor in good working order;
  - c) immediately vacate any Authority Premises occupied by the Contractor;
  - d) assist and cooperate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
  - e) promptly provide all information concerning the provision of the Services which is a reasonable request 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 Contractor to conduct due diligence.
- 7.2 If the Contractor does not comply with clause 7.1a and b, the Authority shall recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter for the purposes of such recovery any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items shall be held.

## H8 Retendering and Handover

- 8.1 Within 21 days of being requested by the Authority, the Contractor 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.

- 11.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause 11.1 is given only to potential providers who have qualified to tender for the future provision of the Services.
- 11.3 The Authority shall require that all potential providers treat the information in confidence that they do not communicate it except to specified persons within their organisation and to specified 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.
- 11.4 The Contractor 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 Contractor is required to provide under clause 11.1.
- 11.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative to any person representing any potential provider who the Authority has selected to tender for the future provision of the Services.
- 11.6 If access is required to the Contractor's Premises for the purposes of clause H9.5 the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list specifying the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.
- 11.7 The Contractor shall cooperate fully with the Authority during any handover at the end of the Contract. This cooperation shall include allowing full access to and providing copies of all documents, reports, spreadsheets and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.
- 11.8 Within 10 Working Days of being requested by the Authority the Contractor 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 format and to operate on a proprietary software package identical to that used by the Authority.

## H9 Exit Management

- 9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause 10.

## H10 Exit Procedures

- 10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract either by terminating the Contractor itself or by engaging a third party to perform the Services the Contractor shall cooperate 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.
- 10.2 The following commercial approach shall apply to the transfer of the Services to the Contractor:

2a does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry where shall be no change to the Price or

reasonable incurs additional costs the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 2 or forming the basis for the Price.

10. When requested to do so by the Authority the Contractor shall deliver to the Authority details of all licences or software used in the provision of the Services including the software licence agreements.

10. Within one Month of receiving the software licence information described above the Authority shall notify the Contractor of the licences it wishes to be transferred and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

## H11 Knowledge Retention

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

# I DISPUTES AND LAW

## I1 Governing Law and Jurisdiction

11.1 Subject to the provisions of clause I2 the Contract including any matters arising out of or in connection with it shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrent or not.

## I2 Dispute Resolution

12.1 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 Contractor and the commercial director of the Authority.

12.2 Nothing in this dispute resolution procedure shall prevent the Parties from 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.

12.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 either Party may refer it to mediation pursuant to the procedure set out in clause I2.5.

12.4 The obligations of the Parties under the Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation or arbitration and the Contractor and the Staff shall continue to fulfil their requirements of the Contract at all times.

12.5 The procedure for mediation and confidential provisions relating to mediation are as follows

- a) a neutral adviser or mediator the “**Mediator**” shall be chosen by agreement between the Parties or if they are unable to agree upon a Mediator within 10 Working Days after a request from 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 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 90 Working Days of the Mediator being appointed or such longer period as may be agreed between 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 12.6

12.6 Subject to clause 12.2 the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.5 have been completed save that

- a) The Arbitrator may at any time before court proceedings are commenced serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.6
- b) if the Contractor intends to commence court proceedings it shall serve notice on the Arbitrator of its intentions and the Arbitrator shall have 21 days following receipt of such notice to serve a request on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.6 and
- c) the Contractor may request notice to the Arbitrator that any dispute be referred and resolved by arbitration in accordance with clause 12.6 to which the Arbitrator may assent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6

- a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Arbitrator shall give a notice of arbitration to the Contractor in 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 12.1 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of an appeal or failure to comply with its procedural 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 Arbitrator under clause 12.1 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 and interpreted in accordance with English Law.

# SCHEDULE 1 - SPECIFICATION

Ceās The Centre for Environment<sup>1</sup>iseries and Atmosphere Science<sup>2</sup>is an executive agency of DeRa. It is an applied science agency that primarily supports government decision making whilst extending its reach across public sector, the E<sup>3</sup> and wider markets where possible in regards to marine and closely related environments.

