

CALL-OFF TERMS AND CONDITIONS
NATIONAL HIGHWAYS
FLEET MAINTENANCE AND MANAGEMENT CONTRACT 2024

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1. INTERPRETATION

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

"Agreement"	means the Agreement for Fleet Management and Maintenance Contract 2024 between National Highways and the Supplier dated 01/04/2024
"Approval" and "Approved"	means the written consent of the Customer
"Audit"	means an audit carried out pursuant to Clause 35
"Auditor"	means the National Audit Office or an auditor appointed by the National Audit Office or the Customer as the context requires, or such other auditor as may have been appointed in relation to the Customer
"Call-Off"	means the issue of an Invitation to Tender in relation to any contract to be awarded under the Dynamic Purchasing System
"Commencement Date"	means the date set out in the Order Form
"Commercially Sensitive Information"	means the Confidential Information listed in the Order Form comprised of information: - (a) which is provided by the Supplier and designated as commercially sensitive information by the Customer for the period set out in that Order Form
"Confidential Information"	means: - (a) 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 (b) the Commercially Sensitive Information, and does not include any information: - (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 32). (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party. (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information
"Contract"	means the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses save

	that for the purposes of Clause 6.1 only, reference to Contract shall not include the Order Form
"Contract Period"	means the period from the Commencement Date to: - (a) the date of expiry set out in Clause 2; or (b) following an extension pursuant to Clause 3 the date of expiry of the extended period; or (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract
"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract
"Contracting Authority"	means YPO and any Contracting Authority for the purposes of the Public Contracts Regulations 2015 other than the Customer(s)
"Contractual Commitments"	means the measurable commitments made by the Supplier as part of its tender in respect of how it is to perform its obligations under the contract.
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
"Customer(s)"	means the Contracting Authority(s) identified in the Order Form
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data breach.
"Data Processor"	has the meaning given to it in the Data Protection Legislation, as amended from time to time.
"Data Protection Legislation" or "DPA"	the UK General Data Protection Regulations, the Data Protection Act 2018 as amended from time to time 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 or relevant Government department in relation to such Law.
"Data Subject"	has the meaning given to it in the Data Protection Legislation, as amended from time to time.

"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access their Personal Data;
"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 the 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
"Deliverables"	means those deliverables listed in the Order Form
"Dynamic Purchasing System"	means a completely electronic system of limited duration which is (a) established by a contracting authority to purchase commonly used Goods, Services and/or Works; and (b) open throughout its duration for the admission of economic operators which (i) satisfy the selection criteria specified by the contracting authority; and (ii) submit an Request to Participate to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
"Equipment"	means the Supplier's equipment, plant, materials, and such other items supplied and used by the Supplier in the performance of its obligations under the Contract
"FOIA"	means the Freedom of Information Act 2000 and any subordinate Law 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 Law
"Force Majeure"	<p>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: -</p> <ul style="list-style-type: none"> (a) any industrial action occurring within the Supplier's or any sub-contractor's organisation. (b) the failure by any sub-contractor to perform its obligations under any sub-contract. (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
"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 YPO or a Contracting Authority
"Good Industry Practice"	means standards, codes, 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
"Goods and/or Services"	means the Goods and/or Services to be supplied as specified in the Order Form
"Improvement Notice"	means a notice issued on the Supplier to improve Minor Defaults of the Agreement, the Contract or the Order Form instructing the Supplier to improve or remedy any Minor Defaults in the provision of the Goods, Services and or Works
"Independent Testing Engineer"	means an independent engineer appointed by either YPO, the Customer or the Supplier to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer's decision shall be final as to whether or not the Goods have been installed to the required standard/specification.
"Independent Testing House/Organisation"	means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Contract. It is agreed that the Independent Testing House/Organisation's decision shall be final as to whether or not the Goods meet the required standard/specification.
"Information"	has the meaning given under section 84 of the FOIA
"Initial Contract Period"	means the period from the Commencement Date to the date of expiry set out in Clause 2, or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Key Personnel"	means any individual identified in the Order Form as being key personnel
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply
"Material Default"	means any breach of Clauses 5 (Provision of Management Information), 10 (Conflicts of Interest), 11 (Prevention of Fraud),

	15 (Provision of Goods and/or Services), 16 (Manner of Providing Goods and/or Services) 24 (Bribery and Corruption), 25 (Discrimination), 29 (Data Protection), 30 (Freedom of Information), 32 (Confidential Information), 35 (Records and Audit Access), 36 (Transfer and Sub-contracting), 47 (Warranties and Representations)
"Minor Default"	means any breach of the Agreement, the Contract or the Order Form which may be either a partial breach or a breach not so severe to warrant a Material Default;
"Month"	means calendar month
"Order"	means the order submitted by the Customer to the Supplier in accordance with the Call-Off
"Order Form"	means the order submitted to the Supplier by the Customer in accordance with the Contract which sets out the description of the Goods and/or Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables, and the Quality Standards
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company, and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term "Holding Company" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Supplier or the Customer
"Personal Data"	has the meaning given to it in the Data Protection Legislation as amended from time to time;
"Premises"	means the location where the Goods and/or Services are to be provided, as set out in the Order Form
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted; accordingly,
"Prohibited Act"	<p>means any of the following acts, as described in the Bribery Act 2010:</p> <ul style="list-style-type: none"> (a) to directly or indirectly offer, promise or give any person working for or engaged by YPO or another Contracting Authority a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

	<p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract.</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act.</p> <p>(ii) under Law creating offences concerning fraudulent acts.</p> <p>(iii) at common law concerning fraudulent acts relating to this Contract; or</p> <p>defrauding, attempting to defraud or conspiring to defraud YPO or any other Contracting Authority</p>
"Property"	means the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract
"Provider"	Shall have the same meaning as Supplier
"Supplier"	means the person, firm, or company with whom the Customer enters into the Contract as identified in the Order Form
"Supplier's Terms and Conditions"	means the Terms and Conditions of the Supplier contained at Appendix 6 supplementing the clauses of this Contract
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the Food Standards Agency, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer
"Replacement Supplier"	means any third-party Supplier appointed by the Customer, to provide any Goods and/or Services which are substantially similar to any of the Goods and/or Services, and which the Customer receives in substitution for any of the Goods and/or Services following the expiry, termination or partial termination of the Contract
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)

"Staff"	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents and sub-contractors used in the performance of its obligations under the Contract
Staff Vetting Procedures	means the Customer's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989;
"Sub-Processor"	means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Contract;
"Tender"	means the document(s) submitted by the Supplier to the Customer in response to the Customer's Invitation to Tender to provide the Customer with the Goods and/or Services;
"Variation"	has the meaning given to it in Clause 38
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales

The interpretation and construction of the Contract shall be subject to the following provisions: -

- 1.2 Words importing the singular meaning include where the context so admits the plural meaning and vice versa.
- 1.3 Words importing the masculine include the feminine and the neuter.
- 1.4 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".
- 1.5 References 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.
- 1.6 References 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.
- 1.7 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.8 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.9 Reference to any employees of the Supplier shall not be deemed to include the Supplier's agents and sub-contractors unless expressly stated; and
- 1.10 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

2. INTITAL CONTRACT PERIOD

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3.

