

## Schedule A

### Conditions of Contract

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## 1. Definitions and Interpretation

1.1 The following definitions and rules of interpretation in this clause apply in this Agreement.

**Agreement:** the agreement for Services made between the Parties which comprises the Form of Agreement, the following schedules and their annexes:

- a) Schedule A - Conditions of Contract;
- b) Schedule B - Contract Information;
- c) Schedule C - Specification;
- d) Schedule D- Tender Commitments;
- e) Schedule E - Performance;
- f) Schedule F – Pricing Schedule;
- g) Schedule G – Mandatory Policies; and
- h) Schedule H - Commercially Sensitive Information.

**Approval:** the written consent of the Client.

**Authorised Representatives:** the persons respectively designated as such by the Client and the Supplier from time to time in relation to the Agreement.

**Background IPR:** any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the Agreement (whether prior to the Contract Date or otherwise).

**Bribery Act:** the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant Government department concerning the legislation.

**Client Data:** any material, specification or data supplied by the Client, or others, in whatever format, related to the delivery of the Services.

**Client Premises:** the list of Client offices and regional control centres referred to in Annex 10 of Schedule C ( Specification).

**Client System:** means the Client's computing equipment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Supplier in connection with this Agreement which is owned by or licensed to the Client by a third party and which interfaces with the Supplier System or which is necessary for the Client to receive the Services.

**Collaborative Performance Framework or CPF:** the Client's system for assessing the Supplier's performance under the Agreement.

**Commercially Sensitive Information:** the information of a commercially sensitive nature relating to the Supplier set out in Schedule H (Commercially Sensitive Information), which the Supplier has indicated to the Client that, if disclosed by the Client, would be likely to prejudice the Supplier's commercial interests.

**Conditions of Contract:** the terms and conditions of this Agreement.

**Confidential Information:** means:

- a) any information that would be regarded as confidential by a reasonable business person in relation to (i) the business, the customers, suppliers or plans of the disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party including all Intellectual Property Rights;
- b) any other information of the disclosing Party clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
- c) any information developed by the Parties in the course of carrying out this Agreement;
- d) Personal Data;
- e) any Commercially Sensitive Information;
- f) information derived from any of the above.

**Consistent Service Failure:** has the meaning set out in Schedule E (Performance).

**Contract Charges:** the prices (exclusive of any applicable VAT) set out in Schedule F (Pricing Schedule) payable to the Supplier by the Client under this Agreement for the full and proper performance by the Supplier of its obligations under the Agreement.

**Contract Date:** the date of this Agreement.

**Contract Information:** the contract information for this Agreement set out in Schedule B (Contract Information).

**Contract Year:** a period of 12 months, commencing on Contract Date.

**Contracts Finder:** the government's publishing portal for public sector procurement opportunities.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer:** take the meaning given in the Data Protection Legislation.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Protection Impact Assessment:** an assessment by the relevant data Controller of the impact of the envisaged processing on the protection of Personal Data.

**Data Protection Legislation:** the DPA 2018, GDPR and all applicable Law about the processing of personal data and privacy.

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

**Data Subject:** as defined in the Data Protection Legislation.

**Default:** any breach of the obligations of the Supplier or any other default, act, omission, negligence or negligent statement of the Supplier, any of its Subcontractors or any Supplier Personnel in connection with or in relation to the subject matters of this Agreement and in respect of which the Supplier is liable to the Client.

**DPA 2018:** Data Protection Act 2018.

**EIRs:** the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.

**Exit Management Plan:** the plan set out in Annex 3 (Exit Management Plan).

**Extension period:** shall have the meaning given to it in clause 2.2.

**FOIA:** the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation.

**Force Majeure Event:** means any event or occurrence 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 dispute occurring within the Supplier's or any Subcontractor's organisation or any other failure in the Supplier's or a Subcontractor's supply chain; or
- b) the failure by any Subcontractor to perform its obligations under any Subcontract.

**Form of Agreement:** the contract document which appends these Conditions of Contract and the other contract documents incorporated within the Agreement.

**GDPR:** General Data Protection Regulation (Regulation (EU) 2016/679).

**Good Industry Practice:** means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector.

**Health and Safety Policy:** the health and safety policy of the Client as provided to the Supplier on or before the Contract Date and as subsequently provided to the Supplier from time to time.

**ICT Environment:** means the Client's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Supplier in connection with this Agreement which is owned by or licensed to the Client by a third party and which interfaces with the Supplier System or which is necessary for the Client to receive the Services and the information and communications technology

system used by the Supplier in performing the Services (but excluding the Client System).

**Inclusion Action Plan:** the plan submitted by the Supplier in accordance with clause 7 and Schedule C (Specification).

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

**Initial Term:** the period from the Contract Date ending on the second (2nd) anniversary of the Contract Date.

**Insolvency Event:** where:

- a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other party;
- c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- d) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);

- e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- h) a creditor or encumbrancer of the Supplier 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 other party's assets and such attachment or process is not discharged within 14 days;
- i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or
- j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Intellectual Property Rights or IPRs:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Key Performance Indicators or KPIs:** means the performance measurements and targets in respect of the Supplier's performance of parts of the Services set out in Table A of Schedule E (Performance).



**Key Persons:** the persons named as such in Schedule B (Contract Information) for the roles attributed to such persons or as appointed pursuant to Clause 11.

**Law:** means any legal provision the Supplier must comply with including any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body, whether in the UK or elsewhere.

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

**Management Reports:** the reports to be prepared and presented by the Supplier in accordance with clause 14 and Schedule C (Specification).

**Mandatory Policies:** the Client's mandatory policies for contracts which include the following policies set out in Schedule G (Mandatory Policies) or, as notified to the Supplier from time to time:

- a) Company Records Policy
- b) Information Security Data Handling Requirements
- c) Highways England Health and Safety Policy
- d) Information Security Data Security
- e) Information Assurance Policy

**Performance Improvement Plan:** the plan agreed in accordance with clause 5.6 to remedy a Consistent Service Failure.

**Performance Monitoring Report:** has the meaning given in paragraph 4 of Schedule E (Performance).

**Personal Data:** as defined in the Data Protection Legislation.

**Processor:** as defined in the Data Protection Legislation.

**Processor Personnel:** all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement.

**Project Specific IPRs:**

- a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these; and/or
- b) IPR in or arising as a result of the performance of the Supplier's obligations under this Agreement and all updates and amendments to the same; but shall not include the Supplier's or any third party's Background IPR.

**Prohibited Act:** the following constitute Prohibited Acts:

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

**Protective Measures:** appropriate technical and organisational measures which include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Quality Standards:**

- a) any relevant standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply;
- b) the requirements set out in Schedule C (Specification) in respect of Supplier accreditation and security standards; and
- c) any relevant Government codes of practice and guidance applicable from time to time.

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

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Client receives following the termination (in whole or in part) or expiry of this Agreement, whether those services are provided by the Client internally or by any Replacement Supplier.

