



# Professional Services Terms and Conditions

*Procurement*

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These General Conditions of Contract may only be varied with the written agreement of the Authority. No Terms or Conditions put forward by the Contractor shall form any part of the Contract.

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## 1 DEFINITIONS AND INTERPRETATION

1.1 In this Contract unless the context requires otherwise the following definitions shall be used for the purposes of interpreting the Contract. Other definitions that are not of general application are stated in the clause where the definition first appears and shall apply only to that clause unless otherwise shown below:

"Authority" means the Secretary of State for Health.

"Authority's Representative" means the person authorised to act for Secretary of State for Health. This person's name is shown in Schedule 5 - Administrative Instructions.

"Commencement Date" means the date performance of the contract is to begin.

"Commercially Sensitive Information" means the information listed in Schedule 4 and is comprised of information:

- a) that constitutes a trade secret; and/or
- b) the disclosure of which would be likely to cause prejudice or would cause actual prejudice to the commercial interests of the Contractor or the Authority..

"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 Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

- a) was public knowledge at the time of disclosure (otherwise than by breach of clause 19 (Confidential Information));
- b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- d) is independently developed without access to the Confidential Information.

"Contract" means this written agreement between the Authority and the Contractor consisting of a Form of Agreement and Section Two General Conditions of Contract consisting of these clauses and any attached Schedules which shall be read as one document and which, in the event of any ambiguity or any contradiction between the clauses and the Schedules shall be resolved by giving precedence to the meaning of the clauses over the Schedules, and by giving precedence to Schedule 1 over Schedules 2-6. wherever

any conflict of meaning needs to be resolved. Schedule 6 shall have precedence over Schedule 1.

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

- a) the date of expiry set out in clause 2 (Initial Contract Period), or
- b) following an extension pursuant to clause 3 (Extension Beyond Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial 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 Schedule 2, 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 7 (Price Adjustment on Extension Beyond Initial Contract Period).

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

"Contractor" means the supplier with whom the Authority enters into the Contract.

"Contractor's Representative" means the individual authorised to act for the Contractor for the purposes of the Contract.

"Contractor's Staff" means all employees, staff, other workers, agents and consultants of the Contractor and of any sub-Contractors who are engaged in the provision of the Services from time to time.

“Crown” means the government of the United Kingdom (including the governments of Northern Ireland, Scotland, and Wales), including, but not limited to, government ministers, government departments, government agencies and particular bodies.

“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.

"Data Controller" shall have the meaning given in the Data Protection Act 1998.

"Data Processor" shall have the meaning given in the Data Protection Act 1998.

"Data Protection Legislation" shall mean the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful

Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the EU Cookie Directive 2009/136/EC and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Data Subject" shall have the meaning given in the Data Protection Act 1998.

"Default" means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff 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.

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

"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:

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

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

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or

body engaged in a similar type of undertaking under the same or similar circumstances.

“Information” has the meaning given under section 84 of the FOIA.

"Initial Contract Period" means the period for which the Contract is originally let.

“Intellectual Property Rights” includes but is not limited to patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, rights in software programmes, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, the Common Law including but not limited to any judgment of a relevant court of law, 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, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

“Monitoring Schedule” means Schedule 3 containing details of the monitoring arrangements.

"Month" means calendar month.

"Party" means a party to the Contract.

"Person" where the context allows, includes a corporation or an unincorporated association.

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

“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 Contract Price.

"Replacement Contractor" means any third party Contractor of Replacement Services appointed by the Authority from time to time.

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

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

“Services” means the services to be supplied as specified in the Specification.

"Service Transfer" means a transfer of the Services in whole or in part .

"Specification" means the description of the Services to be supplied under the Contract as set out in the Specification Schedule .

"Specification Schedule" means the Schedule containing details of the Specification.

"Transferring Employees" means those employees of the Contractor whose contract of employment will be transferred to the Authority or a Replacement Contractor pursuant to the TUPE Regulations on expiry or termination of this Contract.

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006

"Variation" has the meaning given to it in clause 4.1 (Variation)

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

"Working Day" means a day (other than a Saturday or Sunday or Bank Holiday or other public holiday) on which retail banks are open in London.

- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
  - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
  - 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2 INITIAL CONTRACT PERIOD**

- 2.1 The Contract shall start on the Commencement Date and finish on the dates set out in the Form of Agreement unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause 3.1 (extension beyond Initial Contract Period).

## **3 EXTENSION BEYOND INITIAL CONTRACT PERIOD**

- 3.1 Subject to clause 7 (Price adjustment on extension beyond the Initial Contract Period), the Authority may, by giving written notice to the Contractor not less than [ 3 ] Months prior to the last day of the Initial Contract Period, extend the Contract for a further period or further periods of up to [12 ] Months. The maximum period for all extensions beyond the Initial Contract Period shall not exceed 24 months. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause 7 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

## **4 VARIATION**

- 4.1 A Variation means a change to the Services or to the Terms and Conditions which does not amount to a material change to the Services or the Terms and Conditions. Such a change is hereinafter called a "Variation".
- 4.2 The Contract shall not be varied unless such variation is agreed in writing by the Parties and recorded, for example, on a Variation to Contract Form as set out at Appendix A to Schedule 5 - Administrative Instructions. All Variations shall be successively numbered with the first numbered 1, the second 2 and so on and so forth.
- 4.3 In the event of an emergency the Authority shall have the right to vary the Contract by the Authority's Representative giving oral instructions, which shall be confirmed by the issue of a written Variation to Contract Form – Appendix A to Schedule 5 - Administrative Instructions - within 7 days.
- 4.4 The Authority shall have the right to vary the Services at any time, subject to the Variation being related in nature to the Services being provided, and no such Variation shall vitiate the Contract.
- 4.5 The Contractor may request a Variation provided that:
- 4.5.1 the Contractor shall notify the Authority's Representative in writing of any additional or changed requirement which it considers should give rise to a Variation within seven days of such occurrence first becoming known to the Contractor;
  - 4.5.2 any proposed Variation shall be fully supported by a quotation as detailed in clause 4.6.