3. EXTENSION OF INITIAL CONTRACT PERIOD

- 3.1 Subject to satisfactory performance of its obligations under the Contract by the Supplier during the Initial Contract Period, the Customer may, by giving written notice to the Supplier not less than 180 days prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

4. SUPPLIER STATUS

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

5. PROVISION OF MANAGEMENT INFORMATION

- 5.1 The Supplier shall provide Management Information reports to the Customer in accordance with 'Fleet Maintenance and Management 2024 Specification' section 36.1 - 36.2.

6. CUSTOMER OBLIGATIONS

- 6.1 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.
- 6.2 The Customer shall select a Supplier for Orders in accordance with the Award Criteria outlined in the Invitation to Tender.
- 6.3 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.4 The Customer shall respond to any reasonable request for information from the Supplier.
- 6.5 The Customer will assign an authorised representative who will liaise with the Supplier's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 6.6 The Customer shall ensure that all Orders are awarded in accordance with the provisions of this Contract and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).

7. ENTIRE AGREEMENT

- 7.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels, or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledge and agree that by entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty, or understanding shall be for breach of contract under the terms of the Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
- 7.5 Law and/or code of practice.
- 7.5.1 the Order Form.
- 7.5.2 the clauses of the Contract; and
- 7.5.3 any other document referred to in the clauses of the Contract.
- 7.6 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.
- 7.7 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

8. NOTICES

- 8.1 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 sending the communication.
- 8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 8.3 For the purposes of Clause 8.2, the address of each Party shall be: -
- 8.3.1 For the Customer: the address set out in the Order Form.
- 8.3.2 For the Supplier: the address set out in the Order Form.
- 8.4 Either Party may change its address for service by serving a notice in accordance with this clause.

9. MISTAKES IN INFORMATION

- 9.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the provision of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

10. CONFLICTS OF INTEREST

- 10.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 10.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
- 10.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 10.4 This Clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

11. PREVENTION OF FRAUD

- 11.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 11.2 The Supplier shall notify the Customer and YPO immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.
- 11.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Customer, the Customer may: -
- 11.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the provision of the Goods and/or Services (if applicable) and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
- 11.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this Clause.

12. PROVISION OF GOODS

- 12.1 Notwithstanding the other terms of this Agreement, the Customer acknowledges that the Supplier is not a manufacturer or distributor of the Goods. The Supplier shall pass on to the Customer the benefit of any warranty, indemnity, remedy, or other commitment that the Supplier has received from the manufacturer or distributor in relation to the description, specification and/ or quality of the Goods ("**Goods Warranty**"). The Customer acknowledges that the Supplier's liability to the Customer in relation to the Goods shall not exceed that which the Supplier is able to recover on the Customer's behalf under the Goods Warranty.
- 12.2 The Supplier shall supply and, where relevant, install the Goods in accordance with the specification in the Agreement, the Invitation to Tender, the Order Form and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979.
- 12.3 If requested by the Customer the Supplier shall provide the Customer with samples of Goods for evaluation and approval, at the Supplier's cost and expense.
- 12.4 If requested by the Customer, the Supplier shall submit products to an Independent Testing House/Organisation for testing at the Supplier's cost and expense. Where the Goods are too large to be sent to an Independent Testing House/Organisation or need to be tested in situ then the Supplier shall arrange for an Independent Testing Engineer to test the Goods and/or the installation of the Goods at their own cost and expense. Such requests for Testing should be acted upon immediately.
- 12.5 The Supplier shall ensure that the Goods are fully compatible with any of the Customer's equipment, to the extent specified in the Order Form.
- 12.6 The Supplier acknowledges that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under the Contract.
- 12.7 The Supplier, its agents, sub-contractors, and suppliers shall employ sufficient staff to ensure that the Goods are provided at all times and in accordance with the Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to provide the Goods in accordance with the Contract during staff holidays or absence through sickness or any other cause.
- 12.8 The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Order Form.
- 12.9 Unless otherwise stated in the Order Form, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 12.10 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 12.11 All deliveries shall be accompanied wherever possible by the appropriate paperwork including but not limited to any certificates authorised by an Independent Testing House/Organisation, evidencing that all Goods are manufactured to an agreed Specification/Standard, weighbridge produced delivery notes or equivalent automated delivery notes. If deliveries are made with incomplete paperwork the Customer has the right to reject the Goods in accordance with Clause 12.16.
- 12.12 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time specified in the Order Form, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 12.13 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered with the exception of any tolerances mutually agreed in advance between the Customer and the Supplier. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may

dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Customer.

- 12.14 The Customer shall be under no obligation to accept any part delivery of Goods unless such shortfall has been mutually agreed in advance between the Customer and the Supplier. If the Supplier delivers a shortfall, they must ensure that they arrange in advance with the Customer the date, time and balance of Goods to be provided to ensure the Customer has sufficient capacity/resource to accept this in line with any other anticipated deliveries.
- 12.15 The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order Form unless this has been mutually agreed in advance between the Customer and the Supplier.
- 12.16 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments unless agreed in accordance with Clause 12.13 above. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer.
- 12.17 The Supplier will need to ensure that sufficient "waiting time" is included in their delivery schedule at such levels as may be agreed between the Supplier and the Customer as indicated in the Order Form.
- 12.18 The Supplier must ensure that adequate vehicles are used to transport the required volume of Goods ordered by the Customer. The Customer will not be liable for additional transport costs incurred as a result of the use of inadequately sized vehicles unless this has been mutually agreed in advance between the Customer and the Supplier. Any charges in relation to part loads must be agreed with the Customer prior to delivery.
- 12.19 Risk in the Goods shall without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery. Ownership of the Goods shall without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of payment.
- 12.20 Where specified by the Customer on dispatch of any consignment of the Goods, the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume and such other information as requested in clause 12.10 above or specified in the Order Form. Where the Goods, having been placed in transit, fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier free of charge to deliver substitute Goods within the timescales specified by the Customer or terminate the Contract.
- 12.21 The Customer or its authorised representatives may inspect or test the Goods either when complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Customer of any rights or remedies in respect of the Goods and the Customer reserves the right to reject the Goods in accordance with Clause 12.20 below.
- 12.22 If the Customer becomes aware that Goods have been provided which fail to conform to the approved sample, do not have valid certification, or fail to meet the Contract requirements they may arrange for such Goods to be tested in accordance with clause 12.20 above and other clauses within this Contract. Should the testing show that the Goods provided did not meet the required specification the Customer may terminate the Contract in accordance with Clause 48 and/or seek reimbursement in accordance with Clause 35.7.
- 12.23 The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
- 12.24 The Supplier hereby guarantees the Goods for the period from the date of delivery to the date of either (i) twelve (12) Months thereafter; or (ii) such other guarantee period or warranty period notified by the Supplier in their response to the Invitation to Tender against faulty materials or workmanship. If the Customer shall within such guarantee period or within twenty five (25)

Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by reinforcement or replacement as the Customer shall elect) free of charge.

- 12.25 Any Goods rejected or returned by the Customer as described in Clause 12.22 shall be returned to the Supplier at the Supplier's risk and expense.