**Replacement Supplier:** any third party supplier of Replacement Services appointed by the Client from time to time.

**Representatives:** means, in relation to a Party, its employees, officers, representatives and advisors.

**Request for Information:** a request for information or an apparent request under the FOIA or the EIRs.

**Service Level Failure:** means failure by the Supplier to meet the Service Level described as “Red” in respect of a KPI.

**Service Levels:** the service levels applicable to the KPIs specified in Table A of Schedule E (Performance).

**Services:** the services and deliverables to be delivered by or on behalf of the Supplier under this Agreement, as more particularly described in Schedule C (Specification).

**Specification:** the specification document describing the requirements for the Services set out in Schedule C (Specification).

**Subcontract:** any contract or agreement, or proposed contract or agreement, between the Supplier and a third party pursuant to which that third party agrees to provide to the Supplier the Services or any part of the Services, or facilities or services necessary for the provision of the Services or any part of the Services.

**Subcontractor:** the third parties that enter into a Subcontract with the Supplier.

**Supplier Equipment:** the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Client) in the performance of its obligations under this Agreement.

**Supplier Personnel:** all directors, officers, employees, staff, other workers, agents and consultants of the Supplier and of any Subcontractors who are engaged in the provision of the Services from time to time.

**Supplier Software:** software which is proprietary to the Supplier and which is or will be used by the Supplier for the purposes of providing the Services.

**Supplier System:** means the information and communications technology system used by the Supplier in performing the Services including the software, the Supplier Equipment and related cabling (but excluding the Client System).

**Sub-processor:** any third party appointed to process Personal Data on behalf of that Processor related to this Agreement.

**Tender:** the document(s) submitted by the Supplier to the Client in response to the Client's invitation to suppliers for formal offers to supply it with the Services.

**Tender Commitments:** the commitments set out in Schedule D (Tender Commitments) which summarise key elements of the Supplier's methodology for delivering the Services.

**Term:** the period of the Initial Term as may be varied by:

- a) any Extension Period; or
- b) the earlier termination of this Agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this Agreement.

**Termination Notice:** a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination.

**Third Party Software:** software which is proprietary to any third party which will be or is proposed to be used by the Supplier for the purposes of providing the Services.

**Transparency Requirements:** means all transparency-related guidance and principles published by the UK Government with which the Client is mandated to comply including but not limited to: Procurement Policy Note 02/17 – Promoting Greater Transparency, Procurement Policy Note 01/17 – Update to Transparency Principles and Guidance for publishing spend over £25,000.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

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

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 References to Schedules are to the Schedules to the Agreement, references to Clauses and Annexes are to the Clauses and Annexes of these Conditions of Contract.
- 1.4 A reference to this Agreement or to any other agreement or document is a reference to this Agreement or such other agreement or document as varied, supplemented or novated from time to time.
- 1.5 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes any subordinate legislation for the time being in force made under it.
- 1.7 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020.
- 1.8 If there is any ambiguity or inconsistency between the documents comprising this Agreement, the priority of the documents is in accordance with the following sequence:
- (a) this Agreement excluding Schedule D (Tender Commitments); and
  - (b) Schedule D (Tender Commitments).

## **2. Term**

- 2.1 This Agreement shall take effect on the Contract Date and shall continue for the Term.
- 2.2 The Client may extend this Agreement beyond the Initial Term for up to two (2) in increments of one year at a time (the "**Extension Period**") subject to satisfactory performance of the Services by the Supplier. The Client may extend this Agreement by giving the Supplier at least three months' written notice.

## **3. Due diligence and Supplier's warranty**

- 3.1 The Supplier acknowledges and confirms that:
- (a) it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Client; and
  - (b) it shall not be excused from the performance of any of its obligations under this Agreement on the grounds of:
    - (i) misinterpretation of the requirements of the Client in this Agreement;

(ii) failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the any information supplied or made available to it by or on behalf of the Client; and/or

(iii) failure by the Supplier to undertake its own due diligence,

nor shall the Supplier be entitled to recover any additional costs or charges arising as a result of any of the circumstances set out in clauses 3.1(b)(i) to (iii) above.

3.2 No representations, warranties or conditions are given or assumed by the Client in respect of any information which is provided to the Supplier by the Client and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by Law.

3.3 The Supplier represents and warrants that:

- (a) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (b) as at the Contract Date, all written statements and representations in any written submissions made by the Supplier as part of the procurement process, its Tender, and any other documents submitted remain true and accurate save as may have been specifically disclosed in writing to the Client prior to execution of the Agreement;
- (c) it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Agreement;
- (d) it shall take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, spyware or other malware) into systems, data or software owned by or under the control of, or used by, the Client;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

- (f) it is not affected by an Insolvency Event; and,
- (g) for the Term and for a period of twelve (12) months after the termination or expiry of this Agreement, the Supplier shall not employ or offer employment to any staff of the Client which have been associated with the provision of the Services without the prior written consent of the Client which shall not be unreasonably withheld.

3.4 The warranties and representations in clause 3.2 are repeated each time the Supplier provides Services.

3.5 If at any time the Supplier becomes aware that a representation or warranty given by it under clause 3.2 has been breached, is untrue or is misleading, it shall immediately notify the Client of the relevant occurrence in sufficient detail to enable the Client to make an accurate assessment of the situation.

#### **4. Supply of services**

##### **Services**

4.1 The Supplier shall provide the Services to the Client from the Contract Date in accordance with the provisions of this Agreement.

4.2 The Supplier shall meet any performance dates for the Services that the Client notifies to the Supplier. If no date has been agreed, the Supplier shall provide the Services diligently and within a reasonable time.

##### **Supplier Equipment**

4.3 Unless otherwise stated in this Agreement, the Supplier shall provide all the Supplier Equipment necessary for the provision of the Services.

4.4 The Supplier shall not deliver any Supplier Equipment nor any Services on the Client Premises without obtaining the Client's consent.



- 4.5 The Supplier shall be solely responsible for the cost of carriage of the Supplier Equipment to any Client Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on the Termination Date, the Supplier shall be responsible for the removal of all relevant Supplier Equipment from any Client Premises, including the cost of packing, carriage and making good the Client Premises following removal.
- 4.6 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Client shall be liable for loss of or damage to any of the Supplier's property located on Client Premises which is due to the negligent act or omission of the Client.
- 4.7 The loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement.
- 4.8 The Supplier shall maintain all Supplier Equipment within the Client Premises in a safe, serviceable and clean condition.
- 4.9 The Supplier shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Client Premises any Supplier Equipment or any component part of Supplier Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
  - (b) replace such Supplier Equipment or component part of Supplier Equipment with a suitable substitute item of Supplier Equipment.

### **Exit Management Plan**

- 4.10 The Supplier shall comply with the obligations as set out in Annex 3 (Exit Management Plan).

## **5. KPIs and Performance monitoring**

### **KPIs**

- 5.1 Where a KPI and Service Levels are specified in Schedule E (Performance), the Supplier shall provide that part of the Services to meet or exceed the Service Level described as “Green”.
- 5.2 The Supplier shall provide records of and Management Reports summarising its performance of the KPIs as provided for in clause 14.

