

**NORTH TYNESIDE COUNCIL  
GENERAL CONDITIONS OF CONTRACT  
FOR THE SUPPLY OF SERVICES**

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# GENERAL CONDITIONS OF CONTRACT

## 1 DEFINITIONS AND INTERPRETATIONS

The terms and expressions used in this Contract shall have the meanings set out below:

- 1.1 "Authorised Officer" means the representative of the Authority referred to in Condition 3 (including any representative appointed under that Condition).
- 1.2 "Commencement Date" means the date stated in the Specific Conditions.
- 1.3 "Conditions" means all the terms and conditions of the Contract.
- 1.4 "Confidential Information" means information of a confidential nature (including the Contract Generated Materials) the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information (and in the case of the Authority, this shall include the Tender and the Contract Documents), information which relates to the finances, business, affairs, properties, assets, trading practices, goods/services, developments, trade secrets, Intellectual Property Rights, employees and other workers, customers and suppliers of either party, or to any other third party with whom of either party has dealt, or which is Personal Data (as defined in the Data Protection Legislation).
- 1.5 "Contract" means the agreement between the Authority and the Contractor comprising the Contract Documents to provide the Service in accordance with the Conditions and where applicable, pursuant to either an Order or a series of Orders.
- 1.6 "Contract Documents" means all of the following:
- the Tender
  - the Articles of Agreement
  - these General Conditions of Contract
  - the Specific Conditions
  - the Specification
  - the method statement of the Contractor forming part of the Tender ("Method Statement")
  - all the schedules and appendices to the Conditions

- where applicable, any Order placed and any attachments or amendments that form part of the Contract as agreed and signed by the parties in writing.

- 1.7 “Contract Generated Materials” means any and all information data documentation things materials and deliverables created developed or generated exclusively for the Authority by/on behalf of the Contractor in connection with the Contract or in the performance of the Service or to that the Contractor supplies or may supply in any form (whether printed, machine readable or otherwise) on any media (whether now known or in the future) under the Contract.
- 1.8 “Contract Period” means the period from and including the Commencement Date until this Contract expires or terminates on the date as specified in the Specific Conditions (and where the context so admits including any agreed extension but subject to earlier termination as provided in the Contract or otherwise).
- 1.9 “Contract Standard” means such standard in compliance with each and every respect of all relevant provisions of the Contract. Where no criteria are stated in the Contract, the standard is to be the entire satisfaction of the Authority and in accordance with Good Industry Practice.
- 1.10 "Contractor" means the party with whom this Contract is placed to provide the Service to the Authority as appearing in the Articles of Agreement, or an Order placed by the Authority pursuant to the Contract, and where the context so admits shall include the Contractor's employees, agents sub-contractors, permitted assigns and their employees and agents.
- 1.11 “Data Protection Impact Assessment” means an assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
- 1.12 “Data Protection Legislation” means the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).
- 1.13 “Data Sharing Agreement” means, where applicable, the data sharing agreement signed by the parties to the Contract.

- 1.14 "Data Subject Access Request" means any request from a data subject under Chapter 111 Section 2 (Information and Access to Data) thereof.
- 1.15 "Authority" means the Authority of the Borough of North Tyneside.
- 1.16 "Good Industry Practice" means the exercise of such degree of skill, diligence, care and foresight which one would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged in the provision of services similar to the Service under the same or similar circumstances as those applicable to the Contract and which are in accordance with all codes of practice published by relevant professional bodies trade or associations prevailing from time to time.
- 1.17 "EIRs" means the Environmental Information Regulations 2004 together with any code of practice made pursuant to those Regulations and any related guidance issued by the Department for Environment, Food and Rural Affairs, the Information Commissioner or the Secretary of State for the Department of Constitutional Affairs.
- 1.18 "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation (as defined in the Interpretation Act 1978) but excluding the EIRs, as amended modified or re- enacted from time to time, together with all codes of practice made pursuant to that Act or pursuant to that subordinate legislation from time to time, together with any related guidance issued by the Information Commissioner or the Secretary of State for the Department of Constitutional Affairs.
- 1.19 "Force Majeure" means any cause materially affecting the performance by a party of its obligations under this Contract beyond its reasonable control affecting either party.
- 1.20 "Intellectual Property Rights" means any patents, trade marks, service marks, trade names, design rights, copyright, domain name, database rights, know-how and other intellectual property rights of whatever nature and wheresoever arising and in each case whether registered or unregistered and including any applications for the grant of any such rights.
- 1.21 "Law" means all relevant rules of law, Acts of Parliament and statutory regulations, instruments or orders, guidance, codes of practice, or directives or requirements of any

regulatory body with which the Contractor is bound to comply and any applicable EU Community legislation, which may be in force during the period of the Contract, as enacted, amended or interpreted from time to time and "Laws" shall have a corresponding meaning.

- 1.22 "Location" means the location where the Service, or any part thereof, is to be provided by the Contractor as specified or agreed by the Authority for the due performance of the Service/the Contract from time to time.
- 1.23 "Order" means any order placed by the Authority with the Contractor for the provision of Service pursuant and subject to the Contract.
- 1.24 "Price" means the rates or prices for the provision of the Service as specified in the Contract/ Schedule of Prices.
- 1.25 "Prohibited Act" means:
- (i) directly or indirectly offering, giving or agreeing to give to any employee of the Authority any gift or consideration of any kind as an inducement or reward:
    - (a) for doing or not doing any act in relation to the obtaining or performance of this Contract or any other contract with the Authority, or
    - (b) for showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority; and/or committing any offence,
  - (ii) an offence under the Bribery Act 2010, Competition Act 1998 or the Enterprise Act 2002,
  - (iii) an offence under legislation creating offences in respect of fraudulent acts,
  - (iv) an offence or any activity at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority, or
  - (v) defrauding or attempting to defraud or conspiring to defraud the Authority.
- 1.26 "Schedule of Prices" means the itemised schedule of prices of the Contractor accompanying its Tender in respect of the Service to be provided under or pursuant to the Contract.

- 1.27 "Service" means the whole of the services, including any equipment, goods and materials as specified in the Specification or any part thereof as the Authority shall specify from time to time when placing an Order) provided or supplied by the Contractor pursuant to and in accordance with the Contract.
- 1.28 "Specific Conditions" means the additional terms and conditions identified as the conditions specific to the Contract.
- 1.29 "Specification" means the service description forming part of the Tender Documents describing the Authority's requirements regarding the Service to be provided subject to and in accordance with the Contract (including any modification or variation thereof as agreed by the Authority in writing).
- 1.30 "Special Deliverables" means any such information data documentation things materials and deliverables that the Contractor supplies or may supply in connection with the Contract which incorporate or are embedded with either licensed third party Intellectual Property Rights or the Contractor's pre-existing Intellectual Property Rights the ownership of which is to be retained by the Contractor.
- 1.31 "Successor Provider" means the entity (or entities), if any, which provides the Service and/or any replacement services after the Termination Date.
- 1.32 "Tender" means the tender submission by way of completed form of Tender submitted by the Contractor in response to the Tender Documents.
- 1.33 "Tender Documents" means all of the following:
- the form of Tender
  - the form of Articles of Agreement
  - the form of Non-Collusive Tendering Certificate
  - the Instructions For Tendering
  - these General Conditions of Contract
  - the Specific Conditions
  - the Specification
  - all the schedules to the Conditions
  - the form of Schedule of Prices
  - all appendices (if any)
  - the form of Deed of Guarantee (if any)
  - the form of Bond (if any).
- 1.34 "Termination Date" means the date on which the Contract (or in respect of the Service) expires or is terminated, howsoever occurring.

