

Dated _____

The Secretary of State for Justice

-and-

Howden UK Group Limited

AGREEMENT
relating to
the Provision of Surety Bonds:
Office of the Public Guardian

SECTION 1

FORM OF AGREEMENT

THIS AGREEMENT is made

BETWEEN:

- (1) **The Secretary of State for Justice** of 102 Petty France, London, SW1H 9AJ ("the Authority"); and
- (2) **Howden UK Group Limited** (Company No. 725875) whose registered office is at 16 Eastcheap, London, EC3M 1BD. ("**Contractor**").

THE PARTIES NOW AGREE as follows:

- 1.1 The clause headings in this Contract are for ease of reference only and do not affect the meaning or construction of the clauses to which they relate.
- 1.2 The Schedules form an integral part of this Contract and have effect as if set out in full in the body of this Contract. A reference to this Contract includes the Schedules.
- 1.3 In this Contract, a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence).
- 1.4 Any reference in this Contract to the singular will include reference to the plural and vice versa unless the context requires otherwise.
- 1.5 The following documents and their annexes and accompanying schedules, if any, shall together constitute the Contract between the Authority and the Contractor and the term "the Contract" shall in all such documents be construed accordingly.
- 1.6 Each Party acknowledges that this Contract constitutes the entire agreement and understanding between the Parties with respect to the subject matter of this Contract and supersedes all prior discussions, understandings and agreements between the Parties and their agents.
- 1.7 The Contractor agrees that in entering into this Contract and the documents referred to within it, it is not relying on any statements, warranties or representations given or made (whether negligently or innocently or whether express or implied), or any acts or omissions by or on the part of the Authority in relation to the subject matter of this Contract, except those

expressly set out in this Contract and the Contractor hereby waives and releases the Authority in respect thereof absolutely.

- 1.8 In consideration of the award of this Contract the Contractor covenants with the Authority to provide the Services in conformity with the provisions of the Contract.
- 1.9 The Authority hereby appoints **redacted on the grounds of the protection of personal data**, Commercial Manager, to act as Authority Representative for the purposes of the Contract.
- 1.10 The Contractor hereby appoints **redacted on the grounds of the protection of personal data**,, to act as Contract Manager for the purposes of the Contract.
- 1.11 The Contract shall be governed and construed according to the laws of England and the Parties hereby submit to the exclusive jurisdiction of the Courts of England.

IN WITNESS whereof the parties hereto have caused this Contract to be executed in duplicate as follows:

SIGNED by a duly authorised officer

for and on behalf of the Authority

By:

Signature:

Date:

SIGNED for and on behalf of Howden UK Group Limited

By:

Signature:

Date:

SECTION 2

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STANDARD TERMS

1. Definitions and Interpretation

1.1. Definitions

In this Contract unless the context otherwise requires the following terms shall have the meaning given to them below:

"Approval" means the written consent of the Authority.

"Authorised Deposit Taker" means

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to accept deposits.

The definitions of "authorised insurance company" and "authorised deposit-taker" must be read with—

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section;

(c) Schedule 2 to that Act.

"Authorised Insurance Company" means

(a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance;

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to effect or carry out contracts of insurance;

(c) a person who carries on insurance market activity (within the meaning given in section 316(3) of that Act)

"Authority" means the Secretary of State for Justice acting on behalf of the Office of the Public Guardian.

"Authority Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel, and suppliers of the Authority, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential.

"Authority Data" means

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

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

"Authority Personnel" means all employees, agents, consultants and sub-

.contractors of the Authority acting in the course of their office and/or employment

"Authority's Personnel Vetting Procedure" means the Authority's procedures for the vetting of Contractor's Personnel, as advised to the Contractor by the Authority from time to time.

"Basic Disclosure" means Disclosure Scotland's Basic Disclosure Certificate which contains details of convictions considered "unspent" under the Rehabilitation of Offenders Act 1974.

"Commencement Date" means the 1 October 2016.

"Commercially Sensitive Information" means the information listed in the Commercially Sensitive Information Schedule.

"Condition" means a condition of the Contract.

"Confidential Contract Information Exceptions" means the Information listed in the relevant Schedule.

"Confidential Information" means the Authority's Confidential Information and/or the Contractor's Confidential Information.

"Contract" means this written agreement between the Authority and the Contractor consisting of these terms and conditions, any attached Schedules and the Contractor's Tender.

"Contract Period" means the period from the Commencement Date to:

- (a) the date of expiry of the Initial Contract Period; or
- (b) following an extension pursuant to clause 31 (Extension of the Contract Term), the date of expiry of the extended period(s);

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

"Contract Price" means the value of the premium (exclusive of any applicable VAT), which the Contractor Deputy in respect of each Surety Bond provided as set out in

the Pricing and Payment Schedule, and subject to the full and proper performance by the Contractor of its obligations under this Contract.

"Contracting Authority" means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2015.

"Contractor" means the person, firm or company with whom the Authority enters into the Contract and for the purposes of the Contract includes the Contractor's Personnel and where applicable the Key Personnel.

"Contractor's Confidential Information" means any information which has been designated as confidential by either party in writing or that ought reasonably to be considered as confidential, however it is conveyed, including information that relates to the business affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

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

"Crown" means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

"Data Controller" shall have the same meaning as set out in the Data Protection Act 1998.

"Data Processor" shall have the same meaning as set out in the Data Protection Act 1998.

"Data Protection Legislation" means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

"Data Subject" shall have the same meaning as set out in the Data Protection Act 1998.

"Default" means any breach of the obligations and/or warranties of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or

any other default, act, omission, negligence or negligent statement of the relevant Party or their Personnel in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other and for the avoidance of doubt this shall include a continued failure by the Contractor to meet the standards and/or requirements of this Contract in relation to the provision of the Services following the Contractor's receipt of a warning notice setting out the breach and/or the failure which is to be remedied by the Contractor.

"Deputy" means a person appointed by the Court of Protection (CoP) to manage the personal welfare and/or the property and affairs of a person lacking mental capacity.

"Environmental Information Regulations" means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

"Fees Regulations" means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this 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" means any event or occurrence which arises after the date of this Contract which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

"Fraud" means any offence under the Law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or .defrauding or attempting to defraud or conspiring to defraud the Crown

"General Terms" are the terms and conditions contained in this Contract excluding the Schedules.

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

"Information" has the meaning given under section 84 of the FOIA.

"Initial Contract Period" means the period from the Commencement Date to the date of expiry set out in clause 2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or provisions of the Contract. .

"Intellectual Property Rights" or **"IPRs"** means any and all patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off and which are created, brought into existence, acquired, used or intended to be used by the Contractor for the purposes of providing the Services and otherwise for the purposes of this Contract.

"Law" means any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

"Management Information" means the information specified in the Monitoring Schedule.

"Month" means a calendar month.

"Monitoring Schedule" means the Schedule containing details of the monitoring arrangements.

"Party" means a party to the Contract.

"Personal Data" shall have the same meaning as set out in the Data Protection Act 1998.

"Personnel" means all employees, agents, consultants and sub-contractors of either Party.

"Premises" means the location where the Services are to be delivered or provided as set out in the Specification.

"Pricing and Payment Schedule" means the Schedule containing details of the Contract Price.

"Process" has the meaning given to it under the Data Protection Legislation and, for the purposes of the Contract, it shall include both manual and automatic processing.

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

"Quality Standards" means the quality standards published by the British Standards Institute, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and **"Regulatory Body"** shall be construed accordingly.

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

"Replacement Contractor" means any third party service provider appointed by the Authority to supply any Services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

"Requests for Information" shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

"Schedule" means a schedule attached to, and forming part of, the Contract.

"Services" means the services to be supplied as detailed in the Specification.

"Specification" means the description of the Services to be supplied under the Contract as set out in Schedule G (Specification) including, where appropriate, the Contractor's Key Personnel, the Premises and the Quality Standards.

"Surety Bond" means an on demand guarantee and indemnity which is provided to a Deputy in writing by an Authorised Insurance Company or an Authorised Deposit taker as required by and in accordance with the Public Guardian Regulations.

"Tender" means any document(s) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services.

"Variation" has the meaning given to it in clause 28 (Variation).

