

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

E3.10 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E3.6 is made aware of the Client's obligations of confidentiality.

E3.11 Nothing in this clause E3 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

E4 Freedom of Information

E4.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

E4.2 The Contractor shall and shall procure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;

- (a) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within [five] Working Days (or such other period as the Client may specify) of the Client's request; and
- (b) provide all necessary assistance as reasonably requested by the Client to enable the Client 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.

E4.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement 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.

E4.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

E4.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the 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 their views into account;

provided always that where E4.5(a) applies the Client 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.

E4.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

E4.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause E4.

E5 Publicity, Media and Official Enquiries

E5.1 The Contractor shall not make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the Client.

E5.2 The Contractor shall take reasonable steps to ensure that his servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E5.1.

E6 Security

E6.1 Where the Services are delivered from the Client's own premises, the Client shall be responsible for maintaining the security of its own premises in accordance with its standard security requirements. When on the Client's premises, the Contractor shall comply with all security requirements of the Client, and shall ensure that all Staff comply with such requirements.

E6.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

E6.3 The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Plan and the Security Policy.

E6.4 The Client shall notify the Contractor of any changes or proposed changes to the Security Policy. Any changes shall be agreed in accordance with the procedure in clause F3.

E6.5 Until and/or unless a change to the Contract Price is agreed by the Client pursuant to clause E6.4 the Contractor shall continue to perform the Services in accordance with its existing obligations.

E7 Intellectual Property Rights

- E7.1 Save as granted elsewhere under this Contract, neither the Client nor the Contractor shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- E7.2 All Intellectual Property Rights in any guidance, specifications instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or any other materials furnished to or made available to the Contractor by or on behalf of the Client ("**Client Background Rights**") shall remain the property of the Client.
- E7.3 The Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Client Background Rights or Project Specific Intellectual Property Rights to any third party.
- E7.4 All title to and all rights and interest in the Project Specific Intellectual Property Rights shall vest in the Client. The Contractor hereby assigns to the Client with full title guarantee, title to and all rights and interest in the Project Specific Intellectual Property Rights and/or shall procure that the first owner of the Project Specific Intellectual Property Rights also does so. The assignment shall either 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 Project Specific Intellectual Property Rights, as appropriate.
- E7.5 The Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Client under this Contract.
- E7.6 If requested to do so by the Client, the Contractor shall without charge to the Client execute all documents and do all such further acts as the Client may require to perfect the assignment under clause E7.4 or shall procure that the owner of the Project Specific Intellectual Property Rights does so on the same basis.
- E7.7 The Client hereby grants to the Contractor a non-exclusive, revocable, non assignable licence to use the Client Background Rights and the Project Specific Intellectual Property Rights during the Contract Period for the sole purpose of enabling the Contractor to provide the Services.
- E7.8 To the extent only this is necessary to enable the Client to obtain the full benefits of ownership of the Project Specific Intellectual Property Rights, the Contractor hereby grants to the Client and shall procure that any relevant third party licensor shall grant to the Client a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to use, sub-license and/or commercially exploit any Contract Pre-Existing Intellectual Property Rights or Intellectual Property Rights owned by a third party that are embedded in or which are an integral part of the Project Specific Intellectual Property Rights.
- E7.9 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other

liabilities which the Client or the Crown may suffer or incur as a result of the performance by the Contractor of the Services and/or the possession of use by the Client of the Deliverables except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Client; or
- (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

- E7.10 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any third party Intellectual Property Rights. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights provided always that the Contractor:
- (a) shall consult the Client 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 Client; and
 - (c) shall not settle or compromise any claim without the Client's prior written consent (not to be unreasonably withheld or delayed).
- E7.11 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements incurred in doing so). Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause E7.9(a) or (b).
- E7.12 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under the Contract.
- E7.13 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative Services or Deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with

any necessary changes to such modified Services or Deliverables or to the substitute Services or Deliverables; or

- (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Client, and in the event that the Contractor is unable to comply with clauses E7.13 (a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

E8 Use of Documents and Information

- E8.1 Except with the consent in writing of the Client, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.
- E8.2 Except with the consent in writing of the Client the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Client otherwise than for the purpose of the Contract.
- E8.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Client for the purposes of the Contract remain the property of the Client and must be returned on completion of the Contract.
- E8.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Client Data.
- E8.5 The Contractor shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Client.
- E8.6 To the extent that Client Data is held and/or processed by the Contractor the Contractor shall supply that Client Data to the Client as requested by the Client in the format specified in the Specification Schedule [and/or the Exit Management Strategy].
- E8.7 The Contractor shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.
- E8.8 The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at no less than **[three]** monthly intervals.

- E8.9 The contractor shall ensure that any system on which the Contractor holds any Client Data, including back-up data, is a secure system that complies with the Security Policy.
- E8.10 If the Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:
- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Client Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than **[ten calendar days]**; and/or
 - (b) itself restore or procure the restoration of Client Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.
- E8.11 If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.

E9 Audit

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

- F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any

part thereof due to the Contractor under this Contract (including any interest which the Client incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:

- (a) reduction of any sums in respect of which the Client exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Client receiving notification under both clauses F1.5 and F1.6.

F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Client of the Assignee's contact information and bank account details to which the Client shall make payment at least 5 Working Days prior to submission of the relevant invoice.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.

F1.8 Subject to clause F1.10, the Client 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 Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
- (c) any private sector body which substantially performs the functions of the Client,

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

F1.9 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client 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 of the Client in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default)

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

- (b) the Transferee shall only be able 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.

F1.11 The Client 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 Client 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.

F1.12 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.

F2 Waiver

F2.1 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.

F2.2 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 A6 (Notices).

F2.3 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.

F3 Variation

F3.1 Subject to the provisions of this clause F3, the Client may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".

F3.2 The Client may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;

- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;
- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause I2.

F4 Severability

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

F5 Remedies in the event of inadequate performance

F5.1 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 Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client 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 10 Working Days or such other period of time as the Client may direct.

F5.5 In the event that:

(a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause F5.4 above,

the Client may terminate the Contract with immediate effect by notice in writing.

F6 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.

F7 Monitoring of Contract Performance

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

F8 Extension of Initial Contract Period

Subject to clause C4 (Price adjustment on extension of the Initial Contract Period), and only where and to the extent that provision for such extension has been explicitly retained in the relevant contract notice or advertisement and invitation to tender documentation, the Client may, by giving written notice to the Contractor not less than One Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period. Any such period shall not exceed the maximum extension period provided for in the relevant contract notice or advertisement and invitation to tender documentation. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price

adjustment on extension of the Initial Contract Period)) throughout any such extended period.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the clauses of the Contract.

F10 Counterparts

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.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 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.

G1.2 Subject to clause G1.3, the Contractor shall indemnify the Client and keep the Client 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 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.