

**Standard Terms and Conditions**  
**Purchase of Services – High Value/Risk or Value above**  
**the EU Threshold from time to time in place**

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THIS CONTRACT WILL BE PUBLISHED IN ACCORDANCE WITH THE ELECTED LOCAL  
POLICING BODIES (SPECIFIED INFORMATION) ORDER 2011 (AS AMENDED)

**SECTION A - GENERAL PROVISIONS**

**1 Definitions and Interpretation**

- 1.1 In the Contract unless the context otherwise requires the following terms shall have the meanings given to them below:
- 1.1.1 "Agreed Equality Policy" means the equality and diversity policy entitled "Agreed Equality Policy" as negotiated and agreed by the Parties and attached to the Contract;
  - 1.1.2 "Approval" means the written consent of the Customer and "Approved" shall be construed accordingly;
  - 1.1.3 "Assignee" has the meaning given to that expression in clause 33.5;
  - 1.1.4 "Commencement Date" means the date specified as such in Section 2 of the Contract Schedule;
  - 1.1.5 "Contract" means this written agreement between the Customer and the Contractor consisting of the Contract Schedule, these Terms and Conditions, the Schedules and all other documents attached to the Contract Schedule;
  - 1.1.6 "Contract Information" means the contents of the Contract, the contents of the Tender, information regarding the tender process for the Contract and information on the amounts paid to the Contractor under the Contract;
  - 1.1.7 "Contracting Authority" means any contracting authority as defined in Regulation 2 of the PCR;
  - 1.1.8 "Contractor" means the person, firm or company identified in Section 2 of the Contract Schedule;
  - 1.1.9 "Contractor's Final Staff List" means the list of all the Staff engaged (in whatever capacity) in or wholly or mainly assigned to the performance of the Services or any part of the Services at the End Date;
  - 1.1.10 "Contractor's Provisional Staff List" means a list prepared and updated by the Contractor of all the Staff engaged (in whatever capacity) in, or wholly or mainly assigned to, the performance of the Services or any part of the Services at the date of preparation of the list;
  - 1.1.11 "Contract Period" means the period of the Contract as specified in Section 2 of the Contract Schedule;
  - 1.1.12 "Contract Price" means the price (exclusive of any applicable VAT), payable to the Contractor by the Customer under the Contract, as set out in Schedule 2 (Pricing), for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause 18.11;
  - 1.1.13 "Customer" means the Chief Constable and the Police and Crime Commissioner of the police force(s)/police force area(s) identified in Section 2 of the Contract Schedule;
  - 1.1.14 "Customer Contact" means the individual(s), whether a contract manager, category consultant or otherwise, who are to act for the Customer as the day to day point of contact for communications from the Contractor to the Customer in relation to the Contract, being the individual(s) identified in Section 2 of the Contract Schedule or otherwise notified to the Contractor from time to time;
  - 1.1.15 "Customer Material" has the meaning set out in clause 30.1;
  - 1.1.16 "Data Protection Law" means:
    - (a) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time;
    - (b) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy; and

- (c) all applicable Law about the processing of Personal Data and privacy;
- 1.1.17 “Default” means any breach of the obligations of a Party set out in the Contract (including fundamental breach or breach of a fundamental term) or any other default, negligent act, negligent omission, negligence or negligent statement of the relevant Party (or, in the case of the Contractor, 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;
- 1.1.18 “End Date” means the date on which an Exit Employee becomes employed by the Customer or a Replacement Contractor or a sub-contractor thereof (as the case may be) by virtue of the TUPE Regulations;
- 1.1.19 “Entrance Employee” means any person whose contract of employment transfers under the TUPE Regulations to the Contractor or a Sub-contractor on the date of and by virtue of Service Commencement, being all those persons who are listed in Schedule 7 (Entrance Employees);
- 1.1.20 “Exit Employee” means any person:
- (a) who is engaged in the performance of the Services when the Contractor or any Sub-contractor ceases for whatever reason, whether directly or indirectly, to provide the Services or any part of them; and
  - (b) whose contract of employment has effect by virtue of the TUPE Regulations as if originally made between such person and the Customer or a Replacement Contractor or a sub-contractor of a Replacement Contractor (as the case may be);
- 1.1.21 “Force Majeure” means in relation to either Party any event which is beyond the reasonable control of that Party and which materially and adversely affects its ability to perform its obligations under the Contract, but excluding any one or more of the following:
- (a) any event which is caused by or attributable to any wilful act or omission or any negligence by the Party in question or any of its personnel (including the Staff in the case of the Contractor) and/or any Default by that Party of any of its obligations under the Contract;
  - (b) any event to the extent that it could have been prevented or avoided, or its adverse impact could have been mitigated, through the exercise by the Party in question of Good Industry Practice, including the establishment and implementation of appropriate disaster recovery or business contingency arrangements;
  - (c) any lack of funds by the Party in question;
  - (d) any failure on the part of a sub-contractor of the Party in question, unless that failure was in turn attributable to an event of the kind which would fall within, and not be excluded from, the preceding parts of this definition (if references in those preceding parts to the Party in question were references to the relevant sub-contractor);
- 1.1.22 “Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill, diligence, prudence and foresight which, at the relevant time, would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in the same or a similar type of undertaking as the relevant Party under the same or similar circumstances, seeking in good faith to comply with its contractual and other obligations;
- 1.1.23 “Intellectual Property Rights” 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 the United Kingdom) and the right to sue for passing off;
- 1.1.24 “Key Personnel” means those persons (if any) named in the Specification as being key personnel;
- 1.1.25 “Law” means any applicable EU or UK law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- 1.1.26 “Outgoing Contractor” means any employer of the Entrance Employees immediately

- prior to the date of Service Commencement;
- 1.1.27 “Party” means the Customer and/or the Contractor (as the context requires);
- 1.1.28 “PCR” means the Public Contracts Regulations 2015;
- 1.1.29 “Premises” means the location(s) at which the Services are to be performed, as set out in the Specification;
- 1.1.30 “Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or any other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1 (Specification);
- 1.1.31 “Receipt” means the physical or electronic arrival of the invoice at the address of the Customer detailed in Section 2 of the Contract Schedule or at any other address given by the Customer to the Contractor for the submission of invoices, provided that if any such invoice arrives on a day that is not a Working Day or after 5.00pm on a Working Day, then it shall not be deemed to have been received until 10.00am on the next following Working Day;
- 1.1.32 “Regulatory Body” means any government department or regulatory, statutory or other entity, committee, ombudsman or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate or influence the matters dealt with in the Contract or any other affairs of the Customer;
- 1.1.33 “Replacement Contractor” means any third party supplier appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract;
- 1.1.34 “Required Insurances” has the meaning given to that expression in clause 41.4;
- 1.1.35 “Service Credits” means the sum of 2% of the total Contract Price payable for the Services provided in the preceding month to the month of the relevant Service Failure;
- 1.1.36 “Service Failure” means a failure to deliver any part of the Services in accordance with the Service Levels;
- 1.1.37 “Service Levels” means the levels of service required to be provided, as described in Schedule 1 (Specification);
- 1.1.38 “Services” means the services to be provided by the Contractor to the Customer as specified in the Specification (including any training, installation, commissioning or other support services relating to the performance of the Services);
- 1.1.39 “Services Commencement” means the commencement of the performance of the Services by the Contractor;
- 1.1.40 “Specification” means the description of the Services to be provided under the Contract as set out or referred to in Schedule 1 (Specification) including, where appropriate, the Key Personnel, the Premises, the Service Levels and the Quality Standards;
- 1.1.41 “Staff” means all employees, staff, workers, agents and consultants of the Contractor, and of any Sub-contractor or other third party with whom the Contractor contracts in order to perform the Services or any part of them, who are engaged in the performance of the Services from time to time;
- 1.1.42 “Staff Expenses” means any expenses in connection with the engagement of Staff, including wages and salaries, bonuses, commissions, expenses, sick pay, maternity pay, holiday pay (including accrued but unused holiday entitlement), income tax, national insurance contributions and contributions to occupational or personal pension schemes;
- 1.1.43 “Staffing Information” means in relation to all persons detailed on the Contractor's Provisional Staff List, such information as the Customer may reasonably request (subject to Data Protection Law), but including in an anonymised format:
- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employees, workers, self-employed, contractors or

- consultants, agency workers or otherwise and whether they have previously worked for a public sector organisation;
  - (c) the identity of their employer or relevant contracting party;
  - (d) their relevant notice periods and any other terms relating to termination of employment or engagement, including any redundancy procedures and contractual redundancy payment schemes;
  - (e) the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
  - (f) details of other employment-related benefits including medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and customer car schemes applicable to them;
  - (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
  - (h) details of any such individuals on long-term sickness absence, maternity or other statutory leave or otherwise absent from work;
  - (i) copies of all relevant documents and materials relating to such information including copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals); and
  - (j) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and details of any current industrial disputes and claims for recognition by any trade union;
- 1.1.44 "Sub-contractor" means any sub-contractor or agent of the Contractor;
- 1.1.45 "Tender" means the document(s) submitted by the Contractor to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services;
- 1.1.46 "Transferee" has the meaning given to that expression in clause 33.8;
- 1.1.47 "TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
- 1.1.48 "Variation" has the meaning given to it in clause 35.1;
- 1.1.49 "VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- 1.1.50 "Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
- 1.2 The interpretation and construction of the Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.2 words importing the masculine include the feminine and the neuter;
  - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
  - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
  - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
  - 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
  - 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **2 Customer's Obligations**

- 2.1 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 Contractor.

### **3 Contract Period**

- 3.1 The Contract shall come into effect on the Commencement Date and shall remain in force throughout the Contract Period unless it is otherwise terminated in accordance with the provisions of the Contract or otherwise lawfully terminated or extended.