### **Performance monitoring**

- 5.3 The Supplier’s performance of the Services shall be assessed and monitored through the Collaborative Performance Framework using the KPIs and associated Service Level set out in Schedule E (Performance) and other measures to be agreed in accordance with clause 5.4.
- 5.4 The Parties shall discuss and agree within 30 days after the Contract Date the other measures to be assessed and monitored through the CPF including the scoring principles, reporting frequency and reporting deadlines.
- 5.5 The Supplier shall:
- (a) co-operate and shall procure that its Subcontractors co-operate with the Client in carrying out the assessment and monitoring referred to in clause 5.3 at no additional charge to the Client; and
  - (b) collect and assemble evidence and data about its performance against the KPIs and Service Levels and meet with the Client to review the Supplier’s performance under this Agreement in accordance with this clause and Schedule E (Performance).

### **Performance Improvement Plan**

- 5.6 Without prejudice to any other right or remedy which the Client may have, if there is a Consistent Service Failure, then the following shall apply:

- (a) At the Client's request, the Parties shall meet within 7 Working Days of the request in order to discuss using a Performance Improvement Plan to address the Consistent Service Failure. The Supplier shall be represented at that meeting by at least two Representatives including an executive director of the Supplier.
- (b) Following the meeting and at the Client's request, the Supplier shall submit, as soon as reasonably practicable and in any event within 7 Working Days of the request, a draft Performance Improvement Plan.
- (c) The Client shall (acting reasonably) either approve the draft Performance Improvement Plan within 7 Working Days of receipt or it shall inform the Supplier why it cannot accept the draft Performance Improvement Plan. In such circumstances, the Parties shall meet as soon as reasonably practicable to discuss the Client's concerns. The Supplier shall submit a revised Performance Improvement Plan to the Client for Approval within 5 Working Days of the meeting, which the Client shall (acting reasonably) either approve or reject within 5 Working Days of receipt.
- (d) If the Supplier does not receive notice from the Client that it does not accept the draft Performance Improvement Plan within the 7 Working Days' time period or if applicable the further 5 Working Days' time period, the Supplier's draft Performance Improvement Plan shall be deemed to be agreed.
- (e) Once agreed, the Supplier shall promptly start work on and comply fully with the terms of the Performance Improvement Plan.

5.7 In the event that the Supplier fails to comply with clause 5.6 and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty, then the Client may (whether or not any part of the Services have been delivered) do any of the following:

- (a) terminate the Agreement with immediate effect by giving the Supplier notice in writing;
- (b) without terminating the Agreement, procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the

reasonable satisfaction of the Client that the Supplier will once more be able to supply all or such part of the Services in accordance with the Agreement;

- (c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (d) charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Client (including any reasonable administration costs) in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

## **6. Provision of the Services**

6.1 In providing the Services, the Supplier shall:

- (a) perform its obligations under this Agreement in accordance with:
  - (i) all applicable Law
  - (ii) Good Industry Practice
  - (iii) the Quality Standards
  - (iv) the Mandatory Policies; and
  - (v) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirement of clauses 6.1(a) (i) to (iv).
- (b) at all times allocate sufficient resources with the appropriate technical expertise to provide the Services;
- (c) provide the Services in accordance with:
  - (i) all descriptions, standards and requirements in Schedule C (Specification); and
  - (ii) the Tender Commitments;

- (d) provide all equipment and such other items as are required to provide the Services;
- (e) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (f) hold all Client Data in safe custody at its own risk and maintain the Client Data in good condition until returned to the Client, and not dispose or use the Client Data other than in accordance with the Client's written instructions or authorisation;
- (g) not act in a manner that would conflict with the performance of its obligations under this Agreement and immediately inform the Client in writing of any such actual or potential conflict; and
- (h) comply with any additional obligations set out in Schedule C (Specification).

## **7. Compliance**

### **Health and Safety**

- 7.1 The Supplier shall be responsible for the observance by Supplier Personnel and Subcontractors of all health, safety and welfare precautions necessary for their protection and the protection of any other persons, including all precautions required to be taken by or under or pursuant to any Law, and the Client's health safety and welfare policies and procedures notified to the Supplier from time to time including any such procedures set out in Schedule C (Specification).
- 7.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Client Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

### **Equality and diversity**

- 7.3 The Supplier shall (and shall procure that the Supplier Personnel shall):

- (a) co-operate and assist the Client to satisfy its duty under all applicable equality Law to:
  - (i) eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited by the Law;
  - (ii) advance equality of opportunity between people who share a protected characteristic and people who do not; and
  - (iii) foster good relations between people who share a protected characteristic and people who do not.
- (b) prepare and submit for acceptance by the Client an Inclusion Action Plan in accordance with Schedule C (Specification).
- (c) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) the Client 's equality and diversity policies and procedures as provided to the Supplier from time to time;
  - (iii) any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality Law;
- (d) take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
- (e) notify the Client as soon as it becomes aware of any investigation or proceedings brought against the Supplier under the applicable equality Law in relation to the Agreement and:
  - (i) provide any information requested by the investigating body, court or tribunal in the timescale allotted;
  - (ii) attend (and permit a representative from the Client to attend) any associated meetings;

- (iii) promptly allow access to any relevant documents and information; and
- (iv) co-operate fully and promptly with the investigatory body, court or tribunal.

## **8. Client Premises**

- 8.1 The Client shall provide the Supplier (and its Subcontractors) with access to such accommodation and facilities at the Client Premises as reasonably necessary for the purposes only of providing the Services.

## **9. Payment**

- 9.1 In consideration of the provision of the Services by the Supplier, the Client shall pay the applicable Contract Charges to the Supplier in monthly instalments in accordance with the provisions of this clause 9 and 0 1 (Payment).
- 9.2 The Supplier shall invoice the Client for payment of the applicable Contract Charges at the end of each calendar month. All invoices shall be directed to the Client's Authorised Representative and shall contain such information as the Client may inform the Supplier of from time to time.
- 9.3 The Supplier shall include in the invoices a detailed breakdown of the Services provided and such other information as may be required by the Client to substantiate the invoice.
- 9.4 The Client shall pay all sums properly due and payable to the Supplier within thirty (30) days of receipt of a valid invoice.
- 9.5 The Supplier shall comply with the Client's fair payment charter. The Supplier shall ensure that any Subcontract it enters into shall contain a provision which requires payment to be made of all sums due by the Supplier to the Subcontractor within a specified period not exceeding thirty (30) days from the receipt of a validly issued invoice, in accordance with the terms of the Subcontract.

- 9.6 Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 16.
- 9.7 The Contract Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Client following delivery of a valid VAT invoice. The Supplier shall indemnify the Client against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Client at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this Agreement.
- 9.8 The Supplier shall maintain and complete accurate records of, and supporting documentation for, all amounts which may be chargeable to the Client pursuant to this Agreement. Such records shall be retained for inspection by the Client for 7 years from the end of the Agreement.
- 9.9 Where, under the Agreement, any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Client in respect of any breach of the Agreement), such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the Supplier under the Agreement or any other contract between the Supplier and the Client.
- 9.10 If the Client wishes to set off any amount owed by the Supplier to the Client against any amount due to the Supplier pursuant to clause 9.9, it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Client's reasons for withholding or retaining the relevant Contract Charges.
- 9.11 The Supplier shall make any payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Supplier.
- 9.12 Interest shall be payable on the late payment of any undisputed Contract Charges properly invoiced under this Agreement in accordance with clause 10.



