

**BEDFORDSHIRE FIRE AND RESCUE AUTHORITY**



# **Fire and Rescue Service**

**GENERAL TERMS AND CONDITIONS OF CONTRACT**

Relating to the supply of  
Goods and/or the provision of Services

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## **A. GENERAL PROVISIONS**

### **A1 Context**

These General Terms and Conditions of Contract shall apply to all business dealings between the Authority and any Supplier.

### **A2 Incorporation**

These General Terms and Conditions of Contract shall be incorporated in any Contract made by the Authority for the supply of any Goods and/or the provision of any Services unless they are specifically excluded and shall apply to the extent that they are not inconsistent with any Special Conditions of Contract.

### **A3 Interpretation**

The interpretation and construction of these General Terms and Conditions of Contract shall be subject to the following provisions:-

- (a) the meanings attached to the terms in the Schedule of Definitions shall apply in all cases unless the context otherwise requires;
- (b) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (c) words importing the neuter include the masculine and the feminine;
- (d) reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (e) reference to any Statute, Enactment, Order, Regulation or Instrument shall be construed as a reference to the Statute, Enactment, Order, Regulation or Instrument as amended, modified or re-enacted by any subsequent Enactment, Order, Regulation or Instrument for the time being in force;
- (f) reference to any person shall include natural persons and Partnerships, Firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (g) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- (h) headings are included for ease of reference only and shall not affect the interpretation or construction of any Contract.

### **A4 Initial Contract Period**

Any Contract entered into shall take effect on the Commencement Date and shall

expire automatically upon the Termination Date unless it is otherwise terminated in accordance with the provisions of any Contract, or otherwise lawfully terminated, or extended under Clause F9. Either Party shall be at liberty to give to the other Party three (3) months' notice in writing to the effect that, after the expiration of such notice, no further orders will be issued or accepted.

#### **A5 Supplier's Status**

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

#### **A6 Authority's Obligations**

Save as otherwise expressly provided, the obligations of the Authority under any Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in any Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under any Contract (howsoever arising) on the part of the Authority to the Supplier.

#### **A7 Notices**

A7.1 Except as otherwise expressly provided within any Contract, no notice or other communication from one (1) Party to the other shall have any validity under any Contract unless made in writing by or on behalf of the Party concerned.

A7.2 Any notice or other formal communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter) to the registered office or principal place of business. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail. Notices to be served on the Authority shall be delivered by hand or posted in a pre-paid letter addressed to the Authority's Contract Manager at the Fire and Rescue Headquarters in Kempston.

A7.3 For the purposes of Clause A7.2, the address of each Party shall be:-

- (a) for the Authority:-  
Bedfordshire Fire and Rescue Authority  
92 Southfields Road  
Kempston  
Bedfordshire  
MK42 7NR

For the attention of: **Insert Contract Manager**

Tel: +44 1234 insert telephone no.

Email: insert email

(b) for the Supplier:-

[Insert Supplier's Name]

[Insert Full Supplier Address ]

For the attention of [Insert Name of Supplier's Contract Manager]

Tel: [Insert Supplier's Contract Manager Tel No]

Email: [Insert Supplier's Contract Manager Email]

A7.4 Either Party may change its address or nominated addressee for service by serving a notice in accordance with this Clause A7.

## **A8 Mistakes in Information**

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

## **A9 Conflicts of Interest**

A9.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any of its Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of any Contract. The Supplier will disclose to the Authority full particulars of any such conflict of interest which may arise.

A9.2 The Authority reserves the right to terminate any Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of any Contract. The actions of the Authority pursuant to this Clause A9 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **B. SUPPLY OF GOODS AND/OR THE PROVISION OF SERVICES**

### **B1 The Goods and/or the Services**

B1.1 Subject to and in accordance with these General Terms and Conditions of Contract the Supplier shall supply (which shall for the purposes of any Contract include the delivery thereof and where relevant the installation thereof) the Goods and/or provide the Services during the agreed Contract Period in accordance with the Authority's requirements as set out in the Specification and the provisions of any Contract in consideration of the payment of the Contract Price in whole or in part.