Our priorities focus on water to the open ocean and includes both wild and farmed fish. Our influence and leadership spans a wide spectrum of issues including

- climate change impacts and adaptation
- marine planning and environmental licensing
- sustainable fisheries management
- marine biodiversity and habitats
- fish and shellfish health and hygiene
- emergency response.

For further background information on Ceās please visit our website at <http://www.ceas.co.uk>

## 2. Background

Due to an expansion of our activities, Ceās has a requirement for a High Resolution Mass Spectrometer (HRMS) at its Wexham laboratory. This will expand upon the existing analytical capabilities and complement the existing triple quadrupole mass spectrometers and HPLC systems on site.

## 3. Aims and Objectives

The system is required to have as a minimum three main applications for use, although other applications are expected. These include

1. High resolution accurate mass MS and MS/MS information for identification and structural elucidation of low molecular weight natural and synthetic toxins
2. Untargeted analysis and identification of chemical contaminants i.e. pharmaceutical compounds in tissue and environmental samples
3. Metabolomics profiling.

The system should also incorporate an appropriate chromatographic separation mode

## 4. Approach

- As part of the tender process and evaluation, in addition to a pre-bid assessment, Ceās requests an additional assessment of a number of samples that will be provided. This should be completed at a site visit to allow thorough evaluation of software and data interpretation/analysis. Samples should be sent prior to onsite visit to allow for processing.

## 5. Scope of Requirements

- High Resolution Mass Spectrometer for accurate mass determination of low molecular weight. To be equipped with an electrospray source to allow integration with a liquid chromatographic system
- The final system at Ceās must have a liquid chromatographic mode capable of interfacing with the mass spectrometer. This can be provided to the Tenderer as part of this ITT or



alternative. Ceas currently has a Waters LC Class Acquisition PLC system which is shown to require rents. It is is compatible with a note incorporating this system details can be provided on request and/or an additional note with the manufacturers referred chromatography system can be included

- LC acquisition must have the capability to use standard 2 µL acquisition vials and able to operate at cool temperatures (10°C)
- Positive and negative ionisation capabilities
- Interfacing computer and software for operation, data analysis and reporting
- Sufficient sample entry software licences to allow simultaneous processing of data online by at least three analysts
- On-site installation
- Appropriate training and ongoing application support
- Options for service cover detailed

It is the intention of Ceas to raise the Purchase Order as soon as possible after the contract is signed. As mentioned in the timetable' All equipment and associated parts must be delivered before 1st March 2022 to ensure funding is available.

## 6. Quality Assurance

Tenderers should submit information on their quality and assurance processes and provide a copy of ISO1001 certificate. This information should also be provided for any subcontractors who would be employed for the contract and should include how the quality will be managed. Those submitting bids will be expected to establish a quality assurance process and have read and be able to commit to the Joint Code of Practice for Research and the Concordat to support research integrity which can be accessed using the following links

<http://www.defra.gov.uk/publications/2012/01/20/11/25/researchcodeofpractice/>

<http://www.universities.ac.uk/policiesandanalyses/reports/Documents/2012/theconcordatofsupportresearchintegrity.pdf>

## 7. Data Protection

Tenderers should note that the Authority requires all Tenderers are to be registered under the Data Protection Act 2018 and commit to equivalent national legislation. The time their responses to the Invitation to Tenders (ITT) are submitted. The Authority will require evidence of such registration such as DPA notification number with the Tenderers response to the ITT.

## 8. Security

8.1. Where appropriate the Authority may require Tenderer's personnel appointed to work on the contract to commit to the MG Baseline Personnel Security Standard. Tenderers should note that the will be required to submit all necessary information and documentation needed for the Authority to enable security checks to be made before the commencement of the contract and must meet the costs associated with carrying out security checks.

8.2. From time to time the Authority may have higher security requirements and the Provider's personnel working on the contract will need to "undertake and complete national security vetting at Co~~u~~nter Terrorist C~~o~~nc~~o~~ur~~u~~ CTC~~o~~r Sec~~u~~rit~~u~~ C~~o~~nc~~o~~ur~~u~~ SC~~o~~levels.