9.13 The Supplier shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services in the event of:

- (a) any withholding or deduction by the Client of any sum due to the Supplier pursuant to the exercise of a right of the Client to such withholding or deduction under this Agreement;
- (b) the existence of an unresolved dispute; and/or
- (c) any failure by the Customer to pay any Contract Charges,

unless the Supplier is entitled to terminate this Agreement under clause 27.9 for failure by the Client to pay undisputed Contract Charges.

## **10. Interest**

10.1 If a Party fails to pay any undisputed amount due under this Agreement, the other Party shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment.

## **11. Key persons**

11.1 The Supplier acknowledges that the Key Persons are essential to the proper provision of the Services to the Client. The Supplier shall ensure that all Key Persons shall be appropriately qualified and experienced. The Supplier shall supervise and manage all Key Persons properly.

11.2 The Supplier shall not (and shall procure that any Subcontractor shall not) release any of the Key Persons from supplying the Services without the Approval of the Client except by reason of by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.

11.3 Any replacements to the Key Persons shall be subject to the Approval of the Client. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Persons whom they have replaced

- 11.4 The Client shall not unreasonably withhold its Approval under clauses 11.2 or **Error! Reference source not found.** Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the delivery of the Services which could be caused by a change in Key Persons.
- 11.5 The Client may require the Supplier to remove, or procure the removal of, any of its Key Persons whom it considers unsatisfactory for any reason which has a material impact on such person's responsibilities.
- 11.6 If the Supplier replaces a Key Person as a consequence of this clause 11, the cost of effecting such replacement shall be borne by the Supplier.

## **12. Supplier Personnel**

- 12.1 The Supplier shall ensure that all Supplier Personnel:
- (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (b) meet the requirements specific to Supplier Personnel set out in Schedule C (Specification); and
  - (c) all of the Supplier Personnel comply with all of the Client's policies including those that apply to persons who are allowed access to the applicable Client's Premises.
- 12.2 If the Client considers that any of the Supplier Personnel are unsuitable to provide the Services or have failed to provide the Services with reasonable skill, care and diligence, the Client may direct the Supplier to end those persons' involvement in the provision of the Services. Following the removal of any of the Supplier Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary qualifications, training and experience to meet the requirements of the Services. The Supplier shall be responsible for the cost of replacing any Supplier Personnel.
- 12.3 The Supplier shall maintain up-to-date personnel records on the Supplier Personnel engaged in the provision of the Services and shall provide information to the Client as

the Client reasonably requests on the Supplier Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

### **13. TUPE**

- 13.1 The Supplier shall provide the Client, or any other person authorised by the Client who is to be invited to submit a tender in relation to the provision of similar Services, with such information (including any changes to and interpretations thereof) in connection with TUPE as the Client may require. The Supplier shall provide the information within ten (10) days of the Client's request.
- 13.2 During the eight (8) month period preceding the expiry or termination of the Agreement, the Supplier shall not without the prior consent of the Client (which shall be in writing, but shall not be unreasonably withheld or delayed) move or deploy any Key Persons away from the performance of the Services under this Agreement.
- 13.3 Save where the Services comprise the provision of a consultancy service, during the 8 month period preceding the expiry or termination of the Agreement, the Supplier shall not without the prior consent of the Client (which shall be in writing, but shall not be unreasonable withheld or delayed):
- (a) materially amend the terms and conditions of employment of any employee whose work, wholly or mainly falls within the scope of this Agreement; or
  - (b) materially increase the number of employees whose work (or any part of it) is work undertaken for the purposes of this Agreement.
- 13.4 The Supplier shall not knowingly do, or omit to do, anything which may adversely affect the orderly transfer of responsibility for provision of the Services.

### **14. Reporting and meetings**

- 14.1 The Supplier shall meet the requirements of the Client's in respect of management information set out in Schedule C (Specification) and summarised in Annex 2 (Contract Management).

- 14.2 The Authorised Representatives shall meet in accordance with the details set out in Annex 2 (Contract Management).

## **15. Continuous improvement**

- 15.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Client's Authorised Representative quarterly on:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
  - (b) new or potential improvements to the Services including the quality, responsiveness, procedures and performance mechanisms;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Client which might result in efficiency or productivity gains or in reduction of operational risk; and
  - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Client.

## **16. Dispute resolution**

- 16.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it then the Parties shall follow the procedure set out in this clause:
- (a) the Authorised Representatives shall first attempt to resolve the dispute in good faith;
  - (b) if the Authorised Representatives are for any reason unable to resolve the dispute through good faith discussions within thirty (30) Working Days from when they first started, the Parties shall attempt to resolve the dispute by discussion between the Supplier's chief executive officer and an executive director of the Client;
  - (c) if the Supplier's chief executive officer and the executive director of the Client are for any reason unable to resolve the dispute within thirty (30) Working Days of the date the Parties agree good faith discussions under clause 16.1(a) were

deemed unsuccessful, then either Party may refer the dispute to mediation in accordance with the Centre For Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time. Unless otherwise agreed between the Parties within fourteen (14) days of notice of the dispute, the mediator will be nominated by CEDR.

- (d) If the dispute is not resolved within 45 days after service of a written demand for mediation (or such other period agreed by the Parties from time to time), then either Party may commence proceedings in English courts.

## **17. Subcontracting and assignment**

- 17.1 The Supplier shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the Client, nor shall the Supplier subcontract the whole or any part of its obligations under this Agreement except with the prior Approval of the Client, such consent not to be unreasonably withheld.
- 17.2 In the event that the Supplier enters into any Subcontract in connection with this Agreement it shall:
  - (a) remain responsible to the Client for the performance of its obligations under the Agreement and be responsible for the acts omissions and neglects of its Subcontractors;
  - (b) impose obligations on its Subcontractor in the same terms as those imposed on it pursuant to this Agreement and shall procure that the Subcontractor complies with such terms; and
  - (c) provide a copy, at no charge to the Client, of any such Subcontract on receipt of a request for such by the Client's Authorised Representative.
- 17.3 The Client shall be entitled to novate or assign the Agreement to any other body which substantially performs any of the functions that previously had been performed by the Client and the Supplier shall, at the Client's request, enter into a novation agreement in such form as the Client shall reasonably specify in order to enable the Client to exercise its rights pursuant to this clause 17.3.

## **18. Limitation of liability**

- 18.1 References to liability in this clause 18 include every kind of liability arising under or in connection with this Agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 18.2 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 18.3 Nothing in this clause 18 shall limit the Client's payment obligations under this Agreement.
- 18.4 Nothing in this Agreement shall limit any liability under clauses 9.7 (payment of VAT) and 26.5 (Intellectual Property).
- 18.5 Nothing in this Agreement limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 18.6 Subject to clauses 18.2 to 18.5 and 18.8, the Supplier 's liability to the Client shall be subject to the following financial limits:
- (a) the Supplier's total aggregate liability for Default resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed five million pounds (£5,000,000) or twice the contract value (whichever is higher); and
  - (b) the Supplier's total aggregate liability for all other loss, claim or damage (whether in tort or under contract) which does not fall within sub-clause (a), shall not exceed five million pounds (£5,000,000) or twice the contract value (whichever is higher).