- 1.35 “TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
- 1.36 “UK Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any guidance and codes of practice issued by the Information Commissioner where applicable. .
- 1.37 “VAT” means value added tax as described in Condition 16.
- 1.38 A reference to any statute, order, regulation or similar instrument shall be construed as a reference to that statute, order, regulation or instrument as from time to time amended modified or re-enacted by any subsequent statute, order, regulation or instrument after the date of the Contract and include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents or permissions (together with any conditions attaching to any of the foregoing) made thereunder.
- 1.39 Any reference to time shall be construed, during the period of summertime, to be British Summer Time and otherwise to be Greenwich Mean Time. References to month shall mean a calendar month.
- 1.40 Any ambiguity, discrepancy, error, omission or mis-statement shall not vitiate the Contract nor shall it release the Contractor from the completion of any part of the Contract.
- 1.41 Any reference to ‘person’ shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint common interest, or any other legal or commercial entity or undertakings.
- 1.42 Words importing the singular number shall include the plural and vice versa and words importing the masculine include the feminine and neuter and vice versa.
- 1.43 The headings to the clauses, annexes and paragraphs of the Contract will not affect the interpretation.
- 1.44 Any obligation on the Contractor not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done.
- 1.45 The General Conditions and the Specific Conditions shall apply on an equal basis, except where there is an inconsistency between General Conditions and the Specific Conditions the relevant Specific Condition shall prevail.



- 1.46 Where there is any conflict or inconsistency between the Specification and the Conditions, the Conditions shall prevail.
- 1.47 Where a term of the Conditions provides for a list of items following the word “including” or “includes” then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.
- 1.48 Any reference to the Contractor “procuring” another person to act or omit to act in a certain manner shall mean that the Contractor shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 1.49 All references to the Contract shall include (subject to all relevant approvals) a reference to the Contract as amended, supplemented, substituted, novated or assigned from time to time.
- 1.50 Where the context so admits and for the purpose of the benefits or rights afforded to or obligations owed to the Authority under the Contract, references to the term “Authority” in the Contract includes any body consortium company entity firm person partnership or organisation which takes over or assumes the statutory functions or administrative responsibilities of the Authority (whether in part or totally) or which is controlled by or is under common control with the Authority (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the body company entity person partnership or organisation in question but only for so long as such control exists).

## **2 CONTRACT EXTENSION**

- 2.1 If the Contract Period includes an option to extend and if the Authority intends to take up the option, the Contractor shall be notified in writing in accordance with the Specific Conditions prior to the commencement of the extension. If no such communication is received before the expiry of the Contract Period, the Contract shall terminate on the expiry of the initial Contract Period.
- 2.2 For the avoidance of doubt, the Conditions shall continue and apply throughout any extension period.

## **3 AUTHORISED OFFICER**

- 3.1 The Authorised Officer shall be the person named (or in default of appointment such representative appointed by the Authority from time to time) to act in the name of the Authority for the purposes of the Contract.
- 3.2 The Authority shall give notice in writing to the Contractor of the replacement of the Authorised Officer or if any person ceases to be the Authorised Officer.
- 3.3 The Authorised Officer may appoint one or more representatives to act for the Authorised Officer generally or for specified purposes or periods. If any such

appointment is made, the Authorised Officer shall give written notice to that effect to the Contractor.

## **4 ORDERS**

- 4.1 Any Orders shall be made officially in writing by the Authority subject to the Conditions.
- 4.2 The Contractor shall accept Orders placed by the Authority during the Contract Period.
- 4.3 Notwithstanding any information in regard to estimated value and/or volume of service/work set out in the Specification or otherwise the Authority gives no representation or guarantee whatsoever as to whether any Order will be placed during the Contract Period or under the Contract.
- 4.4 The Authority does not accept liability whatsoever as to the actual value or number of Orders which may be placed with the Contractor save and except any liability arising from any fraudulent act of any employees of the Authority.
- 4.5 The Orders shall state the type of or part of the Service required including the Authority's requirements with regard to timescale for delivery of the Service and the fee basis applicable in respect of the relevant Order and the project to which it relates.
- [4.6 All Orders shall be signed by the Authorised Officer and where applicable the relevant contract manager of the Authority in respect of the relevant Order. Any Order with aggregate value of (£100,000 (one hundred thousand) or over is to be executed as a deed in accordance with the Authority's constitution.]
- 4.7 Should the Contractor be of the reasonable opinion that any specified timescale for delivery of the Service under an Order as being unreasonable it shall have a right of reasonable objection provided that this is exercised within 48 hours of its receipt of the Order. The decision of the Authority's Authorised Officer in relation to the reasonableness of any such objection shall be final and binding.

## **5 CONTRACT MANAGER**

- 5.1 The Contractor shall employ a competent and authorised contract manager empowered to act on behalf of the Contractor for all purposes connected with the Contract. Any notice, information, instruction or other communication given or made to the contract manager shall be deemed to have been given or made to the Contractor.
- 5.2 The Contractor shall forthwith give notice in writing to the Authority of the identity, address and telephone numbers of the person appointed as contract manager and of any subsequent appointment. The Contractor shall give maximum possible notice to the Authority before changing its contract manager for the Contract.

## **6 MEETINGS AND PROGRESS REPORTS AND CHANGES TO METHOD STATEMENT**

- 6.1 A competent representative of the Contractor shall attend any meetings, including site meetings, as may reasonably be requested by the Authority. The Contractor shall make all arrangements for sub-contractors and suppliers to be present as required by the Authority.
- 6.2 The Contractor shall submit written reports to the Authority in connection with any material changes to the Method Statement submitted by the Contractor.

## **7 DAMAGE TO AUTHORITY PROPERTY**

Should the Contractor cause any damage to Authority property in connection with the provision of the Service, or performance of the Contract the Contractor shall rectify such damage at its sole expense within fourteen days of the Authority notifying the Contractor of the damage.

## **8 USE OF AUTHORITY'S LAND, PREMISES AND FACILITIES**

- 8.1 The Contractor shall ensure that neither the Contractor nor its employees, agents nor sub-contractors shall do or authorise any act or thing at any Location owned or occupied by the Authority other than acts or things necessary for the proper provision of the Service.
- 8.2 Where applicable and upon the Authority's request the Contractor shall provide to the Authorised Officer prior to the Commencement Date a schedule of all premises, depots and equipment to be used by the Contractor in the provision of the Service. Any changes to such schedule during the Contract Period shall be notified in writing to the Authorised Officer at least 21 days prior to the change taking place. The Contractor shall allow the Authorised Officer the use of such premises, depots and equipment as may reasonably be required to ensure the proper performance of the Contract.
- 8.3 Where applicable the Contractor shall at all times during the Contract Period permit the Authorised Officer access to all premises occupied by the Contractor for the purpose of the Contract and shall allow the Authorised Officer access to such materials and equipment as is reasonably necessary to allow the Authorised Officer to inspect goods.

## **9 SERVICES PERFORMANCE AND NON-EXCLUSIVITY**

- 9.1 The Contractor shall:
- 9.1.1 provide or perform the Service set out in each Order at the Location with such quality, description and frequency in accordance with the Contract;
  - 9.1.2 provide the Service in a diligent, proper, skilful and professional manner in accordance with the Contract and in compliance with all applicable laws, regulations or other legal requirements concerning the performance of the Service;

