



Home Office

Dated: 2015

(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

(2) THE SALVATION ARMY TRUSTEE COMPANY

CONTRACT

relating to the supply of

Adult Victims of Modern Slavery

Care & Co-ordination Services

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THIS CONTRACT is made on thisday of 2015

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** acting through the Home Office whose principal place of business is at 2 Marsham Street, London SW1P 4DF (the "**Authority**"); and
- (2) **THE SALVATION ARMY TRUSTEE COMPANY** OF 99-101 NEWINGTON CAUSEWAY, LONDON, SE1 6BN (00259322) acting in its capacity as the trustee of the Salvation Army Social Work Trust (charity registration number 215174) (the "**Contractor**").

BACKGROUND

- (A) The Authority published a notice in the Official Journal of the European Union on 12th August 2014 in respect of its desire to procure Adult Victims of Modern Slavery Care & Co-ordination Services.
- (B) The Contractor is trustee of a charity that delivers social welfare services.
- (C) The Parties have agreed that the Contractor shall supply the Services to the Authority on the terms and conditions set out in this Contract.

IT IS AGREED as follows:

DEFINITIONS

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

"Accommodation" means the Accommodation allocated to the Service Users by the Contractor.

"Accommodation Manager" means the person(s) employed by the Contractor to manage the day-to-day management of each unit of Accommodation.

"Accommodation Standards" means the standards that the Accommodation to be provided to the Service User must adhere to. These are detailed in Schedule 2 Annex B.

“Adult Victims” means a person who is eighteen years old or older, who claims to be a victim of human trafficking.

“Alternative Accommodation” means temporary Accommodation for Service Users provided by the Contractor, should they be forced to vacate their allocated Accommodation as a result of it being deemed unsafe according to the Accommodation Standards.

"Affiliates" means and includes each holding company and each subsidiary of such holding company (with those terms to have the meaning given in section 1159 of the Companies Act 2006).

“Approval” means the written consent of the Authority and “Approve” shall be construed accordingly.

“Asylum Needs Based Assessment” means an assessment carried out by the Contractor should a Service User who is accommodated by the Contractor decide to make an application for asylum. The purpose of this assessment is to determine and address the Service User’s Accommodation and Outreach Service requirements.

“Authority” means the Secretary of State for the Home Department.

“Authority Data” means: the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- supplied to the Contractor by or on behalf of the Authority; of which the Contractor is required to generate, process, store or transmit pursuant to this Contract; and/or any Personal Data for which the Authority is the Data Controller;
- which may also be protectively marked in accordance with HMG Security Policy Framework.

“Authority Premises” means the Premises where those premises are owned by or under the control of the Authority.

“Authority Representative” means the individual nominated by the Authority as the primary contact point for all matters relating to this Contract (and whose details are specified in the Representatives Schedule).

“Authority’s Accommodation” means Accommodation allocated to Service Users by the Authority, e.g. asylum Accommodation.

“Bidder (or Tenderer)” means the organisation or consortium that is submitting the Request for Proposal (RFP) with the aim of supplying provision to the Authority.

“Care Quality Commission” means the independent regulator of health and social care services in England, who inspect services against national standards.

“Catered Accommodation” means the type of Accommodation where Service Users receive three meals-a-day, seven days-a-week.

“Change Control Form” means the form to be used within Schedule 6 (Contract Change Control).

“Commercially Sensitive Information” means the information listed in the Commercially Sensitive Information Schedule comprised of information which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or that constitutes a trade secret.

“Complaints Service” means a mechanism for Service Users to make a complaint in confidence about the Services, Contractor and/or other Service Users.

“Competent Authorities” means the two Competent Authorities that host the National Referral Mechanism process. These are: the National Crime

Agency's UK Human Trafficking Centre (UKHTC) and the Home Office's UK Visas and Immigration (UKVI).

"Conclusive Grounds" means the decision made by the Competent Authorities and which ascertains whether a Potential Victim of Trafficking is an actual victim of human trafficking.

"Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property and know-how of either Party and all Personal Data. Confidential Information shall not include information which:

- was public knowledge at the time of disclosure (otherwise than by breach of clause 32);
- was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- is independently developed without access to the Confidential Information.

"Contract" means this written agreement between the Authority and the Contractor consisting of these clauses and the attached Schedules.

"Contracting Authority" means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006.

"Contract Manager" means the Contractors Contract Manager and/or the Authority Contract Manager as named within the Key Representative Schedule.

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

- the date of expiry set out in clause 2, or
- following an extension pursuant to clause 3, the date of expiry of the extended period,
- or such earlier date of termination of the agreement in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract, but before taking into account the effect of any adjustment of price in accordance with clause 16.

““Contractor” means the person, firm or company with whom the Authority enters into the Contract.

“Contractor Materials” has the meaning given in clause 35.

“Contractor Representative” means the individual nominated by the Contractor as its primary representative (and whose details are specified in the Schedule 7 Key Representatives).

“Contractor's Group” means the Contractor and all its Affiliates.

“Consumer Price Index (CPI) ” is the official measure of inflation of consumer prices of the United Kingdom.

“Default” means any breach of the obligations of the relevant Party (including material breach or breach of a material term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff (including servants, agents, suppliers and Sub-contractors as well as any consultants and professional advisers and their respective servants, agents,

suppliers and Sub-contractors) in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“Dependant” means a person in the United Kingdom who:

- a. Is the Service User’s spouse;
- b. Is a child of the Service User or of the Service User’s spouse, is dependant on the Service User and is, or was at the relevant time, under 18;
- c. Is a member of the Service User’s or the Service User’s spouse’s close family and is, or was at the relevant time, under 18;
- d. Had been living as part of the Service User’s household:
 - i. for at least six of the twelve months before the Service User’s referral to the Service; or
 - ii. since birth;
 - iii. and is, or was at the relevant time, under 18;
- e. Is in need of care and attention from the Service User by reason of a disability and would fall within sub-paragraph (c) or (d) but for the fact that the dependent is not, and was not at the relevant time, under 18; and
- f. Had been living with the Service User as a member of an unmarried couple for at least two of the three years before the Service User’s referral to the Service.

“Detailed Needs Based Assessment” means an assessment carried out by the Contractor to determine the Services that will be provided to the Service User.

“Disclosure and Barring Service (DBS)” means public corporation of the Home Office that helps employers make safer recruitment decisions and prevent unsuitable people from working with vulnerable groups, including

children. It replaces the Criminal Records Bureau (CRB) and Independent Safeguarding Authority (ISA).

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Effective Date” means the date the contract is signed by both parties.

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

“Equipment” means the equipment, plant, materials and such other items supplied and used by the Contractor (or the Contractor's Sub-contractors or agents) in the performance of its obligations under the Contract.

“ERG” means the Efficiency and Reform Group of the Cabinet Office.

“ESOL” means English for Speakers of Other Languages courses.