- 18.7 Subject to clauses 18.2 to 18.5 and 18.8, the Client's total aggregate liability to the Supplier for all loss, claim or damage (whether in tort or under contract), shall not exceed five million pounds (£5,000,000) or twice the contract value (whichever is higher).
- 18.8 Subject to clauses 18.2 (types of losses and specific losses not excluded), in no event shall either Party be liable to the other for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect, special or consequential loss or damage.
- 18.9 The provisions of clause 18.8 shall not be taken as limiting the right of the Client to recover as a direct loss:
- (a) sums paid by the Client to the Supplier pursuant to this Agreement, in respect of Services not provided in accordance with the Agreement;
  - (b) wasted expenditure;
  - (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials; and/or
  - (d) losses incurred by the Client arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontractor, Supplier Personnel, regulator or employees of the Client) against the Client caused by the act or omission of the Supplier.

## 19. Insurance

19.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than five million pounds sterling (£5,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period. The Supplier shall ensure that the public liability policy shall contain an indemnity to principals clause under which the Client shall be indemnified in respect of claims made against the Client in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable;
- (b) employer's liability insurance with a limit of indemnity of not less than five million pounds sterling (£5,000,000) in respect of any once occurrence, the number of occurrences being unlimited in any annual policy period or such higher limit as required by law from time to time;
- (c) professional indemnity insurance with a limit of indemnity of not less two million pounds sterling (£2,000,000) in relation to any one claim or series of claims, and in the annual aggregate, and shall ensure that all agents, professional consultants and Subcontractors involved in the supply of the Services maintain appropriate professional indemnity insurance during the Term; and
- (d) and any other insurances as may be required by applicable law or relevant regulation from time to time.

(the “**Required Insurances**”). The insurance cover shall be in respect of relevant insurable risks which may be incurred by the Supplier, arising out of the Supplier 's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

19.2 The Supplier shall give the Client upon the date of the Agreement and within fifteen (15) days after the renewal or replacement of each of the Required Insurances



evidence in a form satisfactory to the Client, that the Required Insurances are in force and effect and meet in full the requirements of the Agreement. Receipt of such evidence by the Client shall not in itself constitute acceptance by the Client or relieve the Supplier of any of its liabilities and obligations under the Agreement.

- 19.3 The Required Insurances shall be taken out and maintained with insurers who are of good financial standing, regulated by the applicable regulatory body and are in good standing with that regulator.
- 19.4 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 19.5 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 19.6 The Supplier shall notify the Client in writing at least five (5) days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 19.7 Where any of the Required Insurances are subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Client any sum paid by way of excess or deductible under the Required Insurances whether under the terms of the Agreement or otherwise.
- 19.8 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Agreement.

## **20. Confidentiality**

- 20.1 Subject to clauses 20.3 and 20.4, each Party shall keep the other Party's Confidential Information confidential and shall not:
- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this Agreement; and/or

- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 20.

20.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- (a) which the other Party confirms in writing is not required to be treated as Confidential Information;
- (b) which was, is or becomes available to the other Party on a non-confidential basis from a person who, to that Party's knowledge, is not under any confidentiality obligation in respect of that information;
- (c) which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any disclosure prohibited by this Agreement; and
- (e) which a Party can demonstrate was lawfully in its possession prior to receipt from the other Party.

20.3 A Party may disclose the other Party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this Agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure;
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this Agreement; and
- (c) at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 20.3

20.4 Nothing in this Agreement shall prevent the Client from disclosing any of the Supplier's Confidential Information:

- (a) to the Department for Transport and its officers, employees, consultants and professionals;
- (b) pursuant to the requirements of the FOIA or the EIRs;
- (c) pursuant to the Transparency Requirements;
- (d) to the extent the need for disclosure arises for the purpose of the examination and certification of the accounts of the Client or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client is carrying out its public functions; and/or
- (e) if the Client has reasonable grounds to believe that the Supplier is involved in activity that may constitute a serious criminal offence and the disclosure is being made to a relevant investigating or enforcement authority.

## **21. Transparency and Freedom of information**

- 21.1 The Supplier acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and EIRs, the content of the Agreement is not Confidential Information and consents to its publication in its entirety. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA and EIRs. The Client may inform the Supplier of its decision regarding any redactions but the Client shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with the Client to enable the Client to publish this Agreement.
- 21.2 The Supplier acknowledges that the Client is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Client to enable the Client to comply with its obligations under the FOIA and EIRs;
  - (b) transfer to the Client all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

- (c) provide the Client with a copy of all Information belonging to the Client requested in the Request For Information which is in its possession or control in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Client.

21.3 The Supplier acknowledges that the Client may be required under the FOIA and EIRs to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Client shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but the Client shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **22. Data processing**

- 22.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor, unless otherwise specified in Annex 4 (Processing Personal Data).
- 22.2 The only processing that the Supplier is authorised to do is determined by the Controller and listed in Annex 4 (Processing Personal Data).
- 22.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 22.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

22.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Annex 4 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex 4 (Processing Personal Data));
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Processor's duties under this clause;
  - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
  - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the European Union unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

22.6 Subject to clause 22.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

22.7 The Processor's obligation to notify under clause 22.6 shall include the provision of further information to the Controller in phases, as details become available.

22.8 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 22.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

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

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

- (a) the Controller determines that the processing is not occasional;
- (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

22.10 The Processor shall allow for audits of its data processing activity by the Controller or the Controller's designated auditor.

22.11 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

22.12 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- (a) notify the Controller in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 22 such that they apply to the Sub-processor; and
- (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

22.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

22.14 The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated in to this Agreement).

22.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Working Days'



notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

22.16 The Supplier shall indemnify the Client against any losses, damages, cost or expenses incurred by the Client arising from, or in connection with, any breach of the Supplier's obligations under this clause 22.

22.17 The provisions of this clause shall apply during the Term and indefinitely after the expiry or termination of this Agreement.

## **23. Audit**

23.1 The Supplier shall keep and maintain until 7 years after the end of the Termination Date, or as long a period as may be agreed between the Parties, full and accurate records and account relating to the Agreement including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Supplier shall on reasonable notice permit the Client or its representatives such access to those records as may be requested by the Client in connection with the Agreement.

23.2 The Supplier shall allow the Client's representatives reasonable access to the Supplier's premises to examine the records and accounts relating to the Agreement held under this Clause 23.

23.3 Subject to the provision of reasonable notice to the Supplier, and for the purpose of:

- (a) examining and certifying the Client's accounts; or
- (b) any examination, pursuant to section 6(1) of the National Audit Act 1983, of the economy, efficiency and effectiveness with which the Client has used its resources,

the Comptroller and Auditor General shall have a right of access to such relevant documents as are owned, held or otherwise within control of the Supplier.