### **4 Contractor's Status**

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

### **5 Notices**

- 5.1 Except as otherwise expressly provided within the Contract, no notice or consent required or permitted to be given by one Party to the other Party shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

- 5.2 Any notice or consent which is to be given by either Party to the other Party shall only be valid if given by letter (sent by hand, first class post, recorded delivery or special delivery). Such letters shall be addressed to the other Party at the address for that Party set out in Section 2 of the Contract Schedule. Any such notice or consent shall be deemed to have been duly received:

5.2.1 if hand delivered, at the time of actual delivery; or

5.2.2 if dispatched by first class post, recorded delivery or special delivery, 2 Working Days after the day on which the relevant letter was posted to the correct address,

provided in each case that if the deemed receipt time occurs either on a day that is not a Working Day or after 5.00pm on a Working Day, then the notice or consent in question shall not in fact be deemed to have been received until 10.00am on the next following Working Day (such times being local time at the address of the recipient).

- 5.3 Either Party may change its address for service by serving a notice in accordance with this clause 5.

- 5.4 At the same time as giving any notice or other communication to the Customer in accordance with clause 5.2, the Contractor shall provide a copy of the relevant notice or communication to the Customer Contact (or, where there is more than one, to each of them) using the email address(es) set out in Section 2 of the Contract Schedule or otherwise notified to the Contractor for these purposes from time to time.

### **6 Due Diligence**

- 6.1 The Contractor acknowledges that it:

6.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer and has entered into the Contract in reliance on its own due diligence alone;

6.1.2 has inspected the Premises and the Customer's systems, made appropriate enquiries and received sufficient information so as to satisfy itself in relation to all matters required by it in order to determine whether it is able to provide the Services and to perform its obligations in accordance with the Contract;

6.1.3 has raised (and satisfied itself as to the answers to) all relevant due diligence questions with the Customer before the Commencement Date; and

6.1.4 having made all such enquiries, has satisfied itself that it is able to provide the Services and to perform its obligations in accordance with the terms of the Contract.

### **7 Mistakes in Information**

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

## **8 Conflicts of Interest**

- 8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where (in the reasonable opinion of the Customer) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or Staff and the duties owed to the Customer under the provisions of the Contract.
- 8.2 Where any conflict referred to in clause 8.1 arises or is reasonably foreseeable, the Contractor shall promptly notify the Customer and provide the Customer with full particulars or as much detail as it is able to in the circumstances of the conflict or potential conflict.
- 8.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor 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 Contractor and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause 8 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

## **SECTION B – SUPPLY OF SERVICES**

### **9 Specification**

- 9.1 In consideration of the payment of the Contract Price, the Contractor shall perform the Services during the Contract Period in accordance with the Customer's requirements as set out in the Specification and the provisions of the Contract.

### **10 Provision and Removal of Equipment**

- 10.1 The Contractor shall provide (or procure the provision of) all the tools, plant, materials and equipment necessary for the performance of the Services. In the event that the Contractor or any of the Staff brings any tools, plant, materials or equipment onto the Premises it shall be at the Contractor's own risk and the Customer shall have no liability for any loss of or damage to any tools, plant, materials or equipment unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default.
- 10.2 The Contractor shall not deliver any tools, plant, materials or equipment nor begin any of the Services without obtaining prior Approval.
- 10.3 On completion of any specific element of the Services, on request and on termination or expiry of the Contract, the Contractor shall remove (at its own cost) its tools, plant, equipment and any unused materials from the Premises and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.

### **11 Manner of Carrying Out the Services**

- 11.1 Where applicable the Contractor shall maintain accreditation with the relevant industry authorisation body.
- 11.2 If the Customer informs the Contractor in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Customer, the Contractor shall at its own expense re-schedule and re-perform the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 11.3 The Contractor shall perform the Services so as to meet or exceed the Service Levels at all times.
- 11.4 The Contractor shall provide the Customer with reports detailing its performance in respect of each Service Level monthly.
- 11.5 If there is a Service Failure, the Contractor shall:
- 11.5.1 notify the Customer of the Service Failure as soon as it becomes aware (or should have reasonably become aware of it);
  - 11.5.2 at its own cost, deploy such reasonable additional resources and take such reasonable remedial action as is necessary to rectify or to prevent the Service Failure from recurring; and



- 11.5.3 automatically credit the Customer with the applicable Service Credits. Service Credits shall either be shown as a deduction from the amount due from the Customer to the Contractor in the next invoice then due to be issued under the Contract, or the Contractor shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Contractor as a debt within 5 Working Days of issue of the credit note.

## 12 Contractor's Staff

- 12.1 The Contractor shall ensure that:

12.1.1 all Staff performing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper performance of the Services; and

12.1.2 it engages an adequate number of trained and competent Staff to perform the Services in accordance with the Contract and shall provide evidence of such competency if reasonably requested to do so by the Customer.

- 12.2 At the Customer's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- 12.3 The Contractor shall ensure that the Staff, engaged on the Premises or performing the Services, comply with:

12.3.1 the Customer's rules, procedures, policies, regulations and requirements (including those relating to site security arrangements and standards of professional conduct) notified to the Contractor or the Staff from time to time; and

12.3.2 all relevant professional conduct legislation, codes of practice and any other appropriate standards, policies, procedures and documentation relating to standards of professional conduct including the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015 as may be in force from time to time.

- 12.4 The Customer may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises and/or direct the Contractor to end the involvement in the provision of the Services:

12.4.1 any member of the Staff; or

12.4.2 any person employed or engaged by any member of the Staff,

(a) whose admission or continued presence or involvement would, in the reasonable opinion of the Customer, be undesirable and/or represent a security risk; or

(b) the Customer reasonably believes does not have the required levels of training and expertise; or

(c) who is or has acted in any manner in breach of the provisions of clause 21 or clause 22; or

(d) whom the Customer can demonstrate has failed to comply with the rules, regulations, codes of conduct, policies or other requirements referred to in clause 12.3; or

(e) whom the Customer has other reasonable grounds for requiring their removal.

- 12.5 Following the removal of any Staff for any reason, the Contractor shall, at its own cost, ensure that such person is replaced promptly with another person with necessary training and skill to meet the requirements of the performance of the Services undertaken by the member of Staff removed.

- 12.6 Any access to, or occupation of, the Premises which the Customer may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the Premises to such Staff as is necessary for that purpose. The Contractor shall cooperate (and ensure that the Staff cooperate) with such other persons working concurrently on the Premises as the Customer may reasonably request.

- 12.7 The Contractor acknowledges and agrees that the Customer is entitled to determine the appropriate lead investigator for any complaints or suspected misconduct of any member of

Staff.

- 12.8 The Contractor acknowledges that the Customer shall be free to search any member of Staff on or entering the Premises and shall procure that the Staff cooperate fully with the Customer for these purposes. The Contractor shall also ensure that all of the Staff carry out their duties and act (while on the Premises or while performing the Services) in an orderly and appropriate manner, having regard to the nature of their duties and that they shall at all times be dressed appropriately in view of their job category and/or the Services they are to perform.
- 12.9 If and when requested by the Customer, the Contractor shall procure (in respect of the Staff) from each person identified by the request a signed statement that he understands that the Official Secrets Acts 1911 to 1989 applies to him both during the carrying out and after expiry or termination of the Contract.
- 12.10 The Contractor shall ensure that any Staff who work, or ordinarily work, in the UK are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.
- 12.11 The Contractor alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Staff. The Contractor assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

### **13 Key Personnel**

- 13.1 The Contractor acknowledges that the Key Personnel are essential to the proper performance of the Services to the Customer. The Key Personnel shall be responsible for performing those roles referred to in the Specification.
- 13.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 13.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer and shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 13.4 The Customer shall not unreasonably withhold its agreement under clause 13.2 or clause 13.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

### **14 Contract Monitoring**

- 14.1 For the duration of the Contract, the Parties shall meet at the intervals specified in Schedule 6 (Monitoring) (if applicable) at a location and at a time to be agreed between the Parties, for the purpose of discussing the performance of the Services (including the performance against the Service Levels) and any other appropriate matters.
- 14.2 Without prejudice to any other provisions in the Contract, the Contractor shall provide such information (including the information set out in Schedule 6 (Monitoring) (if applicable)) in relation to the performance of its obligations and compliance with the Law required under the Contract (including information in respect of claims, progress against relevant timescales or milestones and information required by the Customer for the purposes of re-tendering the Services) as the Customer may reasonably request from time to time. The Contractor shall:
- 14.2.1 provide such information in the format and within the timescales reasonably specified by the Customer;
  - 14.2.2 ensure that all such information is accurate and complete; and
  - 14.2.3 in respect of any information required by the Customer for re-tendering purposes, notify the Customer without delay of any changes to information previously provided to the Customer.

### **15 Procurement by the Contractor**

- 15.1 In so far as the Contractor procures any goods, services or works from any third party on behalf of the Customer (acting as the Customer's agent), then it shall do so in accordance with:
- 15.1.1 the Customer's standing orders and any other reasonable instructions given by the Customer; and
  - 15.1.2 the PCR and all other Laws governing public procurement as if the Contractor was itself a Contracting Authority within the meaning of those Laws.

## **16 Contract Performance**

- 16.1 The Contractor shall perform its obligations under the Contract:
- 16.1.1 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - 16.1.2 in a timely, reliable and professional manner;
  - 16.1.3 in accordance with Good Industry Practice;
  - 16.1.4 in accordance with the Quality Standards; and
  - 16.1.5 in compliance with all applicable Laws.
- 16.2 The Contractor acknowledges that the Customer relies on the skill and judgment of the Contractor in the performance of the Services and the performance of the Contractor's obligations under the Contract.
- 16.3 Throughout the Contract Period, the Contractor shall:
- 16.3.1 have at all times all licences, approvals and consents necessary to enable the Contractor and Staff to perform the Services;
  - 16.3.2 not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

## **SECTION C - PAYMENT AND CONTRACT PRICE**

### **17 Contract Price**

- 17.1 In consideration of the Contractor's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with clause 18.
- 17.2 The Customer shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services provided in accordance with the Contract.