“Exit Plan” means the plan to be agreed between the Parties that shall set out each Party’s obligations in detail, to ensure a smooth transition of the fulfilment of the relevant Services Requirements back to the Authority or to a Replacement Contractor.

“First Responder” means the agency or organisation that makes the Service User’s initial referral into the National Referral Mechanism. First Responder’s include, but is not limited to:

- a UK police force;
- the UK Border Force;
- Home Office Immigration and Visas;

- Social Services;
- Local Authorities;
- Certain NGOs; and
- The Contractor.

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

“Force Majeure” means any event or occurrence which 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:

- any industrial action occurring within the Contractor’s or any Sub-contractor’s organisation; or
- the failure by any Sub-contractor to perform its obligations under any subcontract.

“General Change in Law” means a change in Law which comes into effect after the Service Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or similar nature to the supply of the Services.

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

“HM Government” means Her Majesty's Government, also referred to as the UK Government.

“Human Trafficking” means the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. As defined in the Palermo Protocol 2000.

“Individual/Speaker” means the person in respect of whom the Services are provided.

“Information” has the meaning given under section 84 of the FOIA or, as applicable, means 'environmental information' as defined in Regulation 2 of the Environmental Information Regulations.

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

“Initial Needs Based Assessment” means an assessment carried out at the point of referral to the Contractor, in order to determine and address the Service User's Accommodation needs, taking into account their safety and security needs.

“Integration” means a programme to facilitate the integration of Service Users into mainstream UK society after they exit the Service.

“Intellectual Property” means property in which intellectual property rights of whatever nature (including patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing,

copyright, database rights, domain names, trade or business names, subsist, whether registerable or not in any country; and, where the context so admits, includes such intellectual property rights.

“IP Infringement Claim” means a claim, demand or action by a third party for infringement (or alleged infringement) of Intellectual Property rights in any materials supplied by or licensed by the Contractor in connection with this Contract.

“IP Materials” has the meaning given in clause 33.

“Key Performance Indicators (KPI’s)” means the indicators of effective service delivery as set out in the Performance Regime Schedule.

“Key Personnel” means the Contractor Representative and any other persons named in the Specification as being key personnel.

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

“Management Information” means the information specified in the Schedule 8 (Management Information).

“Management Information Schedule” means the Schedule containing details of the monitoring arrangements.

“Material Default” means any Default by the Contractor which is sufficiently material to warrant Termination of the Agreement or, in the case of a partial Termination, is sufficiently material to warrant Termination of such part of the Agreement.

“Mobilisation Plan” means the plan which sets out the activities associated with mobilising the Contract, as set out in Schedule 13 (Mobilisation).

“Mobilisation Period” means the period from contract signature to award of ‘Go Live Approval’ in accordance with Schedule 13 (Mobilisation).

“Mobilisation services” means those services required by the Contractor for provision of Services as it feels may be required and as are agreed by the Authority.

“Modern Slavery” means ‘human trafficking’ and wider slavery, servitude and forced or compulsory labour offences. As defined in Part 1 of the Modern Slavery Bill 2014.

“MOVEit” means the Authority’s online two-way file-sharing service that allows the sharing of Official and Official-Sensitive (IL2) data with other government departments, non-departmental public bodies and external organisations, in a completely secure environment. Files including PDFs, all types of Office documents, images and Winzip of up to 2GB in size may be uploaded.

“Move In’ service” means the Service provided by the Contractor to Service Users upon arrival at their allocated Accommodation.

“National Referral Mechanism” means the National Referral Mechanism (NRM) set up in 2009, as part of the UK’s implementation of ECAT. Its primary purpose is to provide a framework to help statutory and non-statutory partners identify and support potential victims of trafficking. It is coordinated by the UK Human Trafficking Centre (UKHTC) in the National Crime Agency.

“Outgoing Contractor” means the person, firm or company currently providing the Services and whose replacement is envisaged pursuant to the Contract.

“Outreach Services” means the Services provided to Service Users who are not accommodated by the Contractor.

“Party” means a party to the Contract.

“Persistent Failure” shall have the meaning set out in paragraph 4.2 of the Schedule 5 (Performance Regime).

“Persistent Breach” means a breach for which a final warning notice (as referred to in clause 41.2 of clause 41) has been issued.

“Personal Data” shall have the meaning given in the DPA.

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

“Pricing Schedule” means the Schedule containing details of the rates and the Contract Price.

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

“Post Exit Needs Assessment” means the assessment carried out to determine the most appropriate assistance and/or follow up support needs for Service Users once they have exited the Service.

“Potential Victim of Human Trafficking” means an individual who makes a claim of being a victim of human trafficking.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Schedule 2 (Authority Requirement).

“Rates” means the rates set out in the Schedule 4 (Pricing, Payment and Invoicing) which the Contractor will charge for the Services.

“Reasonable Grounds” means the decision which is made by the Competent Authorities and which currently entitles a PVoT to the Service.

“Receipt” means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause 55.4 or at any other address given by the Authority to the Contractor for the submission of invoices.

“Referral” means when a Potential Victim of Human Trafficking (PVoT) is referred to the Contractor, with the intention of the PVoT entering the Service.

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

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

“Re-integration” means a programme to facilitate Service Users, who are originally from the EEA, to return home, or to another country, in the EEA, of their choice that they are legally allowed to reside in.

“Replacement Contractor” means any service provider appointed by the Authority to supply any Replacement Services (or, as the case may be, the Authority's or another Contracting Authority's nominee).

“Replacement Services” means any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination of the Contract.

“Regulatory Body” is a governmental agency charged with the responsibility of exercising statutory powers and standards.

“Remedial Plan” means the plan for remedying the circumstances of concern.

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

“Returning Employees” means those persons listed in a schedule to be agreed by the Parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any Sub-contractor) wholly and/or mainly in the Services immediately before the end of the Contract Period.

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

“Security Policy” “means the Authority’s mandatory security requirements as advised to the Contractor from time to time.

“Security Plan” or “Security Management Plan” means the plan prepared pursuant to the Security Schedule and attached as Annex 10-2 Schedule 10 (Security).

“Self Catered Accommodation” means Accommodation where Service Users have facilities to prepare their own meals.

“Service Credits” means the amount to be deducted (in accordance with the Schedule 5 Performance Regime) from the payments which would otherwise be payable by the Authority to the Contractor under this Contract.

“Service Commencement Date” means 1st April 2015.

“Service Exit Date” means the date that the Service User must exit the Service.

“Services” means the services to be supplied by the Contractor as specified in the Schedule 2 (Authority Requirements), which does not include Mobilisation services.

“Service User” means a PVoT that has entered the Service.

“Specific Change in Law” means a change in Law which comes into effect after the Service Commencement Date, that relates specifically to the operations of the Authority and which would not affect the supply of services of the same or similar nature to the supply of Services to an entity other than the Authority.

“Specification” means the description of the Services to be supplied under the Contract as set out in the Schedule 2 (Authority Requirement).