- 9.1.3 act proactively to alert the Authority of any material matter affecting, or likely to affect, the provision of the Service or the performance of the Contract;
  - 9.1.4 ensure that all equipment, goods or materials supplied as part of the Service are of satisfactory quality and fit for purpose and fit for the purposes for which the Authority intends to use such equipment, goods or materials; and
  - 9.1.5 hold and continue to hold and maintain all necessary approvals, certificates, licences and consents to enable it to provide the Service in accordance with the Contract.
- 9.2 The Contractor will employ and maintain sufficient and competent staff to ensure that the Service (s) is provided to the Contract Standard.
- 9.3 The Contractor will ensure that its staff
- 9.3.1 are appropriately experienced, qualified and trained to supply the Service (s);
  - 9.3.2 apply all due skill, care and diligence in faithfully performing the Service (s);
  - 9.3.3 obey all lawful instructions and reasonable directions of the Authority;
  - 9.3.4 respond to any queries relating to the Service (s) as soon as reasonably practicable
  - 9.3.5 complete any vetting and/or conduct any IR35 Assessments reasonably required by the Authority as soon as reasonably practicable and provide evidence of such to the Authority without delay.
- 9.4 The Contractor must retain overall control over Contractor staff to ensure that they are not considered employees, workers, agents or contractors of the Authority.
- 9.5 The Contractor may substitute Contractor staff as long as they have the equivalent experience and qualifications to the substituted staff member.
- 9.6 The Authority may conduct IR35 Assessments in relation to the Contractor and/or its staff using the ESI tool to assess whether the Contractor's engagement pursuant to this Contract and/or any member of the Contractor's staff is in any way inside or outside IR35.
- 9.7 The Authority may terminate this Contract for material breach if the Contractor and/or any member of staff is delivering Services inside IR35.
- 9.8 The Service shall be performed by the personnel identified in the Method Statement or by alternative personnel with equivalent or comparable experience and qualification as notified to the Authority in writing.
- 9.9 Commercial vehicles shall not enter or leave school premises of the Authority during morning, midday and afternoon breaks.
- 9.10 Commercial vehicles visiting the Authority's premises shall be fitted with audible reversing alarms.

- 9.11 Time shall be of the essence for the supply or performance of the Service in accordance with the date and time as specified in the Contract or an Order. The Authority shall be under no obligation to accept or pay for any Service provided earlier than as stated in the Contract or an Order (as the case maybe) unless agreed in writing by the Authority in advance.
- 9.12 If the Authority or the Location is affected by circumstance of Force Majeure, the Authority shall be entitled to totally or partially suspend the date or dates for provision of the Service until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim whatsoever by the Contractor against the Authority, nor entitle the Contractor to terminate the Contract, save and except any suspension or claim arising as a result of any fraudulent act or the employees of the Authority.
- 9.13 The Contractor acknowledges and agrees that the provision of the Service shall be non-exclusive as regards the Authority and therefore the Authority may at any time obtain the same services as or similar to the Service from a third party other than the Contractor.
- 9.14 In the event of industrial action by the Contractor's employees, it remains the Contractor's responsibility to meet the requirements of the Contract. The Contractor shall inform the Authority immediately of any impending or actual disputes that may affect the Contractor's ability to provide the Service or performing the Contract.
- 9.15 To assist with smooth transitional arrangements in the event of a change of provider whether on expiry or termination of this Contract (howsoever occasioned), the Contractor shall within ten days of receiving a written request from the Authority, provide to the Authority (or such Successor Provider) details of such employees of the Contractor engaged in the provision of the Service and to whom the TUPE Regulations apply or may apply (but not any employees who have elected not to be transferred pursuant to the TUPE Regulations) including sufficient information about the transferring employees to enable any Successor Provider to give practical effect to its obligations under the TUPE Regulations.

## **10 CONTRACTOR'S DEFAULT**

Should the Contractor not complete any part of the Service in accordance with the Contract to the Authority's satisfaction, the Authority shall be entitled to withhold payment of the Price in respect of Orders placed until approved steps have been taken by the Contractor to rectify such non-performance to the Authority's satisfaction.

## **11 TERMINATION**

- 11.1 The Authority may terminate any Order or part of an Order at any time by giving reasonable advance written notice to the Contractor. On receipt of such a notice from the Authority, the Contractor shall cease all preparations or work in respect of the Order. In full settlement but strictly subject to Conditions 10, 12 and 15 the Authority shall pay the Contractor a reasonable charge for the Service (if any) provided up to the date of termination of that Order. The termination of an individual Order will not operate to terminate any other Order or this Contract but consequential amendments

to any remaining Order may be necessary and will be agreed between the parties. Termination of an Order or part of an Order shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuation in force of any provision of this Contract which expressly or by implication is intended to come into force or continue in force on or after the expiry or termination (howsoever occasioned of) an Order or the Contract.

11.2 Without prejudice to other provisions of this Contract, this Contract is terminable by the Authority at its option at any time by giving not less than fourteen days notice in writing to that effect to the Contractor and this Contract shall terminate immediately upon the expiry of such notice and the Authority shall further have the right to instruct another contractor to perform the Contract. The grounds for termination of the contract shall include:

11.2.1 where the contract is subject to substantial modification requiring a further procurement process;

11.2.2 where the Contractor should have been excluded from the procurement process for any reason;

11.2.3 where the contract should not have been awarded to the Contractor as a result of serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union.

11.3 The Authority shall be entitled to terminate this Contract with immediate effect by giving notice in writing to the Contractor.

11.3.1 if the Contractor commits a series of persistent breaches of the Contract which remain unresolved for a period as deemed reasonable by the Authority after the Contractor has received notice thereof from the Authority;

11.3.2 if the Contractor commits a material breach of its obligations under the Contract; and if such a breach is capable of remedy but not remedied within 14 days of the Authority's written notice requesting remedial action;

11.3.3 if the Contractor ceases or threatens to cease to carry on all or substantially the whole of its business;

11.3.4 if any distress execution sequestration or other such process is levied upon or enforced on or sued against the Contractor, or if the Contractor offers to make any arrangement with its creditors;

11.3.5 if a trustee in bankruptcy, receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the Contractor;

11.3.6 if the Contractor suspends or threatens to suspend payments of its debts or is unable to pay its debts as they fall due or goes into bankruptcy, receivership, liquidation or similar process save for the purpose of a genuine amalgamation or reconstruction ;

- 11.3.7 if any of the personnel of the Contractor engages in providing or performing the Service fail or refuse after written instruction to provide the Service reasonably and properly required hereunder;
- 11.3.8 if there is a change of key personnel or representative of the Contractor working on the Contract/an Order without the Authority's prior written agreement;
- 11.3.9 in the event of the Contractor or any of its employees or agents or contractors (with or without the Contractor's knowledge) doing anything improper to influence the Authority to award to the Contractor any contract; or committing an offence under the Bribery Act 2010;
- 11.3.10 if the Contractor or any of the personnel it engages in providing or performing the Service conduct itself/himself/herself in any manner which, in the Authority's reasonable opinion brings or is likely to bring the Authority into disrepute by association,
- 11.3.11 if there is a change of control of the Contractor within the meaning of Section 1124 of the Corporation Tax Act 2010; or
- 11.3.12 if any Force Majeure event prevents either party from performing its obligations under this Contract for any continuous period of six months.

## **12 CONSEQUENCES OF TERMINATION OF CONTRACT**

- 12.1 If this Contract or any Order is terminated, in the whole or in part, pursuant to the terms hereof or otherwise the Authority shall:
  - 12.1.1 cease to be under obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Order or this Contract shall have been calculated and provided that such calculation shows a sum or sums due to the Contractor. For the avoidance of doubt and without prejudice to any other provisions of the Contract, the Authority shall be liable to pay to the Contractor only payment that has properly accrued in accordance with the Contract up to the time of the termination;
  - 12.1.2 be entitled to engage and pay another contractor(s) to provide and complete the provision of the Service or any part thereof;
  - 12.1.3 should the Authority instruct another contractor(s) to perform the Contract as a result of a termination under Condition 11.3 and in doing so incur any additional expenditure in securing the performance of the requirements of the Contract in total, this shall be recoverable from the Contractor as a debt;
  - 12.1.4 be entitled to deduct from any sum or sums which would have been due from the Authority to the Contractor under this Contract or any other contract or otherwise and to recover the same from the Contractor as a debt in respect of any loss or damage to the Authority resulting from or arising out of the termination of this Contract. Such loss or damage shall include the

reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the provision of the Service or any parts thereof as a result of a termination under Condition 11.3. All such sums shall be ascertained and certified by the Authority's Head of Strategic Finance whose decision shall be final in the absence of manifest error; and

12.1.5 in the event that any sum of money owed by the Contractor to the Authority (the Contractor's debt) exceeds any sum of money owed by the Authority to the Contractor (the Authority's debt) under this Contract then the Authority shall, at its sole discretion, be entitled to deduct the Contractor's debt from any future Authority's debt or to recover the Contractor's debt as a civil debt.