- 4.6 The Contractor, within 14 days of being requested by the Authority's Representative or where requesting a Variation pursuant to clause 4.5, shall submit a quotation to the Authority, such quotation to contain at least the following information:
- 4.6.1 a description of the work together with the reason for the proposed Variation;
  - 4.6.2 the price, where applicable;
  - 4.6.3 details of the impact, if any, on other aspects of the Contract.
- 4.7 The price for any Variation shall, unless otherwise agreed between the Parties, be calculated in the following order of precedence:
- 4.7.1 using the price or rates;
  - 4.7.2 prices pro-rata to the prices or rates;
  - 4.7.3 prices based on the prices or rates.
- 4.8 The Authority shall either approve or reject any Variation proposed by the Contractor.
- 4.9 In the event that the Contractor contends that a proposed Variation is outstanding or continues to be required, the Contractor shall update the information contained in his quotation for the proposed variation every Month and shall send the updated information to the Authority.
- 4.10 The Parties shall be able to vary these Terms and Conditions where there is no material change to the Services and Terms and Conditions.

## **5 CONTRACT PRICE**

- 5.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause 6 (Payment and VAT). The Contract Price shall remain firm for the Initial Contract Period.
- 5.2 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 supplied in accordance with the Contract.
- 5.3 The Contractor shall, if so requested by the Authority, furnish such information as may reasonably be required by the Authority as to the amount of Value Added Tax chargeable under the Contract and payable by the Authority to the Contractor in addition to the Contract Price. Any overpayment by the Authority to the Contractor shall be a sum of money recoverable from the Contractor under clause 16 (Recovery of Sums Due).

## **6 PAYMENT AND VAT**

- 6.1 The Authority shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted monthly in arrears.

- 6.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice. Where travel and subsistence is claimed all claims must comply with the provisions set out in the Pricing Schedule and must be accompanied by receipts to cover the total amount claimed.
- 6.3 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.
- 6.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 6.5 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 6.5 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.
- 6.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 45 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

## **7 PRICE ADJUSTMENT ON EXTENSION BEYOND INITIAL CONTRACT PERIOD**

- 7.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause 3 (extension beyond Initial Contract Period) the Authority shall, in the 6 month period prior to the expiry of the Initial Contract Period or as the case may be, in such other period as may be appropriate, enter into discussion in good faith with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.
- 7.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause 7.1, the Contract shall terminate at the end of the Initial Contract Period.
- 7.3 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.

- 7.4 Any increase in the Contract Price pursuant to clause 7.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index as may be specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period

## 8 CONTRACTOR'S STATUS

- 8.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor. Accordingly:
- 8.1.1 the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- 8.1.2 nothing in this Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Authority, his staff or agents.

## 9 CONTRACTOR'S STAFF

- 9.1 At all times, the Contractor shall ensure that:
- 9.1.1 each of the Contractor's Staff is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- 9.1.2 there is an adequate number of Contractor's Staff to provide the Services properly;
- 9.1.3 only those people who are authorised by the Contractor are involved in providing the Services; and
- 9.1.4 all of the Contractor's Staff comply with all of the Authority's policies, rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for conduct when at or outside the Authority's Premises.
- 9.2 The Authority may refuse to grant access to and remove any of the Contractor's Staff who do not comply with clause 9.1.4 or if they otherwise present a security threat or the Authority reasonably determines their presence to be undesirable.
- 9.3 The Contractor shall replace any of the Contractor's Staff who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Staff for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

- 9.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request. The Contractor shall ensure at all times that it has the right to provide these records under Data Protection Legislation.
- 9.5 The Contractor shall comply with the Authority's procedures for the vetting of personnel and as advised to the Contractor by the Authority in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Authority's procedures for the vetting of personnel.
- 9.6 If the Contractor fails to comply with clause 9.4 within one Month of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract immediately by giving notice in writing at any time after the end of that one Month period, such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 9.7 The decision of the Authority as to whether any person is to be refused access to the Premises and/or as to whether the Contractor has failed to comply with clause 9.4 shall be final and conclusive.

## **10 KEY PERSONNEL**

- 10.1 "Key Personnel" means those persons named in the Specification as being key personnel.
- 10.2 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 10.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other good reason.
- 10.4 The Authority shall not unreasonably withhold its agreement under clause 10.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **11 SUSTAINABILITY AND ENVIRONMENTAL REQUIREMENTS**

- 11.1 The Contractor, when working on the Premises, shall perform its obligations under the Contract so as to promote sustainability and to protect the environment.

## 12 THE SERVICES

- 12.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Authority may inspect and examine the manner in which the Contractor supplies the Services during normal business hours on reasonable notice.
- 12.2 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

## 13 USE OF THE AUTHORITY'S PREMISES

- 13.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract or as the Authority otherwise requests.
- 13.2 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or the Contractor's Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 13.3 Notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

## 14 PROPERTY

- 14.1 "Property" means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.
- 14.2 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority. The Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and

- shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 14.3 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- 14.4 Upon receipt of the Property the Contractor shall subject it to:
- 14.4.1 a reasonable visual inspection, and
  - 14.4.2 such additional inspection and testing as may be necessary and practicable in order to check that the Property is not defective or deficient for the purpose for which it has been provided.
- 14.5 Within a reasonable period the Authority shall replace or re-issue issued Property agreed to be defective.
- 14.6 The Contractor shall ensure the security of all the Property whilst in its possession.
- 14.7 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2 Working Days of any loss of, or damage to, the Property.