- B1.2 Those Goods and/or Services are to be of the qualities or sorts, at the rates or prices and to the quantity or numbers respectively set opposite thereto in the attached Schedules but only in such quantity or numbers at such times and in such manner as the Authority's Contract Manager, or other authorised officer, shall from time to time direct in writing on the Authority's official order form.
- B1.3 If requested by the Authority, the Supplier shall provide the Authority with samples of the Goods and/or full details of the Services for evaluation and approval, at the Supplier's cost and expense.
- B1.4 The Supplier shall ensure that the Goods and/or the Services are fully compatible with any equipment, to the extent specified in the Specification.
- B1.5 The Supplier acknowledges that the Authority relies on the skill and judgment of the Supplier in the supply of the Goods and/or the provision of the Services and the performance of its obligations under any subsequent Contract.
- B1.6 The Authority may inspect and examine the manner in which the Supplier supplies the Goods and/or provides the Services at the Premises (and if required by the Authority at the Supplier's premises) during normal business hours on reasonable notice.
- B1.7 If the Authority informs the Supplier in writing that the Authority reasonably believes that any part of the Goods and/or the Services does not meet the requirements of any Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Supplier shall at its own expense re-schedule and carry out the development and delivery of the Goods and/or the Services in accordance with the requirements of any Contract within such reasonable time as may be specified by the Authority.

## **B2 Provision and Removal of Equipment**

- B2.1 The Supplier shall provide all the Equipment necessary for the development and supply of the Goods and/or the provision of the Services.
- B2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining the Authority's prior written approval.
- B2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.
- B2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Supplier shall, at the Authority's written request, at its own expense and as soon

as reasonably practicable:-

- (a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with any Contract; and
- (b) replace such item with a suitable substitute item of Equipment.

B2.6 On completion of the supply of the Goods and/or the provision of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and/or provide the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any of its Staff.

### **B3 Manner of the supply of Goods and/or the provision of Services**

B3.1 The Supplier shall supply the Goods and/or provide the Services at the time(s) and date(s) specified in the Specification, unless prevented by Force Majeure, in which case Clause H7 applies.

B3.2 Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.

B3.3 Unless otherwise stated in the Specification, where the Goods are delivered by the Supplier, the point of delivery shall include the unloading, stacking or installation of the Goods by the Supplier's Staff or a sub-contractor or other supplier or carriers at such place as the Authority or its duly authorised representative shall reasonably direct.

B3.4 Subject to the Authority providing written consent in accordance with Clause B2.2, time of delivery shall be of the essence and if the Supplier fails to deliver the Goods and/or to provide the Services within the time promised or specified in the Specification, unless revised deadlines are expressly agreed by formal communication with the Authority, the Authority may release itself from any obligation to accept and pay for the Goods and/or the Services and/or terminate any Contract, in either case without prejudice to any other rights and remedies of the Authority. The Authority reserves the right to claim liquidated damages for quantifiable losses incurred in such circumstances (Clause F7).

B3.5 The Authority shall be under no obligation to accept or pay for any Goods supplied in excess of the quantity ordered. If the Authority elects not to accept such over-supplied Goods and/or Services provided it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of rectification), failing which the Authority may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Authority. If the Supplier shall provide Services in excess of those required under any Contract the Authority shall not be required to pay for the same and in respect thereof the Supplier



shall take such action as is required by the Authority.

- B3.6 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification. The Authority shall be under no obligation to pay for any Services provided earlier than the date specified in the Specification.
- B3.7 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery of the Goods by instalments. If, however, the Authority does specify or agree to delivery by installments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of any Contract without further liability to the Authority. The Services shall be provided strictly in accordance with the Specification.
- B3.8 The Supplier shall at all times comply with the Quality Standards mentioned in the Specification of the Authority, and where applicable shall maintain accreditation with relevant Quality Standards authorisation body as may be set out in any Tender. To the extent that the standard of the Goods and/or the Services has not been specified in any Contract, the Supplier shall agree the relevant standard of the Goods and/or the Services with the Authority prior to the supply of the Goods and/or the provision of the Services and, in any event, the Supplier shall perform its obligations under any Contract in accordance with the Law and Good Industry Practice.
- B3.9 The Supplier shall ensure that all of its Staff supplying the Goods and/or providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Goods and/or the provision of the Services. The Supplier shall be responsible for compensating the Authority for consequential losses in the event of material failing in service.
- B3.10 The Goods are to be supplied and/or the Services are to be provided at reasonable times and on the day and at the place specified in the Authority's official order form. Delivery shall be free of charge to the Authority and at the Supplier's risk, unless otherwise agreed in writing by both Parties. Delivery of the Goods to a carrier shall not be deemed to be delivery of the Goods to the Authority.

