

**PART THREE – CONDITIONS OF CONTRACT**

**DATED**

-----

**PROVISION OF AUDIO AND VISUAL TRIBUTES AT**

**WARREN HILL CREMATORIUM**

between

**Kettering Borough Council**

and

**Supplier**

This agreement is dated [DATE]

## Parties

- (1) Kettering Borough Council of Municipal Offices, Bowling Green Road, Kettering, NN15 7QX (**Authority**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

## BACKGROUND

- (A) The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.

## Agreed terms

### 1. Definitions and Interpretation

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

**Achieved KPIs:** in respect of any Service in any measurement period, the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the KPI for that Service is calculated and expressed in Schedule 2).

**Authorised Representatives:** the persons respectively designated as such by the Authority and the Supplier, the first such persons being set out in Schedule 5.

**Authority Assets:** any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services.

**Authority's Premises:** Warren Hill Crematorium, Rothwell Road, Kettering NN16 8XE which will be made available for use by the Supplier for the provision of the Services on the terms set out in this agreement.

**Best Industry Practice:** the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard

to factors such as the nature and size of the parties, the KPIs, the term, the pricing structure and any other relevant factors.

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

**Catastrophic Failure:** any action by the Supplier, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of the Authority's Authorised Representative has or may cause significant harm to the reputation of the Authority.

**Charges:** the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in [Schedule 4](#).

**Commencement Date:** 29<sup>th</sup> February 2020.

**Commercially Sensitive Information:** the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Confidential Information:** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party and that party's Representatives in connection with this agreement, including but not limited to:

- a) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, 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;
- b) any information developed by the parties in the course of carrying out this agreement;
- c) Personal Data;
- d) any Commercially Sensitive Information.

**Consistent Failure:** shall have the meaning set out in Part 2 of [Schedule 2](#).

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

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

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

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply

to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

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

**Default:** any breach of the obligations of the relevant party (including abandonment of this agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence of statement:

- a) in the case of the Authority, of its employees, servants, agents;
- b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,

in connection with or in relation to this agreement and in respect of which such party is liable to the other.

**Default Notice:** is defined in clause 5.2.

**Dispute Resolution Procedure:** the procedure set out in clause 17.

**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 day:** has the meaning set out in the European Union (Withdrawal) Act 2018.

**Extension period:** shall have the meaning given to it in clause 3.1.

**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:** any circumstance not within a party's reasonable control including, without limitation:

- a) acts of God, flood, drought, earthquake or other natural disaster;
- b) epidemic or pandemic;
- c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- d) nuclear, chemical or biological contamination or sonic boom;
- e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- f) collapse of buildings, fire, explosion or accident; and

**g)** any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

**Health and Safety Policy:** the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

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

**Initial Term:** the period commencing on the Commencement Date and ending on the 3rd anniversary of the Commencement 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:** patents, utility models, rights to inventions, copyright and neighbouring 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.

**KPIs:** the key performance indicators set out in **Schedule 2**.

**Key Personnel:** those personnel identified **Schedule 5** for the roles attributed to such personnel, as modified pursuant to clause 12.

**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.

**Management Reports:** the reports to be prepared and presented by the Supplier in accordance with clause 14 and **Schedule 5** to include a

comparison of Achieved KPIs with the Target KPIs in the measurement period in question and measures to be taken to remedy any deficiency in Achieved KPIs.

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

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

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

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

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any improper performance of a relevant function of activity;
- 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; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the Authority;
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

**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.

**Remediation Notice:** a notice served by the Authority in accordance with clause 27.1(a).

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

**Replacement Supplier:** any third party supplier of Replacement Services appointed by the Authority 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 Code of Practice on Access to Government Information, FOIA or the EIRs.

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in [Schedule 1](#).

**Service Failure:** a shortfall or failure by the Supplier to provide the Services in accordance with any Target KPI, as specified in **Error! Reference source not found.** of [Schedule 2](#).

**Supplier Party:** the Supplier's agents and contractors, including each Sub-Contractor.

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

**Supplier's Tender:** the tender submitted by the Supplier and other associated documentation set out in [Schedule 3](#).

**Sub-Contract:** 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.

**Sub-Contractor:** the third parties that enter into a Sub-Contract with the Supplier.

**Target KPI:** the minimum level of performance for a KPI which is required by the Authority as set out against the relevant KPI in [Schedule 2](#).