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

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

1.2. Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- (a) Words importing the singular meaning include where the context so admits the plural meaning 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.
- (d) Reference to any statute, enactment, order, regulation or other similar instrument where appropriate shall be construed as referring to any subsequent amendment or re-enactment of the same.
- (e) References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted.
- (f) The words **"include"**, **"includes"** and **"including"** are to be construed as if they were immediately followed by the words **"without limitation"**.
- (g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. Initial Contract Period

- 2.1. The Contract shall take effect on the Commencement Date and shall expire automatically on 30 September 2020, unless it is terminated earlier or extended under clause 31.

3. Contractor's Obligations

- 3.1. The Contractor shall employ at all times a sufficient number of Contractor's Personnel to fulfil its obligations under the Contract. All Contractor's Personnel shall possess the qualifications and competence appropriate to the tasks for which they are employed. If and when so directed in writing by the Authority the Contractor shall within seven (7) days provide details of the qualifications and competence of any person employed or proposed to be employed by the Contractor in connection with the Contract and shall provide a copy of any certificate or qualification or competence that has been issued in respect of any such person.
- 3.2. 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 Services 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 Industry Practice. The Contractor shall ensure that all Contractor's Personnel supplying the Services shall do so with all due skill, care and diligence as are necessary for the proper supply of the Services.
- 3.3. The Authority, whose decision shall be final and conclusive, reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any Premises occupied by or on behalf of the Authority:
 - 3.3.1 any member of the Contractor's Personnel; or
 - 3.3.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor whose admission or continued presence would be, in the opinion of the Authority, undesirable.
- 3.4. If and when directed by the Authority, the Contractor shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably desire
- 3.5. The Contractor's Personnel, engaged within the boundaries of a Government establishment, shall comply with such rules, regulations and requirements

(including those relating to security arrangements) as may be in force from time to time for the conduct of contractors' personnel when at that establishment and when outside that establishment.

- 3.6. If the Contractor fails to comply with clause 3.4 above the Authority, (whose decision shall be final and conclusive), may decide that such failure is prejudicial to the interests of the Crown; and if the Contractor does not comply with the provisions of clause 3.4 within 2 Months of the date of a written notice from the Authority so to do then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 3.7. The Contractor shall bear the cost of any complying with any requirement of this clause.
- 3.8. The Contractor shall promptly inform and keep informed the Authority in writing of any industrial relations problems or other matters relating to the Contractor's Personnel which may affect the performance of the Contract.
- 3.9. The Contractor shall not employ any person where the Contractor knows, or by reason of the circumstances might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the Contractor. The Contractor shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by the Contractor, whether in the nature of Social Security fraud, evasion of tax or otherwise.
- 3.10. The Contractor shall comply with the Authority's procedures for the vetting of Contractor's Personnel in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's Personnel Vetting .Procedures
- 3.11. 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 connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

- 3.12. The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a criminal records bureau check as per the Contractor's Personnel Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the criminal records bureau check or otherwise) is employed or engaged in the provision of the Services.
- 3.13. Where the Authority deems it necessary the Contractor shall provide a list of Personnel who will be undertaking regulated activity according to the Protection of Freedoms Act 2012. The Authority may in its sole discretion refuse access to its Premises by any member of the Contractor's Personnel who has not been subjected to the necessary checks by the Disclosure and Barring Service
- 3.14. The Contractor shall be subject to the provisions of the Schedules to this contract as applicable.

4. Authority's Obligations

- 4.1. Subject to reasonable notification by the Contractor of its requirements, the Authority shall give to the Contractor such instructions and/or decisions pursuant to the Contract as are required to be given by the Authority at such a time and in such a manner as shall enable the Contractor properly to perform its obligations under the Contract.
- 4.2. The Authority shall supply or make available to the Contractor, without charge, such information as it is required to provide in accordance with the Specification in such time so as not to delay or disrupt the performance of the Contractor's duties under the Contract.
- 4.3. Not used
- 4.4. Not used
- 4.5. The Authority shall be subject to the provisions of the Schedules to this Contract as applicable.

5. Scope of Contract

- 5.1. At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor 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.

- 5.2. Other than as set out in the Contract, the Contractor agrees and acknowledges that it has not been given any rights of exclusivity or any volume guarantees whatsoever in relation to the volume of the Services provided under the Contract.

6. Notices

- 6.1. For the purposes of this Contract, the address of each Party shall be:

Supplier's Manager	Contract	redacted on the grounds of the protection of personal data,
Authority's Manager	Contract	redacted on the grounds of the protection of personal data,

Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

- 6.2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by receipted facsimile transmission or receipted electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such notice or communication.
- 6.3. Either Party may change its address for service by serving a notice in accordance with this clause.

7. Mistakes in Information

- 7.1. The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.
- 7.2. The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services required by the Authority, the means of communication and access to the Authority's Premises, the supply and

conditions affecting labour, the suitability of the Authority's Premises and the equipment necessary for the performance of the Contract, subject to all such matters being discoverable by the Contractor.

- 7.3. The Contractor acknowledges that it has:
 - 7.3.1 made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority;
 - 7.3.2 raised all relevant due diligence questions with the Authority before the Commencement Date;
 - 7.3.3 satisfied itself that it has sufficient information to ensure that it can provide the Services; and
 - 7.3.4 entered into the Contract in reliance on its own due diligence alone.
- 7.4. Without prejudice to clause 7.3, the Contractor shall:
 - 7.4.1 use its reasonable endeavours to check and verify that the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority are accurate; and
 - 7.4.2 notify the Authority immediately if it discovers errors or discrepancies in the data, information, plans, drawings, documents, handbooks and codes of practice supplied by the Authority.

8. Conflicts of Interest

- 8.1. The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Contractor's Personnel is placed in a position where, in the reasonable opinion of the Authority:
 - there is or may be an actual conflict or potential conflict, between the pecuniary 8.1.1 or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract; or
 - 8.1.2 the behaviour of the Contractor or the Contractor's Personnel is not in the Authority's best interest or might adversely affect the Authority's reputation.

The Contractor will as soon as reasonably practicable disclose to the Authority full particulars of any behaviour which might give rise to the acts complained of in sub-clauses 8.1.1 or 8.1.2.

- 8.2. The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict

or potential conflict, between the financial or personal interests of the Contractor or the Contractor's Personnel and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which . has accrued or will accrue to the Authority

9. Prevention of Fraud and Prevention of Corruption

- 9.1. The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by the Contractor's Personnel in connection with the receipt of monies from the Authority.
- 9.2. The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 9.3. If the Contractor or its Personnel commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:
 - (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
 - (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.
- 9.4. The Contractor shall not offer or give or agree to give to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the .Contract or any such contract
- 9.5. The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

- 9.6. If the Contractor, its Personnel or anyone acting on the Contractor's behalf, engages or is found to have engaged in conduct prohibited by clauses 9.4 or 9.5, the Authority may:
- 9.6.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- 9.6.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

PAYMENT AND CONTRACT PRICE

10. Contract Price

- 10.1. In consideration of the performance by the Contractor of its obligations under this Contract, the Contractor shall be entitled to issue an invoice to each Deputy to whom a Surety Bond is provided. The value of the invoice shall be the Contract Price relative to the value of the Surety Bond provided.
- 10.2. Not used

11. Payment and VAT

- 11.1. For the avoidance of doubt the Contractor shall not be entitled to receive any payment from the Authority in exchange for its provision of the Services].

12. Recovery of Sums Due

- 12.1. Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any Default), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement or contract with the Authority or the Crown.
- 12.2. Any overpayment by either Party, whether of the Contract Price or of VAT, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 12.3. The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement 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.

13. Contract Price for an Extended Contract Term

- 13.1 Unless otherwise agreed by the Parties in writing the Contract Price shall remain fixed for the Contract Period, including any extension to the same pursuant to clause 31.

14. Euro

- 14.1. Any legislative requirement to account for the Services in Euro € (or to prepare for such accounting), instead of and/or in addition to Pounds Sterling £, shall be implemented by the Contractor at nil charge to the Authority.
- 14.2. The Authority shall provide all reasonable assistance to facilitate compliance with clause 14.1 by the Contractor.