12.2 For the avoidance of doubt and without prejudice to any rights or remedies that Authority has under this Contract or otherwise:

12.2.1 the expiration or any termination of this Contract (howsoever occasioned) will not affect any rights of the parties accrued to them under this Contract up to the date of expiry or of termination;

12.2.2 the expiration or any termination of this Contract (howsoever occasioned) shall not affect the coming into force or the continuance in force of any provision of the Contract hereof which is expressly or by implication intended to come into force or continue in force on or after the expiration or such termination.

12.3 If the Contract terminates in whole or in part, or upon the expiry of the Contract, the Authority may require the Contractor to do any one or more of the following and the Contractor shall comply promptly, without delay (and at its own expense, without charging the Authority) with such requirements in accordance with a timetable specified by the Authority:

12.3.1 to deliver up to the Authority all equipment, materials and property of the Authority that it had supplied to the Contractor its employees, agents or their employees or agents in connection with the Contract;

12.3.2 to deliver up to the Authority or its nominee (to the extent permitted by law) printed copies of the Contract Generated Materials and Authority's Confidential Information then in the Contractor's possession, custody or control;

12.3.3 to deliver up to the Authority or its nominee (to the extent permitted by law) such Contract Generated Materials and Authority's Confidential Information then in the Contractor's possession, custody or control as at the date of termination on suitable storage media and formats (generally available at the relevant time) as may be reasonably designated by the Authority or its nominee; and

12.3.4 provide to the Authority or its nominee (to the extent permitted by law) co-operation and information as the Authority or its nominee may reasonably request in order to achieve an orderly and timely hand-over of such materials and information to the Authority or its nominee.



12.4 On the expiry or any termination of this Contract and for six months thereafter, the Contractor shall at its own expense, provide such other co-operation and information as the Authority or its nominee reasonably requests in order to achieve an orderly and timely hand-over of the provision of the Service (as applicable) to a Successor Provider, such co-operation to include:

12.4.1 the provision of a single point of contact whose function shall be to:

12.4.1.1 participate in the planning and resourcing of the transfer of the provision of the Service (as applicable); and

12.4.1.2 manage that party's involvement in that process and commit its resources to it, and to manage the timescales involved;

12.4.2 the supply to the Authority or its nominee of all documentation, data and information on appropriate media needed to re-establish a service equivalent to the Service (as applicable) terminated including all database files and control files and copies of all back-up and archived information.

### **13 PASSING OF PROPERTY**

Property in any equipment goods or materials supplied in the course of the provision of the Service shall pass to the Authority upon use, installation or delivery (whichever is the earliest).

### **14 PRICE**

The Contractor shall not be entitled to retain or set off any amount due to it from the Authority. The Authority may set off any amount due to it from the Contractor (including any applicable VAT payable) against any amount due to the Contractor. The Authority shall notify the Contractor as soon as reasonably practicable of any such retention or set off.

### **15 PAYMENT**

15.1 Subject to the Conditions, the Authority shall pay the Contractor for the Service provided in accordance with this Contract monthly in arrears or at such other frequency as the Authority agrees in writing.

15.2 The Contractor shall submit a single VAT invoice to the Authority within seven days after the end of each month or the relevant payment period, itemising the Service provided in accordance with the Contract during the relevant month or period, the amount payable and applicable rate of charge with reference to the Price together with any amount to be added in respect of VAT. Subject to Condition 10, 12 and 14 Subject to Conditions 11, 13 and 16 and paragraphs 15.3 – 15.7 below, payment shall be made to the Contractor within (30) thirty days of the Authority's actual receipt of the invoice.

15.3 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor the Authority shall notify the Contractor in writing within fourteen (14) Business Days of receipt by the Authority of the Contractor's Invoice (insofar as the Authority is reasonably able to quantify it) which the Authority

disputes (a "Disputed Amount") and submit to the Contractor an Interim Valuation with such supporting evidence as the Authority may have.

- 15.4 The Authority may withhold payment of any Disputed Amount pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay on the due date any undisputed amounts.
- 15.5 Within fourteen (14) Business Days following receipt of any notice of the Disputed Amounts served by the Authority pursuant to paragraph 15.2 above, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor states that it does agree the Authority shall be entitled to retain on a permanent basis any amounts withheld pursuant to paragraph 17.3; and
- 15.6 If the Contractor responds (pursuant to paragraph 15.4) that it does not agree with all or any of the statements made in any notice served by the Authority pursuant to paragraph 17.2, the matter or matters in question shall be determined under the Dispute Resolution Procedure.
- 15.7 If the determination of any dispute conducted pursuant to paragraph 15.5 shows that the Authority has withheld any amount which the Contractor was entitled to be paid the Authority shall pay such amount to the Contractor with interest on that amount at the rate of 2% above the Base Rate calculated on a daily basis and compounded quarterly from the date on which payment should have been made until all relevant monies have been paid in full and whether before or after judgement.
- 15.8 payment shall be made to the Contractor within (30) thirty days of the Authority's actual receipt of the invoice.
- 15.9 The Authority shall pay such invoice(s) by BACS (Bank Automated Clearing System) if the Authority so chooses, or any alternative means as agreed between the Authority and the Contractor in writing.
- 15.10 The Contractor shall neither be entitled to any additional payment nor be excused from any obligation or liability under this Contract by reason of any misunderstanding or misinterpretation by the Contractor of the Tender Documents. The Contractor shall promptly bring to the attention of the Authority any matter, which the Contractor finds as not adequately specified or defined in the Tender Documents.

## **16 VALUE ADDED TAX**

- 16.1 For the purposes of this Condition 16, 'tax' means the Value Added Tax as presently charged under the Value Added Tax Act 1994 ("1994 Act") or any tax of a similar nature.
- 16.2 Any reference in the Conditions to Price shall be regarded as being exclusive of tax and recovery by the Contractor from the Authority of tax properly chargeable under or by virtue of the 1994 Act, or any amendment or re-enactment thereof, if applicable.

## **17 CONTRACTOR'S INDEMNITY**

- 17.1 The Contractor shall fully indemnify the Authority and keep the Authority fully and effectually indemnified against all loss, damage or injury to anyone or to any property and against all actions, awards, claims, compensations, demands, damages, proceedings, costs, charges, expenses whatsoever suffered or incurred by the Authority (including the costs of transport, labour, administration and legal expenses on an indemnity basis to the Authority) as a result of, arising from or in connection with (whether arising in contract, tort (including negligence), breach of statutory duty or otherwise) in relation to:
- 17.1.1 any defect or fault in the Service provided;
  - 17.1.2 any act default or omission of the Contractor in providing the Service or performing the Contract;
  - 17.1.3 any failure by the Contractor to comply with any statutory provision relevant to the Service or the performance of the Contract; and/or
  - 17.1.4 any breach of the terms of the Contract.
- 17.2 The Contractor's liability to indemnify the Authority arising under Condition 17.1 above shall be without prejudice to any other right or remedy that the Authority has or may have whether arising under this Contract or otherwise.
- 17.3 The provisions of this Condition 17 shall survive the expiry or any termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

## **18 INSURANCE**

- 18.1 Without prejudice to the Contractor's liabilities under Condition 17, the Contractor shall effect and maintain throughout the Contract Period comprehensive and adequate insurances to cover any liability of the Contractor in respect of, arising from or in connection with this Contract (including without limitation):
- 18.1.1 any loss of or damage to property and personal injury to, or death of, any person arising out of or in the course of or caused by the Contractor in carrying out or failing to carry out any of its obligations under or in accordance with the Contract, and against all actions, awards, claims, compensations, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof; and
  - 18.1.2 any liability arising or under this Contract, general law, or otherwise.
- 18.2 Where the Authority so requires the Contractor shall insure against its liabilities under this Condition 18 with a minimum limit indemnity of such sum as specified in the Specific Conditions.