**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.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

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

**Working Hours:** the period from [9.00 am to 5.00pm] on any Working Day.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 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.
- 1.9 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 or re-enacted on or after exit day.
- 1.10 A reference to **writing** or **written** includes fax but not e-mail.
- 1.11 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 A reference in this agreement to any other agreement or a document is a reference to such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time.
- 1.13 References to clauses and schedules are to the clauses and schedules of this agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.14 Any words following the terms including, include, in particular 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.

1.15 If there is any conflict or inconsistency between the provisions in the main body of this agreement and the schedules, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the clauses of the agreement;
- (b) **Schedule 1** to this agreement;
- (c) the remaining schedules to this agreement other than **Schedule 3**;
- (d) **Schedule 3** to this agreement.

## **Commencement and duration**

### **2. Term**

2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term.

### **3. Extending the initial term**

3.1 The Authority may extend this agreement beyond the Initial Term by a further period or periods of up to 2 years (the "**Extension Period**"). If the Authority wishes to extend this agreement, it shall give the Supplier at least 6 months' written notice of such intention before the expiry of the Initial Term.

3.2 If the Authority gives such notice then the Term shall be extended by the period set out in the notice.

3.3 If the Authority does not wish to extend this agreement beyond the Initial Term this agreement shall expire on the expiry of the Initial Term and the provisions of clause 31 shall apply.

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

4.1 The Supplier acknowledges and confirms that:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
- (b) 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 Authority pursuant to clause **4.1(a)**;

- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement (including without limitation the suitability of Authority Premises); and
- (d) it has entered into this agreement in reliance on its own due diligence.

4.2 Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

4.3 The Supplier:

- (a) warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
- (b) shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Target KPIs.

4.4 The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b), save where such additional costs or adverse effect on performance have been caused by the Supplier having been provided with fundamentally misleading information by or on behalf of the Authority and the Supplier could not reasonably have known that the information was incorrect or misleading at the time such information was provided. If this exception applies, the Supplier shall be entitled to recover such reasonable additional costs from the Authority or shall be relieved from performance of certain obligations as shall be determined by the Parites in writing.

4.5 Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

## **The services**

## 5. Supply of services

- 5.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 2.
- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

## 6. KPIs

- 6.1 Where any Service is stated in Schedule 2 to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 6.2 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined and included within Schedule 2.
- 6.3 The Supplier shall provide records of and Management Reports summarising the Achieved KPIs as provided for in clause 14.

## 7. Service standards

Without prejudice to clause 6, the Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care and in accordance with Best Industry Practice;
- (b) in all respects in accordance with the Authority's policies set out in Schedule 1; and
- (c) in accordance with all applicable Law.

## 8. Compliance

- 8.1 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed in writing) incur any additional costs associated with obtaining, maintaining or complying with the same.

- 8.2 Where there is any conflict or inconsistency between the provisions of this agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services and the Supplier has notified the Authority in writing.
- 8.3 The Supplier shall (and shall procure that the Supplier Personnel shall) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Authority Premises.
- 8.4 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority 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.
- 8.5 Without limiting the general obligation set out in clause 7, the Supplier shall (and shall procure that the Supplier Personnel shall):
- (a) 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 Authority's equality and diversity policy as provided to the Supplier from time to time;
    - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law;
  - (b) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## **9. Authority's Premises and Assets**

- 9.1 The Supplier (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of providing the Services. The Supplier's right of access will terminate upon termination of this agreement, subject to clause 9.2.
- 9.2 Subject to the requirements of clause 31, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.
- 9.3 The Supplier shall ensure that:
- (a) where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
  - (b) only those of the Supplier Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
  - (c) any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's Authorised Representative; and
  - (d) any Authority Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.
- 9.4 The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 9.5 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.

9.6 The Supplier shall indemnify the Authority against all and any damage to the Authority Premises and the Authority Assets caused by the same.

## **10. Payment**

10.1 In consideration of the provision of the Services by the Supplier in accordance with the terms and conditions of this agreement, the Authority shall pay the Charges to the Supplier.

10.2 Unless otherwise stated in **Schedule 4**, the Charges:

- (a) shall remain fixed during the Term; and
- (b) is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier Personnel.

10.3 The Supplier shall invoice the Authority for payment of the Charges at [the end of each calendar month **OR** at the time the Charges are expressed to be payable in accordance with the Payment Plan]. All invoices shall be directed to the Authority's Authorised Representative and shall contain such information as the Authority may inform the Supplier from time to time.

10.4 Where the Supplier submits an invoice to the Authority in accordance with clause **10.3**, the Authority will consider and verify that invoice in a timely fashion.

10.5 The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.

10.6 Where the Authority fails to comply with clause **10.4**, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause **10.5** after a reasonable time has passed after the date on which it is received by the Authority.