STATUTORY OBLIGATIONS AND REGULATIONS

15. Discrimination

- 15.1. In providing the Services the Contractor shall comply with the Equality Act 2010 and all applicable amendments, regulations and Codes of Practice or any future or other legislation which concerns discrimination in employment and service delivery (the "Equalities Provisions").
- 15.2. The Contractor shall take all reasonable steps to procure the observance of the Equalities Provisions by those of its Personnel engaged in the provision of the Services.
- 15.3. The Contractor shall provide such information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with clause 15.2.
- 15.4. The Contractor shall notify the Authority immediately in writing upon becoming aware of any investigation or legal proceedings brought against the Contractor or its sub-contractors under the Equalities Provisions.
- 15.5. In the event of any finding of unlawful discrimination being made against the Contractor or its sub-contractors under the Equalities Provisions during the period of this Contract, the Contractor shall inform the Authority of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authority to prevent repetition of the unlawful discrimination.
- 15.6. In the event of repeated findings of unlawful discrimination against the Contractor during the period of this Contract (whether arising from the same or different acts or omissions, and regardless of any steps it has taken in accordance with clause 15.5 above) the Authority shall be entitled to terminate the Contract with immediate effect.
- 15.7. If requested to do so by the Authority, the Contractor shall fully co-operate with the Authority at its own expense in connection with any investigation, legal proceedings, ombudsman inquiries or arbitration in which the Authority may become involved arising from any breach of the Authority's duties under the Equalities Provisions due to the alleged acts or omissions of the Contractor.

16. The Contracts (Rights of Third Parties) Act 1999

- 16.1. A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

INFORMATION

17. Authority Data

- 17.1. The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 17.2. The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Authority.
- 17.3. To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- 17.4. The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 17.5. If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

18. Protection of Personal Data

- 18.1. With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.
- 18.2. The Contractor shall:
- 18.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Authority to

- the Contractor during the Contract Period) and the Contractor shall at the very least comply with the provisions of the Information Security Schedule;
- 18.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 18.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected and in any event the measures shall not be of a lesser standard than that set out in Schedule E (Information Security);
- 18.2.4 take reasonable steps to ensure the reliability of any Contractor's Personnel who have access to the Personal Data;
- 18.2.5 obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractors or affiliates for the provision of the Services;
- 18.2.6 ensure that all Contractor's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 18;
- 18.2.7 ensure that none of the Contractor's Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- 18.2.8 notify the Authority (within five Working Days) if it receives:
- 18.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 18.2.8.2 a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- 18.2.9.1 provide the Authority with full co-operation and assistance in relation to any complaint or request made, including by:
- 18.2.9.2 providing the Authority with full details of the complaint or request;
- 18.2.9.3 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;

- 18.2.9.4 providing the Authority with any Personal Data it holds in relation to a Data Subject, within the timescales required by the Authority; and
- 18.2.9.5 providing the Authority with any information requested by the Authority;
- 18.2.9.6 permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 25, the Contractor's data Processing activities (and/or those of its Personnel) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;
- 18.2.9.7 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- 18.2.9.8 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
 - 18.2.9.9 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - 18.2.9.10 any reasonable instructions notified to it by the Authority.
- 18.2.9.11 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.

19. Freedom of Information

- 19.1. The Contractor acknowledges that the Authority is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and co-operate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 19.2. The Contractor shall and shall procure that its sub-contractors shall:
 - 19.2.1 transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

- 19.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
- 19.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3. The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations
- 19.4. In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 19.5. The Contractor acknowledges that (notwithstanding the provisions of this clause 19) the Authority may be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:
- 19.5.1 in certain circumstances without consulting the Contractor; or
- following consultation with the Contractor and having taken their views into account;
- 19.5.2 provided always that where clause 19.5.1 applies the Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 19.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

20. Confidentiality

- 20.1. The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be

responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public. The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract. Prior to publication the Authority may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- (c) national security;
- (d) personal data;
- (e) information protected by intellectual property law;
- (f) information which it is not in the public interest to disclose (under a Freedom of Information Act analysis)
- (g) third party confidential information;
- (h) IT security; or
- (i) prevention of fraud

20.2. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:

treat the other Party's Confidential Information as confidential and safeguard it 20.2.1 accordingly; and

20.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

20.3. Clause 20.2 shall not apply to the extent that:

20.3.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 19;

20.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

20.3.3 such information was obtained from a third party without obligation of confidentiality; such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

- 20.3.5 it is independently developed without access to the other Party's Confidential Information.
- 20.4. The Contractor may only disclose the Authority's Confidential Information to the Contractor's Personnel who are directly involved in the provision of the Services any of the Authority's Confidential Information and need to know, and shall ensure that the Contractor's Personnel are aware of and shall comply with this clause 20
- 20.5. The Contractor shall not, and shall procure that the Contractor's Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of the Contract.
- 20.6. At the written request of the Authority, the Contractor shall procure that those members of the Contractor's Personnel identified in the Authority's notice sign a confidentiality undertaking on similar terms to the Contract prior to commencing any work in accordance with the Contract.
- 20.7. Nothing in the Contract shall prevent the Authority from disclosing the Contractor's Confidential Information (including the Management Information obtained under clause 24):
- 20.7.1 to any Crown Body or any other Contracting Authority on the understanding that they shall be entitled to further disclose the Confidential Information to other Crown Bodies 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 Crown Body or any Contracting Authority;
- 20.7.2 to any consultant, contractor or other person engaged by the Authority or any entity specified in clause 20.7.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract, including for the avoidance of doubt any person conducting a Gateway review;
- 20.7.3 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 20.7.4 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions or for the purpose of the exercise of its rights under this Contract;
- 20.7.5 on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract
- 20.7.6 for the purpose of the examination and certification of the Authority's accounts;
- or

20.7.7 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

20.8. The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 20.7 is made aware of the Authority's obligations of confidentiality

20.9. Nothing in this clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

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

21.1. The Contractor undertakes to abide by, and ensure that its Personnel abide by, the provisions of:-

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

21.2. In the event that the Contractor and its Personnel fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor

22. Publicity, Media and Official Enquiries

22.1. Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

22.2. Both Parties shall take reasonable steps to ensure that their Personnel comply with clause 22.1.

23. Intellectual Property Rights

23.1. Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

23.1.1 furnished or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and

23.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;

and the Contractor shall not, and shall procure that the Contractor's Personnel shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights in the IP Materials

23.2. Subject to any pre-existing Intellectual Property Rights the Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 23.1.2. This assignment shall take effect on the date of the Contract or 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. The Contractor shall execute all documentation necessary to execute this assignment

23.3. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor for the performance of the Contract.

23.4. The Contractor shall use best endeavours to ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-licence, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying Services to the Authority.

23.5. The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where such claim arises from:

items or materials based upon designs supplied by the Authority; or the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

- 23.6. The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor
- 23.7. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor shall:
- 23.7.1 consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- 23.7.2 take due and proper account of the interests of the Authority; and
- 23.7.3 not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 23.8. The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract 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, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 23.5.1 or 23.5.2
- 23.9. The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- 23.10. If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority as soon as reasonably practicable and, at its own expense

and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:

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, provided that the provisions herein shall apply mutatis mutandis to such modified Services or to the substitute Services; or

procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority;

and in the event that the Contractor is unable to comply with clauses 23.10.1 or 23.10.2 within 20 Working Days of receipt of the Contractor's notification the Authority may terminate the Contract by notice in writing.

23.11. The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) (and where appropriate worldwide) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights and take the benefit of the .Contract including the Services provided

24. Monitoring

24.1. The Contractor shall comply with the monitoring arrangements set out in the Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

24.2. Where requested by the Authority, the Contractor shall supply the Management Information to the Authority and to Cabinet Office in the form set out in the Monitoring Schedule during the Contract Period.

24.3. The Contractor agrees that the Authority may provide Cabinet Office with information relating to the Services and Goods procured and any payments made under the Contract.

24.4. Upon receipt of the Management Information supplied by the Contractor in response to a request under 24.2 or receipt of information provided by the Authority to Cabinet Office under 24.3, the Authority and the Contractor shall :consent to Cabinet Office

(c) storing and analysing the Management Information and producing statistics; and

- (d) sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Authority.
- 24.5. In the event that Cabinet Office shares the Management Information or information provided under clause 24.3 in accordance with 24.4(b), any Contracting Authority receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any body who is not a Contracting Authority (unless required by law). The Authority may make changes to the Management Information which the Contractor is required to supply and shall give the Contractor at least one (1) Month's written notice of any changes

25. Audit

- 25.1. The Contractor and its Personnel shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.
- 25.2. The Contractor and its Personnel 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) for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act of 1983.