## **15 PROVISION AND REMOVAL OF EQUIPMENT**

- 15.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- 15.2 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage and loading and unloading of the Equipment and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.
- 15.3 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- 15.3.1 remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - 15.3.2 replace such item with a suitable substitute item of Equipment.
- 15.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 15.5 The Authority may at its option purchase any item of Equipment from the Contractor at any time, if the Authority considers that the item is likely to be required in the provision of the Services following the expiry

or termination of the Contract. The purchase price to be paid by the Authority shall be the fair market value.

**16 RECOVERY OF SUMS DUE**

16.1 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 agreement or contract with the Authority or with any other department or agent of the Crown.

**17 MANNER OF CARRYING OUT THE SERVICES**

17.1 The Contractor shall begin performing the Services on the Commencement Date and continue to perform them for the Contract Period. The Authority may by written notice require the Contractor to execute the Services in such order as the Authority may decide. In the absence of such notice the Contractor shall submit such detailed programmes of work and progress reports as the Authority may from time to time require.

17.2 The Contractor shall at all times comply with the Quality Standards, "Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. 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 and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

17.3 The Contractor shall ensure that all Contractor's 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.

17.4 The Contractor will be responsible for providing and delivering the Services in each and every respect with all relevant provisions of the Contract at all times and will ensure continuity of supply (at no extra cost to the Authority) in accordance with the Specification.

**18 CONTRACT MANAGEMENT AND MONITORING OF CONTRACTOR'S PERFORMANCE**

- 18.1 The Parties shall each appoint a contract manager to be known respectively as the Authority's Representative and the Contractor's Representative. The contract managers shall meet monthly or whenever the Authority may require to discuss the Contractor's performance and other matters connected to the delivery of the Contract.
- 18.2 The Contractor shall comply with any and all of the monitoring arrangements that the Authority shall require. This shall include, but shall not be limited to, providing such information as the Authority may require the Contractor to produce under this Contract.
- 18.3 At the Authority's request, the Contractor shall supply management information within 5 Working Days to the Authority.
- 18.4 The Contractor shall provide the Authority with such supporting documentation as the Authority may require to establish and verify the Contractor's levels of performance.
- 18.5 The Contractor shall meet with the Authority following the completion of the provision of the services to discuss:
  - 18.5.1 whether the Contractor believes the objectives of the contract were achieved;
  - 18.5.2 how far the intended benefits sought in the Authority's scope of work document and that had been forecast in the Contractor's tender response were achieved; and
  - 18.5.3 to identify any lessons learnt for future projects.
- 18.6 The Authority shall be able to share and use any information arising from such meetings referred to in clause 18.5.1 - 18.5.3 as it sees fit.
- 18.7 The Contractor shall comply, as the Authority shall require, 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.

**19 CONFIDENTIAL INFORMATION**

- 19.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
  - 19.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and
  - 19.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 19.2 Clause 19.1. shall not apply to the extent that:

- 19.2.1 Law requires such disclosure by the party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations;
  - 19.2.2 the information is contained in the Contract and is to be disclosed under the Coalition Government's Transparency policy;
  - 19.2.3 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 19.2.4 such information was obtained from a third party without obligation of confidentiality;
  - 19.2.5 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 19.2.6 it is independently developed without access to the other party's Confidential Information.
- 19.3 The Contractor may only disclose the Authority's Confidential Information to the Contractor's Staff directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor's Staff are aware of and shall comply with these obligations as to confidentiality.
- 19.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.
- 19.5 At the written request of the Authority, the Contractor shall procure that Contractor's Staff identified in the Authority's request shall sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 19.6 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- 19.6.1 to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
  - 19.6.2 to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
  - 19.6.3 for the purpose of the examination and certification of the Authority's accounts; or
  - 19.6.4 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.

- 19.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause 19.6 is made aware of the Authority's obligations of confidentiality.
- 19.8 Nothing in this clause 19 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 Intellectual Property Rights.

## 20 DATA PROTECTION

- 20.1 Both Parties shall comply with their respective obligations under the Data Protection Act 1998 in the performance of the Contract.
- 20.2 Where the Contractor acts as a Data Processor under the Data Protection Act 1998, for the Authority as a Data Controller, it shall act in accordance with the Authority's instructions. The Contractor shall take appropriate organisational, technical and security measures to protect personal data against unauthorised or unlawful data processing and shall guard against accidental loss or destruction.

## 21 AUTHORITY DATA

- 21.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data. 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:
- (i) supplied to the Contractor by or on behalf of the Authority; or
  - (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or
  - (iii) any Personal Data for which the Authority is the Data Controller
- 21.2 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 authorised in writing by the Authority.
- 21.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format the Authority specifies.
- 21.4 Upon receipt or creation by the Contractor of any Authority Data and during any collection, processing, storage and transmission by the Contractor of any Authority Data, the Contractor shall take all

- precautions necessary to preserve the integrity of the Authority Data and to prevent any corruption or loss of the Authority Data.
- 21.5 The Contractor shall perform secure back-ups of all Authority Data. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request.
- 21.6 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 Authority's security policy.
- 21.7 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:
- 21.7.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data and the Contractor shall do so as soon as practicable; and/or
  - 21.7.2 itself restore or procure the restoration of the Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- 21.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

## **22 PROTECTION OF PERSONAL DATA**

- 22.1 For the purposes of this clause 22, the terms "Process" and "Processing" shall have the meaning prescribed under the Data Protection Act 1998 ("DPA").
- 22.2 The Contractor shall:
- 22.2.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Contractor during the contract);
  - 22.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by law or any regulatory body;
  - 22.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- 22.2.4 use best endeavours to ensure the reliability of any Staff who have access to the Personal Data;
- 22.2.5 obtain prior written consent from the Authority before transfer of the Personal Data to any sub-contractors or agents or consultants for the provision of the Services;
- 22.2.6 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 22;
- 22.2.7 ensure that no Staff publish, disclose or divulge any of the Personal Data to any third party unless the Authority has granted its written consent;
- 22.2.8 notify the Authority within five Working Days if it receives:
  - 22.2.8.1 a request from a Data Subject for access to that person's Personal Data; or
  - 22.2.8.2 a complaint or request relating to the Authority's obligations under the Data Protection legislation;
- 22.2.9 provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
  - 22.2.9.1 providing the Authority with full details of the complaint or request;
  - 22.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Act 1998 and in accordance with the Authority's instructions;
  - 22.2.9.3 providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - 22.2.9.4 providing the Authority with any information requested by the Authority;
- 22.2.10 permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause 26 (Right of Audit), the Contractor's data Processing activities (and/or those of its agents, 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;
- 22.2.11 provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and