- 18.3 The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or within three days of the Authority's written request, supply to the Authority a copy of the policies (including schedules) of the insurances referred to in this Condition, together with documentary evidence that such insurances are properly maintained.

## **19 INTELLECTUAL PROPERTY RIGHTS**

- 19.1 All Intellectual Property Rights in the Specification, any other specifications prepared by or on behalf of the Contractor for the Authority in connection with the Contract, and the Contract Generated Materials (including without limitation all Special Deliverables) shall vest in and remain vested in the Authority absolutely immediately upon creation and be the exclusive property of the Authority. If and to the extent that such rights do not so vest on creation, the Contractor hereby assigns to the Authority with full title guarantee all rights title and interest in such Intellectual Property Rights (whether present or future) with effect from and including the effective date of the Contract or if later the date on which such rights come into existence. The Contractor shall procure the assignment of all such rights by the author or creator employed or otherwise contracted to Contractor who may acquire any such rights by operation of law or otherwise.
- 19.2 All Intellectual Property Rights in all data documents things and materials (including the Tender Documents and Contract Documents) provided by the Authority in connection with the Contract are vested and remain vested at all times in the Authority or its licensors. The Authority hereby grants or undertakes to use its reasonable endeavours to procure the grant to the Contractor a non-exclusive non-transferable licence to use, copy and transmit such documents solely to the extent necessary for the provision of the Service during the term of the Contract.
- 19.3 Subject to Conditions 19.1 and 19.2 above, the Authority shall not acquire title to the Contractor's own pre-existing and/or any third party Intellectual Property Rights in any Special Deliverables. The Contractor hereby grants and undertakes to procure the owners of the third party Intellectual Property Rights in the Special Deliverables grant for the benefit of the Authority, its employees and authorised persons a royalty free, transferable, world-wide, perpetual, non-exclusive, irrevocable and sub-licensable licence to use, reproduce, modify, adapt, enhance, publish, broadcast, disseminate and otherwise deal with the Special Deliverables on any media (whether now known or in the future) for all purposes contemplated by the Contract or to the extent required by the Authority any of its employees authorised persons contractors and successors in title in order to realise or implement the full benefits of the Service.
- 19.4 The Contractor shall ensure that the personnel it engages in providing the Service are engaged on the basis that any and all Intellectual Property Rights in or arising out of any work done by such persons belongs to the Authority absolutely immediately on creation and that they waive any and all such rights in respect thereof.
- 19.5 Should any of the data documentation things and materials supplied by the Contractor in connection with the Contract (including the Contract Generated Deliverables and Special Deliverables) incorporate any pre-existing or third party materials, the Contractor will procure the owners grant for the benefit of the Authority, its employees and authorised persons a royalty free transferable world-wide, perpetual, non-exclusive, irrevocable and sub-licensable licence to use, reproduce, modify, adapt, enhance, publish, broadcast, disseminate and otherwise deal with the

Special Deliverables on any media (whether now known or in the future) for all purposes contemplated by the Contract or to the extent required by the Authority any of its employees authorised persons contractors and successors in title in order to realise or implement the full benefits of the Service. ,

- 19.6 The Contractor hereby waives and will procure its employees, sub-contractors and agents to waive all moral rights in all the things and materials mentioned in Condition 19.1 and other things and materials in which the Intellectual Property Rights either have been or will be assigned to the Authority under this Contract.
- 19.7 The Contractor warrants that the provision of the Service and the use and possession by the Authority, any of its employees authorised persons, contractors and successors in title of any documentation, things, goods and materials (including the Contract Generated Materials and Special Deliverables) developed produced or supplied by the Contractor under or in connection with this Contract do not and shall not infringe any Intellectual Property Rights or any rights of any third party.
- 19.8 The Contractor shall fully indemnify the Authority and keep the Authority fully and effectively indemnified on demand against all actions, awards, claims, compensations, demands, proceedings, damages, costs, charges and expenses whatsoever arising from, in respect of, or in connection with any breach by the Contractor of this Condition 19.
- 19.9 The Contractor will at the Authority's request and at the Contractor's expense execute all such documents and do all such further acts as the Court may require to assign and/or perfect the rights assigned to the Authority under this Condition 19.
- 19.10 The provisions of this Condition 19 shall survive the expiry or any termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

## **20 DISPUTE RESOLUTION PROCEDURE**

- 20.1 The Contractor shall deal with any complaints received from whatever source in a prompt, courteous and efficient manner. The Contractor shall keep a written record of all complaints received and of the action taken in relation to such complaints. Such records shall be kept available for inspection by the Authority who shall be informed forthwith in writing of all complaints received and of all steps taken in response thereto.
- 20.2 The Contractor shall, subject to the direction of the Authority, deal with complaints related to the Service provided in accordance with the Authority's Corporate Complaints Procedure details of which are available from the Authorised Officer.
- 20.3 The parties shall attempt in good faith to negotiate a settlement to any dispute or difference (including any dispute as to the construction or meaning of any words in these Conditions, the existence, validity or termination of this Contract) between them arising out of or in connection with the Contract ("Dispute") within 20 working days of either party notifying the other of the Dispute such efforts shall involve negotiations between their respective senior executives having authority to settle the dispute or difference.

- 20.4 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.
- 20.5 If a Dispute cannot be resolved by the parties pursuant to Condition 20.3, the Dispute shall be referred to mediation pursuant to the procedure set out in Condition 20.8 unless the Authority considers that the Dispute is not suitable for resolution by mediation.
- 20.6 The performance of the Contract and/any Order shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (including its employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 20.7 No party may commence or pursue any legal proceedings or arbitration in relation to any Dispute until the procedures set out in Conditions 20.1 to 20.5 have been exhausted.
- 20.8 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 20.8.1 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 (“CEDR”) to appoint a Mediator.
- 20.8.2 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 CEDR to provide guidance on a suitable procedure.
- 20.8.3 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.
- 20.8.4 If the parties reach agreement on the resolution of the Dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.
- 20.8.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both parties.
- 20.8.6 A Dispute may be referred to the court 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.

20.8.6.1 the Authority considers that the Dispute is not suitable for resolution by mediation.

20.8.6.2 the mediation has terminated, or

20.8.6.3 the Authority has attempted to settle the Dispute by mediation but the Contractor has failed to participate in the mediation

20.9 A Dispute may be referred to the court if:-

Without prejudice and strictly subject to Condition 20.7, if all the parties so agree in writing, the parties may opt to refer the Dispute to arbitration in accordance with the Arbitration Act 1996 as an alternative to court proceedings. The Contractor and the Authority shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.

## **21 VARIATIONS AND VALUATIONS**

23.1 The Authority shall be entitled to issue to the Contractor variation orders or instructions in writing or in case of urgency orally provided that the Authority confirms oral instructions in writing as soon as it is practicable, where such variations have been provided for within the Contract.

21.2 Variation orders issued by the Authority may require the addition, suspension, reduction or cessation of the Service and/or the provision of emergency services.

21.3 Instructions issued by the Authority may require the Service to be provided in such a manner as the Authority reasonably requires or at additional Locations.

21.4 The valuation of any variations shall be made by the Authority by reference to the Price. Where the variation is not of similar character to or is not undertaken under similar conditions to the Contract, a valuation shall be made at fair rates and prices having regard to the Price.

21.5 Without prejudice to Conditions 11 and 12 if the Contractor fails to comply with any variation instructions pursuant to Conditions 21.1 to 21.4 above, the Authority is entitled, after giving the Contractor not less than 5 working days written notice, to employ other Contractors to carry out the service under the relevant Order as varied.