CONTROL OF THE CONTRACT

26. Assignment and Sub-Contracting

- 26.1. Except where clauses 26.5 and 26.6 apply, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it

- without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 26.2. The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 26.3. Where the Authority has consented to the placing of sub-contracts for the provision of services, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 26.4. Alternatively, the Authority may require that, if the Contractor wishes to sub-contract any obligations under the Contract for the provision of services at any time it shall submit a list of sub-contractors to the Authority for approval. The Contractor shall obtain the Authority's prior written approval before changing any of the sub-contractors so approved. The Authority shall not unreasonably withhold or delay such approval.
- 26.5. Not used
- 26.6. Not used
- 26.7. Not used
- 26.8. The provisions of clause 11 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- 26.9. Subject to clause 26.11, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof as it sees fit provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 26.10. Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 26.9, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 26.11. If the rights and obligations of the Authority under the Contract are assigned, novated or otherwise disposed of pursuant to clause 26.9 to a body which is not a Contracting Authority, or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"): the rights of termination of the Authority in clauses 36 (Termination on Change of Control and Insolvency) and 37 (Termination on Default) shall be available

to the Contractor in the event of respectively, the bankruptcy or insolvency or Default of the Transferee; and

26.11.2 the Transferee shall only be able to assign, novate or otherwise dispose its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

26.12. The Authority may 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

26.13. 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.

27. Waiver

27.1. The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise 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.

27.2. 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 the provisions of clause 6.

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

28. Variation

28.1. Subject to the provisions of this clause 28, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereafter called a "**Variation**".

- 28.2. The Authority may 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 Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- 28.3. In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Authority may:
- allow the Contractor to fulfil its obligations under the Contract without the 28.3.1 variation to the Specification;
- 28.3.2 terminate the Contract following the arrangements provided by clause 38.

29. Severability

- 29.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 29.2. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

30. Remedies Cumulative

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

31. Extension of the Contract Term

- 31.1. The Authority may, by giving written notice to the Contractor not less than three (3) Month(s) prior to the last day of the Initial Contract Period, extend the term of the Contract beyond the Initial Contract Period for up to 24 months.

- 31.2 The Authority may at any time by giving written notice to the Contractor of not less than three (3) Month(s), extend the term of the Contract (whether or not it has exercised a right to extend pursuant to clause 31.1) for such period(s) as may be specified in the notice. The Authority shall be entitled to exercise its right to extend the term of the Contract pursuant to this clause 31.2 more than once, provided that the aggregate of the extensions made pursuant to this clause 31.2 shall not exceed [two (2)] years.
- 31.3 The provisions of the Contract will apply throughout any extended period(s) pursuant to clause 31.2.

32. Entire Agreement

- 32.1. The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. 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 Fraud or fraudulent misrepresentation.
- 32.2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved, unless the Parties have agreed in writing to the contrary, in accordance with the following order of precedence:
- (1) ;the Schedules
 - (2) the Standard Terms and Conditions of the Contract;
 - (3) the Contractor's Tender; and
 - (4) any other document referred to in the Contract.

33. Counterparts

- 33.1. 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.

LIABILITIES

34. Indemnity and Insurance

- 34.1. Neither Party excludes or limits liability to the other Party for:
- 34.1.1 death or personal injury caused by its negligence; or
- 34.1.2 Fraud; or

- 34.1.3 fraudulent misrepresentation; or
- 34.1.4 any breach of any obligations imposed by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979.
- 34.2. Subject to clauses 34.1 and 34.4, the Contractor shall indemnify the Authority and keep the Authority indemnified [fully up to £1million pounds] against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Contractor's Personnel on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act .or omission of the Contractor
- 34.3. The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of any Authority Personnel or the breach by the Authority of its obligations under the Contract.
- 34.4. Subject always to clause 34.1, the aggregate liability of either Party for Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall unless agreed to the contrary not exceed £5,000,000.
- 34.5. Subject always to clause 34.1 in no event shall either Party be liable to the other for:
- 34.5.1 loss of profits, business, revenue, goodwill; and/or
- 34.5.2 loss of savings (whether anticipated or otherwise); and/or
- 34.5.3 indirect or consequential loss or damage.
- 34.6. The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from .the direct Default of the Contractor
- 34.7. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover as specified in the Specifications Schedule in respect of 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, loss of or damage to property or any other loss. Such insurance shall be maintained for

the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

- 34.8. The Contractor shall hold and shall ensure that all sub-contractors hold employer's liability insurance in respect of all eligible workers engaged in providing the Services in accordance with any legal requirement from time to time in force.
- 34.9. 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 premia due under those policies.
- 34.10. If, for whatever reason, the Contractor fails to ensure that insurances required by the provisions of the Contract are maintained, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 34.11. The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 34.2.

35. Warranties and Representations

35.1. The Contractor warrants and represents that:-

it has full capacity and authority and all necessary consents (including, where 35.1.1 its procedures so require, the consent of its parent company) to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

35.1.2 in entering the Contract it has not committed any Fraud;

35.1.3 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;

35.1.4 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 a material adverse effect on its ability to perform its obligations under the Contract;

- 35.1.5 it is not subject to any contractual obligations, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 35.1.6 no proceeding or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for 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;
- 35.1.7 it owns, or has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 35.1.8 in the three (3) years prior to the date of the Contract:
- 35.1.8.1 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;
 - 35.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- it has not done or omitted to do anything which could have a material adverse 35.1.9 effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

DEFAULT, DISRUPTION AND TERMINATION

36. Termination on Change of Control and Insolvency

- 36.1. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor: -
- a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 36.1.2 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 reorganisation or amalgamation); or
 - 36.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (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; or
- 36.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- 36.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 36.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 36.1.7 being a "**small company**" within the meaning of section 382 of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 36.1.8 any event similar to those listed in clause 36.1.1 to 36.1.7 occurs under the law of any other jurisdiction.
- 36.2. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:
- 36.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- 36.2.2 a debt relief order or a debt restriction order has been made in respect of him; or
- 36.2.3 a petition is presented and not dismissed within fourteen (14) days or order made the Contractor's bankruptcy; or
- 36.2.4 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 his assets; or
- 36.2.5 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 36.2.6 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days; or
- 36.2.7 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005

- 36.3. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:
- 36.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with or assignment for the benefit of its creditors; or
 - 36.3.2 it is for any reason dissolved; or
 - 36.3.3 a petition is presented for its winding up or for the making of any administrative order, or an application is made for the appointment of a provisional liquidator; or
 - 36.3.4 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
 - 36.3.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
 - 36.3.6 any of the following occurs in relation to any of its partners:
 - 36.3.6.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of his creditors; or
 - 36.3.6.2 a petition is presented for his bankruptcy; or
 - 36.3.6.3 a receiver, or similar officer, is appointed over the whole or any part of his assets.
- 36.4. The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:
- 36.4.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 36.4.2 it is for any reason dissolved; or
 - 36.4.3 an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
 - 36.4.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or

- 36.4.5 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- 36.4.6 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
- 36.4.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 36.4.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986
- 36.4.9 References to the Insolvency Act 1986 in clause 36.4.1 shall be construed as references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.
- 36.5. The Contractor shall notify the Authority immediately of a change of control within the meaning of section 416 of the Income and Corporation Taxes Act ("**change of control**"). Where in the reasonable opinion of the Authority 1988 the change is likely to result in an adverse effect on the provision of the ces the Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
 - 36.5.1 being notified that a change of control has occurred; or
 - 36.5.2 where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where an Approval was granted prior to the change of control.

37. Termination on Default

- 37.1. The Authority may terminate the Contract with immediate effect if the Contractor commits a Default and if:
 - the Contractor has not remedied the Default to the satisfaction of the Authority 37.1.1 within ten (10) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - 37.1.2 the Default is not, in the opinion of the Authority, capable of remedy; or
 - 37.1.3 .the Default is a material breach of the Contract.
- 37.2. In the event that through any 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 provide a full credit in respect of any charge levied for its transmission and any other costs charged in connection .with such Default

- 37.3. If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written 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 12.1.

38. Termination for Convenience

- 38.1. The Authority shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Contractor.
- 38.2. Where, following the expiry or termination of the Contract, there is a transfer of an undertaking or a service provision change, within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006, Schedule D (Transfer of Undertakings) shall have effect.