- 22.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:
  - 22.2.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
  - 22.2.12.2 any reasonable instructions notified to it by the Authority.
- 22.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations
- 22.4 The provision of this clause 22 shall apply during the Contract Period and indefinitely after its expiry

### **23 OFFICIAL SECRETS ACTS**

- 23.1 The Contractor shall comply with, and shall ensure its Staff comply with, the provisions of the Official Secrets Acts 1911 to 1989.
- 23.2 The Authority may terminate the Contract immediately by giving notice if the Contractor or its staff do not comply with clause 23.1.

### **24 INTELLECTUAL PROPERTY RIGHTS**

- 24.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials"):
  - 24.1.1 furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
  - 24.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Authority;
- 24.2 and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
  - 24.2.1 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 24.1.2. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect

immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

- 24.2.2 The Authority hereby grants a royalty free, non exclusive, licence (with no right to sub licence) for the duration of the Contract Period to the Contractor to use all Intellectual Property which may subsist in the IP Materials prepared in accordance with clause 24.1.2. This licence shall take effect on the date of the Contract.
- 24.3 The Contractor grants to the Authority a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.
- 24.4 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 24.5 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.
- 24.6 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- 24.6.1 items or materials based upon designs supplied by the Authority; or
- 24.6.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 24.7 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

- 24.8 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- 24.8.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 24.8.2 shall take due and proper account of the interests of the Authority; and
  - 24.8.3 shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 24.9 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 24.6.1 or 24.6.2.
- 24.10 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of its obligations under the Contract.
- 24.11 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- 24.11.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
  - 24.11.2 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,
  - 24.11.3 and in the event that the Contractor is unable to comply with clauses 24.8.1 or 24.8.2 within 20 Working Days of receipt of

the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

**25 PUBLICITY**

- 25.1 The Contractor shall not make any public statement relating to the existence or performance of the Contract without the Authority's prior approval in writing, which shall not be unreasonably withheld.
- 25.2 The Contractor and his sub-contractors shall not refer to the Authority in any advertisement without the Authority's written consent.
- 25.3 The provisions of this clause 25 shall apply during the continuance of this Contract and after its termination howsoever arising, without limitation of time

**26 RIGHT OF AUDIT**

- 26.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the Services, all expenditure reimbursed by the Authority and all payments made by the Authority.
- 26.2 The Contractor shall grant to the Authority, or its authorised agents, such access to those records as they may reasonably require in order to check the Contractor's compliance with the Contract.
- 26.3 For the purpose of:
  - 26.3.1 the examination and certification of the Authority's accounts; or
  - 26.3.2 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

the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3)(d) and (5) of the National Audit Act 1983.

**27 LIABILITY, INDEMNITY AND INSURANCE**

- 27.1 Neither Party excludes or limits liability to the other Party for:
  - 27.1.1 death or personal injury caused by its negligence; or
  - 27.1.2 Fraud; or
  - 27.1.3 fraudulent misrepresentation.

- 27.2 Subject to clauses 27.3 and 27.4, 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 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.
- 27.3 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.
- 27.4 Subject always to clause 27.1, the liability of either Party for Defaults shall be subject to the following financial limits:
- 27.4.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed one million pounds (£1,000,000); and
  - 27.4.2 the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by clauses 24.6 (Intellectual Property Rights) or 27.4.1) shall in no event exceed the greater of one hundred per cent (100%) of the Contract Price payable by the Authority to the Contractor in the year in which the liability arises.
- 27.5 Subject always to clause 27.1, in no event shall either Party be liable to the other for any:
- 27.5.1 loss of profits, loss of business, loss of revenue, loss of an opportunity, or loss of goodwill; and/or
  - 27.5.2 loss of savings (whether anticipated or otherwise); and/or
  - 27.5.3 indirect or consequential loss or damage.
- 27.6 The Contractor shall not be able to exclude liability to the Authority for additional operational, administrative costs and/or expenses or wasted expenditure which the Authority incurs resulting from the direct Default of the Contractor.
- 27.7 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

- 27.8 The Contractor shall hold employer's liability insurance in respect of Contractor's Staff in accordance with any legal requirement from time to time in force.
- 27.9 The Contractor shall give the Authority, on request, evidence to demonstrate that the appropriate insurance cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 27.10 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 27.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 27.2.

## **28 PROFESSIONAL INDEMNITY**

- 28.1 The Contractor shall, where appropriate, effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than one million pounds £1,000,000 for each individual claim or such higher limit as the Authority may reasonably require. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 28.2 Where the Contractor or its agents, professional consultants, and sub contractors do not hold professional indemnity insurance which the Authority believes is reasonably required, the Authority may allow a period of 20 Working Days for a policy of such insurance to be obtained. If such insurance is not taken out the Authority may terminate the Contract immediately by giving notice in writing.