#### **B4 Risk and Ownership**

- B4.1 Subject to Clause B3.3, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under Clause B6), pass to the Authority at the time of delivery.
- B4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under Clause B6), pass to the Authority at the time of delivery (or payment, if earlier).

#### **B5 Non-Delivery**

On dispatch of any consignment of the Goods the Supplier shall send the Authority

an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date for delivery, the Authority shall, (provided that the Authority has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier free of charge to deliver substitute Goods within the timescales specified by the Authority or terminate any Contract in accordance with Clause B3.4.

## **B6 Inspection, Rejection and Guarantee**

B6.1 The Authority or its duly authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and the Authority reserves the right to reject the Goods in accordance with Clause B6.2. The Authority may at any time carry out such examination or inspection in respect of the provision of the Services as it shall reasonably require and the Supplier shall comply with any requirements of the Authority in consequence thereof. The Authority reserves the right to reject the Services in accordance with Clause B6.2.

B6.2 The Authority may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample(s) and/or any of the Services fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods and Services. If the Authority rejects any of the Goods and/or the Services pursuant to this Clause B6.2 the Authority may (without prejudice to other rights and remedies) either:-

- (a) have such Goods and/or Services promptly, and in any event within five (5) Working Days, either repaired by the Supplier or replaced by the Supplier with Goods and/or Services which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
- (b) treat any Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods and/or the Services has already been made) from the Supplier in respect of the Goods and/or the Services concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other Goods and Services in replacement provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services. For the avoidance of doubt, the Authority will be deemed to have accepted the Goods and/or the Services if it expressly states the same in writing or fails to reject the Goods and/or the Services in accordance with this Clause B6.2.

B6.3 Any Goods and/or Services rejected or returned by the Authority as described in

Clause B6.2 shall be returned to the Supplier at the Supplier's risk and expense. Rejected Goods and/or Services or materials remain the property of the Supplier and shall be removed from the Premises as quickly as possible. If perishable Goods are not removed by the Supplier within twenty four (24) hours the Authority may cause the Goods or materials to be removed and charge the Supplier with all the expenses thereby incurred.

- B6.4 The issue by the Authority of a receipt note for the Goods and/or the Services shall not constitute any acknowledgement of the condition, quantity or nature of those Goods and/or Services, or the Authority's acceptance of them.
- B6.5 The Supplier hereby guarantees the Goods and/or the Services for the period from the date of delivery to the date [to be inserted following Contract Award)] Months thereafter against faulty materials or workmanship. If the Authority shall within such guarantee period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods and/or the Services as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.

## **B7 Labelling and Packaging**

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

## **B8 Training**

Where indicated in the Specification, any Contract Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and/or the Services and such instruction shall be in accordance with the requirements detailed in the Specification.

## **B9 Contract Performance**

- B9.1 The Supplier shall perform its obligations under any Contract:-
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - (b) in accordance with Good Industry Practice; and
  - (c) in compliance with all applicable Laws.
- B9.2 The Supplier shall ensure that:-

- (a) the Goods and/or the Services conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;
  - (b) the Goods and/or the Services operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in any subsequent Contract;
  - (c) the Goods and/or the Services conform in all respects with all applicable Laws and standards set by relevant industry bodies; and
- (c)the Goods and/or the Services are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods and/or Services are ordinarily used and for any particular purpose made known to the Supplier by the Authority.