38A. Termination for Procurement Reasons

- 38A.1 The Authority shall have the right to terminate the Contract at any time by giving one (1) Month's written notice to the Contractor where:
- 38A.1.1 this Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015;
 - 38A.1.2 the Contractor, at the time this Contract was awarded, was in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure; or
 - 38A.1.3 this Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaty on the European Union, the Treaty on the Functioning of the European Union and Directive 2014/24 that has been

declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union.

39. Consequences of Expiry or Termination

- 39.1. Where the Authority terminates the Contract under clause 37 and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 38, no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.
- 39.2. Subject to clause 34, where the Authority terminates the Contract under clause 38, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 38.
- 39.3. The Authority shall not be liable under clause 39.2 to pay any sum which:
- 39.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- 39.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

- 39.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.
- 39.4. In the event of any termination or expiry of the Contract:
- 39.4.1 the Authority shall be entitled to obtain a refund of the Contract Price paid by the Authority in respect of any part of the Contract which has not been performed by the Contractor;
- 39.4.2 the Contract Price shall be reduced on a pro rata basis where any part of the Contract is terminated, and the remaining parts of the Contract shall continue to be performed for the remainder of the Contract Period;
- 39.4.3 the Contractor shall return to the Authority all Property and all other items belonging to the Authority in its possession (save for copies required by the Contractor for statutory audit or archive purposes);
- 39.4.4 subject to the payment of the appropriate portion of the Contract Price the Contractor shall provide the Authority with a copy of all deliverables undertaken to date (whether completed or not) in its state at that time and, at the Authority's option, return or destroy all other copies in the Contractor's possession or control; and
- 39.4.5 the Contractor shall at the Authority's request novate any agreements between the Contractor and any third parties that are relevant to the receipt of the Services by the Authority.
- 39.5. Upon expiry or termination of all or any part of the Contract, the Contractor shall provide all reasonable assistance and information to the Authority (and to any Replacement Contractor appointed by the Authority) if requested, to the extent necessary to effect an orderly assumption of the Services by the .Authority or the Replacement Contractor
- 39.6. Save as otherwise expressly provided in the Contract:
- 39.6.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- 39.6.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 9 (Prevention of Fraud and Prevention of Corruption), 11 (Payment and VAT), 12 (Recovery of Sums Due), 16 (Rights of Third Parties), 17 and 18 (Authority Data and Protection of Personal Data), 19 (Freedom of Information), 20 (Confidentiality), 21 (Official Secrets Acts 1911-1989), 23 (Intellectual

Property Rights), 25 (Audit), 30 (Remedies Cumulative), 34 (Liability, Indemnity and Insurance), 35 (Warranties and Representations), 39 (Consequences of Expiry or Termination), 41 (Recovery upon Termination), 43 (Governing Law), 44 (Dispute Resolution) and clause A12 of the Special Conditions (Professional Indemnity).

40. Disruption

- 40.1. 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 any other contractor employed by the Authority.
- 40.2. The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 40.3. In the event of industrial action by the Contractor's Personnel the Contractor shall seek Approval to its proposals to perform its obligations under the Contract.
- 40.4. If the Contractor's proposals referred to in clause 40.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- 40.5. If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

41. Recovery upon Termination

- 41.1. On the termination of the Contract for any reason, the Contractor shall:
immediately return to the Authority all Confidential Information, Personal Data 41.1.1
and Materials subject to Intellectual Property
Rights in its possession or in the possession or under the control of any permitted
suppliers or sub-contractors, which was obtained or produced in the course of
providing the Services;
- 41.1.2 immediately deliver to the Authority all Property (including materials,
documents, information and access keys) provided to the Contractor for the

- purposes of the Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- 41.1.3 assist and co-operate 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;
- 41.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.
- 41.2. If the Contractor fails to comply with clauses 41.1.1 and 41.1.2, the Authority may 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 may be held
- 41.3. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clauses 41.1.3 and 41.1.4 free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

42. Force Majeure

- 42.1. Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 42.2. Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

- 42.3. If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 42.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

DISPUTES AND LAW

43. Governing Law

- 43.1. Subject to the provisions of clause 44, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

44. Dispute Resolution

- 44.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute, such efforts shall involve the escalation of the dispute to the Director of Procurement (or equivalent) of each Party.
- 44.2. Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 44.3. If the dispute cannot be resolved by the Parties pursuant to clause 44.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 44.5 unless the Parties agree that the dispute is not suitable for resolution by mediation.
- 44.4. 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 Contractor's Personnel shall comply fully with the requirements of the Contract at all times.
- 44.5. The procedure for mediation and consequential provisions relating to mediation are as follows:
- a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement 44.5.1 between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed

upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (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.

44.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.

44.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

44.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.

44.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.

44.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 44.6.

44.6. Subject to clause 44.2, the Parties shall not institute court proceedings until the procedures set out in clauses 44.1, 44.3 and 44.5 have been completed save that:

44.6.1 The Authority 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 44.7.

44.6.2 If the Contractor intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the

Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with the provisions of clause 44.7.

44.6.3 The Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with the provisions of clause 44.7, to which the Authority may consent as it sees fit.

44.7. In the event that any arbitration proceedings are commenced pursuant to clause 44.6:

44.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;

44.7.2 the Authority shall give a written notice of arbitration to the Contractor ("**the Arbitration Notice**") stating:

44.7.2.1 that the dispute is referred to arbitration; and

44.7.2.2 providing details of the issues to be resolved;

the London Court of International Arbitration ("**LCIA**") procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 44.7.2 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 any material failure to comply with such rules;

44.7.3 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

44.7.1 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under clause 44.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

44.7.6 the arbitration proceedings shall take place in London and in the English language; and

44.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

SCHEDULES

SCHEDULE A

SERVICES SCHEDULE

SPECIAL CONDITIONS: PROVISION OF THE SERVICES

A1. Definitions and Interpretations

In these Conditions:

"Equipment" means the Contractor's equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

"Key Personnel" means those members of the Contractor's Personnel identified as such in the Specification.

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Contractor's or the Authority's possession before the Contract.

"Service Credits" means any service credits payable by the Contractor for failure to meet the Service Levels, as referenced in [] and the Specification Schedule.

"Service Levels" means the service levels to be met by the Contractor as set out in the Specification.

A2. The Services

- A2.1. The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the Tender and the provisions of the Contract in consideration of the Contractor's entitlement to charge Deputies the Contract Price. The Contractor shall perform the Services in accordance with all applicable Service Levels referenced in the Specification or the Tender. 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.
- A2.2. If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the

Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

- A2.3. Subject to the Authority providing written consent in accordance with clause A3.2 (Provision and Removal of Equipment) below, timely supply of the Services shall be required, and shall meet the requirements stated in the Specification Schedule, and in relation to commencing the supply of the Services within the time agreed or on a specified date.

A3. Provision and Removal of Equipment

- A3.1. The Contractor shall provide all the Equipment necessary for the supply of the Services.
- A3.2. The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- A3.3. All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of 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. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor. The Contractor shall provide for the haulage or carriage to and the removal from the Premises of Equipment when no longer required at its sole cost.
- A3.4. The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- A3.5. The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably possible:
- A3.5.1. remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
- A3.5.2. replace such item with a suitable substitute item of Equipment.
- A3.6. On completion of the Services 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 is solely responsible for making good any damage to the

Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Contractor's Personnel

A4. Key Personnel

- A4.1. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- A4.2. The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- A4.3. Any replacements of the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- A4.4. The Authority shall not unreasonably withhold its agreement under clause A4.2 or clause A4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

A5. Licence to Occupy Premises

- A5.1. Any land or Premises made available to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor 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 completion, termination or abandonment of the Contract.
- A5.2. The Contractor shall limit access to the land or Premises to such Contractor's Personnel as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- A5.3. Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake

approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.

- A5.4. The Contractor shall (and shall ensure that its Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- A5.5. The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner the Authority sees fit.

A6. Offers of Employment

- A6.1. For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that Party's prior written consent unless the employment pertained to an advertised position where appointment was made following fair and open competition.

A7. Environmental Requirements

- A7.1. The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

A8. Health and Safety

- A8.1. The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Contract.

The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Contract.