### **18 Payment and VAT**

- 18.1 Unless otherwise specified in Schedule 2 (Pricing), the Contractor shall submit invoices for the Services monthly in arrears.
- 18.2 Unless otherwise specified in Schedule 2 (Pricing), the Customer shall pay all sums due to the Contractor within 30 days of Receipt of a valid undisputed invoice, submitted in accordance with clause 18.1.
- 18.3 The Contractor shall ensure that each invoice contains the information set out in clause 20.
- 18.4 Where the Contractor enters into a sub-contract with a Sub-contractor for the purpose of performing any of its obligations under the Contract, it shall ensure that provisions are included in such a sub-contract which requires:
- 18.4.1 payment to be made of all sums due by the Contractor to the Sub-contractor within a specified period not exceeding 30 days from the Receipt of a valid invoice; and
  - 18.4.2 the Contractor to consider and verify invoices and to raise queries on any disputed invoices in terms equivalent to those imposed on the Customer as set out in clauses 18.8 and 18.9; and
  - 18.4.3 the Sub-contractor to include, in any sub-contract which it in turn awards, suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this clause 18.4.
- 18.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 18.6 The Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any liability (including any interest, penalties or costs incurred), which is levied, demanded or assessed on the Customer at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 18.6 shall be paid by the Contractor to the Customer not less than 5 Working Days before the date upon which the VAT or other liability is payable by the Customer.
- 18.7 The Contractor shall not suspend the performance of the Services unless the Contractor is entitled to terminate the Contract under clause 44.2 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of

any undisputed sums of money properly invoiced at the statutory rate set out in the Late Payment of Commercial Debts (Interest) Act 1998.

- 18.8 The Customer shall consider and verify any invoices submitted for payment by the Contractor in a timely fashion and, subject to clause 18.9, the Customer acknowledges and agrees that any undue delay by it in considering or verifying any invoices pursuant to this clause 18.8 shall not be sufficient justification for regarding an invoice as invalid and/or disputed.
- 18.9 If the Customer receives an invoice which it reasonably believes includes a sum which is not valid and properly due or any other inaccuracy which renders the invoice invalid (a "disputed invoice"):
- 18.9.1 the Customer shall notify the Contractor in writing as soon as reasonably practicable;
  - 18.9.2 the Customer's failure to pay the disputed invoice shall not be deemed to be a Default of the Contract;
  - 18.9.3 to the extent such element is readily identifiable, the Customer shall pay any element of the disputed invoice which is not in dispute by its due date;
  - 18.9.4 once the dispute has been resolved, where either Party is required to make a balancing payment, it shall do so within 5 Working Days and, where the Contractor is required to issue a credit note and/or fresh invoice, it shall do so within 5 Working Days.
- 18.10 Payment of any invoice in full or in part shall be without prejudice to any claims or rights of the Customer against the Contractor in respect of the provision of the Services.
- 18.11 Save for the deduction of Service Credits pursuant to clause 11.5.3 and subject to clause 18.12, the Contract Price shall only be adjusted to such extent and in such manner (if at all) as is specified in Schedule 2 (Pricing).
- 18.12 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Customer.

## **19 Recovery of Sums Due**

- 19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Customer in respect of any Default), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement with the Customer.
- 19.2 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.
- 19.3 The Contractor shall make all payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Contractor.
- 19.4 Unless otherwise specified in the Contract, any sum payable by the Contractor to the Customer under the Contract or by either Party to the other under clause 19.2 shall be paid in cleared funds, within 5 Working Days of a demand for the same being notified by the recipient Party to the paying Party, to such bank or building society account as the recipient Party may from time to time direct.

## **20 Form of Invoice**

- 20.1 Unless otherwise agreed in writing by the Customer, all invoices shall include the following information:
- 20.1.1 the Contract number and/or purchase order number (unless the Customer has confirmed in writing that such details are not required);
  - 20.1.2 the specification number;
  - 20.1.3 an invoice number;
  - 20.1.4 the project number;
  - 20.1.5 a detailed description of the Services provided;
  - 20.1.6 where applicable, rate description (ie standard hours/time and a half/double time) and

- amount;
  - 20.1.7 a detailed description of any recoverable expenses and the amounts of such;
  - 20.1.8 the location, date or time period of performance of the Services;
  - 20.1.9 the Contractor's VAT number;
  - 20.1.10 the amount due exclusive of VAT, any other duty, Service Credits or early settlement discount;
  - 20.1.11 the VAT rate and VAT amount;
  - 20.1.12 the amount of any other duty payable;
  - 20.1.13 the amount of any early settlement discount or Service Credits to be deducted;
  - 20.1.14 the amount due inclusive of VAT, any other duty, Service Credits and/or early settlement discount;
  - 20.1.15 the name of the Customer Contact;
  - 20.1.16 the name of the person at the Customer with responsibility to authorise payment (if different to the Customer Contact);
  - 20.1.17 details of the Contractor's BACS details or other method of payment;
  - 20.1.18 the Contractor's contact details; and
  - 20.1.19 the date of the invoice.
- 20.2 The Contractor shall ensure that each invoice is:
- 20.2.1 addressed to the Customer at the address set out in Section 2 of the Contract Schedule; and
  - 20.2.2 supported by any other documentation reasonably requested by the Customer to substantiate the invoice.

## **SECTION D - STATUTORY OBLIGATIONS AND REGULATIONS**

### **21 Prevention of Corruption**

- 21.1 The Contractor or anyone associated with the Contractor shall not:
- 21.1.1 offer or give or agree to give, to the Customer or any other public body (or any person employed by or on behalf of the Customer or any other public body) any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Customer or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract;
  - 21.1.2 commit any offence under the Bribery Act 2010 or any other applicable Law creating offences in respect of bribery, corruption or fraudulent acts in relation to the Contract or any other contract with the Customer.
- 21.2 For the purpose of this clause 21, whether a person is associated with another person shall be determined in accordance with section 8 of the Bribery Act 2010 and a person associated with the Contractor includes any Sub-contractor.
- 21.3 The Contractor warrants that it has not paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or any other public body in connection with the Contract.
- 21.4 If the Contractor, any of the Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clause 21.1 or clause 21.3, the Customer may:
- 21.4.1 terminate the Contract immediately by giving notice in writing to the Contractor and recover from the Contractor 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 performance of services in replacement for the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
  - 21.4.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any Default of those clauses.

## **22 Prevention of Fraud**

- 22.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by any of the Staff and/or within the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 22.2 The Contractor shall notify the Customer immediately if it has reason to suspect that any fraud in relation to any contract with the Customer has occurred or is occurring or is likely to occur.
- 22.3 If the Contractor or any of the Staff commits fraud in relation to the Contract or any other contract with the Customer, the Customer may:
- 22.3.1 terminate the Contract immediately by giving notice in writing to the Contractor and recover from the Contractor 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 performance of services in replacement for the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
  - 22.3.2 recover in full from the Contractor any other loss sustained by the Customer in consequence of any Default of this clause 22.

## **23 Discrimination**

- 23.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Human Rights Act 1998, the Disability Discrimination Act 2005, the Equality Act 2010 or any other relevant Law relating to discrimination in employment or any equivalent law (including any equivalent legislation or regulation in force from time to time in any other jurisdiction in which any activities are carried out under or in connection with the Contract by the Contractor or any of the Staff).
- 23.2 The Contractor shall take all reasonable steps to secure the observance of the provisions of clause 23.1 by all of the Staff engaged in the execution of the Contract.
- 23.3 The Contractor shall and shall ensure that the Sub-contractor(s) shall comply with obligations set out in the Agreed Equality Policy or has and complies with an equality and diversity policy which is substantially the same as the Agreed Equality Policy.
- 23.4 Where a Sub-contractor has, pursuant to clause 23.3 or otherwise, adopted an equality and diversity policy which is substantially the same as the Agreed Equality Policy, the Contractor shall:
- 23.4.1 procure that each of its direct Sub-contractors provides; and
  - 23.4.2 in respect of other tiers of sub-contractors beneath the Contractor's direct Sub-contractors, use reasonable endeavours to procure that those indirect Sub-contractors provide,
- a copy of that policy to the Customer within 20 Working Days of a written request from the Customer.

## **24 The Contracts (Rights of Third Parties) Act 1999**

- 24.1 Save as set out in clause 52.16, a person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties. This clause 24.1 does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.
- 24.2 No consent of the Replacement Contractor (or any sub-contractor of a Replacement Contractor) is necessary for any variation (including any release or compromise in whole or in part of any liability) or termination of the Contract or any one or more clauses of it.

## **25 Ethical Requirements**

- 25.1 The Contractor shall perform its obligations under the Contract in accordance with the spirit and objectives of 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.
- 25.2 The Customer is committed to ensuring that workers employed or engaged in its supply chains

throughout the world are treated fairly, humanely and equitably and to this end the Contractor shall comply, and shall ensure that its Sub-contractors comply, in relation to all workers employed or engaged by it directly or indirectly in connection with the performance of the Services, with the Modern Slavery Act 2015 and with the policies, procedures and requirements of the International Labour Organisation, the United Nations Universal Declaration of Human Rights and the Ethical Trading Initiative Base Code or an equivalent code of conduct (the "Ethical Sourcing Principles").

- 25.3 If it has not already done so, as soon as practicable following the Commencement Date the Contractor shall register with an ethical supplier database such as SEDEX (Supplier Ethical Data Exchange). The Contractor will permit and enable the Customer to have access to the information relating to the Contractor that subsists in such ethical supplier database for the Contract Period.
- 25.4 If, during the Contract Period, the Customer has reasonable cause to believe that the Contractor is not complying with any of the Ethical Sourcing Principles, then the Customer shall notify the Contractor and the Parties shall, within six months of the date of the notice (or such other period agreed by the Parties in writing), agree an action plan with appropriate timeframes for compliance with the Ethical Sourcing Principles by the Contractor (the "Action Plan"). The costs of the creation and implementation of the Action Plan shall be borne by the Contractor.
- 25.5 For the Contract Period the Customer may require the Contractor to undertake audits using a reputable auditor (approved by the Customer) to verify whether the Contractor is complying with the requirements of clauses 25.1 to 25.3. The costs of the audit shall be borne by the Customer.
- 25.6 In so far as the Contractor or any of the Staff dispose of any waste goods or other items (including electronic products) in the course of or in connection with the performance of the Contractor's obligations under the Contract, the Contractor shall ensure that those goods or other items are disposed of in an environmentally friendly manner and in accordance with all applicable Law, including (where applicable) the Environmental Protection Act 1990, the Environment Act 1995 and the Waste Electrical and Electronic Equipment Regulations 2006 and 2013.
- 25.7 If and when requested to do so by the Customer at any time, the Contractor shall provide the Customer with such documents and/or permit representatives of the Customer to have such access to the Contractor's premises, systems, procedures and personnel as the Customer may reasonably require for the purposes of verifying compliance on the part of the Contractor with its obligations under clauses 25.1 to 25.3.
- 25.8 The Contractor shall procure that each of its Sub-contractors comply with obligations substantially similar to those set out in clauses 25.1 to 25.7.