13. PROVISION OF GOODS

- 13.1 The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions, any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

14. TRAINING

- 14.1 Where indicated in the Order Form, the Contract Price shall include the cost of instruction of the Customer's personnel in the use and maintenance of Goods and such instruction shall be in accordance with the requirements specified in the Order Form.

15. PROVISION OF THE GOODS AND/OR SERVICES

- 15.1 The Supplier shall provide the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract and the Order Form. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.
- 15.2 If the Customer inform the Supplier in writing that the Customer reasonably believes that any part of the Goods and/or Services do 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 on the part of the Customer, the Supplier shall at its own expense re-schedule and provide or carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 15.3 The Supplier acknowledges that in entering into this Contract no form of exclusivity has been granted by the Customer and that the Customer is at all times entitled to enter into other contracts and arrangements with other Suppliers for the provision of any or all Goods and/or Services which are the same as or similar to the Goods and/or Services provided under the terms of the Contract.

16. MANNER OF PROVIDING GOODS AND/OR SERVICES

- 16.1 The Supplier shall at all times comply with the relevant Law, Codes of Conduct and regulations governing the provision of Goods and/or Services.
- 16.2 Where applicable the Supplier shall maintain and shall ensure that any agents, staff or sub-contractors utilised in the provision of the Goods and/or Services maintain accreditation and certification with the relevant authorisation body. To the extent that the standard of Goods and/or Services has not been specified in the Contract the Supplier shall agree the relevant standard of the Goods and/or Services with the Customer prior to the supply of the Goods and provision of the Services, in any event the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 16.3 The Supplier shall ensure that all Staff providing the Goods and/or Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper supply of the Goods and provision of the Services.
- 16.4 If the Supplier subcontracts the supply of goods or services with the Specification, it is still responsible for meeting the obligations of this Contract as if it had not been subcontracted.

17. KEY PERSONNEL

- 17.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any sub-contractor shall obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one (1) Month's written notice must be provided by the Supplier of its intention to replace Key Personnel.
- 17.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier, their agents or sub-contractors. The Customer may interview the candidates for Key Personnel positions before they are appointed.
- 17.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Goods and/or Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 17.4 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall in no circumstances be liable to the Supplier or to their employee in respect of any liability, loss or damage occasioned by such removal and the Supplier shall provide an indemnity for any claim made by such employee. The Customer will also not be liable for the cost of replacing any Key Personnel.

18. SUPPLIER STAFF

- 18.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises: -
 - 18.1.1 any member of Staff; or
 - 18.1.2 any person employed or engaged by any member of the Staff.whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 18.2 At the Customer's written request, the Supplier 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 Customer may reasonably request.
- 18.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations, and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 18.4 If the Supplier fails to comply with Clause 18.2 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 18.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 18 shall be final and conclusive.
- 18.6 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that

is equivalent to and no less strict than the Staff Vetting Procedure.

19. OFFERS OF EMPLOYMENT

- 19.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Goods and/or Services without that other Party's prior written consent.

20. CONTRACT PERFORMANCE

- 20.1 In supplying the Goods and/or Services the Supplier shall perform its obligations under the Contract:
- 20.1.1 with appropriately experienced, accredited, certified, qualified, and trained Staff.
 - 20.1.2 in a timely manner, and in compliance with applicable Laws, including but not limited to Section 2 of the Supply of Goods and Services Act 1982.
- 20.2 The Supplier shall ensure that:
- 20.2.1 the Goods and/or Services conform in all respects with the specifications set out, in the Invitation to Tender, the Order Form and where applicable the Contract or any sample Approved by the Customer.
 - 20.2.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form.
 - 20.2.3 the Goods and/or Services conform in all respects with all applicable Laws; and
 - 20.2.4 the Goods and/or Services comply with the relevant Law, Codes of Conduct and regulations governing the provision of Goods and/or Services.
- 20.3 The Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the Good Industry Practice and (without limiting the generality of this Clause 20.3) in accordance with its own established internal procedures.

21. PAYMENT AND CONTRACT PRICE

- 21.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 21. The parties acknowledge that the Contract Price is subject to any changes made in accordance with Clause 58 (Rate Changes).
- 21.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 21.3 Unless otherwise expressly stated in the Agreement, the Contract or the Order Form, no claim by the Supplier will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Agreement, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Customer or any other appropriate means.
- 21.4 The Customer shall pay all sums due to the Supplier if properly due and applicable in cleared funds within thirty (30) days of receipt of a valid invoice submitted in accordance with the payment profile set out in the Order Form.
- 21.5 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and/or Services provided and that it is supported by any other

documentation reasonably required by the Customer to substantiate the invoice.

21.6 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice, as defined by the sub-contract requirements.

21.7 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.

21.8 The Supplier shall indemnify YPO and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause

21.8 shall be paid by the Supplier to the YPO and/or the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable.

21.9 The Supplier shall not suspend the provision of the Goods and/or Services unless the Supplier is entitled to terminate the Contract under Clause 48 for failure to pay undisputed sums of money.

22. SET OFF

22.1 The Supplier shall not be entitled to retain or set-off any amount due to YPO or the Customer by it but the Customer may retain or set-off any amount owed to it by the Supplier under this Contract which has fallen due and payable against any amount due to the Supplier under this Contract.

22.2 If the payment or deduction of any amount referred to in Clause 22.1 is disputed, then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

23. RECOVERY OF SUMS DUE

23.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract or under any other agreement or contract with the Customer.

23.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

23.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such bank or building society account as the recipient Party may from time to time direct.

23.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may be from time to time direct.

24. BRIBERY AND CORRUPTION

24.1 The Supplier:

24.1.1 has not, will not, and will procure that its staff (and any agents or sub-contractors) have not committed and will not commit a Prohibited Act in connection with this Contract:

- 24.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive; and
- 24.1.3 represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by YPO or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this contract, or any other contract with YPO or the Customer, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Customer prior to the execution of this contract.
- 24.2 The Supplier will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Supplier arising as a result.
- 24.3 The Supplier will provide to the Customer certification (if requested to do so) in writing and signed by an officer of the Supplier, of the compliance with this Clause 24 by:
- 24.3.1 the Supplier;
- 24.3.2 all persons associated with the Supplier; and
- 24.3.3 any other persons who are supplying Goods and/or Services in connection with this Contract.
- 24.4 Certification will be provided to the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Contract Period. The Supplier will provide any evidence of compliance as may reasonably be requested by the Customer.
- 24.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the Supplier where appropriate.
- 24.6 Should the Supplier become aware of or suspect any breach of Clause 24 it will notify the Customer immediately.
- 24.7 Following notification under Clause 24.3, the Supplier will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 24.4 shall survive the expiry or termination of this Contract for a further period of six (6) Years.
- 24.8 The Customer may recover in full from the Supplier and the Supplier shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 24, whether or not the Contract has been terminated.
- 24.9 The Customer may terminate this Contract and any Order immediately upon serving written notice if the Supplier, its Staff or any sub-contractor's staff whether or not acting with the Supplier's knowledge, breaches Clause 24.1. Before exercising its right of termination under this Clause 24.6 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 24.9.1 the Supplier or a senior officer of the Supplier; or
- 24.9.2 a member of Staff, agents or sub-contractors who are not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier or sub-contractor) means and shall be construed as acting.
- (a) with the authority of.