- A8.2. While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Contractor's Personnel and other persons working on those Premises.
- A8.3. The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- A8.4. The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc., Act 1974 and any other Law relating to health and safety, which may apply to the Contractor's Personnel and other persons working on the Premises in the performance of the Contract.
- A8.5. The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc., Act 1974) is made available to the Authority on request.

A9. Remedies in the event of Inadequate Performance

- A9.1. Where a complaint is received about the standard of the Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 37 (Termination on Default) of the General Terms.
- A9.2. In the event that the Authority is of the reasonable opinion that the Contractor is in Default in relation to the performance of the Services in accordance with the Contract, then the Authority may:
 - A9.2.1. recover Service Credits for any Default; or
 - A9.2.2. withhold from payment or recover from the Contractor any payment attributable to the Default or non conforming Services, which shall be paid

or reimbursed on rectification of the Default to the reasonable satisfaction of the Authority.

A9.3. In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 37 (Termination on Default) of the General Terms, do any of the following

A9.3.1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract

A9.3.2. without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services; and/or

A9.3.3. terminate, in accordance with clause 37 (Termination on Default) of the General Terms, the whole of the Contract.

A9.4. Without prejudice to its rights under clause 12 (Recovery of Sums Due) of the General Terms, the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services

A9.5. If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

A9.6. In the event that:

A9.6.1. the Contractor fails to comply with clause A9.5 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or

A9.6.2. the Contractor persistently fails to comply with clause A9.5 above;

A9.6.3. the Authority may terminate the Contract (or that part of the Contract) with immediate effect by notice in writing.

A9.7. The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor

A10. Care of Property

A10.1. Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to remove any such 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 Personnel and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

A10.2. The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.

A10.3. The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

A10.4. 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.

A10.5. The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

A11. Service Levels

Ref	Descriptor	Metric	Target
KPI1	The Contractor shall resolve OPG or CoP queries within 2 working days . The Contractor shall aim to resolve the majority of such queries on first contact.	Time taken to resolve OPG or CoP queries: <ul style="list-style-type: none"> • Same day • Next working day • More than 2 working days 	2 working days
KPI2	The Contractor shall provide the required MI to OPG and the CoP by the 5th working day of each month on a monthly basis.	Working day on which OPG and CoP receive MI from Howden UK (including number of days early or late).	5 th working day of the month
KPI3	The Contractor shall process all bonds received that have been completed fully and correctly by Lay Deputies with the corresponding premium payment within 2 working days of receipt of the aforementioned documentation.	Time taken to process correctly completed bond applications: <ul style="list-style-type: none"> • Same day • Next working day • More than 2 working days Number of cases where bonds could not be issued within the agreed timescales, including the time outstanding and cause.	2 working days
KPI4	The Contractor shall part process all bonds received that require a referral back to the Deputy due to bond forms not being completed, signed or premium payments of cheques being incorrect; to write to the Deputy within 2 working days of receipt of the aforementioned documentation confirming the remedial action required to enable the bond process to be completed.	Time taken to process incorrectly completed bond applications : <ul style="list-style-type: none"> • Same day • Next working day • More than 2 working days Number of cases where bonds could not be issued within the agreed timescales, including the time outstanding and cause.	2 working days
KPI5	The contractor shall part process all bonds received that require a referral back to the Court of Protection due to investigations discovering a County Court Judgement, Bankruptcy Order, Debt Relief Order or Individual Voluntary Arrangement, and ensure they are sent back within	Time taken to return bond applications requiring a referral back to the CoP: <ul style="list-style-type: none"> • Same day • Next working day • More than 2 working days 	2 working days

	2 working days of discovery. No further action will be undertaken by the Contractor until instructions are received from the Court of Protection regarding the action required.		
KPI6	Any claims cheques received from the Insurer as a result of the bond security being made forfeit by the Court of Protection, will be sent out according to instructions received within 2 working days of receipt.	Time taken to issue cheques received from the insurer as a result of the bond being called in by the CoP.	2 working days
KPI7	All complaints will be managed in accordance with a documented Complaints Procedure and any complaints citing Howden UK for poor service will account for no more than 0.1% of the live bonds.	<p>Percentage of live bonds with complaints citing Howden UK for poor service.</p> <p>Time taken for complaints to be resolved:</p> <ul style="list-style-type: none"> • Same day • Next working day • More than 2 working days <p>Volume of unresolved complaints and reasons why they remain outstanding.</p>	No more than 0.1% of live bonds.

A12. NOT USED

SCHEDULE B

NOT USED

SCHEDULE C

NOT USED

SCHEDULE D

NOT USED

SCHEDULE E
INFORMATION SECURITY SCHEDULE
SPECIAL CONDITIONS: INFORMATION SECURITY

Section I: Process measures to manage information risk

E1. The Contractor must:

- E1.1. identify, keep and disclose to the Authority upon request a record of those members of the Contractor's Personnel and any sub-contractors with access to or who are involved in handling Authority Data ("users"); and
- E1.2. provide to the Authority details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected personal data and ICT security incidents and its procedures for reducing risk and raising awareness; and
- E1.3. immediately report information security incidents to the Authority. Significant actual or potential losses of personal data may be shared with the Information Commissioner and the Cabinet Office by the Authority.

Section II: Specific minimum measures to protect personal information

E2. The Contractor must be particularly careful to protect Authority Data whose release or loss could cause harm or distress to individuals. The Contractor must:

- E2.1. handle all such Authority Data as if it were confidential while it is processed or stored by the Contractor or its sub-contractors, applying the measures in this Schedule.
- E3. **When Authority Data is held on paper it must be kept secure at all times, locked away when not in use or the premises on which it is held secured. If Authority data held on paper is transferred it must be by an approved secure form of transfer with confirmation of receipt. When Authority Data is held and accessed on ICT systems on secure premises, the Contractor must apply the minimum protections for information set out in the Specification, or equivalent measures, as well as any additional protections as needed as a result of the Authority's risk assessment. Where in exceptional circumstances equivalent**

measures are adopted the Contractor must obtain the Authority's prior approval in writing

E4. Authority Data should be held and accessed on paper or ICT systems on secure premises protected as above. This means the Contractor should avoid the use of removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such data where possible. Where the Authority agrees that this is not possible the Contractor should work to the following hierarchy, recording the reasons why a particular approach has been adopted in a particular case or a particular business area:

- E4.1. :best option: hold and access data on ICT systems on secure premises
- E4.2. second best option: secure remote access, so that data can be viewed or amended without being permanently stored on the remote computer. This is possible for Authority Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the Authority;
- E4.3. third best option: secured transfer of Authority Data to a remote computer on a secure site on which it will be permanently stored. Both the Authority Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent. Authority Data must not be stored on privately owned computers;
- E4.4. in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.

E5. The use of removable media to process/store Authority Data must be avoided. If there is an unavoidable necessity to utilise removable media then such use should be approved by the Authority in advance. Where the Authority agrees that it is not possible to avoid the use of removable media, the Contractor should apply all of the following conditions to such use:

- E5.1. the Authority Data transferred to the removable media should be the minimum necessary to achieve the business purpose, both in terms of the numbers of people covered by the Authority Data and the scope of Authority Data held. Where possible only anonymised Authority Data should be held;
- E5.2. the removable media should be encrypted to a standard or at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;

- E5.3. user rights to transfer Authority Data to removable media should be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the Contractor and the Authority; and
- E5.4. the individual responsible for the removable media should handle it – themselves or if they entrust it to others – as if it were the equivalent or a large amount of their own cash.
- E6. Where the Authority agrees that the second condition of encryption in paragraph 5 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Authority Data should only be recorded, moved, stored and monitored if appropriate security controls are in place. All such controls must be agreed with the . Authority in advance of their use**
- E7. All material that has been used for confidential Authority Data should be subject to controlled disposal. The Contractor must:**
- E7.1. destroy paper records containing protected personal data by incineration, pulping or shredding so that reconstruction is unlikely; and
- E7.2. dispose of electronic media that has been used for protected personal data through secure destruction, overwriting, erasure or degaussing for re-use.
- E8. The Contractor must have appropriate mechanisms in place in order to comply with the Authority's requirements as set out in this Schedule, including adequate training in handling confidential data for the .Contractor's Personnel**
- E9. The Contractor must:**
- E9.1. put in place arrangements to log activity of data users in respect of electronically held protected personal information, and for managers to check it is being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity must be shared with the Authority and be available for inspection by the Information Commissioner's Office on request;
- E9.2. minimise the number of users with access to the Authority Data.