## **29 CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

- 29.1 The Contractor shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this clause as "prohibited acts"):
- 29.1.1 offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other contract with the Crown, or for showing or not showing favour

- or disfavour to any person in relation to this or any other contract with the Crown;
- 29.1.2 enter into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by him or on his behalf, or to his knowledge, unless before the Contract is made particulars of any such commission and the terms and conditions of any such agreement for the payment of it have been disclosed in writing to the Authority.
- 29.2 If the Contractor, his employees, agents or any sub-contractor, or anyone acting on his or their behalf, does any of the prohibited acts or commits any offence as the case may be under the Prevention of Corruption Acts 1889 to 1916, or under the Bribery Act 2010 with or without the knowledge of the Contractor, in relation to this or any other contract with the Crown, the Authority shall be entitled:
- 29.2.1 to terminate the Contract immediately by giving notice in writing and recover from the Contractor the amount of any loss resulting from the termination;
- 29.2.2 to recover from the Contractor the amount or value of any such gift consideration or commission; and
- 29.2.3 to recover from the Contractor any other loss sustained in consequence of any breach of this clause, whether or not the Contract has been terminated.
- 29.3 In exercising its rights or remedies under this clause, the Authority shall:
- 29.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing the prohibited act;
- 29.3.2 give all due consideration, where appropriate, to action other than termination of the Contract, including (without limitation to):
- 29.3.2.1 requiring the Contractor to procure the termination of a sub-contract where the prohibited act is that of a sub-contractor;
- 29.3.2.2 requiring the Contractor to procure the dismissal of an employee (whether his own or that of a sub-contractor) where the prohibited act is that of such employee.

### **30 FRAUD**

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

- 30.2 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.
- 30.3 If the Contractor or Contractor's Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:
- 30.3.1 terminate the Contract immediately by giving notice in writing 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
  - 30.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause 30.

### **31 NON-SOLICITATION**

- 31.1 Except in respect of any transfer of staff pursuant to Schedule 7, neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Authority) in the receipt of the Services at any time during the Contract Period or for a further period of 12 months after the termination of this Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 31.2 If either the Contractor or the Authority commits any breach of clause 31.1 the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

### **32 CONFLICT OF INTEREST**

- 32.1 "Conflict of Interest" means a situation in which the Contractor or a member of Contractor's Staff has a private, personal or corporate interest which could appear to influence the objective exercise of his or her work towards the provision of the Services.
- 32.2 The Contractor shall ensure that there is no Conflict of Interest as to be likely to prejudice his independence and objectivity in performing the Contract, and undertakes that upon becoming aware of any such Conflict of Interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance), he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises, and shall furnish such further information as the Authority may reasonably require.

32.3 Where the Authority is of the opinion that the Conflict of Interest notified to it under clause 32.2 is capable of being avoided or removed, the Authority may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

32.3.1 if the Contractor fails to comply with the Authority's requirements in this respect; or

32.3.2 if, in the opinion of the Authority, compliance does not avoid or remove the conflict,

the Authority may terminate the Contract immediately by giving notice in writing and recover from the Contractor the amount of any loss from such termination

32.4 Where the Authority is of the opinion that the Conflict of Interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately by giving notice in writing for breach of a fundamental condition and without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such termination.

### **33 WARRANTIES AND REPRESENTATIONS**

33.1 The Contractor warrants and represents that:

33.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its 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;

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

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

33.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

33.1.5 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;

33.1.6 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;

33.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;

33.1.8 in the three 3 years prior to the date of the Contract:

33.1.8.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

33.1.8.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

33.1.9 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.

#### **34 DISCRIMINATION AND HUMAN RIGHTS**

34.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in sex, age, race, gender, religion or belief, disability, sexual orientation, gender reassignment, maternity, pregnancy, marriage, civil partnership or otherwise) in employment.

34.2 The Contractor shall take all reasonable steps (at his own expense) to secure the observance of clause 34.1 by all servants, employees or agents of the Contractor engaged in performance of this Contract and shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by clause 34.1.

34.3 The Contractor shall notify the Authority immediately of any investigation or proceedings against the Contractor under the Equality Act 2006 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

34.4 The Contractor shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Authority arising out of or in connection with any investigation conducted or any proceedings brought under the Equality Act 2006 due directly or indirectly to any act or omission by the Contractor, its agents, employees or sub-contractors.

34.5 The Contractor shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Contract.

- 34.6 The Contractor shall undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.
- 34.7 Subject to clause 27 (Liability, Indemnity and Insurance), the Contractor agrees to indemnify and keep indemnified the Authority against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under clause 34.

### **35 HEALTH AND SAFETY**

- 35.1 The Contractor shall take all measures necessary to 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, which may apply to Staff in the performance of the Services.
- 35.2 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Services.
- 35.3 The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Services.
- 35.4 The Contractor shall inform all Contractor's Staff engaged in the provision of Services at the Authority's Premises of all known health and safety hazards and shall instruct those Staff in connection with any necessary safety measures.
- 35.5 Whilst on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of persons working on those Premises.
- 35.6 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Services on the Authority's Premises where that incident causes any personal injury or any damage to property which could give rise to personal injury.
- 35.7 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.

### **36 TRANSFER 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 in writing. Approval of a sub-contractor shall be signified by the inclusion of the name in Schedule 8 - Approved Sub Contractors and Key Personnel. Names can only be added to this list by a covering Variation.
- 36.2 The Contractor shall be responsible for the acts and omissions of his sub-contractors as though they were his own.

- 36.3 On giving notice to the Contractor of not less than 30 days and subject to clause 36.6 the Authority shall be entitled to:
- 36.3.1 assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority, provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations pursuant to this Contract; or
  - 36.3.2 novate this Contract to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by any Contracting Authority.
- 36.4 Spare.
- 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 36.6, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.
- 36.6 If the Contract is novated to a body which is not a Contracting Authority pursuant to clause 36.3.2 or if a successor body which is not a Contracting Authority becomes the Authority pursuant to clause 36.5 (in the remainder of this clause both such bodies are referred to as the "transferee"):
- 36.6.1 the rights of termination of the Authority shall be available to the Contractor in clause 44 in the event of the insolvency of the transferee and clause 45 or Default of the transferee;
  - 36.6.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the Contractor;
  - 36.6.3 the following clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Contract had been amended by the Parties.
    - (i) In clause 16.1 – Recovery of Sums Due - the words "or with any department or agent of the Crown" shall be deleted;
    - (ii) In clause 26 – Right of Audit - ceases to be applicable in the event that the Contract is novated to a private sector body;
    - (iii) In clause 29.1. – Corrupt Gifts and Payments of Commission, the word "Crown" shall be replaced with the word "Authority".