## **B10 Key Personnel**

- B10.1 The Supplier acknowledges that the Key Personnel are essential to the proper supply of the Goods and/or the provision of the Services to the Authority. The Key Personnel shall be responsible for day to day management of the Parties' relationship, clarifying briefs for the supply of the Goods and/or the provision of the Services, development and production of Goods and Services to agreed delivery schedules and ensuring compliance of the Goods and/or the Services with the Authority's quality standards.
- B10.2 The Key Personnel shall not be released from supplying the Goods and/or providing the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- B10.3 Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Goods and/or the Services.
- B10.4 The Authority shall not unreasonably withhold its agreement under Clause B10.2 or B10.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on any Contract which could be caused by a change in Key Personnel.

## **B11 Management of Supplier's Staff**

- B11.1 The Authority may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on the Premises:-
- (a) any member of the Supplier's Staff; or
  - (b) any person employed or engaged by any member of the Supplier's Staff,
- whose admission or continued presence would, in the reasonable opinion of the

Authority, be undesirable.

- B11.2 At the Authority's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with any Contract to the Premises, specifying the capacities in which they are concerned with any Contract and giving such other particulars as the Authority may reasonably request.
- B11.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- B11.4 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Goods and/or the Services. The Supplier confirms that all persons employed or engaged by the Supplier were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- B11.5 The Authority may require the Supplier to ensure that any person employed in the provision of the Goods and/or the Services shall be appropriately checked in respect of Criminal Records and in respect of regulated activities under the Safeguarding Vulnerable Groups Act 2006 by the Disclosure and Barring Service (or any other person or Body upon which such duties have devolved) and shall only employ in the provision of the Services those persons who have received clearance at the Enhanced Level and have otherwise been satisfactorily checked to the full satisfaction of the Authority, acting at its sole discretion, and shall, at its own expense, prior to the employ of such persons in the supply of the goods and/or the provision of the Services, produce to the Authority such evidence as the Authority shall require of such satisfactory checks. These checks shall be carried out every two (2) years. The Supplier shall ensure that any person who does not gain such clearance or is found by the Supplier to have a Relevant Conviction (whether as a result of a Police check or otherwise) is not employed or engaged in the provision of any part of the Goods and/or the Services.
- B11.6 If the Supplier fails to comply with Clause B11.2 within ten (10) weeks of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate any Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- B11.7 The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause B11.2 shall be final and conclusive.

## **B12 Inspection of Premises**

Save as the Authority may otherwise direct, the Supplier is deemed to have inspected the Premises during the conduct of any response to an Invitation to Tender (where such inspection is deemed to have a material effect upon the tender

response) and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under any Contract.

### **B13 Licence to occupy Premises**

- B13.1 Any Premises made available from time to time to the Supplier by the Authority in connection with any Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under any Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of any Contract.
- B13.2 The Supplier shall limit access to the Premises to such of its Staff as is necessary to enable it to perform its obligations under any Contract and the Supplier shall co-operate (and ensure that all its Staff co-operate) with such other persons working concurrently on such Premises as the Authority may reasonably request.
- B13.3 Should the Supplier require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Supplier's expense. The Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- B13.4 The Supplier shall (and shall ensure that all its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or any of its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B13.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Supplier or any of its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to any subsequent Contract, the Authority retains the right at any time to use any Premises or any other premises owned or occupied by it in any manner it sees fit.

### **B14 Property**

- B14.1 Where the Authority issues Property free of charge to the Supplier such Property shall be and remain the property of the Authority and the Supplier irrevocably licences the Authority and its agents to enter upon any of the Supplier's premises during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Supplier shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors or other suppliers and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

- B14.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Authority otherwise within five (5) Working Days of receipt.
- B14.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with any Contract and for no other purpose without prior approval.
- B14.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods and/or the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- B14.5 The Supplier shall indemnify and keep indemnified the Authority from and against any action, costs claims and proceedings in injury or damage to any property, real or personal, arising out of or in the course of carrying out these General Terms and Conditions of Contract unless due to any act or neglect of the Authority or its agents. The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Supplier shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

## **B15 Offers of Employment**

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

## **C. PAYMENT AND CONTRACT PRICE**

### **C1 Contract Price**

- C1.1 In consideration of the Supplier's performance of its obligations under any Contract, the Authority shall pay the Contract Price in accordance with Clause C2.
- C1.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods supplied and/or the Services provided in accordance with any Contract.