10.7 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

- (a) provisions having the same effect as clause **10.4** to clause **10.6** of this agreement; and
- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause **10.4** to clause **10.6** of this agreement.

In this clause 10.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 10.8 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 17. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until 14 days after resolution of the dispute between the parties.
- 10.9 Subject to clause 10.8, interest shall be payable on the late payment of any undisputed Charges properly invoiced under this agreement in accordance with clause 10. The Supplier shall not suspend the supply of the Services if any payment is overdue.
- 10.10 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 10.11 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.
- 10.12 The Authority may at any time, set off any liability of the Supplier to the Authority against any liability of the Authority to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Authority of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 10.13 All amounts due under this agreement from the Supplier to the Authority shall be paid in full without any set-off, counterclaim, deduction or withholding (other than deduction or withholding tax as required by law).

## **11. Interest**

11.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:

- (a) Rate. 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- (b) Period. From when the overdue sum became due, until it is paid.

## **Staff**

## **12. Key personnel**

12.1 Each party shall appoint the persons named as such in **Schedule 5** as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.

12.2 The Supplier shall not remove or replace any of the Key Personnel unless:

- (a) requested to do so by the Authority;
- (b) the person is on long-term sick leave;
- (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
- (d) the person resigns from their employment with the Supplier; or
- (e) the Supplier obtains the prior written consent of the Authority.

12.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 14 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.

12.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 5 Working

Days. 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 Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.

12.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

12.6 If the Supplier replaces the Key Personnel as a consequence of this clause 12, the cost of effecting such replacement shall be borne by the Supplier.

### **13. Other personnel used to provide the services**

13.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

13.2 The Authority may refuse to grant access to, and remove, any of the Supplier Personnel who do not comply with any such policies, or if they otherwise present a security threat.

13.3 The Supplier shall replace any of the Supplier Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. 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 training and skills to meet the requirements of the Services.

13.4 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 Authority as the Authority 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.

- 13.5 The Supplier shall use its reasonable endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

## **Contract management**

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

- 14.1 The Supplier shall provide the Management Reports to the Authority on a monthly basis.
- 14.2 The Authorised Representatives and relevant Key Personnel shall meet as and when required by the Authority to discuss the requirements of the Service.

### **15. Monitoring**

- 15.1 The Authority may monitor the performance of the Services by the Supplier.
- 15.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 15.1 at no additional charge to the Authority.

### **16. Continuous improvement**

- 16.1 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 Authority's Authorised Representative once every six months throughout the Term 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 customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority

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 Authority.

## **17. Dispute resolution**

17.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Head of Public Services and the Supplier's [SENIOR OFFICER TITLE] who shall attempt in good faith to resolve it; and
- (c) if the Authority's Head of Public Services and the Supplier's [SENIOR OFFICER TITLE] are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. The mediation will start not later than 14 days after the date of the ADR notice.

17.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 41 which clause shall apply at all times.

## **18. Sub-Contracting and assignment**

18.1 Subject to clause 18.3, neither party shall assign, novate, subcontract or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

18.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;
- (b) impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this agreement and shall procure that the Sub-Contractor complies with such terms; and
- (c) provide a copy, at no charge to the Authority, of any such Sub-Contract on receipt of a request for such by the Authority's Authorised Representative.

18.3 The Authority shall be entitled to novate (and the Supplier shall be deemed to consent to any such novation) the agreement to any other body which substantially performs any of the functions that previously had been performed by the Authority.

18.4 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of this agreement;
- (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

## **Liability**

### **19. Indemnities**

19.1 Subject to clause 19.2, the Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

- (a) the Supplier's breach or negligent performance or non-performance of this agreement;
- (b) any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;

(c) the enforcement of this agreement.

19.2 The indemnity under clause 19.1 shall apply except insofar as the liabilities, costs, expenses, damages and losses incurred by the Authority are directly caused (or directly arise) from the negligence or breach of this agreement by the Authority or its Representatives.

## 20. Limitation of liability

20.1 Neither party shall be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this agreement.

20.2 Notwithstanding the provisions of clause 20.1, but subject to clause **Error! Reference source not found.**, the Supplier assumes responsibility for and acknowledges that the Authority may, amongst other things, recover:

- (a) sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any 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;
- (d) losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier;
- (e) any anticipated savings.

20.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

20.4 Notwithstanding any other provision of this agreement neither party limits or excludes its liability for:

- (a) fraud or fraudulent misrepresentation;

- (b) death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
- (c) breach of any obligation as to title implied by statute; or
- (d) any other liability for which may not be limited under any applicable law.