## **26 Health and Safety**

- 26.1 The Contractor shall, and shall ensure that all of the Staff shall, when working on the Premises or any other premises in connection with the Contract comply with all applicable health and safety Law and with any appropriate standards, policies, procedures and documentation relating to health and safety notified to the Contractor by the Customer from time to time.
- 26.2 The Customer may carry out an inspection or audit of the Contractor's systems and procedures for complying with its legal responsibilities at any time.
- 26.3 The Contractor shall provide applicable hazard information such as material safety data sheets and shall inform the Customer of all regulations, guidance and significant risks (statutory or otherwise) which the Contractor knows or believes to be associated with the performance of the Services and/or any combination of the Services with any other services.
- 26.4 In the event of any release or spillage of substances hazardous to the environment, the Contractor will notify the Customer and the appropriate statutory bodies immediately and ensure that all necessary remedial action is taken to protect the environment.
- 26.5 The Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any liabilities, losses and costs related to any third party claim which arises from the act or omission of the Contractor and/or any of the Staff resulting in the alleged release of any waste, hazardous substance or other pollutant.
- 26.6 Notwithstanding clause 26.3, the Contractor shall, at the Customer's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Customer are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.

- 26.7 The Contractor shall have a designated policy to manage, control and audit the health and safety standards of its Sub-contractors and shall take appropriate action if any Sub-contractors fail to meet required standards.
- 26.8 The Customer shall be entitled, acting through its authorised officers and health and safety advisors, to suspend the performance by the Contractor of some or all of its obligations under the Contract in the event of non-compliance by the Contractor with its obligations under this clause 26. The Contractor shall not resume performance of the suspended obligations until notified that the Customer is satisfied that the relevant non-compliance has been rectified.
- 26.9 For the avoidance of doubt, the Contractor acknowledges and agrees that any Default of its obligations under this clause 26, including any persistent, minor breaches, may have the following consequences:
- 26.9.1 the exercise of rights on the part of the Customer to suspend the performance by the Contractor of some or all of its obligations under the Contract (including the performance of the Services) or to terminate the Contract;
  - 26.9.2 to the extent permitted by applicable Law, the imposition of restrictions on the Contractor from working on any other contract with the Customer until improvements to its health and safety practices have been made and suitable evidence of such has been provided to the Customer;
  - 26.9.3 to the extent permitted by applicable Law, the removal of the Contractor from the Customer's approved/select lists.
- 26.10 The Contractor shall notify the Customer of past enforcement action taken against the Contractor and provide such details of prosecutions, fines, accident history and frequency rate as may be considered necessary by the Customer.
- 26.11 The Contractor shall provide the Customer on request with a copy of its health and safety policy, risk assessments, method statements and safe systems and procedures. Notwithstanding this, the Contractor shall ensure that the Staff comply at all times with the Customer's health and safety policies and procedures in place from time to time in so far as they relevant to the Contract.
- 26.12 The Contractor shall nominate a senior representative to act as coordinator between the Parties for matters of health and safety arising out of the Contract.
- 26.13 The Contractor shall comply with any health and safety related conditions stipulated by the Customer from time to time. Such conditions override details contained in the Contractor's internal documentation.
- 26.14 The Contractor shall notify the Customer in writing without delay of all incidents, which either could have led, or did lead, to injury and/or damage. Where incidents are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrence Regulations 2013, the Contractor shall supply the Customer with a completed copy of all relevant forms and reports required to be submitted pursuant to those Regulations.
- 26.15 The Contractor shall ensure that sufficiently trained and competent employees will be provided to undertake the duties defined in the Contract and shall provide evidence of competency where required by the Customer.

## **SECTION E - PROTECTION OF INFORMATION**

### **27 Data Handling**

- 27.1 The Contractor shall comply with its obligations as set out in Schedule 5 (Data Handling).
- 27.2 If requested to do so by the Customer, the Contractor shall procure that the Staff enter into a direct confidentiality agreement with the Customer on terms substantially similar to those set out in Schedule 5 (Data Handling).
- 27.3 Without prejudice to any other rights or remedies that the Customer may have, the Contractor acknowledges that a Default by the Contractor of Schedule 5 (Data Handling) is likely to cause irreparable and unquantifiable damage to the Customer and agrees that the Customer shall be entitled at its own discretion and without proof of special damages, to apply for and obtain the remedies of injunctive and/or other equitable relief for any threatened or actual Default by the Contractor of the provisions of Schedule 5 (Data Handling).

### **28 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

- 28.1 The Contractor shall comply with, and shall ensure that the Staff comply with, the provisions of:



28.1.1 the Official Secrets Acts 1911 to 1989; and

28.1.2 Section 182 of the Finance Act 1989.

28.2 In the event that the Contractor or any of the Staff fail to comply with clause 28.1, the Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor.

## **29 Publicity, Media and Official Enquiries**

29.1 The Contractor shall not (and shall ensure that the Staff and the Contractor's professional advisers shall not) make any press announcement or publicise the Contract or any part thereof in any way, without prior Approval.

29.2 The Contractor shall not (and shall ensure that the Staff and the Contractor's professional advisers shall not) include in any published material the name, logo or style of the Customer; any Intellectual Property Rights associated therewith; nor any photograph or drawing depicting any officer of the Customer's police force without prior Approval.

## **30 Intellectual Property Rights**

30.1 Intellectual Property Rights belonging to the Customer created prior to the beginning of the Contract Period shall continue to belong to the Customer and the Contractor shall be entitled to use any documentation, information, property (other than real property) or material ("Customer Material") provided by the Customer to the Contractor (or any of the Staff) only for purposes envisaged by or arising under the Contract.

30.2 The Contractor not be entitled to exercise any lien over any Customer Material in its possession but shall hold all such Customer Material in safe custody at its own risk and shall maintain the Customer Material in good condition until returned to the Customer (which the Contractor shall do immediately following a request to do so from the Customer) and shall not dispose of or use the Customer Material other than in accordance with the Customer's written instructions or authorisation. The Contractor irrevocably licences the Customer and its agents to enter any premises of the Contractor during normal working hours on reasonable notice to recover any Customer Material not returned by the Contractor following a request to do so.

30.3 The Contractor shall take all reasonable steps to ensure that the title of the Customer to the Customer Material and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Customer's request, store the Customer Material separately and ensure that it is clearly identifiable as belonging to the Customer.

30.4 Intellectual Property Rights in any deliverable created by the Contractor during the Contract Period in the performance of the Contract shall be the sole property of the Customer provided that the Contractor shall have free and unfettered access to and right to use such Intellectual Property Rights during the Contract Period for all purposes envisaged by or arising under the Contract.

30.5 Immediately upon request, the Contractor shall assign (or procure the assignment) in writing to the Customer (or to such other person(s) as the Customer shall direct) with full title guarantee title to and all rights and interests as it (or any Staff or any Sub-contractor) has or may acquire in any deliverables the sole property of the Customer pursuant to clause 30.4.

30.6 The Contractor shall obtain waivers of all moral rights in any deliverables that are transferred to the Customer pursuant to clause 30.4 and/or clause 30.5 to which any person is now or may at any future time be entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of Law in any jurisdiction.

30.7 The Contractor hereby grants (or (in the case of third party Intellectual Property Rights) shall procure that the third party grants) to the Customer an irrevocable, non-exclusive royalty-free licence to use, copy, modify, adapt, publish and create derivative works from, and for any purpose in connection with the Services (and/or related deliverables), all the Intellectual Property Rights (other than in respect of the Customer Material or deliverables, the Intellectual Property Rights of which are the sole property of the Customer pursuant to clause 30.1 and/or clause 30.4) which the Contractor, the Staff and/or the Sub-contractor(s) have used or supplied in connection with the Services (and/or related deliverables). Such licence shall include the right for the Customer to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods or services to the Customer.

30.8 For the avoidance of doubt, the licence in clause 30.7 extends to any officers, employees, agents or staff of the Customer or any Contracting Authority which is a member of any

collaboration agreement with the Customer for the delivery of goods or services or sharing of data which in the ordinary course of business or operations incorporate or utilise the Services.