- 36.7 The Authority shall be entitled to disclose to any transferee any Confidential Information of the Contractor, which relates to the performance of the Services by the Contractor. In such circumstances the Authority shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

### **37 SERVICE OF NOTICES AND COMMUNICATIONS**

- 37.1 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.
- 37.2 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 facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party as set out in Schedule 5 Administrative Instructions. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

### **38 SEVERABILITY**

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

### **39 REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

- 39.1 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. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 45 (Termination on Default) of the Contract.
- 39.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the

Authority may, without prejudice to its rights under clause 45 (Termination on Default), do any of the following:

- 39.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - 39.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - 39.2.3 terminate, in accordance with clause 45 (Termination on Default), the whole of the Contract.
- 39.3 Without prejudice to its right under clause 16 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 39.4 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 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 10 Working Days or such other period of time as the Authority may direct.
- 39.5 In the event that:
- 39.5.1 the Contractor fails to comply with clause 39.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
  - 39.5.2 the Contractor persistently fails to comply with clause 39.4 above,  
the Authority may terminate the Contract with immediate effect by giving notice in writing.

#### **40 REMEDIES CUMULATIVE**

- 40.1 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.

#### **41 WAIVER**

- 41.1 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.
- 41.2 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 37 (Service of Notices and Communications).
- 41.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

#### **42 ENTIRE AGREEMENT**

- 42.1 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.

#### **43 EMPLOYMENT EXIT AND HANDOVER PROVISIONS**

- 43.1 This Contract envisages that the identity of the provider of the Services or any part of the Services may change (whether as a result of termination of this Contract, or part of this Contract, or otherwise) resulting in a transfer of the Services in whole or in part. If a Service Transfer constitutes a relevant transfer, as defined under the TUPE Regulations and/or if the provisions of the Cabinet Office Statement of Practice in relation to Staff Transfers in the Public Sector apply (“Relevant Transfer”) then as the case may be either the Authority or the Replacement Contractor will inherit liabilities in respect of the Transferring Employees. The provisions in paragraphs 2.5 to 2.9(inclusive) of Schedule 7 shall apply to a Relevant Transfer.
- 43.2 Paragraph 2.10 of Schedule 7 shall apply to a Service Transfer which is not a Relevant Transfer.
- 43.3 Paragraphs 2.1 to 2.4 (inclusive) of Schedule 7 shall apply to all Service Transfers whether or not they are a Relevant Transfer.
- 43.4 Save as set out in clauses 45 (Termination on Default clause) and 46 (Break clause), where no Relevant Transfer occurs upon the termination of all (or part) of this Contract the Contractor will be liable in all respects for the continuing engagement and/or termination of any of the Contractor’s Staff who have been engaged in the Services (or any part thereof) and the Authority will bear no liability, financial or otherwise, in respect of the Contractor’s Staff.

- 43.5 The Contractor shall assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
- 43.6 The Contractor shall promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Contractor to conduct due diligence.
- 43.7 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 43.5 and 43.6 free of charge. Otherwise, the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to keep such costs to the minimum.

#### **44 TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL**

- 44.1 The Authority may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a company and in respect of the Contractor and:
- 44.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - 44.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - 44.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - 44.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 44.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - 44.1.6 it is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 44.1.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- 44.1.8 any event similar to those listed in 44.1.1 – 44.1.7 occurs under the law of any other jurisdiction.
- 44.2 Separate provisions on insolvency and change of control apply where the Contractor is
  - 44.2.1 a limited liability partnership; or
  - 44.2.2 a partnership under the Partnership Act 1890; or
  - 44.2.3 an individual.
- 44.3 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (“change of control”). The Authority may terminate the Contract by notice in writing with immediate effect within six months of:
  - 44.3.1 being notified that a change of control has occurred; or
  - 44.3.2 where no notification has been made, the date that the Authority becomes aware of the change of control, but shall not be permitted to terminate where the Authority agreed in writing prior to the change of control.

**45 TERMINATION ON DEFAULT**

- 45.1 The Authority may terminate the Contract, or terminate the provision of any part of the Services, immediately by giving notice in writing to the Contractor with immediate effect if the Contractor is in Default of any obligation under the Contract and:
  - 45.1.1 the Contractor has not remedied the Default to the satisfaction of the Authority within 30 days, or such other period as may be specified by the Authority, after service of written notice specifying the Default and requiring it to be remedied; or
  - 45.1.2 the Default is not capable of remedy; or
  - 45.1.3 the Default is a fundamental breach of the Contract.
- 45.2 If the Authority fails to pay the Contractor undisputed sums of money after 30 days of having received a valid invoice, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clauses 16.1 (Recovery of Sums Due).

**46 BREAK**

- 46.1 The Authority may terminate the Contract, or to terminate the provision of any part of the Services, at any time by giving 1 Month's notice in writing to the Contractor. The Authority may extend the period of notice

at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension of such notice.

**47 CONSEQUENCES OF EXPIRY OR TERMINATION**

47.1 Where the Authority terminates the Contract under clause 45 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 45 (Termination on Default), no further payments shall be made 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 arranging an alternative supplier of the Services.

47.2 Subject to clause 27 (Liability, Indemnity and Insurance), where the Authority terminates the Contract under clause 46 (Break), the Authority shall indemnify the Contractor against 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. Where the Contractor holds insurance, the Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 46 (Break).

47.3 The Authority shall not be liable under clause 47.2 to pay any sum which:

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

47.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or

47.3.3 is a claim by the Contractor for loss of profit, due to early termination of the Contract.