## 21. Insurance

21.1 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 £10,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) product liability insurance with a limit of indemnity of not less than £10,000,000 in relation to any one claim or series of claims,

(the **Required Insurances**). The cover shall be in respect of all 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.

21.2 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

21.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

21.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.

21.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

## Information

### 22. Freedom of information

22.1 The Supplier acknowledges that the Authority 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 Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Authority 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 Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

22.2 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority 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.

22.3 Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

22.4 The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

## 23. Data processing

- 23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 23, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 23.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor.
- 23.3 Without prejudice to the generality of clause 23.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 23.4 Without prejudice to the generality of clause 23.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the documented written instructions of the Authority, unless the Supplier is required by Applicable Laws to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
  - (i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer;
  - (ii) the Data Subject has enforceable rights and effective remedies;
  - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) notify the Authority immediately if it receives:
  - (i) a request from a Data Subject to have access to that person's Personal Data;
  - (ii) a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority without undue delay on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 23 and allow for audits by the Authority or the Authority's designated auditor pursuant to clause 25 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 23.5 The Supplier shall indemnify the Authority against any losses, damages, cost or expenses incurred by the Authority arising from, or in connection with, any breach of the Supplier's obligations under this clause 23.
- 23.6 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 18 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:
- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
  - (b) obtain prior written consent from the Authority to the processing;
  - (c) enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 23.
- 23.7 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 23 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 replaced by attachment to this agreement).
- 23.8 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **24. Confidentiality**

- 24.1 Subject to clause 24.2, 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; or
  - (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 24.
- 24.2 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 is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
  - (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;
- (e) which a party can demonstrate was lawfully in its possession prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

24.3 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; and
- (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,
- (c) and at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause **24.3**.

## **25. Audit**

25.1 During the Term and for a period of 6 years after the Termination Date, the Authority (acting by itself or through its Representatives) may conduct an audit of the Supplier, including for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Supplier's compliance with the Data Protection Legislation, the FOIA, in accordance with clause 23 (Data Protection) and clause 22 (Freedom of Information) and any other legislation applicable to the Services;
- (d) to review any records created during the provision of the Services;
- (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
- (f) to carry out the audit and certification of the Authority's accounts;

- (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
  
- 25.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this agreement, the Authority may not conduct an audit under this clause 25 more than twice in any calendar year.
  
- 25.3 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
  
- 25.4 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
  - (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Supplier Personnel.
  
- 25.5 The Authority shall endeavour to (but is not obliged to) provide at least [15] Working Days' notice of its intention or, where possible, a regulatory body's intention, to conduct an audit.
  
- 25.6 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 Authority for all the Authority's reasonable costs incurred in the course of the audit.
  
- 25.7 If an audit identifies that:
  - (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure

to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the remedial plan shall include a requirement for the provision of all such information;

- (b) the Authority has overpaid any Charges, the Supplier shall pay to the Authority the amount overpaid within 20 days. The Authority may deduct the relevant amount from the Charges if the Supplier fails to make this payment; and
- (c) the Authority has underpaid any Charges, the Authority shall pay to the Supplier the amount of the under-payment less the cost of audit incurred by the Authority if this was due to a default by the Supplier in relation to invoicing within 20 days.

## **26. Intellectual property**

26.1 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier Personnel:

- (a) in the course of performing the Services; or
- (b) exclusively for the purpose of performing the Services,

shall vest in the Authority on creation.

26.2 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

## **Termination**

### **27. Termination for breach**

27.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

- (a) if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 27.1 if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
- (b) if a Consistent Failure has occurred;

- (c) if there is an Insolvency Event.
- (d) [if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
- (e) the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

27.2 The Authority may terminate this agreement in accordance with the provisions of clause 29 and clause 30.

27.3 If this agreement is terminated by the Authority pursuant to this clause 27, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination.

## **28. Termination on notice**

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving 6 months' written notice to the Supplier.

## **29. Force majeure**

29.1 Provided it has complied with the remaining provisions of this Clause 29, 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.

29.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

29.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event but not later than 5 days from its start, 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.

- 29.4 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 Best Industry Practice, the Supplier should have foreseen and provided for the cause in question.
- 29.5 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.
- 29.6 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 2 weeks' notice to the Affected Party.

### **30. Prevention of bribery**

- 30.1 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.
- 30.2 The Supplier shall promptly notify the Authority 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 30.1 at the relevant time.
- 30.3 The Supplier shall (and shall procure that its Supplier Personnel shall) during the Term:
- (a) not commit a Prohibited Act; and/or
  - (b) not do or omit to do anything that would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors

or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

- (c) have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
- (d) notify the Authority (in writing) if it becomes aware of any breach of clause 30.3(a) or clause 30.3(b), or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with performance of this agreement.