23.4 The Supplier shall assist the Comptroller and Auditor General to understand such documents and provide any oral/or written information and explanation of the documents as may reasonably be requested.

- 23.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this Agreement in any material manner by the Supplier in which case the Supplier shall reimburse the Client for all the Client's reasonable costs incurred in the course of the audit.
- 23.6 The Supplier shall include in every Subcontract a requirement for the Subcontractor to comply with provisions having the same effect as clauses 23.1 to 23.5 above.

## **24. Client Data**

- 24.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Client Data.
- 24.2 The Supplier shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Client.
- 24.3 To the extent that Client Data is held and/or processed by the Supplier, the Supplier shall supply that Client Data to the Client as requested by the Client in the format specified.
- 24.4 The Supplier shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.
- 24.5 The Supplier shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the Client at all times upon request.
- 24.6 The Supplier shall ensure that any system on which the Supplier holds any Client Data, including back-up data, is a secure system that complies with the Client's IT Data Security Policy.
- 24.7 If the Client Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Client may:

- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Client Data to the extent and in accordance with the requirements specified; and/or
- (b) itself restore or procure the restoration of Client Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified.

## **25. Security**

- 25.1 The Supplier shall comply with all security requirements of the Client under this Agreement, and shall ensure that all Supplier Personnel comply with such requirements.
- 25.2 The Supplier shall comply, and shall procure the compliance of the Supplier Personnel, with the Client's IT Data Security Policy (and where required a security plan) and the Supplier shall ensure that the Security Plan produced by the Supplier fully complies with the Security Policy.
- 25.3 The Client shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 25.4 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available (from an industry accepted anti-virus software vendor) to check for and delete Malicious Software from the ICT Environment.
- 25.5 If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 25.6 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 25.5 shall be borne by the Parties as follows:
  - (a) by the Supplier where the Malicious Software originates from the Supplier Software, Third Party Software or the Client Data (whilst the Client Data was under the control of the Supplier); and

- (b) by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

## **26. Intellectual property**

- 26.1 Each Party shall keep ownership of its Background IPRs.
- 26.2 Any Project Specific IPRs shall belong to the Client. The Client shall grant the Supplier a licence to use its Background IPRs and Project Specific IPRs for the purpose of fulfilling its obligations during the Term.
- 26.3 The Supplier hereby assigns (and procures that any third party shall assign) to the Client, with full title guarantee, all rights and interest in the Project Specific IPRs. This assignment shall take effect on the Contract Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Project Specific IPRs produced by the Supplier or a third party on behalf of the Supplier. The Supplier shall execute (and procure from any relevant third party) at its own cost all documentation necessary to execute this assignment.
- 26.4 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright assigned to the Client pursuant to this Agreement.
- 26.5 The Supplier shall ensure and procure that the availability, provision and use of the Services and the performance of the Supplier's responsibilities and obligations under this Agreement shall not infringe any Intellectual Property Rights of any third party.
- 26.6 The Supplier shall indemnify, and keep indemnified, the Client in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against, or incurred, or paid, by the Client as a result of, or in connection with, any claim made against the Client for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the supply or use of the Services ("IPR Claim"). If an IPR Claim is made or anticipated, the Supplier must at its own expense and the Client's sole option, either:

- (a) obtain for the Client the rights in clauses 26.2 and 26.3 without infringing any third party IPR; or,
- (b) replace or modify the relevant item with substitutes that do not infringe IPR without adversely affecting the functionality or performance of the Services.

## **27. Termination**

### **Termination on material Default**

27.1 The Client may terminate this Agreement for material Default by serving a Termination Notice to the Supplier where:

- (a) the representation and warranty given by the Supplier pursuant to clause 3.2 (representations and warranties) is materially untrue or misleading, and the Supplier fails to provide details of proposed mitigating factors which in the reasonable opinion of the Client are acceptable;
- (b) the Client expressly reserves the right to terminate this Agreement for material Default, including pursuant to any of the following clauses: 20 (Confidentiality), 22 (Data processing), 23 (Audit), 29 (Prevention of bribery); and/or,
- (c) the Supplier commits any material Default of this Agreement which is not, in the reasonable opinion of the Client, capable of remedy.

For the purpose of clause 27.1, a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default.

### **Termination for Consistent Service Failure**

27.2 In the event of a Consistent Service Failure, the Client may terminate this Agreement in whole or in part subject to and in accordance with clause 5.7.

### **Termination on financial standing**

27.3 The Client may terminate this Agreement by serving a written notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable

opinion of the Client), there is a material detrimental change in the financial standing and/or the credit rating of the Supplier (as measured from the Contract Date) which:

- (a) adversely impacts on the Supplier's ability to supply the Services; or
- (b) could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Services.

#### **Termination on insolvency**

- 27.4 The Client may terminate this Agreement with immediate effect by the service of written notice on the Supplier if there is an Insolvency Event.

#### **Termination on change of control**

- 27.5 The Supplier shall notify the Client immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Client immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. Unless the Client has given its Approval prior to the Change of Control, the Client shall be entitled to terminate the Agreement by notice in writing with immediate effect within six months of:

- (a) being notified that a Change of Control has occurred or is planned or in contemplation; or
- (b) where no notification has been made, the date that the Client becomes aware of the Change of Control.

#### **Termination on breach of regulation 73(1) of the Public Contracts Regulations 2015**

- 27.6 The Client may terminate this Agreement by service of a written notice with effect from the date specified in such notice to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c) of the Public Contracts Regulations 2015.

#### **Termination on continuing Force Majeure Event**

- 27.7 In the event of a continuing Force Majeure Event, the Party not affected by the Force Majeure Event may terminate this Agreement in accordance with clause 28.

#### **Partial Termination**

- 27.8 If the Client is entitled to terminate this Agreement pursuant to this clause 27, it may (at its sole discretion) terminate all or part of this Agreement.

#### **Client payment default**

- 27.9 If at any time undisputed Contract Charges have been overdue for payment by the Client for a period of 60 days or more, the Supplier may terminate this Agreement by giving 30 days' written notice to the Client save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clause 9.9. In the event that the Client pays the overdue Contract Charges in the 30 day notice period, the Supplier's notice to terminate this Agreement shall be deemed to have been withdrawn.

### **28. Force majeure**

- 28.1 Provided it has complied with the remaining provisions of this Clause 28, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 28.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.
- 28.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and

- (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event.

28.4 An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Good Industry Practice, the Supplier should have foreseen and provided for the cause in question.

28.5 The Affected Party shall notify the other Party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

28.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than four (4) weeks, the Party not affected by the Force Majeure Event may terminate this Agreement with immediate effect by notice in writing to the Affected Party.

## **29. Prevention of bribery**

29.1 The Supplier represents and warrants that neither it, nor any Supplier Personnel:

- (a) has committed a Prohibited Act;
- (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
- (c) has been listed by any Government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in Government procurement programmes or contracts on the grounds of a Prohibited Act.