“Staff” means all persons employed or engaged by the Contractor to perform its obligations under the Contract including the Contractor’s servants, agents, suppliers and Sub-contractors, any consultants and professional advisers (and their respective servants, agents, suppliers and Sub-contractors) used in the performance of its obligations under the Contract.

“Staff Vetting Procedures” means the Authority’s procedures for the vetting of personnel as set out in Schedule 18 (Staff Vetting Procedures) and otherwise as advised to the Contractor by the Authority.

“Sub-contractor” means any person who has contracted with the Contractor for the performance of any obligation of the Contractor under the Contract and has been approved by the Authority.

“Transferring Employees” means any employees transferring from the current Supplier to the Replacement Contractor.

“Third Party” means a person or organisation that interacts with or provides a service to Service Users, and is contracted by the Contractor.

“TUPE” or “TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“Variation” means any changes to the Services (including the Terms and Conditions and Schedules) made by the Contractor or Authority.

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

“Voluntary Sector Advisory Service” means any advisory services provided by the voluntary sector or charitable organisations.

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

PART A - GENERAL PROVISIONS

1. Definitions and interpretation

- 1.1 In this Contract the definitions set out in (**Definitions**) above shall apply.
- 1.2 In this Contract, unless the contrary intention appears:
- 1.2.1 words importing a gender include any other gender;
 - 1.2.2 words in the singular include the plural and words in the plural include the singular;
 - 1.2.3 other grammatical forms of defined words or expressions have their corresponding meaning;
 - 1.2.4 a reference to a person shall include a company, partnership, joint venture, association, corporation or other body corporate or any HM Government Body;
 - 1.2.5 a reference to a Law includes a reference to that Law as amended extended, consolidated or re-enacted from time to time;
 - 1.2.6 a reference to a Recital, Clause, Schedule or Annex is a reference to a Recital, Clause, Schedule or Annex of this Contract;
 - 1.2.7 a reference to a paragraph is a reference to a paragraph of a schedule of this Contract;
 - 1.2.8 the words a “day”, “month” or “year” mean a calendar day, month or year;
 - 1.2.9 the words “includes”, “including”, “for example” or words having a similar effect are not used as words of limitation;
 - 1.2.10 a reference to “GBP”, “pounds” or “£”, shall mean pounds sterling;
- 1.3 The headings in this Contract are included for ease of reference only and do not affect its interpretation.

- 1.4 Where this Contract states that an obligation shall be performed:
- 1.4.1 “no later than” or “within” or “by” a stipulated date or event which is a prescribed number of days after a stipulated date or event; or
- 1.4.2 “no later than” or “by” a stipulated number of days before a base date or event,
- the latest time for performance shall be 23.00hrs on the last day for performance of the obligations concerned.
- 1.5 If there is any conflict between any of the Clauses, the Schedules, the Annexes and any other document referred to in this Contract, the following order of priority in interpretation applies:
- 1.5.1 any provision of the Terms and Conditions together with (Definitions); and
- 1.5.2 Schedule 2 (**Authority Requirements**) to Schedule 5 (**Performance Regime**);
- 1.5.3 all other Schedules;
- 1.5.4 between
- (a) any of the provisions of Schedule 3 (**Supplier Solution**); and
- (b) the other Schedules,
- the provisions of the other Schedules shall prevail.
- 1.5.5 any other document referred to in this Contract or any other document attached to this Contract except the Tender and the Invitation to Tender.
- 1.6 For the purposes of Clause 1.5, an Annex to a Schedule shall have the same priority as the relevant Schedule to which it is attached.
- 1.7 The Contractor agrees that, where relevant to this Contract, all acts or

omissions of its agents, employees or Sub-contractors including employees and agents of the Sub-contractors and any individual contractors engaged by it or its Sub-contractors shall be deemed to be acts or omissions of the Contractor. The Authority agrees that, where relevant to this Contract, all acts or omissions of any of the Authority or of any of its agents, employees or contractors (excluding the Contractor and its Sub-contractors) shall be deemed to be acts or omissions of the Authority.

- 1.8 This Contract was drafted with the joint participation of the Parties and no provision of this Contract will be construed adversely to a party solely on the grounds that such party was responsible for the preparation of this Contract or that provision.

2. Contract Period

- 2.1 The Contract shall take effect from the Effective Date and unless extended pursuant to clause 3, shall expire automatically on 31st March 2018, which shall be thirty-six months from the Service Commencement Date, unless it is terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

3. Extension of Initial Contract Period

- 3.1 The Authority may, by giving written notice to the Contractor not less than three months prior to the last day of the Initial Contract Period, extend the Contract for up to two further periods each of up to twelve months (subject to each such extension having a minimum period of three months). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause) throughout any such extended period.
- 3.2 Where the Authority exercises its right to extend the Contract, in accordance with clause 3.1, the expiry date in clause 2.1 and the definition of Initial Contract Period shall be varied accordingly.

4. Contractor's Status

4.1 At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

5. Authority's Obligations

5.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Contractor.

6. Mistakes in Information

6.1 The Contractor shall be responsible for the accuracy of all documentation (including any drawings) and other information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions in it.

6.2 The Supplier agrees that the Authority does not warrant the accuracy or completeness of any information provided to it by the Authority.

7. Conflicts of Interest

7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential

conflict, between the pecuniary or personal interests of the Contractor and/or the Staff and/or the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

- 7.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

PART B –SUPPLY OF SERVICES

8. The Services

- 8.1 The Contractor shall provide the Mobilisation services from the Effective Date in accordance with Schedule 13 (**Mobilisation**).
- 8.2 The Contractor shall supply the Services from the Service Commencement Date and during the Contract Period in accordance with relevant Assignment Request, the Specification and the other provisions of this Contract.
- 8.3 The Authority may give the Contractor written notice requiring the re-execution of any part of the Services which the Authority reasonably believes does not meet the requirements of the Contract or differs in any way from those requirements. The Contractor shall comply with any such notice at its sole expense and within 14 days of receiving the notice (or within such longer period as the Authority may agree).

8.4 In addition to the Services, the Contractor shall, at no additional cost to the Authority, provide any incidental services and assume any incidental responsibilities which are not specifically set out in the Specification provided that they are services which are inherent to the proper performance and the delivery of the Services and consistent with the overall allocation of responsibilities to the Contractor.

8.5 The provisions of Schedule 16 (**Continuous Improvement**) shall apply throughout the Contract Period.

9. Non-Exclusivity

9.1 The provision of Services by the Contractor under this Contract is a non-exclusive arrangement and the Authority reserves the right to commission services which are similar to the Services from other suppliers.

10. Manner of Carrying Out the Services

10.1 To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services.

10.2 The Contractor shall ensure that it performs its obligations under the Contract with reasonable skill and care and in accordance with the Law, the Security Policy, Good Industry Practice and the Contractor's own established policies and procedures. The Contractor shall draw any conflict between any of the requirements of this clause to the attention of the Authority and shall comply with the Authority's decision on the resolution of that conflict.