## 9. Duration

9.1. The Contract i~~n~~ de~~l~~entation is e~~x~~ected to start ~~on~~ deliver~~u~~ and ~~will~~ last ~~for~~ the d~~u~~ration o~~f~~ the Warrant~~u~~

# SCHEDULE 2 - PRICING

## Vanquish UHPLC

The Vanquish UHPLC system is designed as an integrated UHPLC system, where the pump drives the separation with more power.

Engineered with a biocompatible flow path, the Vanquish Flex systems are available with two pump options, binary and quaternary. The Vanquish Flex systems enable you to run more chromatographic modes on an application inspired UHPLC platform.

- 1000 bar (15,000 psi) of pump pressure and flow rates up to 8 mL/min
- Industry-leading flow and gradient precision
- Four solvent channels for quaternary solvent mixing or two out of six solvent channels for binary solvent mixing
- Maximum application flexibility from biocompatible fluidics and UHPLC pressures
- Obtain highest data confidence from excellent retention time precision
- Viper finger-tight fittings throughout
- Ceramic valve in autosampler

### Main Quotation Highlights:

Line 1.1-1.3 – mass spectrometer; syringe pump; roughing pump; ESI source; PC; Monitor and Xcalibur instrument control software; Install Kit and internal calibration

Line 1.4 – TraceFinder quantitation and screening software

Line 1.5 – Compound Discoverer Software. Small molecule ID & characterisation.

Line 1.6 - On-site training (3 days)

Line 1.7 – Divert Valve

Line 1.8 - Nitrogen Generator

Line 2.1-2.5 - Vanquish Flex UHPLC (column compartment; 1000 bar binary pump, autosampler and degasser).

Item	Description	Unit Price	Qty	Total Price
1.1	<p>BRE725531</p> <p>Orbitrap Exploris 120 Basic System w/ IC</p> <p>The Thermo Scientific Orbitrap Exploris™ 120 mass spectrometer is a high-performance benchtop quadrupole Orbitrap system that combines a quadrupole, an ion routing multipole, and Orbitrap analyzer and features HCD and in-source fragmentation. The high field Orbitrap mass analyzer performs high-resolution accurate mass analysis, with and without HCD fragmentation.</p> <p>The instrument contains the following:</p> <ul style="list-style-type: none"> <li>• An OptaMax NG ion source API inlet source housing with x, y, and z probe positioning, integrated APCI functionality, a fixed on-axis view port, all gas and voltage connections are hard connected automatically producing worry free performance and ultimate reliability. OptaMax NG ion source housing includes one HESI spray insert and a calibration probe. For APCI applications APCI spray insert must be ordered separately.</li> <li>• A vacuum system containing a 6-stage split-flow turbomolecular pump, which controls the vacuum in multiple regions.</li> <li>• A Transfer Tube and an S-lens to capture and efficiently focus ions in a constricted beam.</li> <li>• Thermo Scientific™ EASY-IC™ Ion Source which generates internal calibrant ions for real-time mass calibration of any mass spectrum.</li> <li>• A resolving injection filter to pre-select ions for extended maintenance cycles</li> <li>• A bent flatpole to reduce noise by preventing neutrals and high-velocity clusters from entering the quadrupole mass filter.</li> </ul>			

Item	Description	Unit Price	Qty	Total Price
	<ul style="list-style-type: none"> <li>A segmented quadrupole mass filter in front of the curved ion trap (C-Trap) with a hyperbolic surface, which provide excellent peak shape and transmission.</li> <li>A high-field Orbitrap Mass Analyzer with enhanced FT transient processing resulting in resolving power from 15,000 up to 120,000 FWHM at m/z 200 and isotopic fidelity. m/z range of 40-3,000, with up to 22 Hz acquisition speed.</li> <li>An ion routing multipole for trapping of ions and higher-energy collisional dissociation (HCD).</li> <li>The system also features an independent syringe pump which are controlled via the data station for maximum flexibility.</li> </ul> <p>Additional included items:</p> <ul style="list-style-type: none"> <li>H-ESI II probe</li> <li>Calibration probe</li> <li>Chemyx Syringe pump SKE10 with full data system control</li> <li>Windows 10 computer</li> <li>Windows 10 OS</li> <li>License for Xcalibur software</li> <li>24" monitor</li> <li>Rough pump</li> </ul> <p>System will be installed and tested by trained field service engineers to assure users that the components and system are functioning properly and that the installation specifications are met.</p>			
1.2	BRE0017112 Merkur CountKit UK/IE			
1.3	BRE0021870 Cal Solution, Flexmix, 2x10mL			
1.4	OPTON-31001 SW, TRACEFINDER 5.1 SP3			
1.5	OPTON-31055 SW, COMPOUND DISCOVERER 3.2			
1.6	704-027600 1 day LSMS train & support at cust site			
1.7	00109-99-00046 VALVE,2 POS,6PRT,RHEODYN MXT715-004,RoHS			
1.8	OPTON-30961 GEN N2, GENIUS XE35,230V,35L MIN,ROHS			
2.1	VF-S01-A-02 SYSTEM BASE VANQUISH HORIZON / FLEX			