## **22 ASSIGNMENT SUB-CONTRACTING AND SUPPLY CHAIN PROMPT PAYMENT PROTECTION**

22.1 The Contractor shall not without the written consent of the Authority assign sub-contract novate or in any way dispose of all or any of the interest benefits rights obligations and or the burdens of the Contract or any part of the Contract including any call-off order placed pursuant to the Contract.

22.2 Any sub-contracting shall not in any way relieve the Contractor from its liabilities under this Contract including any call-off order placed. The Contractor shall be and shall remain fully responsible in respect of its obligations hereunder. Notwithstanding any

sub-contracting the Contractor shall be responsible for the acts and omissions of any of its sub-contractors as though those acts and omissions were its own.

- 22.3 The Authority shall be entitled to impose additional terms and conditions in relation to any consent to such assignment sub-contract novation or disposal including a requirement that a guarantee and warranty or other security shall be provided. The Contractor shall procure and obtain collateral warranties from its sub-contractor in a form as prescribed by the Authority and delivered to the Authority duly executed.
- 22.4 The Authority shall require the Contractor to replace a subcontractor where verification has shown that there are compulsory grounds for exclusion, in accordance with the Public Contracts Regulations.
- 22.5 The Authority may require the Contractor to replace a subcontractor where verification has shown that there are non-compulsory grounds for exclusion, in accordance with the Public Contracts Regulations.
- 22.6 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Contract including any call-off order placed pursuant to this Contract, the Contractor shall ensure that all sub-contracts and or contracts for supply of goods that the Contractor enters into in connection with the performance of this Contract and or any call-off order contain a provision:
- 22.6.1 requiring the Contractor to pay the sub-contractor (including the supplier of the Contractor's supply chain) any undisputed sums due from the Contractor within 30 days from the receipt of a valid invoice;
- 22.6.2 requiring the sub-contractor (or the supplier as the case may be) of the Contractor to pay to their own sub-contractor and their supply chain any undisputed sums due from the Contractor's sub-contractor (or the supplier as the case may be) within 30 days from the receipt of a valid invoice; and
- 22.6.3 a right for the Authority to publish the Contractor's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 22.7 The Contractor shall, at the request of the Authority, send copies of each sub-contract, to the Authority as soon as is reasonably practicable.
- 22.8 Upon the Authority's request the Contractor shall provide as soon as possible and in any event not later than 14 days of the request a summary with data showing the Contractor's compliance with this condition 22. If the Contractor notifies the Authority or the Authority otherwise discovers that the Contractor has failed to pay a sub-contractor's undisputed invoice (or undisputed invoice of a supplier as the case may be) within 30 days of receipt, the Authority shall be entitled to publish the details of the late or non-payment (including on the Authority's website and in the press).
- 22.9 The Authority shall be entitled to assign sub-contract novate or otherwise dispose of any of its interest rights obligations benefits and or burdens of the Contract including any call-off order placed (or any part of it/them) without the consent of the Contractor.

## **23 THIRD PARTY RIGHTS**



This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

## **24 HEALTH AND SAFETY**

The Contractor shall comply with and shall ensure and procure that its employees, agents, sub-contractors and their respective employees and agents comply with the requirements of all relevant statutes, regulations, British Standards implementing international or European standards (or the European equivalent), Health and Safety Executive guidance notes and other procedures relevant to health and safety and the performance of this Contract including regulations, codes of practice and policies and procedures (such as Health and Safety at Work) of the Authority.

## **25 DISCRIMINATION**

- 25.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment and such other equal opportunity policies of the Authority as notified to the Contractor from time to time (“Equal Opportunity Requirements”).
- 25.2 The Contractor will ensure that its policies and procedures reflect the Equal Opportunity Requirements. The Contractor must ensure that its workforce receives appropriate training in order to understand their roles and responsibilities in implementing the Equal Opportunity Requirements, and to promote equality and prevent discrimination.
- 25.3 The Contractor shall take all reasonable steps to secure the observance of Condition 25 by all employees, agents and sub-contractors of the Contractor and their respective employees and sub-contractors employed in the execution of the Contract.
- 25.4 The Contractor shall provide such information as the Authority may reasonably request for the purpose of assessing the Contractor’s compliance with the Equal Opportunity Requirements, including if requested, examples of any instructions or other documents, recruitment advertisements or other literature and details of monitoring of recruitment and employees.
- 25.5 In the event of any finding of unlawful discrimination being made against the Contractor or any sub-contractor employed by the Contractor during the term of the Contract by any court or industrial tribunal or of an adverse finding in any formal investigation by the Commission for Racial Equality over the same period the Contractor must promptly inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination. The Contractor shall on request provide the Authority with details of any steps taken under this Condition 25.

## **26 ENVIRONMENTAL REQUIREMENTS**

The Contractor shall, when working on the Authority’s premises, perform the Contract in accordance with the Authority’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.

## **27 CONFIDENTIALITY**

- 27.1 The Contractor shall treat all Confidential Information of the Authority as confidential and safeguard it accordingly provided that this Condition does not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to this Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Condition).
- 27.2 The Contractor hereby agrees that it will use such Confidential Information solely for the purposes of this Contract and that it will not, at any time before during or any time after the completion, expiry or termination of this Contract disclose, divulge the same, allow to be disclosed or divulged, use or allow to be used the same for any other purposes (whether directly or indirectly), to any third party without the Authority's prior written consent and shall use its best endeavours to prevent any such disclosure thereof except where disclosure is expressly specified by the terms of this Contract.
- 27.3 The Contractor shall procure and ensure that each of its employees, staff, agents, associates, sub-contractors, consultants and any other persons engaged on any work in connection with this Contract are aware of and comply with the provisions of this Condition and the Contractor shall indemnify the Authority and keep the Authority fully and effectively indemnified against all actions, costs, awards, claims, proceedings, demands, charges, expenses, loss, damage and liabilities whatsoever which the Authority may suffer incur or sustain as a result of or in connection with any breach of this Condition or the duty of confidence by any such persons.
- 27.4 The provisions of this Condition 27 shall survive the expiry or any termination of this Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

## **28 PUBLICITY**

The Contractor shall not without the prior written consent of the Authority advertise or publicly announce that it is undertaking work for the Authority nor hold itself out in any way as an agent of the Authority.

## **29 INTERCEPTION OF COMMUNICATIONS**

- 29.1 The Contractor acknowledges and accepts that:
- 29.1.1 the Council's systems enable it to monitor telephone, email, voicemail, internet and other communications made using any Council equipment including laptops, telephones and mobile phones;
  - 29.1.2 for business reasons, and in order to carry out legal obligations in its role as an employer, use of the Council's systems (including the computer systems, telephone systems and mobile phone systems), and

any personal use of them, may be continually monitored by automated software or otherwise; and

29.1.3 monitoring by the Council is only carried out to the extent permitted or as required by Law and as necessary and justifiable for business purposes.

29.2. The Council reserves the right to retrieve the contents of email messages or to check telephone or mobile phone or internet usage (including pages visited and searches made) as reasonably necessary in the interests of its business, including for the following purposes (this list is not exhaustive):

29.2.1. to monitor whether use of the email system, telephone system, mobile phone system or the internet is legitimate and in accordance with this Clause 29;

29.2.2. to find lost messages or to retrieve messages lost due to computer failure;

29.2.3. to assist in the investigation of alleged wrongdoing; and

29.2.4. to comply with any legal obligation.

The Contractor shall ensure that at all times all of its employees, agents, sub-contractors and sub-consultants engaged by it in connection with the performance of any of its obligations arising under from or in connection with this Contract are notified of the Council's rights in relation to the monitoring of communications under this Clause 29 and have provided their prior consent to such monitoring by the Council.

## **30 DATA PROTECTION**

30.1 In this Condition 30 "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Processing", "Protective Measures" and "appropriate technical and organisational measures" shall have the meanings as defined in the Data Protection Legislation.