10.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

11. Disruption to the Services

- 11.1 The Contractor shall take reasonable care to ensure that in the performance of the Services and its other obligations under the Contract it does not disrupt the operations or effect the reputation of the Authority.
- 11.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action is by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 11.3 In the event of industrial action by any Staff, the Contractor shall submit to the Authority a proposal as to how it could continue to perform its obligations under the Contract.
- 11.4 If the Contractor's proposals referred to in clause 11.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.

12. Key Representatives

- 12.1 Each party shall appoint Key Representatives as set out in Schedule 7 (**Key Representatives**).

13. Staff Transfer

- 13.1 The provisions of the Schedule 11 (**Staff Transfer**) shall apply in respect of transfers and the application of TUPE on commencement of the Contract and in connection with the end of the Contract Period.

14. Offers of Employment

- 14.1 For the duration of the Contract and for a period of 12 months thereafter neither the Authority nor the Contractor shall employ or offer employment

to any of the other Party's staff who have been associated with the procurement and/or the management of the Services without that other Party's prior written consent.

PART C - CONTRACT PRICE AND PAYMENT

15. Contract Price

15.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause 17 and Schedule 4 (**Pricing, Payment and Invoicing**).

16. Adjustment of Contract Price

16.1 The Contract Price agreed at the Effective Date shall be increased or decreased by a percentage calculated in accordance with the Schedule 4 (**Pricing, Payment and Invoice**).

17. Payment and VAT

17.1 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice complying with clause 17.2, submitted monthly in arrears. The date of payment by cheque shall be the date the cheque is posted, and the date of payment by electronic transmission shall be the date of transmission.

17.2 The Contractor shall ensure that each invoice is submitted in duplicate to the Authority's nominated address. Each invoice shall contain a detailed breakdown of the Services supplied (further broken down per Assignment), a description of how the Contract Price was calculated and any purchase order number or other details that the Authority requires to be quoted and supported by any other documentation reasonably required by the Authority to substantiate the invoice.

- 17.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the Sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 17.4 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services.
- 17.5 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 17.5 shall be paid by the Contractor to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.
- 17.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 48.3 for failure to pay undisputed sums of money.
- 17.7 If a Party fails to make any payment due to the other Party under this Contract by the due date for payment (due date) then, without limiting its other remedies, that other Party may charge the defaulting Party interest on the overdue amount at the rate of 2% above the bank rate paid on commercial bank reserves set by the Bank of England from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest immediately on

demand by such other Party. This clause shall not apply to payments that are contested in good faith.

18. Recovery of Sums Due

- 18.1 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 18.2 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other contract with the Authority.
- 18.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

19. Euro

- 19.1 Any requirement of Law to account for the Services in Euros, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Contractor free of charge to the Authority.
- 19.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause 19.1 by the Contractor.

PART D - STATUTORY OBLIGATIONS, REGULATIONS AND POLICY

20. Prevention of Corruption

- 20.1 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- 20.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.
- 20.3 The Contractor shall:
- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010 (the “**Relevant Requirements**”);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
 - (c) have and shall maintain in place throughout the Contract Period its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 20.3(b), and shall enforce them where appropriate;

- (d) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract;
- (e) immediately notify the Authority in writing if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor, and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the Service Commencement Date;
- (f) within three months of the Service Commencement Date, and annually thereafter, certify to the Authority in writing signed by an officer of the Contractor, compliance with this clause 20.3 by the Contractor and all persons associated with it under clause 20.4. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

20.4 The Contractor shall ensure that any person associated with the Contractor who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause 20 (the “**Relevant Terms**”). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

20.5 If the Contractor, its Staff or anyone acting on the Contractor’s behalf, engages in conduct prohibited by clauses 20.1 and/or 20.2 or commits any offence under the Bribery Act 2010, the Authority may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any

additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those conditions.

20.6 For the purpose of this clause 20:

- (a) the meaning of “adequate procedures” and “foreign public official” and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and
- (b) the purpose of this clause 20, a person associated with the Contractor includes but is not limited to any Sub-contractor of the Contractor.

21. Prevention of Fraud

21.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

21.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

21.3 If the Contractor or its Staff commits fraud in relation to this or any other contract with the HM Government (including the Authority) the Authority may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making

other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

22. Equality, Diversity and Non-Discrimination

- 22.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age or any other protected characteristic and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and or other relevant or equivalent equalities legislation (or any statutory modification or re-enactment thereof).
- 22.2 The Contractor shall take all reasonable steps to secure the observance of clause 22.1 by all Staff.

23. Environmental Requirements

- 23.1 The Contractor shall perform its obligations in compliance with any environmental standards appropriate to the services provided which includes requirements to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 23.2 The Contractor shall comply with current Government Buying Standards for the provision of commodity goods and services. These are available at: <http://sd.defra.gov.uk/advice/public/buying/>.

24. Health and Safety and Minimum Wage Act

- 24.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.
- 24.2 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety.
- 24.3 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.
- 24.4 The Contractor shall ensure that any risk assessments or similar documentation are made available to the Authority on request.
- 24.5 The Contractor shall ensure that, where appropriate, Staff are paid at least the national minimum wage in accordance with any National legislation relating to the application of a Minimum Wage.

PART E - INFORMATION HANDLING AND SECURITY

25. Authority Data

- 25.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 25.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly approved by the Authority.

- 25.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority.
- 25.4 The Contractor shall take responsibility for preserving the integrity of the Authority Data and preventing the corruption or loss of Authority Data.
- 25.5 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.
- (a) If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may require the Contractor (at the Contractor's expense) to restore or procure the restoration of any Authority Data and the Contractor shall do so as soon as practicable but not later than seven days from the loss, corruption or degradation.
- 25.6 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- 25.7 In the event that the Contractor or any Staff fail to comply with this clause 25, the Authority may exercise the rights and/or may terminate the Contract by giving notice in writing to the Contractor pursuant to clause 48.1.

26. Protection of Personal Data

- 26.1 For the purposes of this clause 26, the terms "Data Controller", "Data Processor", "Data Subject", "Process" and "Processing" shall have the meaning prescribed under the DPA.