- 30.9 The Contractor warrants that the performance, receipt and use of the Services and any deliverables shall not infringe the Intellectual Property Rights of any third party and the Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any claims, proceedings, actions, damages, costs, expenses and any other liabilities suffered or incurred by the Customer or for which the Customer may become liable arising directly or indirectly out of or in connection with any claim made against the Customer that the performance, receipt or use of the Services and/or any deliverables infringes the Intellectual Property Rights of a third party.
- 30.10 The warranty and indemnity in clause 30.9 shall not apply to claims which arise from:
- 30.10.1 items or materials based upon designs supplied by the Customer; or
  - 30.10.2 the use of data supplied by the Customer which is not required to be verified by the Contractor under any provision of the Contract.
- 30.11 The Customer shall notify the Contractor in writing of any claim or demand brought against the Customer for infringement or alleged infringement of any Intellectual Property Rights in materials, goods, services or deliverables supplied or licensed by the Contractor in relation to the Contract.
- 30.12 The Contractor shall, at its own expense, conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials, goods, services or deliverables supplied or licensed by the Contractor, provided always that the Contractor shall:
- 30.12.1 consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 30.12.2 take due and proper account of the interests of the Customer; and
  - 30.12.3 not settle or compromise any claim without prior Approval (not to be unreasonably withheld or delayed).
- 30.13 The Customer shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Customer or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract provided that the Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any costs and expenses (including legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Customer in relation to any costs and expenses incurred to the extent that they relate to or arise out of a claim, demand or action in respect of the matters in clause 30.10.1 or clause 30.10.2.
- 30.14 In connection with any negotiations or litigation conducted by the Contractor pursuant to clause 30.12, and subject to the Contractor complying with its obligations under that clause, the Customer shall not without the prior written consent of the Contractor (such consent not to be unreasonably withheld or delayed) make any admissions which may be prejudicial to the defence or settlement of the relevant claim.
- 30.15 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Rights is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Customer and, at its own expense and subject to prior Approval (not to be unreasonably withheld or delayed), use its best endeavours to:
- 30.15.1 modify any or all of the Services and/or deliverables without reducing the performance or functionality of the same, or substitute alternative services and/or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions in the Contract shall apply mutatis mutandis to such modified Services and/or deliverables or to the substitute services and/or deliverables; or
  - 30.15.2 procure a licence to use and provide the Services and/or deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- and in the event that the Contractor is unable to comply with clause 30.15.1 or clause 30.15.2 within 20 Working Days of receipt of the Contractor's notification the Customer may terminate the Contract with immediate effect by notice in writing.

### **31 Audit**

- 31.1 The Contractor shall keep and maintain (in accordance with Good Industry Practice) until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services performed under it, all expenditure reimbursed by the Customer, and all payments made by the Customer.
- 31.2 The Contractor shall on request afford the Customer and/or any Regulatory Body including the National Audit Office (or any other applicable national audit body from time to time) and their respective representatives such access to those records as may be requested by the Customer in connection with the Contract.
- 31.3 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the performance of the Services save insofar as the Contractor accepts and acknowledges that control over the conduct of audits carried out by a third party is outside of the control of the Customer.

### **32 Transparency**

- 32.1 The Contractor acknowledges that the Customer is subject to the Elected Local Policing Bodies (Specified Information) Order 2011 and hereby gives its consent for the Customer to publish the Contract Information to the extent that the Customer is required to do so pursuant to that legislation or any other applicable Law.
- 32.2 The Customer may, in its sole discretion, redact all or part of the Contract Information prior to its publication in accordance with clause 32.1 and, in doing so, the Customer shall take account of the Freedom of Information Act 2000. The Customer may consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to this clause 32 but the Contractor acknowledges and agrees that the final decision regarding publication and/or redaction of the Contract Information shall be that of the Customer.

## **SECTION F - CONTROL OF THE CONTRACT**

### **33 Transfer and Sub-Contracting**

- 33.1 Save as permitted by clauses 33.5 and 33.6, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval.
- 33.2 Where the Customer has Approved the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Contractor to the Customer as soon as reasonably practicable after the relevant sub-contract has been entered into.
- 33.3 Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract and the Contractor shall be responsible for the acts and omissions of any Sub-contractor(s) as though they are its own.
- 33.4 The Contractor shall ensure that each sub-contract shall include:
- 33.4.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that sub-contract as if it were the Contractor;
  - 33.4.2 a provision enabling the Contractor to assign, novate or otherwise transfer any of its rights and/or obligations under the sub-contract to the Customer;
  - 33.4.3 a provision requiring the Sub-contractor to enter into a direct agreement with the Customer on terms substantially similar to those set out in Schedule 5 (Data Handling);
  - 33.4.4 a provision requiring the Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to clause 21; and
  - 33.4.5 a provision restricting the ability of the Sub-contractor to further sub-contract elements of the service provided to the Contractor without first seeking prior Approval.
- 33.5 The Contractor may assign to a third party (the "Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract (including any interest which the Customer incurs under clause 18.7). Any assignment in accordance with this clause 33.5 shall be subject to:
- 33.5.1 reduction of any sums in respect of which the Customer exercises its right of recovery under clause 19;
  - 33.5.2 all related rights of the Customer under the Contract in relation to the recovery of sums due but unpaid; and

- 33.5.3 the Customer receiving notification under both clauses 33.6.1 and 33.6.2.
- 33.6 In the event that the Contractor assigns the right to receive the Contract Price in accordance with clause 33.5:
- 33.6.1 the Contractor or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective;
- 33.6.2 the Contractor shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment; and
- 33.6.3 the provisions of clause 18 shall continue to apply in all other respects after the assignment and shall not be amended without prior Approval.
- 33.7 Subject to clause 33.9, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 33.7.1 any Contracting Authority; or
- 33.7.2 any body which substantially performs the functions of the Customer; or
- 33.7.3 any other third party provider or supplier of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- 33.8 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to clause 33.9, 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.
- 33.9 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 33.7 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 33 both such bodies being referred to as the "Transferee"):
- 33.9.1 the rights of termination of the Customer in clauses 43.1, 43.2, 43.3 and 44.1 shall be available to the Contractor in the event of (as appropriate) the insolvency or the Default of the Transferee; and
- 33.9.2 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 prior consent in writing of the Contractor (such consent not to be unreasonably withheld or delayed).
- 33.10 The Customer may disclose to any Transferee any confidential information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such confidential information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such confidential information on terms equivalent to those set out in Schedule 5 (Data Handling).
- 33.11 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.

#### **34 Waiver**

- 34.1 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.
- 34.2 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 5.
- 34.3 A waiver of any right or remedy arising from a Default of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent Default of the Contract.

#### **35 Variation**

- 35.1 Subject to the provisions of this clause 35, the Customer may request a variation to the Specification provided that such variation does not amount to a material change to the Specification (a "Variation").

- 35.2 The Customer may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Customer shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limit shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- 35.3 In the event that the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Contract Price, the Customer may:
- 35.3.1 allow the Contractor to continue to fulfil its obligations under the Contract without the Variation; or
- 35.3.2 terminate the Contract with immediate effect by giving notice in writing to the Contractor, except where the Contractor has already performed all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure detailed in clause 51.
- 35.4 No variation of the Contract shall be valid unless effected in accordance with clause 35.2 or otherwise expressly agreed in writing by an authorised representative of the Customer and by an authorised representative of the Contractor.

### **36 Severability**

- 36.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 36.2 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 Contractor shall immediately commence good faith negotiations to remedy such invalidity.

### **37 Remedies in the event of inadequate performance**

- 37.1 If the Contractor fails to perform any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall be entitled to instruct the Contractor to remedy the failure, in which event the Contractor shall, at its own cost and expense, remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other reasonable period of time as the Customer may direct.
- 37.2 Where the Contractor fails to perform the Services in accordance with the Contract and the failure is not remedied to the satisfaction of the Customer within 10 Working Days (or such other reasonable period specified by the Customer) following a written notice to the Contractor requesting the failure to be remedied, or where the Contractor persistently fails to comply with the terms of the Contract, it will be considered a material Default of the Contract.
- 37.3 In the event that the Customer is of the reasonable opinion that there has been a material Default of the Contract by the Contractor, then the Customer may, without prejudice to its rights under clause 44, do any of the following:
- 37.3.1 without terminating the Contract, itself perform (or procure a third party to perform) replacement services for all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to perform all or such part of the Services in accordance with the Contract and for the avoidance of doubt, in such circumstances, the Customer shall have no liability to pay the Contract Price in respect of those Services where the Customer has performed (or procured a third party to perform) replacement services;
- 37.3.2 without terminating the whole of the Contract, terminate the Contract immediately by giving notice in writing to the Contractor in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself perform (or procure a third party to perform) replacement services for such part of the Services; and/or
- 37.3.3 terminate, in accordance with clause 44, the whole of the Contract.
- 37.4 Without prejudice to its right under clause 19, the Customer may charge the Contractor for any

costs reasonably incurred and any reasonable administration costs in respect of the performance of any replacement services by the Customer or a third party (including pursuant to clause 37.3) to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services replaced and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement services.

### **38 Remedies Cumulative**

38.1 Except as otherwise expressly provided by the Contract, all rights and remedies available to either Party under the Contract or otherwise are cumulative and may be exercised concurrently or separately, and the exercise of any one right or remedy shall not be deemed an election of such right or remedy to the exclusion of, and shall be without prejudice to the availability of, any other right or remedy.

### **39 Entire Agreement**

39.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contractor acknowledges and agrees that it has not been induced to enter into the Contract in reliance upon, and in connection with the Contract does not have any remedy and waives all rights in respect of, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in the Contract, except that this clause 39.1 shall not exclude liability in respect of any fraudulent misrepresentation.

39.2 In the event of, and only to the extent of, any conflict or inconsistency between the clauses of the Contract, the Schedules and any other documents referred to in or attached to the Contract, the conflict or inconsistency shall be resolved in accordance with the following order of precedence:

39.2.1 first priority, the clauses of the Contract;

39.2.2 second priority, the Schedules (including the Specification);

39.2.3 third priority, any other document referred to in or attached to the Contract.

### **40 Counterparts**

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

## **SECTION G - LIABILITIES**

### **41 Liability, Indemnity and Insurance**

41.1 Neither Party excludes or limits its liability to the other Party for or in respect of:

41.1.1 death or personal injury caused by its negligence or that of its employees, agents or sub-contractors; or

41.1.2 fraud or fraudulent misrepresentation by it or its employees; or

41.1.3 any liability arising under any indemnity provision in the Contract, save for the indemnity set out at clause 41.2; or

41.1.4 any other matter which, by Law, may not be excluded or limited.

41.2 Subject to clauses 41.3 and 41.4, the Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the performance, delayed performance or failure to perform the Services and/or the performance, delayed performance or non-performance by the Contractor of its other obligations under the Contract and/or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor or any of the Staff.