47.4 Save as otherwise expressly provided in the Contract:

47.4.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the

Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- 47.4.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 6 (Payment and VAT), 16 (Recovery of Sums Due), 29 (Corrupt Gifts and Payments of Commission), 22 (Protection of Personal Data), 23 (Official Secrets Acts), 19 (Confidential Information), 53 (Freedom of Information), 24 (Intellectual Property Rights), 26 (Right of Audit), 40 (Remedies Cumulative), 27 (Liability, Indemnity and Insurance), 28 (Professional Indemnity), 47 (Consequences of Expiry or Termination), 49 (Recovery upon Termination) and 56 (Law and Jurisdiction).

## **48 DISRUPTION**

- 48.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 48.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 48.3 In the event of industrial action by the Contractor's Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 48.4 If the Contractor's proposals referred to in clause 48.3 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.
- 48.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **49 RECOVERY UPON TERMINATION**

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

to the Contractor under clause 14 (Property). Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- 49.2 If the Contractor fails to comply with clause 49.1.1 and 49.1.2, the Authority may recover possession of the items mentioned in those clauses. The Contractor shall grant, and shall procure that any sub-contractor shall grant, a licence to the Authority for its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its sub-contractors where any such items may be held.

## **50 FORCE MAJEURE**

- 50.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by giving notice in writing.
- 50.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- 50.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 50.1 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.

## **51 SKILLS TRANSFER**

- 51.1 The Contractor shall arrange for the transfer of skills to be undertaken in the way described by the Authority in Schedule 1 – Specification.

## **52 DISPUTE RESOLUTION**

- 52.1 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 senior management of each Party.
- 52.2 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.

- 52.3 If the dispute cannot be resolved by the Parties pursuant to clause 52.1 the Parties shall refer it to mediation unless the Authority considers that the dispute is not suitable for resolution by mediation; or the Contractor does not agree to mediation.
- 52.4 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.
- 52.5 Subject to clause 52.2, the Parties shall not institute court proceedings until the procedures set out in clauses 52.1 and 52.3 have been completed.

**53 FREEDOM OF INFORMATION ACT**

- 53.1 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 at the Contractor's expense to enable the Authority to comply with these requirements.
- 53.2 The Contractor shall and shall procure that its sub-contractors shall:
  - 53.2.1 transfer to the Authority all requests for information that it receives under FOIA and the Environmental Information Regulations ("Requests for Information") that in its opinion are for the Authority consulting the Authority where it has any doubt whether the request is for the Authority as soon as practicable and in any event within two Working Days of receiving a request for information;
  - 53.2.2 provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days, or such other period as the Authority may specify, of the Authority's request; and
  - 53.2.3 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 53.3 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 Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- 53.4 In no event shall the Contractor respond directly to a request for information unless expressly authorised to do so by the Authority.
- 53.5 The Contractor acknowledges that (notwithstanding the provisions of clause 53) the Authority may, acting in accordance with the Department

of 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:

53.5.1 in certain circumstances without consulting the Contractor; or

53.5.2 following consultation with the Contractor and having taken their views into account;

provided always that where 53.5.1 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

53.6 The Contractor shall ensure that all Information is retained for disclosure in accordance with clause 26 (Right of Audit) and shall permit the Authority to inspect such records as the Authority requests from time to time.

53.7 The Contractor acknowledges that the Commercially Sensitive Information listed in Schedule 4 of the Contract is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause 53.5.

#### **54 TRANSPARENCY**

54.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and or the Environmental Information Regulations, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA and or the Environmental Information Regulations.

54.2 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

54.3 The Authority may, at its sole discretion, redact information from the Contract prior to publishing for one or more of the following reasons:

- a) national security;
- b) personal data;
- c) information protected by intellectual property law;
- d) third party confidential information;
- e) IT security; or
- f) prevention of fraud.

54.4 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

54.5 Notwithstanding any other term of the Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety, including from time to time any agreed changes to the Contract, to the general public

**55 THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

**56 LAW AND JURISDICTION**

56.1 This Contract is made under, governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England.

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SCHEDULE 1  
SPECIFICATION

*[insert description of the Services to be supplied]*

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SCHEDULE 1a  
TENDERER RESPONSE

*[insert the Tenderers response]*

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SCHEDULE 2  
PRICING SCHEDULE

*[insert pricing provisions as appropriate]*

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SCHEDULE 3  
Contract Monitoring

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SCHEDULE 4  
COMMERCIALLY SENSITIVE INFORMATION

*[insert commercially sensitive information as appropriate and if known the dates that the information will remain commercially sensitive]*

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SCHEDULE 5  
ADMINISTRATIVE INSTRUCTIONS

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SCHEDULE 6  
FORM OF TENDER

## SCHEDULE 7 EMPLOYMENT EXIT PROVISIONS

### 1 INTERPRETATION

The definitions and rules of interpretation in this paragraph apply in this Schedule 7.

**Contractor's Final Staff List:** the list of all the Contractor's Staff engaged in or wholly or mainly assigned to the provision of the Services (or the part thereof which will be subject to the Relevant Transfer) at the Service Transfer Date.

**Contractor's Provisional Staff List:** a list prepared and updated by the Contractor of all the Contractor's Staff engaged in, or wholly or mainly assigned to, the provision of the Services (or the part thereof which will be subject to the Relevant Transfer) at the date of preparation of the list.

**Employee Liability Information:** in respect of each of the Contractor's Staff engaged in, or wholly or mainly assigned to, the provision of the Services (or the relevant part thereof which will be subject to the Relevant Transfer):

- (a) the identity and age of the employee;
- (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- (c) information about any disciplinary action taken against the employee and any grievances raised by the employee within the previous two years;
- (d) information about any court or tribunal case, claim or action either brought by the employee against the Contractor within the previous two years; and
- (e) information about any collective agreement which will have effect after the Service Transfer Date in relation to the Employee pursuant to Regulation 5 of the TUPE Regulations.

**Service Transfer Date:** the date on which the Services (or any part of the Services), for whatever reason transfer from the Contractor to the Authority or any Replacement Contractor.