- 26.2 The Contractor shall (and shall ensure that all of the Staff) comply with any applicable registration requirements and notification requirements under the DPA and duly observe all obligations under the DPA which arise in connection with the Contract. The Contractor shall perform its obligations under this Contract in such a way as does not cause the Authority to breach any of the Authority's obligations under the DPA.
- 26.3 Notwithstanding the general obligation in clause 26.2, where the Contractor and/or any Staff Process Personal Data as a Data Processor for the Authority the Contractor shall:
- (a) process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Authority;
 - (b) without limiting clause 10.2 or clause 26.2, comply with the Law;
 - (c) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Contractor's obligations under this Contract, or as is required by Law or any Regulatory Body;
 - (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - (e) take reasonable steps to ensure the reliability of Staff who may have access to the Personal Data;

- (f) obtain prior written consent from the Authority prior to any transfer of Personal Data to any Sub-contractor for the provision of the Services;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior Approval of the Authority which is to have come from the Authority's Senior Information Risk Officer (or equivalent) and, where the Authority so Approves such a transfer, comply with:
 - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in (Definitions) of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
 - (ii) any reasonable instructions notified to it by the Authority.
- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 26;
- (i) ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personal Data to any third parties in any circumstances other than with the written Approval of the Authority or in compliance with a legal obligation imposed upon the Authority;
- (k) notify the Authority (within five Working Days) if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or

- (ii) a complaint or request relating to the Authority's obligations under the DPA.
- (l) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a subject access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any other information requested by the Authority.
- (m) permit the Authority Representative or his/her nominee (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 42, the Contractor's Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract; and
- (n) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority).

26.4 Where the Contractor or any Sub-contractor, as part of the Services, Processes Personal Data as a Data Controller, such Personal Data shall

have been obtained fairly and lawfully. The Contractor shall ensure that it is able to disclose such Personal Data to the Authority and that the Services are designed in such a way as to ensure that use by the Authority of any such Personal Data obtained in connection with the Services does not breach the provisions of the DPA.

26.5 In the event that the Contractor or any Staff fail to comply with this clause 26, the Authority may exercise the rights and/or may terminate the Contract by giving notice in writing to the Contractor pursuant to clause 48.1.

27. Official Secrets Acts 1911 to 1989 and Finance Act 1989

27.1 The Contractor shall, and shall ensure that its Staff:

- (a) comply with the Official Secrets Acts 1911 to 1989; and
- (b) do not contravene section 182 of the Finance Act 1989.

27.2 If the Authority Representative requires it, the Contractor shall ensure that any Staff identified by the Authority each sign an undertaking that they will comply with the provisions of the Official Secrets Acts 1911 to 1989.

27.3 In the event that the Contractor or any Staff fail to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

28. Freedom of Information

28.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

- 28.2 The Contractor shall and shall procure that any Sub-contractors shall transfer to the Authority all Requests for Information that it or they receive as soon as practicable and in any event within two Working Days of receiving a Request for Information. In addition, the Contractor shall and shall procure that any relevant Sub-contractor:
- (a) provides the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and
 - (b) provides all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 28.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract (or any other agreement) whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 28.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- 28.5 The Contractor acknowledges that (notwithstanding the provisions of clause 30) the Authority may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken its views into account;

provided always that where clause 28.5(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

28.6 The Contractor shall ensure that all Information is retained for disclosure for a period of 7 years from the date the contract terminates and shall permit the Authority to inspect such records as requested from time to time.

28.7 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 15 (**Commercially Sensitive Information**) is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause 28.

28.8 The Contractor shall ensure that any sub-contract it enters into in relation to this Contract contains a condition in similar terms to this clause 28 whereby the Sub-contractor acknowledges the Authority's responsibilities under the FOIA and the Environmental Information Regulations and agrees to co-operate with the Authority so that these responsibilities can be discharged.

29. Security Requirements

29.1 The Contractor shall conduct an annual self-assessment of its compliance with the Security Policy, reporting such findings to the Authority's Representative in the manner requested by the Authority's Representative.

- 29.2 The Authority may make available a particular self-assessment tool to assist its suppliers (including the Contractor) in conducting the self-assessment referred to in clause 29.1 and if the Authority does so, the Contractor shall use that self-assessment tool.
- 29.3 The Contractor shall comply, and shall procure the compliance of the Staff, with the provisions of Schedule 10 (**Security**), the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- 29.4 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 29.5 If the Contractor believes that a change or a proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a request for a Variation in accordance with clause 37. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps it has taken to mitigate those costs. Any change to the Contract Price shall be subject to Contract by the Parties.
- 29.6 Until and/or unless a change to the Contract Price is agreed by the Authority pursuant to clause 29.5 the Contractor shall continue to perform the Services in accordance with its existing obligations. The Contractor shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with Schedule 10 (**Security**) and the Security Policy.
- 29.7 The Contractor shall comply, if requested by the Authority, with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the **Services**. The Contractor warrants, represents and undertakes that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than

the Staff Vetting Procedures. In particular, the Contractor warrants, represents and undertakes that:

- (a) the Staff Vetting Procedures for all Staff who will have access to Authority Data will have included security clearance as appropriate; and
- (b) all persons employed or engaged have the right to work in the United Kingdom under applicable immigration Law.

29.8 Without prejudice to clause 29.6, the Authority may require the Contractor to confirm that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service (DBS) check (in accordance with the Staff Vetting Procedures) within the last 12 months (or such shorter timeframe as may reasonably be specified by the Authority). The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the DBS check or otherwise) is employed or engaged in the provision of any part of the Services.

29.9 The Contractor shall keep a register of individuals who have undergone any security clearance process as part of Staff Vetting Procedures. This register shall include, as a minimum, the following details:

- (a) the type of security vetting clearances that have been undertaken;
- (b) the number of people who have undergone security vetting clearances; and
- (c) the outcome of all internal and independent vetting appeals.

29.10 If the Contractor fails to comply with clause 29.7 within two months of the date of the request and in the reasonable opinion of the Authority, such

failure may be prejudicial to the interests of the HM Government, then the Authority may terminate the Contract.

**PART F - CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY
AND PUBLICITY**

30. Confidentiality

30.1 Except to the extent set out in this clause 30 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

30.2 Clause 30.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 28;
- (b) such information was legitimately in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure (otherwise than by a breach of this Contract); or
- (e) the relevant information was independently developed without access to the other Party's Confidential Information.

- 30.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information for the purpose of performing the Services, and shall ensure that such Staff are aware of and comply with the obligations as to confidentiality set out in this clause 30.
- 30.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information otherwise than for the purposes of this Contract.
- 30.5 At the written request of the Authority, the Contractor shall procure that those members of the Staff who will or may have access to the Authority's Confidential Information each sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 30.6 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information (including the Management Information obtained under clause 39 and Schedule 8 (**Management Information**):
- (a) where it relates to the outcome of the procurement for this Contract and is required for publication in the Official Journal of the European Union or to satisfy any other legal obligations on the Authority or the requirements of government policy;
 - (b) to any HM Government body or any other Contracting Authority. All HM Government bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other HM Government bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any HM Government body or any Contracting Authority;

- (c) to any person or organisation engaged in providing services to the Authority for any purpose relating to or ancillary to the Contract;
- (d) to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
- (e) for the purpose of the examination and certification of the Authority's accounts; or
- (f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources,

provided that the Authority discloses only such information as is necessary for the purpose concerned.