- 29.2 The Supplier shall immediately notify the Client if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 29.1 at the relevant time.
- 29.3 The Supplier shall (and shall procure that its Supplier Personnel shall):
- (a) not commit a Prohibited Act;
  - (b) not do or omit to do anything that would cause the Client or any of the Client's employees, consultants, contractors, subcontractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;
  - (c) comply with the Client's anti-bribery code of conduct and anti-fraud code of conduct as updated from time to time; and/or
  - (d) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with performance of this Agreement.
- 29.4 The Supplier shall maintain appropriate and up to date records showing all payments made by the Supplier in connection with this Agreement and the steps taken to comply with its obligations under clause 29.3.
- 29.5 The Supplier shall allow the Client and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 23.
- 29.6 If the Supplier is in Default under this clause 29, the Client may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
  - (b) immediately terminate this Agreement.
- 29.7 Any notice served by the Client under clause 29.7 shall specify the nature of the Prohibited Act, the identity of the Party who the Client believes has committed the Prohibited Act and the action that the Client has elected to take (including, where relevant, the date on which this Agreement shall terminate).

### **30. Consequences of termination or expiry**

- 30.1 On the expiry of the Term or if this Agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan shall come into effect and the Supplier shall co-operate fully with the Client to ensure an orderly migration of the Services to the Client or, at the Client's request, a Replacement Supplier. For the purposes of this clause 30, the meaning of the term "co-operate" shall include:
- (a) liaising with the Client and/or any Replacement Supplier, and providing reasonable assistance and advice concerning the Services and their transfer to the Client or to such Replacement Supplier;
  - (b) subject always to the Supplier's obligations under the Data Protection Legislation, providing to the Client and/or to any Replacement Supplier all and any information concerning the Services which is reasonably required for the efficient transfer of responsibility for their performance; and/or
  - (c) performing its obligations as set out in the Exit Management Plan.
- 30.2 On termination or expiry of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Client before such completion) the Supplier shall procure that all data and other material belonging to the Client (and all media of any nature containing information and data belonging to the Client or relating to the Services), shall be delivered to the Client forthwith and the Supplier Authorised Representative shall certify full compliance with this clause.
- 30.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry, including clause 3.3(g)(non-solicitation clause), clause 9.8 (records), clause 18 (Limitation of Liability), clause 19 (Insurance), clause 20 (Confidentiality), clause 21 (Freedom of Information), clause 22 (Data Protection), clause 23 (Audit), clause 27 (Termination for Breach) and this clause 30 (Consequences of termination), shall remain in full force and effect.
- 30.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

### **31. General Provisions**

- 31.1 No variation of this Agreement shall be effective unless it is in writing and signed by the Parties. The Parties shall consider whether any change to the Contract Charges is required in order to implement the variation and any such change shall be based on the rates specified in the applicable resource cost schedule attached to Schedule F (Pricing Schedule).
- 31.2 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 31.3 No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 31.4 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 31.5 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Agreement is deemed deleted under this clause, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 31.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall

have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

- 31.7 This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from the Contracts (Rights of Third Parties) Act 1999.

## **32. Notices**

- 32.1 Any notice required under the Agreement to be given by a Party to the other Party shall be in writing and shall be served personally, by post or registered post, by recorded delivery or by electronic mail using the information set out in Schedule B (Contract Information).
- 32.2 Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been served two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or electronic mail.
- 32.3 Either Party may change its address for service by serving a notice in accordance with this clause.

## **33. Publicity**

- 33.1 The Supplier shall not:
- (a) make any press announcements or publicise this Agreement or its contents in any way; or
  - (b) use the Client's name, logo or trademark in any promotion or marketing or announcement of orders,

except as required by law, any Government or regulatory authority, any court or other authority of competent jurisdiction, without the prior Approval of the Client, which shall not be unreasonably withheld or delayed.

**34. Entire agreement**

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

**35. Governing law and jurisdiction**

- 35.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 35.2 Subject to clause 16 (Dispute resolution), each Party irrevocably agrees that English courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Annex 1 Payment

### Part A Calculation of the Contract Charges

1. In the first quarter (months 1 to 3) of the Initial Term, the Contract Charges shall be invoiced and paid in arrears in three monthly instalments of the lump sum price for the Services specified in Item 2 of the Price List in Schedule F (Pricing Schedule) to be paid in the following proportions:

First quarter (months 1 – 3)	Amount paid as a proportion of the lump sum price for first quarter (Item 2 of the Price List Schedule F(Pricing Schedule))
Month 1	25%
Month 2	25%
Month 3	50%

2. For months 4 to 36 of the Initial Term, the Contract Charges shall be invoiced and paid in arrears in monthly instalments of the quarterly lump sum price for the Services specified in Item 1 of the Price List in Schedule F (Pricing Schedule) to be paid in the following proportions:

Second and subsequent quarters (months 4- 36)	Amount paid as a proportion of the quarterly lump sum price for months 4 to 36 (Item 1 of the Price List Schedule F (Pricing Schedule))
Months 4,7,10,13,16,19,22,25,28,31,34	15%
Months 5,8,11,14,17,20,23,26,29,32,35	25%
Months 6,9,12,15,18,21,24,27,30,33,36	60%

3. The lump sum prices for the Services on which the monthly Contract Charges are based shall be inclusive of all costs connected with the Services, delivered in any location in England, on any Working Day between the hours of 08:00 to 18:00 (“**Core Hours**”).

4. Where the Client shall require the Supplier's services for activities not described in the Specification or for Services to be delivered outside Core Hours (for example during weekends or on public or bank holidays) ("**Additional Work**"), then any additional charges to be applied shall be by reference to the applicable staff rates set out in Schedule F (Price Schedule) provided that the Client shall have agreed the Additional Work in writing in advance. The Supplier shall be entitled to recover travel, accommodation and subsistence expenses associated with the Additional Work in line with the Client's travel and subsistence policy as updated from time to time.
5. The prices and rates specified in Schedule F (Pricing Schedule) shall remain fixed for the first two Contract Years and shall only be subject to an increase by way of Indexation after the second anniversary of the Agreement in accordance with the provisions of Part B of this Annex 1.

**Service day guarantee**

6. If the Client has booked a meeting, photo/film shoot or interview with the Client, the Supplier shall perform the Services on the date(s) booked.
7. If the Supplier cancels or reschedules any booked full day or half day with less than five (5) Working Days' notice to the Client, the Supplier shall not charge the Client for the undelivered Services and the Supplier shall provide an extra full day at no charge to the Client. This will apply to both half days and full days booked.

## Part B - Indexation

1. Where the prices and rates in Schedule F (Pricing Schedule) (the “**Rates**”) are expressed in this Agreement as “subject to increase by way of Indexation” the following provisions shall apply:
  - 1.1 the relevant adjustment shall:
    - (a) be applied on the effective date of the increase in the relevant Rates by way of Indexation (“**Indexation Adjustment Date**”) which shall be subject to paragraph 1.2 below;
    - (b) be determined by multiplying the relevant amount or sum by the percentage increase or changes in the EARN03 figure published for the twelve (12) months ending on the 31st of January immediately preceding the relevant Indexation Adjustment Date;
    - (c) where the published EARN03 figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the Client and the Supplier shall agree otherwise;
    - (d) if the EARN03 figure is no longer published, the Client and the Supplier shall agree a fair and reasonable adjustment to that index or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified in this Part B to Annex 1.
  - 1.2 The earliest Indexation Adjustment Date will be the first (1st) Working Day following the expiry of the first two (2) Contract Years during which the Rates shall remain fixed (and no review under this paragraph 1 is permitted). Thereafter any subsequent increase by way of Indexation shall not occur before the anniversary of the previous Indexation Adjustment Date during the Term.
  - 1.3 Except as set out in this paragraph 1, neither the Rates nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rates or any other factor or element which might otherwise increase the cost to the Supplier or its Subcontractors of the performance of their obligations under this Agreement.