Item	Description	Unit Price	Qty	Total Price
	Required for the installation of a full Vanquish Horizon or Vanquish Flex system. Includes base module, solvent rack, system tubing for 1-column flow path incl. 1 active pre-heater and 1 passive pre-heater, and system installation accessories (ship kit).			
2.2	VF-P10-A-01 Binary Pump F Supports fast gradient separations in LCMS workflows, UHPLC applications, and standard HPLC workflows. Settable flows of 0.001-8 mL/min and pressures up to 1034 bar (with a flow rate of >5 mL/min, pressure range decreases linearly down to 800 bar), 200 µL mixer, 200 µL GDV, 6 solvent channels, and integrated vacuum degasser; contains Vanquish Binary Pump F module and installation accessories (ship kit).			
2.3	VF-A10-A-02 Split Sampler FT Provides high precision, high accuracy, and short cycle times for all Vanquish Flex workflows at max. 1034 bar. Split-loop sampler w/ SmartInject technology, sample thermostating (4-40°C), injection vol. 0.010-100 µL, 25 µL sample loop, proprietary long-life biocomp. inject valve, 4 segments for vial racks/wellplates; contains Vanquish Split Sampler FT module and installation accessories (includes 4 x 54 pos. sample racks). Ships with high value sample container kit.			
2.4	VH-C10-A-03 COLUMN COMPARTMENT H			
2.5	6000.1020 POWER CORD UK-VERSION SW, 2M Power cord UK-version, 2m			

# SCHEDULE 3 - CHANGE CONTROL

## Contract Change Note ("CCN")

CCN:	
Contract Reference Number & Title	
Variation Title	
Number of Pages	

WHEREAS the Contractor and the Authority entered into a Contract for the supply of **project name** dated **dd mm yyyy** the "Original Contract" and now wish to amend the Original Contract

### IT IS AGREED as follows

1. The Original Contract shall be amended as set out in this CCN

Change Requestor / Originator	
Supply or Change	
Reason for Change	
Revised Contract Price	Original Contract Value
	Previous Contract Changes
	Contract Change Note <b>yyyy</b>
	New Contract Value
Revised Payment Schedule	
Revised Specification (See Annex <b>yy</b> for Details)	
Revised Contract Period	
Change in Contract Manager(s)	
Other Changes	

2. Save as amended in the CCN all other terms of the Original Contract remain effective.

3. The CCN takes effect from the date on which both Parties confirm acceptance of its terms.

# SCHEDULE 4 - COMMERCIALLY SENSITIVE INFORMATION

- 1.1 Without prejudice to the Authority's general obligation of confidentiality the Parties acknowledge that the Authority may have to disclose Information in or relating to the Contract following a Request for Information pursuant to clause E5 Freedom of Information.
- 1.2 In this Schedule the Parties have sought to identify the Contractor's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be contrary to the public interest.
- 1.3 Where possible the Parties have sought to identify when an relevant Information will cease to fall into the category of Information to which this Schedule applies.
- 1.4 Without prejudice to the Authority's obligation to disclose Information in accordance with the FOIA and the EIR the Authority will acting reasonably and in its sole discretion seek to protect the commercial interests of the Contractor set out in s. 44 of the FOIA to the Information listed below.

CONTRACTOR'S COMMERCIALLY SENSITIVE INFORMATION	DATE	DURATION OF CONFIDENTIALITY