30.7 The Authority shall ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 30.6 is made aware of the Authority's obligations of confidentiality. At the request of the Contractor, the Authority shall procure that any person or organisation to whom the Contractor's Confidential Information is disclosed pursuant to clause 30.6(c) gives or has given a confidentiality undertaking which covers such Confidential Information in terms which the Authority considers appropriate.

30.8 Nothing in this clause 30 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of rights in Intellectual Property.

31. IP Materials

31.1 All Intellectual Property (including, without limitation the Intellectual property in Reports) created by the Contractor or any Staff:

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

shall vest in the Authority upon creation.

31.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property within the scope of clause 31.1 (the “**IP Materials**”). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property. The Contractor shall execute all documentation necessary to give effect to this assignment.

31.3 The Contractor shall ensure that it has appropriate arrangements in place with Staff to enable it to assign the IP Materials as required by clause 31.2.

31.4 The Contractor shall procure an unconditional and irrevocable waiver of any moral rights subsisting in the IP Materials.

32. Authority Materials

32.1 All Intellectual Property furnished to or made available to the Contractor by or on behalf of the Authority (the “**Authority Materials**”) shall, as between the Authority and the Contractor, remain the property of the Authority.

32.2 The Contractor shall not, and shall ensure that the Staff do not:

- (a) use the Authority Materials except where necessary for the performance of obligations under this Contract; or

- (b) disclose the Authority Materials except where necessary for the performance of obligations under this Contract, having obtained the Approval of the Authority.

33. Contractor Materials

- 33.1 Where in connection with the provision of the Services, the Contractor uses any Intellectual Property which does not fall within clauses 31.1 or 31.2 and which is owned by the Contractor or any company within the Contractor's Group ("**Contractor Materials**"), the Contractor shall grant to the Authority, or shall procure that the Authority is granted (without charge to the Authority and for the benefit of the Authority and all Contracting Authorities) a perpetual, irrevocable, non-exclusive, royalty-free licence to use, adapt, maintain and support such Contractor Materials, which licence shall include the right for any person providing services to the Authority or any other Contracting Authority to use, adapt, maintain and support such Intellectual Property for the benefit of the Authority or any such organisation. The Contractor shall ensure that the third party owner of any Intellectual Property which is or may be used in the provision or the receipt of the Services but which does not fall within clauses 31.1 or 32.1 grants to the Authority a licence (or sub-licence) to use, reproduce, modify, develop and maintain such Intellectual Property. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign such licence or sub-licence to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority for the purposes of provision or receipt of the Services or Replacement Services.

34. Infringement and Indemnity

- 34.1 The Contractor shall not infringe the Intellectual Property of any third party in supplying the Services and shall ensure that the receipt of the Services

by the Authority and others, as contemplated by this Contract, does not infringe the Intellectual Property of any third party.

- 34.2 The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the HM Government harmless from and against all actions, suits, claims, demands, damages, expenses, legal costs (on a solicitor and client basis) and other liabilities arising from or incurred as a result of or in connection with any breach of clause 34.1, except where any such claim arises from items or materials supplied by the Authority or which the Authority has specified for use by the Contractor.
- 34.3 The Authority shall notify the Contractor in writing of any IP Infringement Claim brought against the Authority in materials supplied or licensed by the Contractor.
- 34.4 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any IP Infringement Claim provided always that the Contractor:
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the Authority; and
 - (c) shall not settle or compromise any claim without the prior Approval of the Authority.
- 34.5 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any IP Infringement Claim. The Contractor shall indemnify the Authority for all costs and expenses (including legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of

an IP Infringement Claim which relates to a claim arising from items or materials supplied by the Authority or which the Authority has specified for use by the Contractor.

34.6 The Authority shall not pay or agree to pay any IP Infringement Claim or make an admission which may be prejudicial to the defence or settlement of any IP Infringement Claim.

34.7 If an IP Infringement Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority, use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the relevant provisions of this Contract shall apply to such modified or substitute Services; or
- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

34.8 If a modification or substitution is not possible so as to avoid the infringement or the Contractor is not able to procure a licence in accordance with clause 34.7(b) within such time as the Authority may reasonably specify:

- (a) the Authority may, at its option, terminate this Contract in accordance with clause 48.1(b); and

- (b) the Contractor shall be liable for the value of Replacement Services and any additional costs incurred in implementing and maintaining such replacements.

35. Publicity and Media

- 35.1 The Contractor shall not make any press announcement, publicise the Contract in any way or use the Authority's name in any marketing material, except with the Approval of the Authority.
- 35.2 The Contractor shall ensure that its Staff comply with clause 35.1.

PART G - CONTROL OF THE CONTRACT

36. Assignment and Sub-Contracting

- 36.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the Authority's prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 36.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- 36.3 Where the Authority has given its Approval to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- 36.4 Subject to clause 36.6, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - (a) any Contracting Authority; or

- (b) any other body established by the HM Government or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority,

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

36.5 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 36.4, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

36.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 36.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

- (a) the rights of termination available to the Authority in clause 46 shall be available, mutatis mutandis, to the Contractor in the event of the bankruptcy or insolvency of the Transferee; and
- (b) the Transferee shall only be able subsequently to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

36.7 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for

purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

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

37. Variation

- 37.1 This Contract shall not be varied unless such variation is made in writing by means of a Change Control Notice as set out in Schedule 6 (**Contract Change Control**).

38. Change of Law

- 38.1 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the provisions of the Contract nor be entitled to an increase in the Contract Price as a result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Service Commencement Date.

- 38.2 If a Specific Change in Law occurs during the Contract Period (other than those referred to in clause 38.1), the Contractor shall notify the Authority of the likely effects of that change including:

- (a) whether any modification is required to the Services, the Contract Price or the Contract; and

- (b) whether any relief from compliance with the Contractor's obligations (including any obligation to achieve any milestones or to meet any service level requirements at any time) is required.

38.3 As soon as practicable after any notification in accordance with clause 38.2, the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor may be able to mitigate the effect of the Specific Change in Law. If the Contractor has already implemented any mitigation, it may also draw these to the attention of the Authority.

38.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 38 shall be implemented in accordance with clause 37.

39. Monitoring of Contract Performance

39.1 The Contractor shall comply with the contract management and monitoring arrangements set out in Schedule 5 (**Performance Regime**), Schedule 8 (**Management Information**) and Schedule 14 (**Contract Management**).

40. Remedies in the event of inadequate performance

40.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. Reference in this clause 40.1 to a "complaint" includes a complaint received from within the Authority, another Contracting Authority, a member of the public or any other associate or provider of services to the Authority.