- (b) with the actual knowledge; of any one or more of the Supplier's, agents, or sub- contractor's (as applicable) directors or partners; or
- (c) in circumstances where any one or more of the directors (or partners) of the Supplier, their agent or sub-contractor (as applicable) ought reasonably to have had knowledge.

24.10 Any notice of termination by the Customer under Clause 24.6 must specify:

24.10.1 nature of the Prohibited Act.

24.10.2 the identity of the person whom the Customer believes has committed the Prohibited Act;

24.10.3 the date on which this Contract will terminate.

24.11 In the event of any breach of Clause 24.1 the Customer is entitled to recover from the Supplier the value of any gift, consideration, or commission.

24.12 Notwithstanding Clause 57 any dispute relating to:

24.12.1 the interpretation of this Clause 24; or

24.12.2 the amount or value of any gift, consideration, commission, or other financial advantage

24.12.3 shall be determined by the Customer and its decision shall be final and conclusive.

24.13 Termination under Clause 24 will:

24.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract.

24.13.2 prohibit the Supplier from claiming any damages for early termination; and

24.13.3 allow the Customer to recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; or

24.13.4 entitle the Customer to be indemnified by the Supplier for any additional costs, losses, damages, or expenses incurred in re-procuring and obtaining the Goods and/or Services from another party.

25. DISCRIMINATION

25.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Lae, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

25.2 The Supplier shall take all reasonable steps to secure the observance of Clause 25.1 by all servants, employees or agents of the Supplier and all Suppliers and sub-contractors employed in the execution of the Contract.

26. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999

26.1 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without prior written agreements of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

27. ENVIRONMENTAL REQUIREMENTS

27.1 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

28. HEALTH AND SAFETY

- 28.1 The Supplier shall promptly notify YPO and the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises, and which may affect the Supplier in the performance of its obligations under the Contract.
- 28.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 28.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations, and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the provision of the Goods and/or Services under the Contract.
- 28.5 The Supplier 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 Customer on request.

29. DATA PROTECTION

- 29.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. Clause 29 is in addition to, and does not relieve, remove, or replace a Party's obligations or rights under the Data Protection Legislation.
- 29.2 Where Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Customer is the Data Controller (the "**Controller**"), and the Supplier is the Data Processor (the "**Processor**").
- 29.3 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract: -
 - 29.3.1 process the Personal Data only in accordance with the Controller's written instructions which are set out in Appendix 3 unless the Processor is required by Law to otherwise Process the Personal Data. Where the Processor relies on Law as the basis for Processing Personal Data, the Processor shall promptly notify the Controller prior to Processing, unless the Law prohibits the Processor from so notifying the Controller.
 - 29.3.2 ensure that at all times it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of the Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction, or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 29.3.3 ensure that all Processor staff who have access to and/or Process Personal Data are obliged to keep the Personal Data confidential.
 - 29.3.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Controller (save where such disclosure or transfer of Personal Data is specifically authorised under this Contract).

29.3.5 not transfer any Personal Data outside of the United Kingdom or the European Economic Area unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer.
- (b) the Data Subject has enforceable rights and effective legal remedies.
- (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Processor complies with reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data.

29.3.6 assist the Controller in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators.

29.3.7 take all reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that they:

- (a) are aware of and comply with the Processor's duties under the Contract.
- (b) are subject to appropriate confidentiality undertakings with the Processor and/or Sub-Processor.
- (c) are informed of the confidential nature of the Personal Data and do not publish, disclose, or divulge any of the Personal Data to any third-party unless directed in writing to do so by the Controller, or as otherwise permitted by this Contract; and
- (d) have undergone adequate training in the use, care, protection, and handling of Personal Data.

29.3.8 notify the Controller without undue delay if it becomes aware of a Data Loss Event or if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block, or erase any Personal Data.
- (c) receives any other request, complaint, or communication relating to either Party's obligations under the Data Protection Legislation.
- (d) receives any communication from the Information Commissioner's Office or any other regulatory authority in connection with Personal Data; and/or
- (e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law.

29.3.9 taking into account the nature of the Processing, provide the Controller with full cooperation and assistance (within the timescales reasonably required by them) in relation to either Party's obligations under the Data Protection Legislation and any complaint, communication, or request made (as referred to at Clause 29.3.8) including by promptly providing to the Controller:

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

29.3.10 if requested by the Controller, provide a written description of the measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 29 and provide copies of all documentation relevant to such compliance including protocols, procedures, guidance, training, and manuals.

29.4 The Processor shall immediately inform the Controller if, in the opinion of the Processor, an instruction infringes the Data Protection Legislation.

29.5 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 29 and allow for audits by the Controller or the Controller's designated auditor.

29.6 The Parties shall use reasonable endeavours to assist each other to comply with any obligations under the Data Protection Legislation and shall not perform their obligations under this Contract in such a way as to cause either Party to breach any of their obligations under the Data Protection Legislation to the extent the other is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

29.7 The Parties shall each designate a data protection officer if required by the Data Protection Legislation. Details of each Party's data protection officer (if required) are outlined below:

For the Supplier: -	For the Customer: -
	Data Protection Team
	dataprotectionadvice@nationalhighways.co.uk
	n/a

29.8 Before allowing any Sub-Processor to Process any Personal Data related to this Contract, the Processor must:

29.8.1 notify the Controller in writing of the proposed Sub-Processor and Processing.

29.8.2 obtain the written consent of the Controller; and

29.8.3 enter into a written agreement with the Sub-Processor incorporating terms which are substantially similar to those set out in Clause 29 and in either case which the Processor undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation.

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

29.10 The Controller may, at any time on not less than thirty (30) days' notice, revise this Clause 30 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

30. FREEDOM OF INFORMATION

30.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations.

30.2 The Supplier shall and shall procure that its Staff, employees, agents, and sub-contractors shall:

30.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information.

30.2.2 provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

30.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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.

30.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

30.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

30.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 30.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000

(the "**Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier of the Goods and/or Services (if applicable):

30.5.1 in certain circumstances without consulting the Supplier; or

30.5.2 following consultation with the Supplier and having taken their views into account.

provided always that where Clause 30.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

30.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

30.7 The Supplier acknowledges that the Commercially Sensitive Information listed in Schedule 6 is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 30.5.

31. NOT USED

32. CONFIDENTIAL INFORMATION

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

32.1.1 treat the other Party's Confidential Information as confidential and safeguard it; accordingly, and

32.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

32.2 Clause 32.1 shall not apply to the extent that:

32.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 30;

32.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner.

32.2.3 such information was obtained from a third party without obligation of confidentiality.

32.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

32.3 it is independently developed without access to the other party's Confidential Information.

32.4 The Supplier may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

32.5 The Supplier shall not, and shall procure that its Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

32.6 Nothing in this Agreement shall prevent the Customer from disclosing the Supplier's Confidential Information:

- 32.6.1 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.
- 32.6.2 to any consultant, Supplier or other person engaged by the Customer or any person conducting a gateway review.
- 32.6.3 for the purpose of the examination and certification of the Customer's accounts.
- 32.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 any relevant Law-making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 32.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 32 is made aware of the Customer's obligations of confidentiality.
- 32.8 Nothing in this Clause 32 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 32.9 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement, the Contract or any Order or disclose any information relating to or contained in the Agreement, the Contract or any Order to any person who is not engaged in the provision of the Goods and/or Services.
- 32.10 In the event that the Supplier fails to comply with this Clause 32 the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.
- 32.11 The provisions of this Clause shall apply notwithstanding termination or expiry of the Contract.