41.3 Subject always to clause 41.1, the liability of either Party for Defaults shall be subject to the following limits:

41.3.1 the liability of either Party for any single Default resulting in loss of or damage to the property of the other Party shall not exceed £10,000,000 (ten million pounds);

41.3.2 the aggregate liability under the Contract of either Party for any and all Defaults (other

than a Default covered by clause 41.3.1) shall not exceed an amount equal to 150% (one hundred and fifty per cent) of the total Contract Price (being the aggregate of all amounts already paid to the Contractor and all amounts payable over the balance of the Contract Period.

- 41.4 Without prejudice to its liability to indemnify the Customer under the Contract, the Contractor shall take out and maintain, or procure the taking out and maintenance of, a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract including death or personal injury, loss of or damage to property or any other loss (including any insurance specified in Section 2 of the Contract Schedule together with any other insurances as may be required by Law) (the "Required Insurances").
- 41.5 The Contractor shall ensure that the Required Insurances are taken out with insurers of good financial standing and of good repute in the United Kingdom insurance market and that the relevant policies are effective in each case not later than the date on which the relevant risk commences.
- 41.6 The Contractor shall not (and shall use all reasonable endeavours to procure that none of the Sub-contractors of any tier shall) take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any policy in which the Contractor is an insured, a co-insured or additional insured person.
- 41.7 The Contractor shall in respect of the Required Insurances:
- 41.7.1 provide for 5 Working Days' prior written notice of their cancellation or non-renewal to be given to the Customer. Failure to do so will be deemed to be a material Default of the Contract;
  - 41.7.2 insofar as they relate to damage to assets, cover the same for the full reinstatement or replacement value; and
  - 41.7.3 in respect of third party public and products liability insurance, procure that this shall contain an indemnity to principals clause under which the Customer shall be indemnified in respect of claims made against the Customer arising from death or bodily injury or third party property damage and for which the insured is legally liable in the provision of the Services and/or in connection with the Contract.
- 41.8 The Contractor shall provide on request by the Customer:
- 41.8.1 evidence of the Required Insurances in a form satisfactory to the Customer;
  - 41.8.2 evidence in a form satisfactory to the Customer, that the premiums payable under the Required Insurances have been paid and that those insurances are in full force and effect and meet the insurance requirements of the Contractor in respect thereof,
- provided that neither inspection, nor receipt of such evidence shall constitute acceptance by the Customer of the terms thereof, nor be a waiver of the Contractor's liability under the Contract.
- 41.9 The Contractor shall obtain renewal certificates or cover notes, in a form satisfactory to the Customer, in relation to any of the Required Insurances as and when requested and shall forward certified copies to the Customer as soon as possible but in any event no later than 10 Working Days following the request.
- 41.10 If the Contractor is in Default of clause 41.5 in respect of any Required Insurance, the Customer may pay any premiums required to keep such insurance in force or itself procure such insurance and may, in either case, recover such amounts from the Contractor on written demand, together with all expenses incurred in procuring such insurance.
- 41.11 The Contractor shall promptly notify to insurers any matter arising from or in relation to the Contract for which it may be entitled to claim under any of the Required Insurances and diligently pursue any valid insurance claim.
- 41.12 The Contractor shall comply with all conditions and requirements attaching to its insurance cover in respect of the performance of the Services and in the event that the Customer receives a claim relating to the Services or the Contract, the Contractor shall cooperate with the Customer or its insurers and assist it in dealing with such claims including providing information and documentation in a timely manner.
- 41.13 The Contractor shall:
- 41.13.1 (except where the Customer is the claimant party) give the Customer notification

- within 10 Working Days after any claim in excess of £50,000 (fifty thousand pounds) relating to the provision of the Services or the Contract on any of the Required Insurances or which, but for the application of the applicable policy excess, would be made on any of the Required Insurances and (if required by the Customer) provide full details of the incident giving rise to the claim;
- 41.13.2 promptly and diligently deal with all claims received relating to the Required Insurances and in accordance with the relevant insurers' requirements;
- 41.13.3 (except where the Customer is the claimant party) in relation to all claims relating to the Required Insurances, give the Customer details of the value and nature of all such claims relating to the provision of the Services or the Contract as may from time to time be required by the Customer.
- 41.14 Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Contractor of its liabilities and obligations under the Contract.
- 41.15 Where any policy relating to the Required Insurances requires payment of a premium then, subject to clause 41.10, the Contractor shall be liable for such premium.
- 41.16 Where any policy relating to any of the Required Insurances is subject to an excess or deductible below which the indemnity from insurers is excluded the Contractor shall be liable for such excess or deductible and shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any losses or claims which would otherwise be insured but for the excess or deductible. The Contractor shall not be entitled to recover from the Customer any sum paid by way of excess or deductible under the Required Insurances whether under the terms of the Contract or otherwise.
- 41.17 If at any time during the performance of its obligations under the Contract, any of the Staff are required to travel, the Contractor shall be responsible for ensuring that it has and maintains at no cost to the Customer adequate personal accident, medical and personal effects travel insurance for such purposes. For the avoidance of doubt, the Customer shall not, in any circumstances, be responsible for arranging or maintaining such insurance or for ensuring that the Contractor arranges or maintains such insurance.

## **42 Warranties and Representations**

- 42.1 The Contractor warrants and represents that:
- 42.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to:
- (a) enter into and perform its obligations under the Contract;
  - (b) grant all the rights it purports to grant in accordance with the terms of the Contract; and
  - (c) perform the Services in accordance with the Contract;
- 42.1.2 the Contract is executed by a duly authorised representative of the Contractor;
- 42.1.3 in entering the Contract it has not committed any fraud;
- 42.1.4 it has not committed any offence under the Bribery Act 2010 or any other applicable Law creating offences in respect of bribery, corruption or fraudulent acts;
- 42.1.5 as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract;
- 42.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- 42.1.7 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 42.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 42.1.9 it has adequate resources to meet its obligations under the Contract in a timely and reliable manner;



- 42.1.10 the Staff shall:
- (a) have the relevant qualifications, experience and training for their role and will be competent to carry out the duties expected of persons acting in their or a similar capacity;
  - (b) be vetted and verified in accordance with the provisions of Schedule 5 (Data Handling) and Good Industry Practice;
  - (c) be entitled to work in the United Kingdom or (where applicable) any other country from which (or in which) the Services are to be performed;
  - (d) perform the Services in compliance with all applicable Law;
- 42.1.11 it owns or has obtained valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- 42.1.12 in the 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;
  - (b) it has been in full compliance with all applicable securities and tax Law in the jurisdiction in which it is established; and
  - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- 42.2 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of Default of that provision by the Contractor.
- 42.3 The Contractor acknowledges and agrees that:
- 42.3.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Customer into entering into the Contract; and
  - 42.3.2 the Customer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

## **SECTION H - DEFAULT, DISRUPTION AND TERMINATION**

### **43 Termination on insolvency and change of control**

- 43.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a body corporate (whether a limited company, a limited liability partnership or otherwise) and in respect of the Contractor:
- 43.1.1 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
  - 43.1.2 a shareholders' or members' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed or any other step is taken with a view to it being determined that it be wound-up (other than as part of, and exclusively for the purpose of, a bona fide solvent reconstruction or amalgamation); or
  - 43.1.3 a petition is presented for its winding up (which is not dismissed within 10 Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to the Insolvency Act 1986; or
  - 43.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - 43.1.5 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
  - 43.1.6 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 43.1.7 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

- 43.1.8 it is for any reason dissolved or struck-off the register of companies; or
  - 43.1.9 any event similar to those listed in clauses 43.1.1 to 43.1.8 occurs under the law of any jurisdiction in which it is established.
- 43.2 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is an individual and:
- 43.2.1 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 Contractor's creditors; or
  - 43.2.2 a petition is presented and not dismissed within 10 Working Days or an order is made for the Contractor's bankruptcy; or
  - 43.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - 43.2.4 the Contractor 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; or
  - 43.2.5 a creditor or encumbrancer 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 Contractor's assets and such attachment or process is not discharged within 10 Working Days; or
  - 43.2.6 he dies or is unable to make decisions for himself within the meaning of section 3 of the Mental Capacity Act 2005; or
  - 43.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 43.3 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Contractor is a partnership and in respect of the Contractor:
- 43.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme, arrangement with, or assignment for the benefit of, its creditors; or
  - 43.3.2 it is for any reason dissolved; or
  - 43.3.3 a petition is presented for its winding-up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
  - 43.3.4 a receiver, or similar officer, is appointed over the whole or any part of its assets; or
  - 43.3.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986; or
  - 43.3.6 any of the following occurs in relation to any of its partners:
    - (a) an application for an interim order is made pursuant to Section 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, his creditors; or
    - (b) a petition is presented for his bankruptcy; or
    - (c) a receiver, or similar officer is appointed over the whole or any part of his assets.
- 43.4 The Contractor shall notify the Customer immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 ("change of control"). The Customer may terminate the Contract with immediate effect by giving notice in writing within six months of:
- 43.4.1 being notified that a change of control has occurred; or
  - 43.4.2 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 to the change of control was granted prior to that change occurring.

#### **44 Termination on Default**

- 44.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a Default and if:

- 44.1.1 the Contractor has not remedied the Default to the reasonable satisfaction of the Customer within 10 Working Days (or such other reasonable period specified by the Customer) after issue of a written notice specifying the Default and requesting it to be remedied; or
  - 44.1.2 the Default is not, in the reasonable opinion of the Customer, capable of remedy; or
  - 44.1.3 the Default, in the reasonable opinion of the Customer, is a material Default of the Contract; or
  - 44.1.4 the Default relates to a persistent or repeated breach of the Contract in such a manner as to reasonably justify the opinion that the Contractor's conduct is inconsistent with it having the intention or ability to perform its obligations in accordance with the terms of the Contract; or
  - 44.1.5 the Default relates to a failure to meet and/or rectify performance in respect of any particular delivery timescales, the Service Levels or any key performance indicators and the failure in question is of a severity that permits the Customer by reference to other provisions in the Contract (whether in a Schedule or otherwise) to terminate the Contract.
- 44.2 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 45 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights in accordance with clause 19.