- 40.2 If at any time the Contractor is in Default (including, without limitation, a failure to meet the Key Performance Indicators) and such Default of the Contractor has not arisen directly from a Default of the Authority or from a Force Majeure Event then notwithstanding any other provision in this Contract, the Contractor shall, at no additional cost to the Authority and without prejudice to the Authority's other rights and remedies, arrange all such additional resources as are necessary, and shall take all necessary remedial action to correct, such Default as soon as practicable thereafter.
- 40.3 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and to meet the required Service Levels in accordance with Schedule 5 (**Performance Regime**), the applicable Service Credit shall be paid by the Contractor to the Authority or, if the Authority elects, the Authority shall deduct such Service Credit from the monthly Service Charges for the applicable month in the next applicable invoice in accordance with Schedule 4 (**Pricing, Payment & Invoicing**) and Schedule 5 (**Performance Regime**). Any such failure that is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten Working Days or such other period of time as the Authority may direct. In the event that the Contractor fails to remedy such Default, the Authority may terminate the Contract pursuant to clause 48.1(a).
- 40.4 If the Contractor has failed to perform its obligations under this Contract in any material manner, the Parties shall agree and the Contractor shall implement at its own cost a remedial plan. If the Contractor's failure relates to a failure to provide any information to the Authority about the Service Charges, proposed Service Charges or the Contractor's costs, then the remedial plan shall include a requirement for the provision of all such information.

41. Persistent Breach

41.1 Where more than 20 complaints regarding the Services are made by Service Users in any 4 week period (a "Complaint Trigger") then the Authority may serve a notice on the Contractor:

- (i) specifying that it is a formal warning notice; and
- (ii) stating that if a Complaint Trigger recurs frequently or continues, it may result in a termination of this Contract.

41.2 If, following service of such a warning notice, a Complaint Trigger has recurred in 3 or more months within the 6 month period after the date of service of the formal warning notice, the Authority may serve another notice on the Contractor:

- (i) specifying that it is a final warning notice; and
- (ii) stating that if a further Complaint Trigger recurs in 2 or more months within the 4 month period after the date of service of the final warning notice, the Contract may be terminated.

41.3 A warning notice may not be served in respect of any Complaint Trigger which has previously been counted in the making of a separate warning notice.

42. Audit & Open Book

42.1 The Contractor shall comply with the provisions of Schedule 9 (**Audit & Open Book**).

42.2 The Contractor shall keep and maintain until six years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services

supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority.

PART H - LIABILITY AND INDEMNITIES

43. Liability and Indemnities

- 43.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
 - (b) fraud; or
 - (c) fraudulent misrepresentation; or
 - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 43.2 Subject to clauses 43.3 and 43.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Authority Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.
- 43.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.

43.4 Subject always to clauses 43.1 and 43.5:

- (a) the aggregate liability of a Party for any and all Defaults by that Party resulting in loss of or damage to the property of the other Party shall in no event exceed one hundred thousand pounds and
- (b) the annual aggregate liability of either Party for any and all Defaults (other than a Default governed by clauses 21, 25, 26, 29, 30, 34, 34.1, 36.1 and 43.4(a) or paragraphs 2.2, 2.4 or 2.5 of Schedule 11 **(Staff Transfer)**) shall in no event exceed five hundred thousand pounds.

43.5 Subject always to clause 43.1, in no event shall either Party be liable to the other for any:

- (a) indirect loss of profits, business, revenue or goodwill; and/or
- (b) indirect loss of savings (whether anticipated or otherwise); and/or
- (c) other indirect or consequential loss or damage,

provided that this clause 43.5 shall not operate to exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the Default of the Contractor.

44. Insurance

44.1 Without prejudice to its liability to indemnify or otherwise be liable to the Authority under this Contract, the Contractor shall for the periods specified in Schedule 1 (Required Insurances) take out and maintain, or procure the taking out and maintenance of the insurances as set out in Schedule 1 (Required Insurances) and any other insurances as may be required by applicable Law (together the "Required Insurances"). The Contractor shall ensure that each of the Required Insurances is effective no later than the date on which the relevant risk commences.

- 44.2 The Required Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the insurance market from time to time.
- 44.3 The Insurances shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- 44.4 The Contractor 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.
- 44.5 Where the Contractor has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Contractor to purchase the relevant Required Insurances, and the Authority shall be entitled to recover the premium and other reasonable costs incurred in connection therewith as a debt due from the Contractor.
- 44.6 The Contractor shall from the date of this Contract and within twenty (20) days after the renewal or replacement of each of the Required Insurances, provide evidence, in a form satisfactory to the Authority, that the Required Insurances are in force and effect and meet in full the requirements of Schedule 1 (Required Insurances). Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Contractor of any of its liabilities and obligations under this Contract.
- 44.7 The Contractor shall notify the Authority in writing at least ten (10) days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances. This clause 45.7 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in

respect of any of the Required Insurances required to be taken out and maintained in accordance with this clause 45 Insurance.

- 44.8 The Contractor shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Required Insurances. In the event that the Authority receives a claim relating to or arising out of the Services or this Contract, the Contractor shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 44.9 Except where the Authority is the claimant party, the Contractor shall give the Authority notice within twenty (20) days after any insurance claim in excess of fifty thousand pounds (£50,000) relating to or arising out of the provision of the Services and/or this Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 44.10 Where any Required Insurance requires payment of a premium, the Contractor shall be liable for and shall promptly pay such premium. Where any Required Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Contractor shall be liable for such excess or deductible. The Contractor shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

45. Warranties and Representations

- 45.1 The Contractor hereby warrants, represents and undertakes to the Authority that:
- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of any

parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;

- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Effective Date, all information contained in the Tender or any other documentation taken into account by the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property that is necessary for the performance of its obligations under the Contract;
- (h) in the three years prior to the date of the Contract:

- (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (ii) it has been in full compliance with all applicable securities and tax Law in the jurisdiction in which it is established; and
 - (iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- (i) all Staff were recruited and vetted in such a way as to allow the Contractor to give the warranty and undertaking and make the representation set out in clause 29.6;
 - (j) it has and will continue to hold all the necessary (if any) approvals from Regulatory Bodies necessary to perform its obligations under this Contract;
 - (k) it shall at all times comply with the Law in carrying out its obligations under this Contract.

PART I - TERMINATION AND CONSEQUENCES OF TERMINATION

46. Termination on insolvency

- 46.1 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or for any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) it means two or more of the requirements for being a small company specified in section 382(3) of the Companies Act 2006 and a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clause 46.1(a) - (g) occurs under the Law of any other jurisdiction.

47. Termination for change of control

47.1 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**change of control**”) which may impact adversely on the performance of the Contract or which may involve it being controlled by any person in relation to whom the Authority may reasonably have concerns. The Authority may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

48. Termination on Default

48.1 The Authority may terminate the Contract by written notice to the Contractor with effect from the date specified in such notice if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within ten Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is itself a material breach of the Contract; or the Default, when taken together with other Defaults, has or is likely to have a material adverse impact on the Authority.

(d) the Default is a Persistent Breach.