30.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller and that the Contractor is the Data Processor. The only processing that the Contractor is authorised to do is listed in Schedule 1 by the Authority and may not be determined by the Contractor.

30.3 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

30.4 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

30.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;

30.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

30.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

30.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data

30.5 The Contractor shall:

30.5.1 process the Personal Data only in accordance with Schedule 1, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing Personal Data unless prohibited by Law;

30.5.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

30.5.2.1 nature of the data to be protected;

30.5.2.2 harm that might result from a Data Loss Event;

30.5.2.3 state of technological development; and

30.5.2.4 cost of implementing any measures;

30.5.3 ensure that :

30.5.3.1 its staff do not process Personal Data except in accordance with this Contract (and in particular Schedule 1);

30.5.3.2 it takes all reasonable steps to ensure the reliability and integrity of any of its staff who have access to the Personal Data and ensure that they:

30.5.3.2.1 are aware of and comply with the Contractor's duties under this clause;

30.5.3.2.2 are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

30.5.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

30.5.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and

30.5.4 not transfer any Personal Data to any country or territory outside the European Economic Area without the prior written consent of the Authority and unless the following conditions are fulfilled:

30.5.4.1 the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or LED Article 37) as determined by the Authority;

30.5.4.2 the Data Subject has enforceable rights and effective legal remedies;

30.5.4.3 the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

- 30.5.4.4 the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- 30.5.5 at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Laws to retain the Personal Data.
- 30.5.6 subject to clause 30.6 notify the Authority immediately if it receives:
  - 30.5.6.1 a Data Subject Access Request (or purported Data Subject Access Request) ;
  - 30.5.6.2 a request to rectify, block or erase any Personal Data;
  - 30.5.6.3 any other request, complaint, communication relating to either Party's obligations under the Data Protection Legislation;
  - 30.5.6.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 30.5.6.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 30.5.6.6 becomes aware of a Data Loss Event.
- 30.6 The Contractor's obligation to notify under clause 30.5 shall include the provision of further information to the Authority in phases, as details become available.
- 30.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 30.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - 30.7.1 the Authority with full details and copies of the complaint, communication or request;
  - 30.7.2 such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - 30.7.3 the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 30.7.4 assistance as requested by the Authority following any Data Loss Event;
  - 30.7.5 assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 30.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
  - 30.8.1 the Authority determines that the processing is not occasional;
  - 30.8.2 the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and

- 30.8.3 the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 30.9 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 30.10 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- 30.10.1 notify the Authority in writing of the intended Sub-processor and processing;
  - 30.10.2 obtain the written consent of the Authority;
  - 30.10.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 30 such that they apply to the Sub-processor; and
  - 30.10.4 provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 30.11 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 30.12 The Contractor make available to the Authority, at reasonable intervals and within twenty one (21) days following a request for such, all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Authority or another auditor mandated by the Authority.
- 30.13 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 30.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 30.15 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation.
- 30.16 The Contractor shall indemnify and keep indemnified the Authority against all losses, claims, damages, liabilities, costs and expenses (including reasonable legal costs) incurred by it in respect of any breach of this Clause 30 by the Contractor and/or any act or omission of any sub-contractor.
- 30.17 The provisions of this Clause 30 shall apply during the continuance of the Contract and indefinitely after its Termination.

## **31 FREEDOM OF INFORMATION**

31.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

- 31.2 The Contractor shall procure that its employees, agents and sub-contractors shall:
- 31.2.1 transfer the request for information within the meaning of the FOIA or EIR (“Request”) to the Authority as soon as practicable after receipt and in any event within two working days of receiving a Request;
  - 31.2.2 provide the Authority with a copy of all information within the meaning of S84 of FOIA in its possession or power in the form that the Authority requires within five working days (or such other period as the Authority may specify) of the Authority requesting that Information; and
  - 31.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 31.3 The Authority has absolute discretion for determining whether any information:
- 31.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;
  - 31.3.2 is to be disclosed in response to a Request and in no event shall the Contractor respond directly to a Request unless expressly authorised to do so by the Authority.
- 31.4 The Contractor acknowledges that the Authority may be obliged under the FOIA or the EIR to disclose Information:
- 31.4.1 without consulting with the Contractor, or
  - 31.4.2 following consultation with the Contractor and having taken its views into account.
- 31.5 The Contractor shall ensure that all information produced in the course of or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- 31.6 The Contractor acknowledges that any lists or schedules provided by the Contractor outlining commercial sensitive information not for disclosure are of indicative value only and that the Authority may nevertheless be obliged to disclose it in accordance with the FOIA or the EIR.
- 31.7 The provision of this Condition 30 shall survive the expiry or termination of the Contract (howsoever occasioned) and shall continue in full force and effect notwithstanding the expiration or such termination.

## **32 RECORD KEEPING**

For auditing and national auditing office requirements, the Contractor shall keep and maintain until six years (or twelve years if the Contract is executed as a Deed) after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Service provided under it, all expenditure reimbursed by the Authority, and all payments made by the

Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to (and copies of) those records as may be required by the Authority in connection with the Contract.

### **33 PREVENTION OF FRAUD AND BRIBERY**

33.1 The Contractor represents and warrants that neither it, nor any of its employees:

33.1.1 has committed a Prohibited Act;

33.1.2 has been or is the subject of any investigation, inquiry or enforcement proceedings by a government, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or

33.1.3 has been or is listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participating in government procurement programmes or other government contracts on the grounds of a Prohibited Act.

33.2 As soon as either party becomes aware of or suspects the commission of any Prohibited Act in respect of the supply of the Service, the performance of the Contract or otherwise, it shall notify the other party.

33.3 The Authority shall have the right to require that the Contractor suspend from any further work on this Contract any person reasonably suspected of fraudulent action or malpractice.

33.4 The Contractor shall not during the Contract Period solicit or receive orders or engage in private transactions with any servant or employee of the Authority for goods or services provided under the terms of this Contract.

### **34 WAIVER**

34.1 Failure by the Authority at any time to enforce any one or more of the provisions of this Contract or to require performance by the Contractor of any of the provisions shall not:

34.1.1 constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce any terms and conditions of this Contract; nor

34.1.2 affect the validity of the Contract or any part of it or the right of the Authority to enforce any provision in accordance with its terms.

### **35 SEVERANCE**

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

### **36 NOTICES**



- 36.1 Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, or by sending it by first class post, registered post recorded delivery or other postal delivery to the appropriate address from time to time notified by the parties to each other.
- 36.2 Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served 48 hours after it was posted.

## **37 AGENCY, PARTNERSHIP**

This Contract including any Order placed shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in this Contract.

## **38 LAW AND JURISDICTION**

This Contract shall be governed by the laws of England and the exclusive jurisdiction of the English courts and the Contractor shall comply at all times with all relevant laws and regulations including without limitation E.U. legislation.

## **39 EXECUTION OF FURTHER DOCUMENTS**

The Contractor shall at its own costs and expense do and execute any further things and document(s) or procure that the same be done or executed as may be required by the Authority to give full effect to any provisions of this Contract and shall provide all such documents and materials to the Authority within fourteen days of the date of the Authority's written request or such longer period as may be agreed by the Authority in writing.

## **40 ENTIRE AGREEMENT**

- 40.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation of either parties.
- 40.2 For the avoidance of doubt, any amendment or variation contained in the Tender or the Method Statement submitted by the Contractor which is inconsistent with the Specification or the Conditions is of no legal effect and does not form part of the Contract, save and except any such amendment or variation expressly and specifically agreed, duly authorised and signed by the Authority in writing as forming part of the Contract **PROVIDED ALWAYS** that such amendments or variations are to be interpreted in same the order of priority as set out in Condition 41.

## **41 ORDER OF PRECEDENCE**

- 41.1 In the event of and only to the extent of any conflict between the Conditions, the Specification, the Instructions for Tendering, the Tender and other

documents referred to or incorporated into the Contract, the conflict shall be resolved in accordance with the following descending order of precedence.

the Conditions of Contract shall prevail over:

the Specification;

the Appendices and Schedules;

the Instructions for Tendering;

the Tender and the Method Statement;

any other document referred to and incorporated in this Contract.