#### **45 Break**

- 45.1 The Customer shall have the right to terminate the Contract at any time for any reason by giving to the Contractor not less than three months' prior written notice.
- 45.2 The Customer shall have the right to terminate the Contract at any time with immediate effect on giving written notice to the Contractor if there is a risk, or the Customer reasonably considers that there is a risk, of the Customer's reputation being damaged if the Contract was to continue in force.
- 45.3 The Customer may terminate the Contract (at any time) immediately by giving written notice to the Contractor where:
- 45.3.1 the Contractor was, at the time of the date of the Contract, in one of the situations referred to in Regulation 57(1) of the PCR, including as a result of the application of Regulation 57(2);
  - 45.3.2 the Contractor was, at the time of the date of the Contract, in one of the situations referred to in Regulation 57(3) or 57(4) of the PCR which has not ceased to apply as a result of the application of Regulation 57(5);
  - 45.3.3 the Customer is notified (or has reasonable grounds to believe) that a claim or application has been or shall be made by a third party to a court of competent jurisdiction in UK or EU:
    - (a) that the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under Directive 2014/24/EU of the European Parliament or the PCR;
    - (b) that the Contract has been subject to a substantial modification which should have required a new procurement procedure in accordance with Regulation 72(9) of the PCR; or
    - (c) requesting Judicial Review of the decision to award the Contract to the Contractor.

#### **46 Consequences of Expiry or Termination**

- 46.1 Where the Customer terminates the Contract in accordance with clauses 8, 21, 22, 26, 28, 30, 37, 43, 44, 45.3.1, 45.3.2 or 47 and then makes other arrangements for the provision of replacement services, the Customer may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.
- 46.2 Where the Contract is terminated in accordance with any of the clauses referred to in clause 46.1, no further payments shall be payable by the Customer to the Contractor (for Services performed by the Contractor prior to termination and in accordance with the Contract but where

- the payment has yet to be made by the Customer), until the Customer has established the final cost of making the other arrangements envisaged under that clause.
- 46.3 On the termination of the Contract for any reason or on expiry of the Contract Period, the Contractor shall:
- 46.3.1 immediately return to the Customer (in the format reasonably specified by the Customer) the Customer Material, any deliverables and all other material, information and documentation belonging to the Customer in its possession or in the possession or under the control of any Staff or Sub-contractors, which were obtained or produced in the course of performing the Services;
  - 46.3.2 refund to the Customer any amount which it may have paid in advance in respect of the Services not provided by the Contractor as a consequence of termination;
  - 46.3.3 promptly vacate the Premises leaving them clean and tidy;
  - 46.3.4 assist and cooperate with the Customer to ensure an orderly transition (to the Replacement Contractor) of the provision of the replacement services and/or the completion of any work in progress; and
  - 46.3.5 promptly provide all information (in the format reasonably specified by the Customer) concerning the performance of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Contractor to conduct due diligence.
- 46.4 If the Contractor fails to comply with clause 46.3.1, the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-contractors where any such items may be held.
- 46.5 Where the Contract is terminated by the Customer in accordance with any of the clauses referred to in clause 46.1 or in accordance with clause 48.3, the Contractor shall provide all assistance and information referred to in clause 46.3.1 and clause 46.3.3 free of charge. Otherwise, the Customer shall pay the Contractor's reasonable costs of providing the assistance and information provided that the Contractor shall take all reasonable steps to mitigate such costs.
- 46.6 At the end of the Contract Period (howsoever arising) at the request of the Customer, the Contractor shall promptly arrange and participate in a post contract review with the Customer to consider all aspects of the provision of the Services.
- 46.7 Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor under clauses 18, 19, 21, 22, 27, 28, 30, 31, 38, 41, 50, 51, 52 and this clause 46.
- 46.8 Save as otherwise expressly provided in the Contract, 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.

## **47 Disruption**

- 47.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 47.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by a member of Staff or any other person, which affects or might affect the Contractor's ability at any time to perform its obligations under the Contract.
- 47.3 In the event of industrial action by the Staff which affects or might affect its ability to perform its obligations under the Contract, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 47.4 If the Contractor's proposals referred to in clause 47.3 are considered insufficient or unacceptable by the Customer acting reasonably, then the Contract may be terminated with immediate effect by the Customer giving notice in writing to the Contractor.

## **48 Force Majeure**

- 48.1 Subject to compliance with clause 48.2, 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 for services already received/performed) to the extent that such delay or failure is a result of Force Majeure.
- 48.2 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 48.1 it shall:
- 48.2.1 immediately notify the other Party by the most expeditious method then available;
  - 48.2.2 inform the other Party of the period for which it is estimated that such failure or delay shall continue;
  - 48.2.3 use its best endeavours, acting in accordance with Good Industry Practice, to resume performance of its obligations as quickly as possible and minimise the duration and impact of such failure or delay.
- 48.3 The Customer shall be entitled to terminate the Contract by written notice to the Contractor with immediate effect if:
- 48.3.1 the performance by the Contractor of some or all of its obligations under the Contract is prevented or delayed by Force Majeure for a period of more than 15 Working Days cumulatively or consecutively; or
  - 48.3.2 the Customer reasonably anticipates that the performance by the Contractor of some or all of its obligations under the Contract is likely to be prevented or delayed by Force Majeure for a period of more than 15 Working Days cumulatively or consecutively.
- 48.4 For the avoidance of doubt, the Customer shall not be required to pay the Contractor in respect of any period during which (and to the extent that) the Contractor is prevented or delayed in performing its obligations due to Force Majeure. In these circumstances, the Contract Price shall be adjusted and any necessary refund or credit effected in accordance with the Customer's reasonable instructions.

#### **49 Ineffectiveness**

- 49.1 If at any time a "declaration of ineffectiveness" is made by a court in respect of the Contract pursuant to Regulation 98(2)(a) or Regulation 103(3) of the PCR then:
- 49.1.1 the provisions of clause 46 and any other provisions in the Contract which are intended to apply on or after the date on which the Contract is terminated for any reason shall apply as if on the date on which the relevant declaration of ineffectiveness is to take effect (and as a result the Contract is to come to an end) the Contract had been terminated lawfully in accordance with clause 45.1;
  - 49.1.2 if and only if it is expressly stated in another provision of the Contract that the Customer will indemnify the Contractor where the Customer terminates the Contract in accordance with clause 45 during any initial contract period identified in Section 2 of the Contract Schedule, the Customer shall indemnify the Contractor subject to and in accordance with the terms of that provision as if on the date on which the relevant declaration of ineffectiveness is to take effect (and as a result the Contract is to come to an end) the Contract had been terminated in accordance with clause 45.1;
  - 49.1.3 subject to clause 49.1.2, the Customer shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Contractor in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Contractor as a result of or in connection with the relevant declaration of ineffectiveness being made, including any loss of revenue or profit that the Contractor might otherwise have generated under the Contract during the Contract Period.
- 49.2 If any at any time an order is made by a court, pursuant to Regulation 102(3)(a) of the PCR, that the duration of the Contract be shortened, then:
- 49.2.1 for the avoidance of doubt, the provisions of clause 46 and any other provisions in the Contract which are intended to apply on or after the date on which the Contract is terminated for any reason shall apply as if on the date on which the Contract expires in accordance with the relevant court order the Contract had been terminated lawfully in accordance with clause 45.1;
  - 49.2.2 if the relevant court order provides for the Contract to expire prior to the end of any initial contract period identified in Section 2 of the Contract Schedule, then if and only if it is expressly stated in another provision of the Contract that the Customer will indemnify the Contractor where the Customer terminates the Contract in

accordance with clause 45 during such initial contract period, the Customer shall indemnify the Contractor subject to and in accordance with the terms of that provision as if on the date on which the Contract expires in accordance with the relevant court order the Contract had been terminated in accordance with clause 45.1;

- 49.2.3 subject to clause 49.2.2, the Customer shall not be required or liable (on whatever grounds) to pay any compensation or restitution to the Contractor in respect of any loss, damage, costs, expenses or other liabilities suffered or incurred by the Contractor as a result of or in connection with the duration of the Contract being shortened in accordance with the relevant court order, including any loss of revenue or profit that the Contractor might otherwise have generated under the Contract during the Contract Period.

## **SECTION I - DISPUTES AND LAW**

### **50 Governing Law and Jurisdiction**

- 50.1 Subject to the provisions of clause 51, the Customer and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed by, and construed according to, English Law.

### **51 Dispute Resolution**

- 51.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other Party of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 51.2 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.
- 51.3 If the dispute cannot be resolved by the Parties pursuant to clause 51.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 51.5 unless:
- 51.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 51.3.2 the Contractor does not agree to mediation.
- 51.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 51.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 51.5.1 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 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 51.5.2 The Parties shall within 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 the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.
- 51.5.3 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.
- 51.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 51.5.5 If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts, unless the dispute is referred to arbitration pursuant to the procedures set out in clause 51.6.