**Staffing Information:** in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Authority may reasonably request, including but not limited to, in an anonymised format:

- (f) their ages, dates of commencement of employment or engagement and gender;
- (g) details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- (h) the identity of their employer or relevant contracting party;
- (i) their relevant notice periods and any other terms relating to termination of employment or engagement, including

- any redundancy procedures and contractual redundancy payment schemes;
- (j) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- (k) details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and Authority car schemes applicable to them;
- (l) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (m) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work; and
- (n) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals).

## 2 EMPLOYMENT EXIT PROVISIONS

2.1 The Contractor agrees that, subject to compliance with the Data Protection Legislation:

2.1.1 within 20 days of the earliest of:

- (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer; or
- (ii) receipt of the giving of notice of early termination of this Contract or any part thereof; or
- (iii) the date which is 6 months before the expiry of the Initial Contract Period or any renewal term,

and, in any event, on receipt of a written request of the Authority at any time, it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Authority or, at the direction of the Authority, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List when reasonably requested by the Authority or, any Replacement Contractor;

2.1.2 at least 14 days prior to the Service Transfer Date, the Contractor shall prepare and provide to the Authority and/or, at the direction of the Authority, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify

- which of the Contractor's Staff named are Transferring Employees;
- 2.1.3 the Authority shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any Tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
  - 2.1.4 upon reasonable request by the Authority the Contractor shall provide the Authority or at the request of the Authority, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Authority reasonably requests.
- 2.2 The Contractor warrants that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information will be true and accurate in all material respects.
- 2.3 From the date of the earliest event referred to in paragraph 2.1.1 of this Schedule 7, the Contractor agrees that it shall not without the prior written consent of the Authority, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 2.3.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - 2.3.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
  - 2.3.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's Staff save for fulfilling assignments and projects previously scheduled and agreed with the Authority;
  - 2.3.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's Provisional Staff List; and

- 2.3.5 replace any of the Contractor's Staff listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.

The Contractor will promptly notify the Authority or, at the direction of the Authority, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.

- 2.4 At least 14 days before the expected Service Transfer Date, the Contractor shall provide to the Authority or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Legislation) on the Contractor's Final Staff List who is a Transferring Employee, their:

- 2.4.1 pay slip data for the most recent month;
- 2.4.2 cumulative pay for tax and pension purposes;
- 2.4.3 cumulative tax paid;
- 2.4.4 tax code;
- 2.4.5 voluntary deductions from pay; and
- 2.4.6 bank or building society account details for payroll purposes.

- 2.5 In connection with a Relevant Transfer, the parties agree that:

- 2.5.1 the Contractor shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date.

- 2.5.2 The Contractor shall indemnify the Authority and any Replacement Contractor in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Authority or any Replacement Contractor including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- 2.5.2.1 the Contractor's failure to perform and discharge any such obligation;

- 2.5.2.2 any act or omission by the Contractor on or before the Service Transfer Date or any other

- matter, event or circumstance occurring before the Service Transfer Date;
- 2.5.2.3 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the Service Transfer Date;
  - 2.5.2.4 any claim arising out of the provision of, or proposal by the Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or before the Service Transfer Date;
  - 2.5.2.5 any claim made by or in respect of any person employed or formerly employed by the Contractor other than a Transferring Employee for which it is alleged the Authority or any Replacement Contractor may be liable by virtue of this Contract and/or the TUPE Regulations;
  - 2.5.2.6 any act or omission of the Contractor in relation to its obligations under Regulation 11 of the TUPE Regulations, or in respect of an award of compensation under Regulation 12 of the TUPE Regulations except to the extent that the liability arises from the Authority or Replacement Contractor's failure to comply with Regulation 11 of the TUPE Regulations; and
  - 2.5.2.7 any statement communicated to or action done by the Contractor or in respect of, any Transferring Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Authority in writing.
- 2.6 The Contractor shall indemnify the Authority and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other Contractor's Staff who is not a Transferring Employee during any period whether before, on or after the Service Transfer Date.

- 2.7 The Authority shall indemnify the Contractor against all claims arising from the Authority's failure to perform and discharge any obligation and against any Claims in respect of any Transferring Employees arising from or as a result of:
- 2.7.1 any act or omission by the Authority relating to a Transferring Employee occurring on or after the Service Transfer Date; and
  - 2.7.2 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.
  - 2.7.3 any claim arising out of the provision of, or proposal by the Authority to offer any change to any benefit, term or condition or working condition of any Transferring Employee arising on or after the Service Transfer Date; and
  - 2.7.4 any act or omission of the Authority in relation to its obligations under Regulation 11 of the TUPE Regulations.
- 2.8 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any Relevant Transfer will be fulfilled.
- 2.9 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to paragraphs 2.4 to 2.8 (inclusive) to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.10 If, in the event of a Service Transfer to which the TUPE Regulations do not apply the following provisions shall apply:
- 2.10.1 the Authority or the Replacement Contractor can, at its discretion, make an offer in writing to any of the employees listed on the Contractor's Provisional Staff List or any Contractor's Staff assigned to the Services, to employ that employee under a new contract of employment to take effect at the earliest reasonable opportunity;

- 2.10.2 when the offer has been made by the Authority or Replacement Contractor and accepted by any employee or worker, the Contractor shall permit the employee or worker to leave his or her employment, as soon as practicable depending on the business needs of the Contractor which could be without the employee or worker having worked his full notice period, if the employee so requests and where operational obligations allow;
- 2.10.3 if the employee does not accept an offer of employment made by the Authority or Replacement Contractor, the employee shall remain employed by the Contractor and all claims in relation to the employee shall remain with the Contractor; and
- 2.10.4 if the Authority or the Replacement Contractor does not make an offer to any employee on the Contractor's Provisional Staff List or any Contractor's Staff, then that employee and all claims in relation to that employee remains with the Contractor.