41.2 The General Conditions and the Specific Conditions shall apply on an equal basis, except where there is an inconsistency between General Conditions and the Specific Conditions the relevant Specific Condition shall prevail.

41.3 Where there is any conflict or inconsistency between the Specification and the Conditions, the Conditions shall prevail.

## **42 SUPERSEDE PRIOR AGREEMENT**

Without prejudice and subject to Condition 40, this Contract shall take effect in substitution for all previous agreements and arrangements whether written or oral or implied between the Authority and the Contractor relating to the Service and all such agreements and arrangements shall be deemed to have been terminated by mutual consent with effect from the effective date of this Contract.

## **43 SURVIVAL OF OBLIGATIONS**

On expiry or termination of the Contract (howsoever occasioned) Conditions 7, 9.6, 9.15, 10, 12, 14, 15, 17, 18, 19, 20, 23, 27, 28, 29, 30, 31, 32, 34 to 46 shall continue and remain in full force and effect notwithstanding the expiration or termination.

## **44. EXCLUSION OF AUTHORITY'S LIABILITIES**

44.1 Unless provided by Condition 44.2 the Authority shall not under any circumstances be liable to the Contractor for any direct, indirect or consequential loss, charge, or expenses (including loss of profit) and/or liabilities suffered by the Contractor however caused whether in contract, tort, breach of statutory duty or otherwise whatsoever however caused, or in connection with the provision of the Service or the performance of the Contract.

44.2 Condition 44.1 shall not apply in relation to:

44.2.1 any wilful or fraudulent act or omission of the Authority or any of its employees; and/or

44.2.2 any negligent act or omission giving rise to death or personal injury.

44.3 The Contractor shall immediately notify the Authority of any accident, loss or damage that occurs on the Authority's premises.

## **45 POST-CONTRACT MONITORING**

45.1 In order to meet the requirements of Part I (Best Value) Local Government Act 1999, the Authority continuously reviews the efficiency and effectiveness of its services to see whether they can be provided to a higher standard or in ways that are more responsive to the needs of their users. To assist the Authority in this respect, the Contractor shall, throughout the period of this Contract and in collaboration with the Authority, actively look for and seek to achieve continuous improvement in the quality and delivery of the Service.

45.2 The Contractor agrees that it will, at no cost to the Authority, use its reasonable endeavours to assist the Authority with any requirements the Authority may have in connection with post-contract monitoring of:-

45.2.1 the initial implementation of the Service;

45.2.1 the Contractor's performance of the Service;

45.2.3 any risks inherent in any Service;

45.2.4 any potential improvements to the Service;

45.2.5 the Authority's performance of its obligations under this Contract;

45.2.6 the ongoing requirement for the Service;

45.2.7 the value for money in respect of the Services; and

45.2.89 any other aspect concerning the operation of this Contract.

45.3 Such post-contract monitoring may include (but not limited to):-

45.3.1 the inspection by the Authority of any aspect of the Contractor's performance at the Authority's premises or elsewhere;

45.3.2 the requirement for the Contractor to self-monitor its performance and provide detailed performance data to the Authority on request;

45.3.3 the provision by the Contractor of detailed financial/cost information; and

45.3.4 the attendance by the Contractor at informal or formal performance reviews or debriefing sessions.

## **46. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**

46.1 For the purpose of the Condition 46, the following expression shall have the following meaning:

**“Termination Date”** the date on which the Contract expires or is terminated (howsoever occasioned) or in respect of the Service the provision of the Service ends or ceases howsoever occasioned.

46.2 The Contractor must determine for themselves whether TUPE Regulations will apply to the expiry, termination of the Contract or cessation of the provision of the Service (howsoever occasioned). The Contractor shall indemnify the Authority and shall keep the Authority fully and effectually indemnified against any and all TUPE claims in respect thereof.

46.3 In event of TUPE applies on or after the Termination Date or the cessation of the Service (or any part thereof) (howsoever occasioned), the Contractor shall discharge and indemnify the Authority and keep the Authority fully and effectually indemnified against all costs claims liabilities expenses and demands whatsoever arising from or in respect of:

46.3.1 all dismissals by the Contractor of any employees whose contracts of employment are affected by TUPE Regulation whether for redundancy or protective awards and any liability for wrongful dismissal or unfair dismissal or otherwise in connection with the transfer of the employment of such employees to the Authority and/or its service provider or otherwise;

46.3.2 all salaries and other emoluments including holiday pay tax and national insurance payments and contributions to retirement benefit schemes relating to such employees shall be borne by the Contractor; and

46.3.3 each and every cost claim liability expense or demand which relates to or arises out of any act or omission by the Contractor or any other event or occurrence prior to the Termination Date or the cessation of the Service (or any part thereof) concerning or in respect of such employees which the Authority and /or its new service provider may incur in relation to any contract of employment or collective agreement concerning such employees or under statute pursuant to TUPE Regulation including without limitation any such matter relating to or arising out of:

46.3.3.1 the Contractor’s rights powers duties and/or liabilities under or in connection with any such contract of employment or any such collective agreement or under statute (which rights powers duties and/or liabilities are or will be transferred to the Authority and/or its service provider in accordance with TUPE Regulation);

46.3.3.2 anything done or omitted before the Termination Date or the cessation of the Service (or any part thereof) by or in relation to the Contractor in respect of any contract of employment or any such collective agreements or any person so employed which is deemed to have been done or omitted by or in relation to the Authority and/or its service provider in accordance with TUPE Regulation;

- 46.3.3.3 the Contractor's failure to pay to any such employee any sums due in respect of the period prior to the Termination Date or the cessation of the Service (or any part thereof);
- 46.3.3.4 any claim by any trade union staff association or staff body recognised by the Contractor in respect of all or any of such employees arising out of the Contractor's failure to comply with its legal obligations to such trade unions or staff associations or bodies;
- 46.3.3.5 any claim by any such employees or any other former existing or future employee of the Contractor against the Authority or Successor Provider concerning or relating to any matter whatever;
- 46.3.3.6 any failure by the Contractor to provide retirement or death in service benefits for or in respect of any such employees of the same or equivalent level as such persons would have been entitled to under the Contractor's scheme immediately before the Termination Date or the cessation of the Service (or any part thereof); and
- 46.3.3.7 any claim or allegation by such employee(s) that in consequence of the expiry, termination or cessation of the provision of the Contract or the Services (howsoever occasioned) that there has been or will be a substantial change in the working conditions of such employee(s) to his detriment.

**SCHEDULE 1**  
**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Contractor shall comply with any further reasonable written instructions with respect to processing.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<p>Processing of personal data in relation to the contract will require it to be exchanged for a variety of purposes, including:</p> <ol style="list-style-type: none"> <li>1. Management and monitoring in the wider context (e.g., contract management meetings, health &amp; safety, rights of audit)</li> <li>2. Ordering</li> <li>3. Use of premises and/or facilities; and</li> <li>4. All other purposes in relation to the contract as reasonably determined by the Authority.</li> </ol>
Duration of processing	Duration of the contract.
Nature and purposes of the processing	<p>Receipt, recording, storage, retrieval, use deletion and/or destruction of contact details in relation to the contract management and monitoring.</p> <p>The contractor should only use the personal data for the authorised purposes and no other purpose outside the contract terms.</p>
Type of Personal Data	<p>Contract contact information in relation to those operating and managing the contract, including:</p> <p>Name Business Address Email Address Online communications and/or photographic image for identification only; and Telephone Number</p> <p>No special category data is to be processed as part of this contract.</p>
Categories of Data Subject	<p>Authority Employees, Sub-Contractors, Agents and Representatives Contractor Employees, Sub-Contractors, Agents and Representatives</p>