33. PUBLICITY, MEDIA, AND OFFICIAL ENQUIRIES

- 33.1 The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take responsible steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 33.1.
- 33.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 33.3 The Suppliers shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

34. INTELLECTUAL PROPERTY RIGHTS

- 34.1 Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other Party's IPR.
- 34.2 The Parties shall not, and shall procure that their Staff shall not, (except when necessary for the performance of the Contract) without prior approval, use or disclose any of the other Party's IPR to any third party.
- 34.3 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.

- 34.4 The Customer hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use the Customer's IPR during the Contract Period for the sole purpose of enabling the Supplier to supply the Goods and/or Services and/or supply the Deliverables.
- 34.5 Prior to using any third-party Intellectual Property Rights, the Supplier shall obtain the Approval of the Customer. The Supplier shall provide the Customer with details of any third-party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third-party Intellectual Property Rights. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third-party licence or where any additional charges will be incurred.
- 34.6 Where the Supplier is granted Approval by the Customer to use the third-party rights, the Supplier shall procure that the owner of third-party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
- 34.7 The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold YPO, the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which YPO, the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Goods and/or Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- 34.7.1 items or materials based upon designs supplied by the Customer; or
- 34.7.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 34.8 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 34.8.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 34.8.2 shall take due and proper account of the interests of the Customer; and
- 34.8.3 shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
- 34.9 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to: -
- 34.9.1 modify the relevant part of the Goods and/or Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Goods and/or Services to the substitute Goods and/or Services; or
- 34.9.2 procure a license to use and provide the Goods and/or Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer.
- 34.10 In the event that the Supplier is unable to comply with Clause 34.9 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Goods and/or Services that is subject to the Claim.

- 34.11 In the event that a modification or substitution in accordance with Clause 34.9.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a license in accordance with Clause 34.9.2 the Customer shall be entitled to delete the relevant Service from the Contract.
- 34.12 This Clause 34 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Goods and/or Services hereunder. This shall not affect the Supplier's financial liability for other defaults or causes of action that may arise hereunder.

35. RECORDS AND AUDIT ACCESS

- 35.1 The Supplier shall keep and maintain until six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including: the Goods and/or Services provided under the Agreement and the Call-Off Contracts entered into with YPO, the Customer and each individual Contracting Authority and the amounts paid by the Customer and each Contracting Authority.
- 35.2 The Supplier shall keep the records and accounts referred to in Clause 35.1 above in accordance with good accountancy practice.
- 35.3 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 35.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of six (6) Years after the expiry of the Contract Period to the Customer and the Auditor.
- 35.5 The Customer shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Customer.
- 35.6 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each Audit, including: -
- 35.6.1 all information requested by the Customer within the scope of the Audit.
- 35.6.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and/or Services; and
- 35.6.3 access to the Staff.
- 35.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the Audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

36. TRANSFER AND SUBCONTRACTING.

- 36.1 The Supplier shall not assign, novate or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.
- 36.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own. All sub-contractors must be appropriately managed and responsibility for the quality of workmanship, warranties and guarantees will remain the responsibility of the Supplier.
- 36.3 If the supplier subcontracts any services, it is still responsible for meeting the obligations of the contract as if it had not been subcontracted.

36.4 Subject to Clause 36.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to: -

36.4.1 any Contracting Authority; or

36.4.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

36.4.3 any private sector body which substantially performs the functions of the Customer.

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

36.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 36.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

36.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "**Transferee**"):-

36.6.1 the rights of termination of the Customer in Clause 48 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

36.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

36.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

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

37. WAIVER

37.1 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.

37.2 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 8.

37.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

38. VARIATION

38.1 Subject to the provisions of this Clause 38.1, the Customer may request a variation to the Goods

and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "**Variation**".

- 38.2 The Customer may request a Variation by completing and sending the Variation form attached at Appendix 2 (the "**Customer Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 38.3 In the event that the Supplier is unable to provide the Variation to the Goods and/or Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
- 38.3.1 agree to allow the Supplier to continue to perform their obligations under the Contract without the Variation; or
- 38.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 57.
- 38.4 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

39. SEVERABILITY

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

40. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE GOODS AND/OR SERVICES

- 40.1 Where a complaint is received about the standard of Goods and/or Services or about the manner in which any Goods and Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint.
- 40.2 Where a complaint is received about the quality of the Goods or of installation of the Goods then the Supplier may at their own cost and expense arrange for the Goods to be tested either at an Independent Testing House/Organisation or inspected in situ by an Independent Testing Engineer.
- 40.3 The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 48 of the Contract.
- 40.4 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 48, do any of the following:

- 40.4.1 without terminating the Contract, itself provide or procure the provision of all or part of the Goods and/or Services (if applicable) until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to provide all or such part of the Goods and/or Services (if applicable) in accordance with the Contract;
 - 40.4.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Goods and/or Services (as applicable);
 - 40.4.3 terminate, in accordance with Clause 48, the whole of the Contract; and/or
 - 40.4.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the provision of any part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and/or Services provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services (as applicable).
- 40.5 If the Supplier fails to provide any of the Goods and/or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.
- 40.6 In the event that the Supplier:
- 40.6.1 fails to comply with Clause 40.4 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
 - 40.6.2 persistently fails to comply with Clause 40.4 above;
- the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

41. Not Used

42. CUMULATIVE REMEDIES

- 42.1 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 one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

43. MONITORING OF CONTRACT PERFORMANCE

- 43.1 The Supplier shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract.

44. LIABILITY, INDEMNITY, AND INSURANCE

- 44.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for: -
 - 44.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 44.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
 - 44.1.3 any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982;
- 44.2 Subject to Clause 44.3 and Clause 44.4 the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the provision, or late or purported provision of the Goods or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier 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 negligently given or omitted to be given by the Supplier, or any other loss which is caused directly by material breach of this Agreement by the Supplier. The Supplier 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 Customer or by breach by the Customer of its obligations under the Contract.
- 44.3 Subject always to Clause 44.1 and Clause 44.4, the liability of either Party for Defaults shall be subject to the following financial limits: -
 - 44.3.1 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 125% of the Contract Price and
 - 44.3.2 the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of the Contract Price or 125% per cent of the Contract Price payable by the Customer to the Supplier in the year in which the liability arises.
- 44.4 Subject to Clause 53, in no event shall either Party be liable to the other for any:
 - 44.4.1 loss of profits;
 - 44.4.2 loss of business;
 - 44.4.3 loss of revenue;
 - 44.4.4 loss of or damage to goodwill;
 - 44.4.5 loss of savings (whether anticipated or otherwise); and/or
 - 44.4.6 any indirect or consequential loss or damage.
- 44.5 The Customer may, amongst other things, recover as a direct loss: -
 - 44.5.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
 - 44.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and
 - 44.5.3 the additional cost of procuring replacement Goods and/or Services (if applicable) for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.