- E9.3. undertake an annual self assessment of its information assurance procedures and work with the Authority as necessary to report the findings of such assessments and ensure that all applicable Government security policy requirements are appropriately met.

Annex A

Minimum scope of Authority Data which is protected personal data

In the absence of specific instructions from the Authority, all of the data identified in the table below could cause harm or distress to individuals if released or lost. The Contractor and its sub-contractors must treat the information identified below as .protected personal data

1. one or more of the pieces of information which can be used along with public domain information to identify an individual	combined with	2. information about that individual whose release is likely to cause harm or distress
Name/addresses (home or business or both)/post code/e-mail/telephone numbers/ driving licence number/date of birth [Note that driving licence number is included in this list because it directly yields date of birth and first part of surname]		Sensitive personal data as defined by s.2 of the Data Protection Act, including records relating to the criminal justice system, and group membership DNA or fingerprints/bank, financial or credit card details/mother's maiden name/National Insurance number/Tax, benefit or pension records/health records/employment record/school attendance or records/material relating to social services including child protection and housing

SCHEDULE F
NOT USED

SCHEDULE G
SPECIFICATION SCHEDULE
SPECIAL CONDITIONS: SPECIFICATION

- G1 In order to help safeguard the interests of those for whom a Deputy has been appointed, Deputies are usually required by the CoP to give “security”. In rare cases, the Court of Protection (CoP) exercises its jurisdiction by making a one off Order authorising a person to carry out a transaction(s) on behalf of the person lacking capacity, without appointing a Deputy. It may require the person carrying out the terms of the Order to give security. [What is said below in relation to Deputies will also apply in relation to such cases.]
- G1.2 The Contractor shall be responsible and accountable to the Authority for the administration and management of the provision of Surety Bonds in accordance with the requirements of this Agreement. The Contractor shall further be responsible and accountable to the Authority for appointing an appropriate Insurer to act in relation to the provision of Surety Bonds in accordance with the requirements of this Agreement.
- G1.3 The Authority provides no guarantee to the Contractor in relation to the volume or associated value of work it may receive or generate from this Agreement (either in terms of number of Deputies appointed and how many will be required to give security or otherwise). The Authority cannot guarantee a minimum level of business. The Authority expects the average length of a Deputyship to be four to five years in duration. Many cases, particularly when P has acquired a brain injury at a young age, will last significantly longer.
- G1.4 The security provided via the Surety Bond must remain in force until the Surety Bond is discharged by the CoP. Deputies cannot cancel Surety Bonds and the Contractor recognises and accepts that the Surety Bond and the Contractor’s enduring obligations in relation to the provision of the same as contained in this Agreement shall not be discharged until one of the following timeframes has elapsed:
- 2 years after the date of death of the person on whose behalf the Deputy was appointed to act; or
 - 2 years from the date that a Deputy replaces the Surety Bond with a new equivalent security from another provider; or
 - in any other case, until the end of the period of 7 years beginning on whichever of the following dates first occurs:
 - (i) the date of the death of the Deputy; or
 - (ii) the date of an order that the CoP makes which discharges the Deputy but which does not also discharge the Surety Bond; or
 - (iii) the date when the Deputy otherwise ceases to be under a duty to discharge the functions in respect of which he was ordered to give security under the Surety Bond.
- G1.5 The Public Guardian (PG) will inform the Contractor of any changes in the Deputyship triggering the 2/7 year lapsing period. The Contractor shall alert the PG when an existing Surety Bond is about to lapse.

- G1.6 The Contractor acknowledges and accepts that the level of security to be provided via a Surety Bond can only be set, or amended, by the CoP. In relation to any particular application before it, the CoP will assess the level of security based on the value of the assets under the Deputy's control, and for professional Deputies, where there is professional indemnity insurance in place, it will assess the level according to P's annual expenditure and cost of care. [For low value cases, where the level of assets are not likely to vary significantly], the court will set a single premium bond of generic value designed to provide lifetime cover for estates of limited value.]
- G1.7 Neither the CoP nor the PG will be a party to the Surety Bond contract, which will be a contract between the Contractor and the Deputy. The CoP and the PG cannot mandate the use of any one Contractor or Insurer to Deputies. The CoP will, however, only provide details of the recommended Contractor to prospective Deputies. Neither the CoP nor the OPG can recommend a provider of Surety Bonds other than the recommended Contractor.
- G1.8 The Contractor must ensure that Surety Bonds are offered to both lay and professional Deputies as required and that such bonds cover the full value of the required security as set by the CoP. The Contractor must provide the necessary Surety Bond as and when instructed by the CoP.
- G1.9 When this Agreement comes to an end (irrespective of whether it expires or is terminated), the Surety Bonds provided by the Contractor prior to the Agreement coming to an end will remain in force and will continue to be supported by the Contractor until each bond is discharged by the CoP.
- G1.10 As part of its obligations under this Agreement the Contractor must select a suitable Insurer or Insurers who can meet the requirement at a competitive rate, and to review this arrangement at intervals. The Insurer must have been selected and be available to provide Surety Bonds as required in accordance with the terms of this Agreement by the Commencement Date.
- G1.11 The scope of this requirement excludes all existing Surety Bonds. Where such bonds are already in force, cover will continue to be provided by the original insurers.
- G1.12 Deputies may choose to switch from their current bond provider. In such cases, the Contractor shall accept retrospective liability for any claim under the bond, regardless of when the loss arose or was identified. Once a Deputy has taken out a bond with a new provider, the old provider shall not charge further annual premiums.

G2 The Surety Process

- G2.1 The level of security required in any given case will be decided by the CoP. The level will vary according to a number of factors which may include the size of the estate in question and the extent to which the Deputy will have access to it, and whether the Deputy has professional indemnity insurance.
- G2.2 Once the CoP makes an Order, they will write to the Deputy explaining that security must be arranged before appointment may be taken up. The letter

will provide details of any scheme(s) provided by the PG, but will also explain that the Deputy can make their own arrangements with a provider of their choice.

- G2.3 The Contractor is required to develop an application form to be sent to prospective Deputies. Deputies will complete the form and submit it directly to the Contractor for processing. The Contractor shall offer the Deputy different options for applying for a Surety Bond, including digital methods but also telephone and post. The Contractor shall offer a variety of payment methods for Deputies, including cheque, and card payments, online or via telephone. The Contractor must notify the CoP when a Surety Bond has been issued. This in turn shall allow the CoP to release the Deputy's order.
- G2.4 While the Contractor may require the applicant to provide whatever information the Contractor reasonably considers appropriate, it should be noted that:
- the Contractor's form shall be subject to PG and Authority approval;
 - the information required by the Contractor should be limited to that which is reasonable in the circumstances and completion of the application form should not place a significant burden on the potential Deputy i.e. by the volume or nature of the information requested; and
 - the Contractor may vary the information required depending on the level of security to be provided i.e. more information is provided for higher value Surety Bonds.
- G2.5 The CoP will also require the Contractor to make enquiries, such as a credit check, before issuing a Surety Bond to ascertain whether the Deputy/prospective Deputy represents a financial risk, where there is an active or recent bankruptcy order; a debt relief order; county court judgement; or an individual voluntary arrangement. The Contractor must feed back any adverse risk to the CoP and in some circumstances the CoP may set aside the appointment of a Deputy. While any information provided by the Deputy/authorised person that gives cause for concern may be presented to the PG or the CoP, the Insurer must still provide the bond unless the CoP rules otherwise.
- G2.6 All premiums must be paid from the Client's funds, by the Deputy. The Deputy should be asked to make just one payment, on an annual basis, while the case is active, to cover both the insurance premium charged by the Insurer and the fee charged by the Contractor. The Contractor's fee shall be published openly.
- G2.7 The exception is for bonds of £21,000, for which we expect the Contractor to charge a one-off payment covering the lifetime of the Deputyship. Bond values above or below this figure will be subject to the annual premium.
- G2.8 In cases where the Deputy fails to pay the annual premium, the Surety Bond cannot be cancelled and security remains in place. The Contractor is

expected to inform the PG of non-compliant Deputies within four weeks of a late payment.