2. For the purposes of this Annex:

**“EARN03”** means the Average Weekly Earnings by Industry “Not Seasonally Adjusted Average Weekly Earnings- Index figures excluding Bonuses, including Arrears” Sector M- Professional Scientific and Technical Activities, Tab 4, Column K5EU published by the Office for National Statistics

**“Indexation”** or **“Indexed”** means the adjustment of an amount or sum in accordance with paragraph 1.1 of this Annex.

3. One month prior to each Indexation Adjustment Date, the Supplier shall provide the Client with an updated table of Indexed Rates.

## Annex 2 Contract management

### 1. Meetings

Type of meeting	Quorum	Frequency	Agenda
Quarterly review meetings	Client's Authorised Representative and Supplier's Authorised Representative to be present	Quarterly	As set out in Schedule C (Specification)

### 2. Management Reports

The Supplier shall provide the following reports at the intervals set out in the table below or as agreed with the Client.

Type of report	Intervals	Agenda
Quarterly management information	Quarterly	As set out in Schedule C (Specification)
Performance Monitoring Report	Quarterly	As set out in Schedule E (Performance)

### **Annex 3 Exit management plan**

#### **1. Introduction**

- 1.1. This Annex describes provisions that should be included in the Exit Management Plan, the duties and responsibilities of the Supplier to the Client leading up to and covering the expiry or termination (howsoever arising) (including partial termination) of this Agreement and the transfer of service provision to a Replacement Supplier.
- 1.2. The objectives of the Exit Management Plan are to ensure a smooth transition of the availability of the Services from the Supplier to a Replacement Supplier at the termination (howsoever arising) (including partial termination) or expiry of this Agreement.

#### **2. Exit Management Plan**

- 2.1. The Supplier shall provide the Client with an Exit Management Plan within the first three months after the Contract Date. The Client shall review the Exit Management Plan within twenty (20) Working Days of receipt from the Supplier and shall notify the Supplier of any suggested revisions to the Exit Management Plan. Such suggested revisions shall be discussed and resolved within ten (10) Working Days. The agreed Exit Management Plan shall be signed as approved by each Party.
- 2.2. The Exit Management Plan shall provide comprehensive proposals for the activities and the associated liaison and assistance that will be required for the successful transfer of the Services. The Supplier shall ensure that the Exit Management Plan shall include as a minimum:
  - (a) a detailed description of how the Services will be ceased and transferred to the Client and/or the Replacement Supplier as the case may be;
  - (b) details of the management structure to be employed by the Supplier to effectively transfer the Services to the Client and/or Replacement Supplier as the case may be;

- (c) details of how relevant knowledge will be transferred to the Client and/or the Replacement Supplier.

2.3. The Exit Management Plan shall be reviewed and updated by the Supplier. In this regard, the Supplier shall provide a revised version of the Exit Management Plan to the Client on or before 31 July each year (or more frequently as may be agreed between the Parties). The revised Exit Management Plan shall be reviewed and agreed in accordance with the provisions of paragraph 3.1 of this Annex.

### **3. Assistance on expiry or termination**

3.1. If this Agreement expires or is terminated, then the Supplier shall, where so requested by the Client, provide assistance to the Client to migrate the provision of the Services to a Replacement Supplier including as set out in the Exit Management Plan.

#### **Annex 4 Processing Personal Data**

This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Client at its absolute discretion.

1. The contact details of the Client's Data Protection Officer are:  
DataProtectionAdvice@highwaysengland.co.uk
2. The contact details of the Supplier's Data Protection Officer are provided in Schedule B (Contract Information).
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of the Controller and Processor for different categories of Personal Data	<b>Where the Client is Controller and the Supplier is Processor</b> The Parties acknowledge that in accordance with Clause 22.2 to 22.15 and for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor of the following Personal Data: <ul style="list-style-type: none"><li>• Individual employee's basic email addresses provided by the Client to the Supplier to facilitate the employee accessing any published content</li><li>• Individual employees work contact details for the purposes of arranging interviews and the production of content</li></ul>
Subject matter of the processing	The processing is needed in order to ensure that the Supplier can effectively provide and publish the internal staff magazine as required under the Agreement.
Duration of the processing	The duration of the processing shall be the Initial Term unless the Agreement is extended or terminated earlier in accordance with the Agreement. The relevant dates are set out in Schedule B (Contract Information).

Nature and purposes of the processing	<ul style="list-style-type: none"> <li>▪ The internal magazine service is a communications publication for the Client's employees. It provides a method for communicating positive news stories about employees.</li> <li>▪ The primary route for employees to access the published magazine will be a 24 hour, 7 days a week, 365 days per year accessible digital platform, accessible on a website.</li> <li>▪ In addition to the website version, the Supplier may provide hard copy versions of the magazine.</li> <li>▪ Employee contact detail Records will be kept by the Supplier on employees who have engaged with the magazine publishing service.</li> </ul>
Type of Personal Data being Processed	<p>The Supplier may hold the following information for each employee that will capture:</p> <ul style="list-style-type: none"> <li>▪ title, given name, surname, email address, telephone number, mobile number, job title, department / location, imagery and video footage or sound recordings.</li> <li>▪ information disclosed by the employee on a case-by-case basis which the employee consents to share as part of the production of magazine article content. This may include, but is not limited to: current state of mind, medical history, disability, ethnicity, gender, relationships / family history, financial history, alcohol / drug use, bereavement, disclosing being a victim of crime / criminal history.</li> <li>▪ interviewer's notes / assessment of the interview(s) and any agreed article content, which is produced and held with the employee's consent.</li> </ul> <p>The Supplier will also provide the Client with management information via monthly management information reports. These reports may contain:</p> <ul style="list-style-type: none"> <li>▪ information about article content which could identify the subject employee(s) by name or any defining characteristic of the article topic..</li> </ul>
Categories of Data Subject	Employees of the Client.

<p>Plan for return and destruction of the data once the processing is complete</p>	<p>Both after the articles are published individually, and, at the end of the Agreement, if applicable, the Supplier will work with the Replacement Supplier(s) to ensure a seamless transfer of article content and notes for those employees who are the subject of an article (whether previously published, banked or in development) only to ensure continuity of services with the Replacement Supplier subject to the requirements of Data Protection Legislation. The Parties acknowledge that the data transfer may include:</p> <ul style="list-style-type: none"> <li>▪ employee records for those who have or would be interviewed for the purpose of developing an article;</li> <li>▪ any interviewer notes</li> </ul> <p>Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and their privacy policy.</p>
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