- 44.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 44.7 The Supplier shall affect 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 Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 44.8 The Supplier shall affect and maintain, where required, the following insurances for the Contract Period in relation to the performance of the Contract: -
- 44.8.1 Public and products liability insurance with a limit of indemnity of not less than £20,000,000 for any one occurrence, the number of occurrences being unlimited in any annual period of insurance but £20,000,000 any one occurrence and in the aggregate per annum in relation to products and pollution liability (to the extent insured by the relevant insurance policy):
- (a) to contain an indemnity to principal's clause, under which the Customer shall be indemnified in respect of claims made against the Customer in respect of death or bodily injury or third-party property damage arising out of or in connection with the performance of the Contract and for which the Supplier is legally liable.
 - (b) To contain a motor traders extension/service indemnity repair extension. Inner limit not less than £5,000,000 each and every occurrence and in the aggregate per annum.
- 44.8.2 Employer's liability insurance with cover (for a single event or series of related events and in the aggregate) of not less than £5 million, or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;
- 44.9 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 44.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 44.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 44.
- 44.12 The Supplier shall maintain the insurances referred to in this Clause 44 for a minimum of six (6) Years following expiry or termination of the Contract.

45. PROFESSIONAL INDEMNITY

- 45.1 The Supplier shall affect and maintain a professional indemnity insurance policy during the Contract and shall ensure that all agents, professional consultants and sub-contractors involved in the provision of the Goods and/or Services affect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractor or consultant involved in the provision of the Goods and/or Services has a limit of indemnity of not less than £2,000,000 for any one claim and in the annual aggregate, or such higher limit as the Customer may reasonably require (and as required by Law) from time to time. Such insurance shall be maintained for a minimum of six (6) Years following the expiration or earlier termination of the Contract.

46. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

- 46.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

47. WARRANTIES AND REPRESENTATIONS

- 47.1 The Supplier warrants and represents that: -

47.1.1 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.

47.1.2 the Contract is executed by a duly authorised representative of the Supplier.

47.1.3 in entering the Contract, it has not committed any Fraud.

47.1.4 as at the Commencement Date, all information, statements and representations contained in their submission to both the Request to Participate and the Invitation to Tender for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to YPO and the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

47.1.5 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 its assets which will or might affect its ability to perform its obligations under the Contract;

47.1.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract.

47.1.7 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 Supplier 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 Supplier's assets or revenue.

47.1.8 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.

47.1.9 the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence.

47.1.10 in the three (3) Years prior to the date of the Contract: -

- (a) 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; and
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

- 47.1.11 all obligations of the Supplier pursuant to this Contract shall be performed by appropriately experienced, certified, qualified, and trained Staff with all due skill, care and diligence.
- 47.1.12 it will ensure that the Supplier and all Staff, agents, sub-contractors, self-employed staff, or personnel employed by the Supplier in connection with the Goods and/or Services will comply with the relevant Law, Codes of Conduct and regulations governing the delivery of Goods and performance of Services.

48. TERMINATION

Termination - Insolvency and Change of Control

- 48.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier: -
 - 48.1.1 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
 - 48.1.2 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
 - 48.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (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
 - 48.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 48.1.5 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
 - 48.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 48.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 48.1.8 any event similar to those listed in Clause 48.1 occurs under the law of any other jurisdiction.
- 48.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
 - 48.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;
 - 48.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy;
 - 48.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 48.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
 - 48.2.5 a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;

- 48.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983;
- 48.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 48.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
- 48.3.1 being notified that a Change of Control has occurred; or
- 48.3.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control;
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 48.4 The Customer may terminate the Contract with immediate effect by notice in writing where:
- 48.4.1 the Supplier are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods and/or Services;
- 48.4.2 the Supplier and its Staff, agents, sub-contractors, or personnel employed by the Supplier in connection with the Goods and/or Services have failed to comply with the relevant Law, Codes of Conduct and regulations governing the delivery of Goods and performance of Services.

Termination on Default – Minor Defaults

- 48.5 Where the Supplier commits a Minor Default of the Contract, the Customer shall be entitled to issue the Supplier with an Improvement Notice. Such Improvement Notice shall state the nature of the Minor Default and give the Supplier a minimum of ten (10) Working Days to remedy the Minor Default.
- 48.6 If the Supplier commits three (3) Minor Defaults in a twelve (12) Month rolling period, this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 48.7.3.

Termination on Default – Material Default

- 48.7 The Customer may terminate the Contract by serving written notice on the Supplier with effect from the date specified in such notice where: -
- 48.7.1 the Supplier commits a Material Default, and the Supplier has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied.
- 48.7.2 the Supplier commits a Material Default, and the Material Default is not, in the reasonable opinion of the Customer, capable of remedy.
- 48.7.3 if the Supplier has committed three (3) or more Minor Defaults within a twelve (12) Month rolling period.
- 48.7.4 Where any Contracting Authority terminates a Call-Off Contract awarded to the Supplier under this Agreement as a consequence of a default by the Supplier.
- 48.7.5 Where any Goods have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and Installation Services do not meet the minimum required standards/specification, the Agreement, and any Orders or Contracts may be terminated, and all outstanding Orders may be cancelled at no cost and without any liability to YPO or the Customer.

48.8 The Supplier may terminate the Contract by serving written notice on the Customer with effect from the date specified in such notice, where the Customer commits a Material Default and:

48.8.1 the Customer has not remedied the Material Default to the satisfaction of the Supplier within twenty (20) Working Days, or such other period as may be specified by the Supplier, after issue of a written notice specifying the Material Default and requesting it to be remedied; or

48.8.2 the Material Default is not, in the reasonable opinion of the Supplier, capable of remedy.

48.9 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier 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 Customer exercising its rights under Clause 23.

49. BREAK

49.1 Each party shall have the right to terminate the Contract at any time by giving twelve (12) months' written notice to the other party.

50. TERMINATION OF THE DYNAMIC PURCHASING SYSTEM

50.1 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Dynamic Purchasing System is terminated for any reason whatsoever.

51. CONSEQUENCES OF EXPIRY OR TERMINATION

51.1 Where the Customer terminates the Contract under Clause 48 and then makes other arrangements for the provision of Goods and/or Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 48, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

51.2 Where the Customer terminates the Contract under Clause 49, the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 49.

51.3 The Customer shall not be liable under Clause 51.2 to pay any sum which: -

51.3.1 was claimable under insurance held by the Supplier, and the Supplier 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; or

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

51.4 Save as otherwise expressly provided in the Contract: -

51.4.1 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

- 51.4.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 21 (Payment and Contract Price), 23 (Recovery of Sums Due), 29 (Data Protection), 30 (Freedom of Information), 32 (Confidential Information), 34 (Intellectual Property Rights), 35 (Records and Audit Access), 41 (Cumulative Remedies), 44 (Liability, Indemnity and Insurance), 45 (Professional Indemnity), 51 (Consequences of Expiry or Termination), 53 (Recovery upon Termination) and 55 (Governing Law and Jurisdiction).