- G2.9 If the CoP varies the level of the surety, the Contractor must vary the level of the bond immediately so that it applies retrospectively to the date the CoP made the decision. The Contractor shall confirm to the PG that the cover has been increased and the Contractor shall advise the Deputy of the amendment. Any increase or decrease in premium as a result of the amendment should be applied at the next anniversary payment. As with any anniversary premium, the Contractor shall alert the PG of Deputies failing to provide the increased premium within four weeks of it being due for payment.

G3 Enforcement of the Surety Bond

- G3.1 Ultimately, where a Deputy breaches his powers and obligations, a sum not exceeding the amount of the endorsement, representing the loss to the Client can be claimed. The bond is enforced by making an application to the CoP. In most cases, the OPG will make the application, but anyone can apply to the CoP to enforce a bond.
- G3.2 Under existing arrangements, the PG will send a letter to the Deputy indicating that the bond may be claimed.
- G3.3 The sum claimed must be paid to P's estate on first demand and there must be no onus on the PG or the CoP to prove fraud or quantify the amount of the loss. When the OPG sends the Contractor an Order calling in the bond, the Contractor shall ensure that the payment is made within 7 working days of receiving such Order. Where there is no Deputy in place, the court may order payment to a new Deputy, when appointed.

G4 Other Requirements

- G4.1 The Contractor shall provide a training manual for OPG staff, detailing the end-to-end bond process. They shall also compile a Q&A document to assist case workers and contact centre staff. This shall be updated quarterly, or as necessary based on any new developments during the period of the Agreement
- G4.2 The Contractor shall develop and host a website to support deputies and the OPG/CoP. We anticipate the development of digital features to assist the surety process.
- G4.3 The Contractor shall offer services to Deputies both by digital and analogue means. This shall include a telephone helpline and a monitored inbox for queries via email, to be open during working hours (9am-5pm), as well as detailed information on the Contractor's website. The Contractor shall provide monthly MI to the Authority, detailing as a minimum, the volume and nature of calls/emails/enquiries/comments received.

G5 Compliance

- G5.1 The PG and CoP will require management information from the Contractor in relation to the provision of surety. The Contractor shall attend meetings with the PG and the CoP quarterly, and as necessary. The Contractor shall obtain

information from the Insurer(s) upon request by the OPG/CoP. The Contractor shall supply management information on a monthly basis including, but not limited to, the following:

- total number of live bonds (split into annual/single)
- volumes and value of new bonds (lay/professional split)
- volumes and value of transferred bonds, both from and to other providers (lay/professional split),
- volumes and value of renewed bonds (lay/professional split)
- total amount of security provided
- average value of security provided
- volume of bonds over £1 million
- Contractor's commission on each bond
- underwriter for each bond (if multiple insurers are appointed)
- lapsed bonds/bonds awaiting discharge
- size of premiums collected
- average bond premium
- amended security
- non-complaint Deputies/unpaid premiums (number of cases, number of deputies, amount outstanding and age of debt)
- number of claims and why the claims arose (e.g. negligence, theft, poor decisions)
- value of claims
- trends
- issues
- complaints
- average timeframes for processing bonds
- average timeframes for paying out bonds
- credit checks

The Contractor shall continue to share this information with OPG, monthly and on request, after the contract end date, while they still hold bonds.

- G5.2 The Contractor shall highlight discrepancies in the information we share to assist in the safeguarding of vulnerable clients. This may relate to case numbers, level of security, status of case (lapsing, closed).
- G5.3 Updates or amendments to bonds must be confirmed by the Contractor in writing.
- G5.4 The Contractor shall acknowledge OPG or CoP queries within two working days.
- G5.5 The Contractor shall provide a complaints handling process for dealing with complaints from the OPG/CoP or the Deputy.
- G5.6 The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services to be performed. No claims by the Contractor for additional payments shall be allowed on the grounds of

misunderstanding of misinterpretation due to lack of knowledge of the requirements as set out in this Specification.

G6 Risk

- G6.1 Surety Bonds are required to provide financial protection for the CoP's/PG's clients. It is therefore important that any risks associated with the provision and enforcement of such bonds are minimized.

G7 Membership Requirements

- G7.1 In line with Public Guardian Regulations, the Contractor must ensure that all Surety Bonds provided in accordance with the requirements of this Agreement are provided by an "authorised insurance company" and an "authorised deposit-taker".

For the purposes of this Agreement:

"Authorised insurance company" means

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to effect or carry out contracts of insurance;
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to effect or carry out contracts of insurance;
- (c) a person who carries on insurance market activity (within the meaning given in section 316(3) of that Act)

"Authorised deposit-taker" means

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits;
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule to accept deposits.

The definitions of "authorised insurance company" and "authorised deposit-taker" must be read with

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section;
- (c) Schedule 2 to that Act.

SCHEDULE H
PRICING AND PAYMENT SCHEDULE
SPECIAL CONDITIONS: PRICING AND PAYMENT

- H1 In consideration of the Contractor's provision of the Services in accordance with the terms and conditions of this Contract the Contractor shall be entitled to charge Deputies a premium.
- H2 Bond premiums shall be charged as a single percentage of the bond value (except in the case of low value bonds of £21,000 when a one off single lifetime premium payment option shall be available). The bond value is set by the Court of Protection.
- H3 The premium prices are a percentage of the bond value as per the pricing structure table below:

	% premium based on the value of the bond
Year 1	0.075%
Year 2	0.075%
Year 3	0.075%
Year 4	0.050%
Year 5	0.050%
Subsequent years	No premium charged

Note: The premium percentage rates in the table above relate to the years of the bond being in place, not the years of the agreement between the Authority and the Contractor.

- H4 Where a bond has a value of **redacted on the grounds of the protection of personal data**, (as set by the Court of Protection), the Contractor shall offer a Deputy the option of either an annual premium (as detailed in the pricing structure table H3) or a single one off premium payment option which covers the lifetime of a deputyship. The price of this premium shall be set at **redacted on the grounds of the protection of personal data**, for the lifetime of the deputyship.

SCHEDULE I

NOT USED

SCHEDULE J
MONITORING SCHEDULE
SPECIAL CONDITIONS: MONITORING AND MANAGEMENT
INFORMATION

J1 Authority's Monitoring Requirements

J1.1 The Contractor shall attend meetings with the PG and CoP on at least a quarterly basis. The meetings will include, but will not be limited to, the following topics:

J1.1.1 Throughput of requests

J1.1.2 Number of users,

J1.1.3 Review of expenditure in regard to requests,

J1.1.4 Discussion of any potential changes to legislation which impact or affect the Authority or any of its requests.

J1.2 The Contractor shall supply management information on a monthly basis including, but not limited to:

J2 Management Information to be supplied to the Authority and the Cabinet Office

J2.1 The PG and CoP will require management information from the Contractor in relation to the provision of surety. The Contractor shall attend meetings with the PG and the CoP quarterly, and as necessary. The Contractor shall obtain information from the Insurer(s) upon request by the OPG/CoP. The Contractor shall supply management information on a monthly basis including, but not limited to, the following:

- total number of live bonds (split into annual/single)
- volumes and value of new bonds (lay/professional split)
- volumes and value of transferred bonds, both from and to other providers (lay/professional split),
- volumes and value of renewed bonds (lay/professional split)
- total amount of security provided
- average value of security provided
- volume of bonds over £1 million
- Contractor's commission on each bond
- underwriter for each bond (if multiple insurers are appointed)
- lapsed bonds/bonds awaiting discharge
- size of premiums collected
- average bond premium

- amended security
- non-complaint Deputies/unpaid premiums (number of cases, number of deputies, amount outstanding and age of debt)
- number of claims and why the claims arose (e.g. negligence, theft, poor decisions)
- value of claims
- trends
- issues
- complaints
- average timeframes for processing bonds
- average timeframes for paying out bonds
- credit checks

J2.2 The Contractor shall continue to share the service levels with OPG, monthly and on request, after the contract end date, while they still hold bonds.

SCHEDULE K

NOT USED

SCHEDULE L

CONFIDENTIAL CONTRACT INFORMATION EXCEPTIONS SCHEDULE

L1. Pursuant to clause 20.1, the Authority declares that the following categories of contract information are exceptions to the contract information to be published and the information falling within these categories is to be considered Confidential Information:

(a) NOT USED

SCHEDULE M

NOT USED

SCHEDULE N

Contractor's Tender

N1 Operational Delivery

N2 Communications

N3 Implementation