30.4 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 30.3.

30.5 The Supplier shall allow the Authority and its third party representatives to audit any of the Supplier's records and any other relevant documentation in accordance with clause 25.

30.6 If the Supplier is in Default under this clause 30 the Authority 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.

30.7 Any notice served by the Authority under clause 30.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

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

31.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.

31.2 On termination or expiry of this agreement the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating

to the Services), shall be delivered to the Authority forthwith and the Supplier Authorised Representative shall certify full compliance with this clause.

31.3 Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 6.3 (provision of records), clause 19 (Indemnities), clause 20 (Limitation of Liability), clause 21 (Insurance), clause 22 (Freedom of Information), clause 23 (Data Processing), clause 24 (Confidentiality), clause 25 (Audit), clause 27 (Termination for Breach) and this clause 31 (Consequences of termination), shall remain in full force and effect.

31.4 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.

## **General provisions**

### **32. Waiver**

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.

### **33. Rights and remedies**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### **34. Severability**

34.1 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.

34.2 If any provision or part-provision of this agreement is deemed deleted under clause 34.1, 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.

### **35. Partnership or agency**

- 35.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 35.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### **36. Third party rights**

- 36.1 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.

### **37. Publicity**

The Supplier shall not:

- (a) make any press announcements or publicise this agreement or its contents in any way; or
- (b) use the Authority's name or logo 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 written consent of the Authority, which shall not be unreasonably withheld or delayed.

### **38. Notices**

- 38.1 Any notice given to a party under or in connection with this contract shall be in writing marked for the attention of the party's Authorised Representative and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by fax to its main fax number.
- 38.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- (c) if sent by fax, at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 38.2(c), working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

38.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **39. Entire agreement**

39.1 This agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

39.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

### **40. Governing law**

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 the law of England and Wales.

### **41. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales 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).

This agreement has been entered into on the date stated at the beginning of it.

- Signed for and on behalf of Kettering Borough Council
- .....
- Chief Legal Officer Democratic and Legal

•

•

- Signed by [NAME OF DIRECTOR] for and on behalf of [NAME OF SUPPLIER]
- .....
- Director

•

•

## Schedule 1 Specification

## Schedule 2 Performance regime

### Part 1 KPIs

#### 1. The KPIs

1.1 The KPIs which the Parties have agreed shall be used to measure the performance of the Services by the Supplier are contained in the below table.

KPI Description	Method of calculating service delivery/ measurement period	Target KPI	KPI category (Red/ Green)
Ensure that audio and visual tributes are delivered to the Authority in accordance with the requirements of the applicant for the funeral	Feedback from deceased's family	100%	Red

1.2 The Supplier shall monitor its performance against each Target KPI and shall send the Authority a report detailing the Achieved KPIs in accordance with the provisions of clause 14.

### Part 2 Consistent failure

#### 1. Consistent failure

In this agreement, **Consistent Failure** shall mean:

- (a) a failure to meet the Target KPI labelled Red more than twice in any rolling 1 month period
- (b) the Authority serving more than 1 Remediation Notice in a rolling 1 month period or more than 1 Default Notice in a rolling 1 month period.
- (c) the Supplier repeatedly breaching any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct

is inconsistent with it having the intention or ability to give effect to the terms of this agreement.

**Schedule 3 Supplier's Tender**

## Schedule 4 Charges and payment

### 1. Calculation of the Charges

The Charges shall be calculated on the basis of the rates and prices set out in this Schedule.

### 2. Charges based on a fixed price

Service	Monthly cost (£)
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
[INSERT RELEVANT PART OF SERVICES]	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]
<b>TOTAL</b>	[INSERT FIGURE TO BE CHARGED TO AUTHORITY]

### 3. Payment triggered by meeting milestones

Workstream	Milestone	Date completion expected	Charge payable on completion (£)
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]
[INSERT]	[INSERT DETAILS]	[INSERT DATE]	[INSERT FIGURE]

## **Schedule 5 Contract management**

### **1. Authorised representatives**

1.1 The Authority's initial Authorised Representative: Russ Howell

1.2 The Supplier's initial Authorised Representative: [INSERT DETAILS]

### **2. Key personnel**

[INSERT DETAILS]

**Schedule 6 Commercially sensitive information**

[DETAILS OF ANY SUPPLIER INFORMATION TO BE CLASSIFIED AS  
COMMERCIALY SENSITIVE]