52. DISRUPTION

- 52.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Supplier employed by the Customer.
- 52.2 The Supplier shall immediately inform the Customer 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.
- 52.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the provision of the Goods and/or Services in accordance with its obligations under the Contract.
- 52.4 If the Supplier's proposals referred to in Clause 52.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 52.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

53. RECOVERY UPON TERMINATION

- 53.1 On the termination of the Contract for any reason, the Supplier shall:
- 53.1.1 immediately return to the Customer all Confidential Information, Personal Data and IPR 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 Goods and/or Services;
- 53.1.2 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- 53.1.3 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or the completion of any work in progress.
- 53.1.4 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 53.2 If the Supplier fails to comply with Clause 53.1, the Client may recover possession thereof and the Supplier grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted Suppliers or sub-contractors where any such items may be held.
- 53.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 53.1 free of charge. Otherwise, the Customer shall pay the Supplier's

reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

- 53.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 34.4 shall automatically terminate without the need to serve notice.

54. FORCE MAJEURE

- 54.1 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 six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 54.2 Any failure or delay by the Supplier 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 Supplier.
- 54.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 54.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 54.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub contract or otherwise as a result of circumstances of Force Majeure.
- 54.5 For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

55. GOVERNING LAW

- 55.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts.
- 55.2 This Contract is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

56. TUPE

- 56.1 During the period of six (6) months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) Working Days of being so requested by the Customer, the Supplier shall fully and accurately disclose to the Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Goods and/or Services under the Contract, in particular but not necessarily restricted to, the following:
- 56.1.1 the total number of Staff whose employment with the Supplier is liable to be terminated at the expiry of the Contract but for any operation of law;
- 56.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates, but which have already been agreed and their

redundancy entitlements (the names of individual members of employed Staff do not have to be given);

56.1.3 full information about the other terms and conditions on which the affected or about where that information can be found;

56.1.4 details of pensions entitlements, if any; and

56.1.5 job titles of the members of Staff affected and the qualifications required for each position.

56.2 The Supplier shall permit the Customer to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the Goods and/or Services by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.

56.3 The Supplier agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 56.2.

56.4 In the event that the information provided by the Supplier in accordance with Clause 56.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Customer of the inaccuracies and provide the amended information.

56.5 The provisions of this Clause 56 shall apply during the continuance of the Contract and indefinitely after its termination.

57. DISPUTE RESOLUTION

57.1 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 twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance or divisional director (or equivalent) of each Party.

57.2 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.

57.3 If the dispute cannot be resolved by the Parties pursuant to Clause 57.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 57.5 unless: -

57.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

57.3.2 the Supplier does not agree to mediation.

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

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

57.5.1 a neutral adviser or mediator (the "**Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, the Parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties within 7 days of the Dispute being referred for mediation, the mediator

shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing (an "ADR notice") on the other Party, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the Parties, the mediation will start not later than 14 days after the date of the ADR notice.

- 57.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- 57.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- 57.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- 57.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- 57.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

58. RATE CHANGES

Rates

- 58.1 Holman's management charges ("**Rates**") shall remain fixed for the initial 12 months of the contract; except that, Decrease to the Rates

58.1.1 The Supplier may make a request at any time to decrease its rates.

58.1.2 Any decrease to the rates will be applied at the earliest opportunity as agreed between the Supplier and Customer.

Rate Increases

58.1.3 The Supplier may request an increase to its rates, capped at the rate of inflation in accordance with CPI, in writing no less than 3 months prior to each anniversary of the start date of the contract (the Review Date).

58.1.4 If the Supplier fails to submit a request no less than 3 months prior to any Review Date, it shall not be permitted to request any increase to its rates until the next Review Date.

58.1.5 The Supplier shall be entitled to pass through to the Customer any changes to direct charges which are applied to Goods and/ or Services (excluding the Rates) from the Supplier's vendor network, including by way of example replacement parts, repair costs, servicing costs, hire costs and regulatory charges.

- 58.2 The Supplier's request for an increase shall include:

- (a) A list of the rates to be reviewed,
- (b) Justification for the requested increase including supporting evidence,
- (c) Substantiated breakdown of costs.

- 58.3 Where an increase to a rate is agreed, this will be confirmed in writing by the Customer. The increase to the rate will take effect from the first working day after the Review Date.

58.4 Subject to clauses 58.5 – 58.11 below, the Customer reserves the right to reject a request to increase the rates for any reason.

Adjustment for Inflation

- 58.5 Notwithstanding Clauses 58.2 – 58.7, each of the Supplier's rates will be subject to adjustment for inflation on each anniversary of the start date.
- 58.6 The Base Date Index (B) is the latest available index before the start date.
- 58.7 The Latest Index (L) is the latest available index before the Review Date.
- 58.8 The Price Adjustment Factor (PAF) is calculated as $PAF = (L - B) / B$
- 58.9 Adjustments to the Supplier's rates for inflation shall be made in accordance with the CPI (Maintenance of Motor Vehicles) index.
- 58.10 Where it is agreed by the Customer that any rate is decreased or increased in accordance with 58.1, the new agreed rate is discounted back to the start date using the CPI (Maintenance of Motor Vehicles) index prior to making any adjustment for inflation.
- 58.11 Each of the Supplier's new agreed rates that have been discounted back to the start date, and each original agreed start date rate that has not been decreased or increased in accordance with Clause 58.1 above will be adjusted for inflation by multiplying the rate by $(1 + PAF)$.
- 58.12 All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier.

APPENDIX 1
ORDER FORM
Dynamic Purchasing System

FROM

Contracting Authority/Customer	National Highways Limited
Address	Bridge House 1 Walnut Tree Close Guildford Surrey G U1 4LZ
Invoice Address	invoices@nationalhighways.co.uk
Contact Ref:	Ref: Name: National Fleet Team representative Phone: E-mail: <u>NFG@nationalhighways.co.uk</u>
Order Number	<i>To be quoted on all correspondence relating to this Order.</i>
Order Date	

TO

Supplier:	
Address:	
Contact Details:	Name: Phone: Email:

TERM**1.1 Effective Date**

This Contract shall commence on **25th June 2024 at 00:00**

1.2 Expiry Date

This Contract shall expire on:

1.2.1.1 **31st March 2027 at 23.59** unless extended at the Customer's sole discretion for 12 months (1 year) from **1st April 2027 at 00:00**

1.2.1.2

whichever is the earlier, unless terminated earlier pursuant to this Contract.

GOODS AND/OR SERVICE REQUIREMENTS**2.1 Contract Goods and/or Services Required**

The Contract Goods and/or Services required are as set out in the Specification.

Annex 1 Specification – Fleet Maintenance Management Contract 2024 R1

PERFORMANCE OF THE CONTRACT SERVICES AND DELIVERABLES**3.1 Implementation Plan and Milestones (including dates for completion)**

The customer requires an implementation plan to be submitted within fourteen (14) days of the execution of the contract.

Such milestones/key performance indicators below shall be applicable in addition to any milestones/key performance indicators mutually agreed between the parties and set out in the implementation plan.

Once agreed the Implementation Plan will form part of the contractual documents and failure to meet the milestones/key performance indicators by the stipulated dates may be enforced as a breach of contract.