### **C2 Payment and VAT**

- C2.1 The Authority shall pay all sums due to the Supplier within thirty (30) days of receipt of a valid invoice, submitted monthly in arrears.
- C2.2 The Supplier shall ensure that each invoice contains all appropriate references including a purchase order number and a detailed breakdown of the Goods and/or the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

- C2.3 Where the Supplier enters into a sub-contract with a sub-contractor or other supplier for the purpose of performing its obligations under any Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor or other supplier within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- C2.4 The Supplier shall add VAT to any Contract Price at the prevailing rate as applicable.
- C2.5 The Supplier shall indemnify the Authority against any liability which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under any Contract. Any amounts due under this Clause C2 shall be paid by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.6 The Supplier shall not suspend the supply of the Goods and/or the provision of the Services unless the Supplier is entitled to terminate any Contract under Clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

### **C3 Recovery of Sums Due**

- C3.1 Wherever under any Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of any Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under any Contract or under any other agreement or contract with the Authority.
- C3.2 Any overpayment by either Party, whether of any Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Supplier shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in any Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

### **C4 Price adjustment on extension of the Initial Contract Period**

- C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to Clause F9 the Authority shall, in the six (6) month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Supplier (for a period of not more



than thirty (30) Working Days) to agree a variation in any subsequent Contract Price.

- C4.2 If the Parties are unable to agree a variation in any subsequent Contract Price in accordance with Clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.
- C4.3 If a variation in the Contract Price is agreed between the Authority and the Supplier, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- C4.4 Any increase in any subsequent Contract Price pursuant to Clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (the "**CPI**") (or another such index specified in the Pricing Schedule) between the Commencement Date and the date six (6) Months before the end of the Initial Contract Period.

## **C5 Euro**

- C5.1 Any requirement of Law to account for the Goods and/or the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Supplier free of charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with Clause C5.1 by the Supplier.

## **D. STATUTORY OBLIGATIONS AND REGULATIONS**

### **D1 Prevention of Bribery and Corruption**

- D1.1 The Supplier shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of any Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.
- D1.2 The Supplier warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with any Contract.
- D1.3 If the Supplier or any of its Staff or anyone acting on the Supplier's behalf, engages in conduct prohibited by Clause D1.1 or D1.2 as laid out under the Bribery Act 2010 or any amendment of them, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972 or any statutory re-enactment or modification thereof, the Authority may:-
  - (a) terminate any Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the

supply of the Goods and/or the provision of the Services and any additional expenditure incurred by the Authority throughout the remainder of any subsequent Contract Period; or

- (b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of those Clauses.

## **D2 Prevention of Fraud**

D2.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by any of its Staff and the Supplier (including its shareholders, members, directors) in connection with the receipt of monies from the Authority.

D2.2 The Supplier shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Supplier or any of its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:-

- (a) terminate any Contract and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Goods and/or the provision of the Services and any additional expenditure incurred by the Authority throughout the remainder of any subsequent Contract Period; or
- (b) recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this Clause D2.

## **D3 Equal Opportunities**

D3.1 The Supplier shall not unlawfully discriminate either directly or indirectly within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Supplier shall take all reasonable steps to secure the observance of Clause D3.1 by all its Staff. The Supplier may be required to answer queries raised by the Authority on matters referred to in this Clause and to co-operate with any investigation that the Authority may wish to carry out.

## **D4 The Contracts (Rights of Third Parties) Act 1999**

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

## **D5 Environmental Requirements**

The Supplier shall, when working on the Premises, perform its obligations under any 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.