- 51.5.6 The costs of the Mediator and all other costs connected with the mediation shall be equally apportioned between the Parties or as may otherwise be directed by the Mediator.
- 51.5.7 Each party will bear its own costs and expenses of its preparation and participation in the mediation.
- 51.6 Subject to clause 51.2, the Parties shall not institute court proceedings until the procedures set out in clauses 51.1 and 51.3 have been completed save that:
  - 51.6.1 the Customer may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 51.7;
  - 51.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Customer of its intentions and the Customer shall have 15 Working Days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 51.7;
  - 51.6.3 the Contractor may request by notice in writing to the Customer that any dispute be referred and resolved by arbitration in accordance with clause 51.7, to which the Customer may consent as it sees fit.
- 51.7 In the event that any arbitration proceedings are commenced pursuant to clause 51.6:
  - 51.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
  - 51.7.2 the Customer shall give a written notice of arbitration to the Contractor (the “**Arbitration Notice**”) stating:
    - (a) that the dispute is referred to arbitration; and
    - (b) providing details of the issues to be resolved;
  - 51.7.3 the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with clause 51.7.2 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 51.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
  - 51.7.5 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days of the Arbitration Notice being issued by the Customer in accordance with clause 51.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 51.7.6 the arbitration proceedings shall take place in London and in the English language; and
  - 51.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

## **SECTION J - TUPE**

### **52 TUPE**

- 52.1 The Parties acknowledge and agree that if Services Commencement gives rise to a relevant transfer within the meaning of the TUPE Regulations:
  - 52.1.1 the Contractor shall, and shall procure that any Sub-contractor shall, comply with such obligations as may arise under Regulation 13 of the TUPE Regulations to inform and (if appropriate) consult with employees and/or their appropriate representatives; and
  - 52.1.2 clauses 52.2 to 52.5 shall apply.
- 52.2 Subject to clauses 52.3 and 52.4, the Customer shall indemnify the Contractor in respect of any costs, expenses, liabilities, damages and losses (including legal costs) arising out of any claim, demand, action or proceeding which is made or brought against the Contractor at any time:
  - 52.2.1 by an Entrance Employee, to the extent that it relates to the period before the date of Service Commencement;
  - 52.2.2 in relation to a failure by any Outgoing Contractor to comply with its obligations under Regulation 13 of the TUPE Regulations; and/or
  - 52.2.3 by an employee or former employee of any Outgoing Contractor other than an

Entrance Employee whose employment is deemed to transfer to the Contractor under the TUPE Regulations by virtue of Service Commencement.

- 52.3 The indemnities in clause 52.2 shall not apply to the extent that:
- 52.3.1 any contract between the Customer and the Outgoing Contractor provides for the Outgoing Contractor to indemnify the Contractor in respect of any of the costs, expenses, liabilities, damages and losses covered by the indemnities set out in clause 52.2;
  - 52.3.2 the relevant indemnity in such contract is enforceable directly by the Contractor against the Outgoing Contractor pursuant to the Contract (Rights of Third Parties) Act 1999; and
  - 52.3.3 the Customer has provided to the Contractor a copy of the relevant clauses from such contract.
- 52.4 Subject always to clause 52.3, the indemnities in clause 52.2 shall only apply to the extent that the Customer recovers (in respect of the subject matter of such indemnities) such sum of money as may be required to satisfy such indemnities from any Outgoing Contractor under any indemnity or other legal entitlement it has against such Outgoing Contractor. The Customer shall use its reasonable endeavours to recover any such sums under such entitlement as is mentioned in this clause 52.4.
- 52.5 The Contractor shall indemnify and keep indemnified the Customer in full and hold it harmless on demand from and against any claims, costs, expenses, damages, losses or other liabilities whatsoever and howsoever arising incurred or suffered by the Customer (whether directly or indirectly under an indemnity given by the Customer or otherwise) including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 52.5.1 any failure by the Contractor or any Sub-contractor to comply with its obligations pursuant to the TUPE Regulations; and/or
  - 52.5.2 anything done or omitted to be done by the Contractor or any Sub-contractor in respect of any of the Entrance Employees whether before or after the date of Service Commencement.
- 52.6 The Parties acknowledge and agree that:
- 52.6.1 subsequent to the commencement of the Contract, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of the Contract, or part of it, or otherwise) resulting in a transfer of the Services in whole or in part ("Exit Transfer"); and
  - 52.6.2 if an Exit Transfer is a relevant transfer for the purposes of the TUPE Regulations, then the Customer or a Replacement Contractor or a sub-contractor of a Replacement Contractor (as the case may be) would inherit liabilities in respect of the Exit Employees.
- 52.7 The Contractor agrees that, subject to compliance with Data Protection Law:
- 52.7.1 within 15 Working Days of the earliest of:
    - (a) receipt or the giving of notice of early termination of the Contract or any part thereof;
    - (b) the date which is 12 months before the expiry of any fixed period for the duration of the Contract (whether an initial or any extended period);
    - (c) receipt by the Contractor of a written notice from the Customer given on or after the commencement by the Customer of a re-tendering exercise in respect of the provision of part of all of the Services or any similar services;it shall provide the Contractor's Provisional Staff List and the Staffing Information to the Customer or, at the direction of the Customer, to a Replacement Contractor and it shall provide an updated Contractor's Provisional Staff List and updated Staffing Information when reasonably requested by the Customer or any Replacement Contractor;
  - 52.7.2 at least 20 Working Days prior to the End Date, the Contractor shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Contractor, the Contractor's Final Staff List, which shall be complete and accurate in all material respects. The Contractor's Final Staff List shall identify which of the Staff named are Exit Employees;



- 52.7.3 the Customer shall be permitted to use and disclose the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Contractor for any services which are substantially the same type of services (or any part thereof) as the Services; and
- 52.7.4 upon reasonable request by the Customer the Contractor shall provide the Customer or at the request of the Customer, the Replacement Contractor, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as the Customer reasonably requests.
- 52.8 The Contractor shall ensure that the Contractor's Provisional Staff List, the Contractor's Final Staff List and the Staffing Information are true and accurate in all material respects.
- 52.9 Within 10 Working Days following the End Date, the Contractor shall, if so requested by the Customer, provide to the Customer or any Replacement Contractor, in respect of each person (subject to compliance with Data Protection Law) on the Contractor's Final Staff List who is an Exit Employee, their:
  - 52.9.1 pay slip data for the most recent month;
  - 52.9.2 cumulative pay for tax and pension purposes;
  - 52.9.3 cumulative tax paid;
  - 52.9.4 tax code;
  - 52.9.5 voluntary deductions from pay; and
  - 52.9.6 bank or building society account details for payroll purposes.
- 52.10 From the date of the earliest event referred to in clause 52.7.1 the Contractor shall not, and shall procure that each Sub-contractor shall not, without prior Approval assign any person to the performance of the Services (or the relevant part) which is the subject of an Exit Transfer who is not listed in the Contractor's Provisional Staff List and shall not without the prior Approval (not to be unreasonably withheld or delayed):
  - 52.10.1 increase the total number of employees listed on the Contractor's Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
  - 52.10.2 make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's Provisional Staff List;
  - 52.10.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
  - 52.10.4 introduce any new contractual or customary practice concerning the making of any lump sum payment or the giving of any benefit on the termination of employment of any employees listed on the Contractor's Provisional Staff List; or
  - 52.10.5 replace any of the Staff listed on the Contractor's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's Provisional Staff List.
- 52.11 The Contractor shall promptly notify the Customer or, at the direction of the Customer, the Replacement Contractor of any notice to terminate employment received from any persons listed on the Contractor's Provisional Staff List regardless of when such notice takes effect.
- 52.12 In connection with a relevant transfer to which the TUPE Regulations apply, the Contractor shall, and shall procure that each Sub-contractor shall, perform and discharge all obligations in respect of all the Exit Employees and their representatives for its own account up to and including the End Date.
- 52.13 The Contractor shall indemnify and keep indemnified the Customer and any Replacement Contractor (and any sub-contractor of a Replacement Contractor) in full and hold them harmless on demand from and against any claims, costs, expenses, damages, losses or other liabilities whatsoever and howsoever arising, incurred or suffered by the Customer (whether directly or indirectly under an indemnity given by the Customer to a Replacement Contractor or otherwise) or any Replacement Contractor (or any sub-contractor thereof) including all legal expenses and other professional fees (together with any VAT thereon) in relation to:
  - 52.13.1 any act or omission by the Contractor or any Sub-contractors on or before the End

- Date or any other matter, event or circumstance occurring or having its origin before the End Date, which relates to an Exit Employee;
- 52.13.2 any claim in respect of all emoluments and outgoings in relation to the Exit Employees (including all wages, holiday entitlement, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period on or before the End Date;
- 52.13.3 any claim arising out of the provision of, or proposal by the Contractor or any Sub-contractor to offer any change to any benefit, term or condition or working condition of any Exit Employee where such offer or agreement is made on or before the End Date;
- 52.13.4 any claim made by or in respect of any person who claims to be employed or to have been employed by the Contractor or any Sub-contractor, other than an Exit Employee, and for which it is alleged that the Customer or any Replacement Contractor (or any sub-contractor thereof) may be liable by virtue of the Contract and/or the TUPE Regulations;
- 52.13.5 any act or omission of the Contractor or any Sub-contractor in relation to its obligations under Regulations 11 or 13 of the TUPE Regulations, or in respect of an award of compensation under Regulation 15 of the TUPE Regulations except to the extent that the liability arises from the failure of the Customer or any Replacement Contractor (or any sub-contractor thereof) to comply with Regulation 13 of the TUPE Regulations;
- 52.13.6 any statement communicated to or action done by the Contractor or any Sub-contractor in respect of any Exit Employee on or before the End Date regarding the Exit Transfer which has not been agreed in advance with the Customer in writing.
- 52.14 All Staff Expenses which relate to any Exit Employee shall be apportioned on a time basis so that such part of such Staff Expenses which relates to any Exit Employee and is attributable to the period ending on the End Date shall be borne by the Contractor. Within 10 Working Days of the End Date, the Contractor shall account to the Customer or any Replacement Contractor for such Staff Expenses, including the cost of unused holiday entitlement accrued to the End Date. The Contractor shall indemnify and keep indemnified the Customer and any Replacement Contractor (or any sub-contractor thereof) in full and hold them harmless on demand from and against any liability arising because of any failure by the Contractor to fulfil its obligations in accordance with this clause 52.14.
- 52.15 The Contractor shall indemnify and keep indemnified the Customer, any Replacement Contractor and/or (as the case may be) any sub-contractor of a Replacement Contractor in full and hold them harmless on demand from and against any claims (including any claims under an indemnity given by the Customer to a Replacement Contractor or otherwise) arising from any act or omission of the Contractor (or any Sub-contractors) in relation to any other Staff who is not an Exit Employee during any period whether before, on or after the End Date.
- 52.16 The Parties agree that any Replacement Contractor and any sub-contractor of a Replacement Contractor shall be entitled to enforce the obligations owed to and the indemnities given to such Replacement Contractor or sub-contractor (as the case may be) under this clause 52 pursuant to the Contracts (Rights of Third Parties) Act 1999.