(i) The Implementation Plan as at the Effective Date is set out below:

Milestone	Deliverables(bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)
NH/Supplier meetings	<ul style="list-style-type: none"> •Initial meeting post award to discuss mobilisation. •Agree mobilisation plan. •Communications. •Telephone number transfer for go-live inc. tyres/glass. 		February 2024	
Impact schedule	<p>Supplier led impact schedule and risk assessment to identify the potential cost of any delay.</p> <p>Impact on new supplier of demobilisation of outgoing Supplier contract.</p> <p>Business continuity and disaster management.</p>		February 2024	
Programme plan	Supplier to publish a master programme plan which should include a schedule for timings, resources, and costs for the implementation phase of the project. This will include and highlight risks, milestones/performance targets and monitoring and control activities to take you through to a business-as-usual state		February 2024	
Mobilise subcontracted services	Ensure the supplier/supply chain is clearly aligned with one another. The supplier should ensure that any SMEs or other specialised support advisors, sub-contractors and associates involved on the project are provided with a full brief of the project, including its business outcomes, so the entire supply chain is clear as to their respective roles and responsibilities and how these all align to everyone else's. This will help to further avoid misunderstandings and ensure the project and/or ongoing service is delivered to drive maximum value for all concerned.		February 2024	
Security and compliance	Ensure supplier has appropriate documentation for the standards that align with statutory responsibilities and that these are issued and discussed so that		February 2024	

	over the roles and duties involved are minimised			
Contract register	Make sure that all elements of the signed contract are stored in a known and accessible location that is appropriately secure and that they are all captured in a contract register. There are many reasons why rapid access to your contract may be required, but the two that come immediately to mind are that a supplier could misunderstand what is expected of them, or a supplier gets into financial difficulty, and you need to know quickly what the escalation, step-in and/or exit and transition process should be.		March 2024	
Asset register	Supplier to create and maintain/update a central repository for all software contract and licence/licences, including VIDA. In terms of key equipment, this should contain the manufacturer, warranty information, purchase date, maintenance schedule, supplier contact details for spare parts and maintenance work, and so forth. Supplier must be able to evidence that the asset register is being regularly updated		February 2024	
Inspections and quality assurance	Supplier to provide information on what its inspection regimes and quality assurance procedures are for service delivery and for maintaining/keeping on top of the business outcomes both parties expect to achieve.		Ongoing	
*Provide an Implementation Plan	Parties to agree a mutually acceptable Implementation Plan that must include: - *Particular milestones * deadlines for completing the milestones	*14	*If not submitted with bid within 14 days of the award of the contract	To mutually agree the Implementation Plan with the Supplier

(ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.

- (iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- (iv) The Supplier shall perform its obligations so as to achieve each Milestone by the Milestone Date.
- (v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

3.2 Performance Monitoring

Performance will be monitored by the milestones/key performance indicators set out in:

a) CPF & Community Metrics, Fleet Maintenance and Management (section 47 of Specification)

b) the rectification process for poor performance

- Stage 1: The Supplier will be required to produce rectification plan, and this will be classed as a Minor Default. This will be required to be completed and detail proposals to show improvements to performance scores.
Should the supplier not show any action or reasonable improvement after the rectification plan, they will proceed to Stage 2.
Suppliers who have reached stage 1 on more than 3 occasions throughout the duration of the contract may not be eligible for contract extension unless significant efforts for improvement have been proven.
- Stage 2: Once proceeded to Stage 2, suppliers should receive a formal letter of warning, and an adjusted rectification plan to suit. This will be required to be completed and improvements to performance scores.
Should the supplier not show any action or reasonable improvement from the issued rectification plan, they will proceed to Stage 2.
Suppliers who have reached Stage 2 on more than 1 occasions throughout the duration of the contract may not be eligible for contract extension unless significant efforts for improvement have been proven.
- Once proceeded to Stage 3 contract may be a Material Default and the Customer may withdraw from any contractual relationship.
Suppliers who have reached Stage 3 may not be eligible for contract extension.

CALL-OFF TERMS AND CONDITIONS

4.1 Customers must state which set of Call-Off Terms and Conditions they will be adopting in relation to the provision of these contract services.

(A) These Call-Off Terms and Conditions

SPECIAL TERMS AND CONDITIONS

Note the following terms have been updated by the Customer:

- Section 44 – Liability, Indemnity and Insurance
- Section 57 – Dispute Resolution
- Section 58 – Rate Changes

CONFIDENTIAL INFORMATION

6.1 The following information shall be deemed Commercially Sensitive Information or Confidential Information:

Outlined in Annex 4 Commercially Sensitive Information

6.2 Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information

APPENDIX 2

PRICES FOR GOODS AND/OR SERVICES

CHARGES FOR GOODS

As detailed in the attached pricing schedule Holman Annex 2 Pricing Schedule

CHARGES FOR SERVICES

As detailed in the attached pricing schedule Holman Annex 2 Pricing Schedule

Invoicing Arrangements:

On a receipt of a valid Invoice payment will be made to the Supplier within thirty (30) days of the date of the invoice.

Invoices should be sent as a PDF file and quoting Order No and emailed to
INVOICES@nationalhighways.co.uk

If an invoice is disputed it will be returned to the Supplier with details on why the invoice cannot be processed for payment.

APPENDIX 3

VARIATIONS AND/OR SUPPLEMENTS TO THE CALL-OFF TERMS

APPENDIX 4

CUSTOMER VARIATION FORM

CALL-OFF TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

[Name of

Lot]¹.....

No of Order Form being

varied:..... **Variation**

Form No:.....

BETWEEN:

[.....]²

(the "**Customer**") and

[.....]³ (the "**Supplier**")

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Customer.

Signature

Date

Name in Capitals

Address

.....

Authorised to sign for and on behalf of the Supplier.

Signature

Date

Name in Capitals

Address

¹ To be inserted.

² Insert name of Contracting Authority

² Insert name of Supplier

³

APPENDIX 5

DETAILS OF PERMITTED PROCESSING

Subject matter of the Processing	The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide goods and services for the Fleet Maintenance and Management Contract.
Duration of the Processing	For the duration of the contract
Nature and purposes of the Processing	The use of data for the purpose of allowing the ordering, recording, and processing to provide the goods and services including storing of data to facilitate such processes. This includes structuring the data to facilitate efficient processes such as into geographical areas and maintaining the list of data.
Type of Personal Data	<p>The types of personal data shall include:</p> <ul style="list-style-type: none">• Employee name• Employee work location(s)• Employee work email address• Employee personal address(es) (in rare and limited cases only)
Categories of Data Subject	The Customer's staff
Plan for return or destruction of Personal Data	<p>All employee data shall be destroyed:</p> <ul style="list-style-type: none">• 3 months from the date of contract expiry or• once relevant data has been handed back to the Purchaser as part of any demobilisation process. <p>Identifiable employee data shall be destroyed at regular intervals no more than 6 months from when the Supplier is informed by the Customer. Any relevant data can continue to be held providing all identifiable information has been removed.</p>

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Goods, Services and/or Works specified in this Order Form (together with where completed and applicable, the Call-Off Order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Agreement entered into by the Supplier and YPO on [] 2024.

For and on behalf of the **Supplier:**

Name and Title	
Signature	
Date	11/6/24.

For and on behalf of the **Customer:**

Name and Title	Jo Wilkes - Head of Procurement Delivery
Signature	<i>Jo Wilkes</i>
Date	18/06/2024