- 48.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, such Default shall be deemed to be a material breach of the Contract for the purposes of clause 48.1(c) and, without limiting clause 43.5, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.
- 48.3 If the Authority fails to pay the Contractor any undisputed sum of money when due, the Contractor shall notify the Authority in writing of such failure to pay ("**Final Notice**"). If, following receipt of the Final Notice, the Authority fails to pay undisputed sums within 90 Working Days of the date of the Final Notice, the Contractor shall contact the Authority's Head of Commercial and explain that it intends to issue a notice of termination if the undisputed sums are not paid. If the undisputed sums are still not paid within ten Working Days of such contact, the Contractor may terminate the Contract on 25 Working Days' notice. Such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 18.
- 48.4 The Authority reserves the right to terminate the Contract under this clause 48 (**Termination on Default**) following evidence of abuse of employment rights.
- 48.5 The Contractor will terminate its relationship with any of its sub-contractors, where any of its sub-contractors commit any abuse of employment rights, which is a breach of any legislation.

49. Termination for convenience

The Authority shall have the right to terminate the Contract (or to terminate the provision of any part of the Services) at any time by giving three months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to Contract on the level of Services to be provided by the Contractor during the period of extension (such Contract not to be unreasonably withheld or delayed).

50. Consequences of Expiry or Termination

50.1 Where the Authority terminates the Contract under clause 48.1 or terminates any part of the Services under that clause (and makes other arrangements for the supply of Services), the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority in respect of the provision of the Services (beyond that which it would have had to pay to the Contractor under this Contract if the Contract (or part of it) had not been terminated) throughout the remainder of the Contract Period.

50.2 Where the Authority terminates the Contract under clause 48 or terminates any part of the Services under that clause, no further payments shall be payable by the Authority to the Contractor for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority, until the Authority has established the final cost of making the other arrangements envisaged under this clause.

50.3 Subject to clauses 43, 50.4, 50.5, 50.6 and 50.7, where the Authority terminates the Contract under clause 49, the Authority shall reimburse the Contractor for any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of

the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss.

50.4 The Contractor shall ensure that it has included terms in all sub-contracts in substantially the same form as clause 49 allowing it to terminate the relevant sub-contract by giving three months' notice in writing without incurring any financial penalty beyond payment of the Sub-contractor's reasonable termination expenses and provided that the Contractor takes reasonable steps, consistent with the obligation to provide the Services during the period of notice to mitigate its losses including:

- (a) terminating all contracts with Sub-contractors on the best available terms;
- (b) cancelling all capital and recurring cost commitments; and
- (c) reducing Equipment and labour costs.

50.5 Where the Contractor holds insurance, the Authority shall only reimburse the Contractor for those unavoidable direct costs that are not covered by the insurance available.

50.6 The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it would seek to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of a termination under clause 49. The Authority may reasonably request such a list at any time during the Contract Period and without having exercised its rights under clause 49 prior to the request.

50.7 The Authority shall not be liable under clause 50.3 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;

- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period;
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

51. Return of Information, Property and Provision of Exit Assistance

51.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Authority all Authority Data, the Authority's Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any of its suppliers or Sub-contractors, which was obtained or produced in connection with this Contract;
- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor for the purposes of this Contract. Such Property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor in accordance with this clause 51 and Schedule 12 (**Exit Management and Handover**) and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority or the Replacement Contractor for the purposes of adequately understanding the manner in which the Services have been

provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.

- 51.2 The Contractor shall comply with clauses 51.1(a) and 51.1(b) at no additional charge to the Authority. If the Contractor fails to comply with clause 51.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-contractors where any such items may be held.
- 51.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 51.1(c) and (d) at no additional charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance (provided that such costs have been approved in advance) and the Contractor shall take all reasonable steps to mitigate such costs.

52. Force Majeure

- 52.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract to the extent that such delay or failure is a result of Force Majeure.
- 52.2 If either Party becomes aware of any circumstances of which give rise to, or which are likely to give rise to, any failure or delay on its part as described in clause 52.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.
- 52.3 Notwithstanding clause 52.1, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for

a period in excess of three months, either Party may terminate the Contract with immediate effect by notice in writing.

- 52.4 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

PART J - GOVERNING LAW AND DISPUTE RESOLUTION

53. Governing Law and Jurisdiction

Subject to the provisions of clause 54, the Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

54. Dispute Resolution

- 54.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Head of Commercial (or equivalent) of each Party.
- 54.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 54.3 If the dispute cannot be resolved by the Parties pursuant to clause 54.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 54.5 unless:

- (a) the Authority considers that the dispute is not suitable for resolution by mediation; or
- (b) the Contractor does not agree to mediation.

54.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

54.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by Contract between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution or other mediation provider to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with the Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution or other mediation provider to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be

conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to a court of competent jurisdiction.

PART K - GENERAL

55. Notices

- 55.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- 55.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by or electronic mail (confirmed by letter). Such letters and electronic mail items shall be addressed to the other Party in the manner referred to in clause 55.4. Provided the relevant communication is not returned as undelivered, any notice or

communication which is posted or delivered by hand but not sent by electronic mail shall be deemed to have been given:

- (a) subject to clause 55.3, where the notice or communication is posted, 2 Working Days after the date of postage; and
- (b) subject to clause 55.3, at the time of delivery, where the notice or communication is delivered by hand.

55.3 Where a notice or communication is given by electronic mail and receipt of the electronic mail is acknowledged the notice or communication shall be deemed to have been given at the time of acknowledgement. For the avoidance of doubt, if a notice or communication given by electronic mail is not acknowledged, the notice or communication shall be deemed to have been given when the letter confirming the notice or communication is delivered in accordance with clauses 55.2(a) or 55.2(b).

55.4 For the purposes of clauses 55.2 and 55.3, the address of each Party shall be:

- (a) For the Authority:

Name: <Redacted>

Corporate Services - Commercial

Address: 2nd Floor Bedford Point

35 Dingwall Road

Croydon

CR9 2EF

Email: <Redacted>

- (b) For the Contractor:

Name: <Redacted>

Address: 99-101 Newington Causeway

London

SE1 6BN

Email: <Redacted>

- 55.5 Either Party may change its address for service by serving a notice in accordance with this clause 55.

56. Waiver

- 56.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 56.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 55.
- 56.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

57. Accrued Rights and Survival of Obligations

- 57.1 Save as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall

prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 20, 25, 26, 27, 28, 30, 31 to 35, 42, 43, 44, 50, 51, 53 and 57 to 61.

58. Severability

If any provision of this Contract (or any part or phrase within a provision of this Contract) is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision (or part or phrase of such provision) shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

59. Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

60. Entire Agreement

- 60.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraud or fraudulent misrepresentation.

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

61.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on them, without the prior written agreement of both Parties.

61.2 This clause 61 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the HM Government.

62. Counterparts

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

IN WITNESS of which this Contract has been duly signed by the Parties.

SIGNED for and on behalf of **The Secretary of State for the Home Department**

SIGNED for and on behalf of **The Salvation Army Trustee Company acting in its capacity of trustee of the Salvation Army Social Work Trust**

Signature.....

Signature.....

Name

Name.....

Position

Position.....