## **D6 Health and Safety**

- D6.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under any Contract. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under any Contract.
- D6.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of all its Staff and other persons working there.
- D6.3 The Supplier shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under any Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D6.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to any of its Staff and other persons working on the Premises in the performance of its obligations under any Contract.
- D6.5 Each Party shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the other Party on request.
- D6.6 The Supplier shall undertake checks into the competence of any sub-contractor or other supplier the Supplier intends to use and inform them of all health and safety requirements pertinent to the Authority.
- D6.7 Any Contract may be terminated in the event of any serious or persistent breaches of safe working practices by the Supplier or any person employed by him and if appropriate, will result in the Supplier being removed from the Authority's Approved Suppliers List.

## **E. PROTECTION OF INFORMATION**

### **E1 Data Protection**

#### **E1.1 NOT USED – REPLACED BY SCHEDULE 4**

**E2 Official Secrets Acts 1911 to 1989 and S182 of the Finance Act 1989**

E2.1 The Supplier shall comply with, and shall ensure that all its Staff comply with the provisions of:-

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

E2.2 In the event that the Supplier or any of its Staff fail to comply with this Clause E2, the Authority reserves the right to terminate any Contract by giving notice in writing to the Supplier.

**E3 Confidential Information**

E3.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in these General Terms and Conditions of Contract, each Party shall:-

- (a) treat the other Party's Confidential Information as confidential, safeguarding it accordingly and use all reasonable endeavors to prevent their staff from making any disclosure to any person of any such Confidential Information; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent except to such persons and to such extent as may be necessary for the performance of either Party's obligations under any Contract or except where disclosure is otherwise expressly permitted by the provisions of any subsequent Contract.

E3.2 Clause E3.1 shall not apply to the extent that:-

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under FOIA or the Environmental Information Regulations pursuant to Clause E4;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of these General Terms and Conditions of Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E3.3 The Supplier may only disclose the Authority's Confidential Information to its Staff

who are directly involved in the supply of the Goods and/or the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

- E3.4 The Supplier shall not, and shall procure that its Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of these General Terms and Conditions of Contract.
- E3.5 Where it is considered necessary in the opinion of the Authority, the Supplier shall ensure that its Staff or such professional advisors or consultants give a confidentiality undertaking before beginning work in connection with any Contract. The Supplier shall ensure that its Staff, professional advisors and consultants are aware of the Supplier's confidentiality obligations under any Contract.
- E3.6 Nothing in this Agreement shall prevent the Authority from disclosing the Supplier's Confidential Information:-
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, Supplier or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
  - (c) for the purpose of the examination and certification of the Authority's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E3.7 The Authority shall use all reasonable endeavors to ensure that any Government department, Contracting Authority, employee, third party or sub-contractor or other supplier to whom the Supplier's Confidential Information is disclosed pursuant to Clause E3.6 is made aware of the Authority's obligations of confidentiality.
- E3.8 Nothing in this Clause E3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of any Intellectual Property Rights.
- E3.9 In the event that the Supplier fails to comply with Clauses E3.1 to E3.5, the Authority reserves the right to terminate any Contract with immediate effect by notice in writing.
- E3.10 Clauses E3.1 to E3.9 (inclusive) are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

- E3.11 In order to ensure that no un-authorized person gains access to any Confidential Information or any data obtained in the supply of the Goods and/or the provision of the Services under any Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- E3.12 The Supplier will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods and/or the provision of the Services under any subsequent Contract and will keep a record of such breaches. The Supplier will use its best endeavors to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses E3.1 to E3.5 (inclusive). The Supplier will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E3.13 The Supplier shall, at its own expense, alter any security systems at any time during any Contract Period at the Authority's request if the Authority reasonably believes the Supplier has failed to comply with Clause E3.11.

#### **E4 Freedom of Information**

- E4.1 The Supplier acknowledges that the Authority is subject to the requirements of FOIA and the Environmental Information Regulations and that by fulfilling the services covered by these General Terms and Conditions of Contract that the Supplier is subject to the same legal requirements. The Supplier shall be required to follow all Authority processes and procedures that provide for compliance with the FOIA and the Environmental Information Regulations where information held is subject to thereto.
- E4.2 The Supplier shall give reasonable assistance to the Authority to comply with FOIA and the Environmental Information Regulations, and the Authority shall give reasonable assistance to the Supplier to comply with FOIA and the Environmental Information Regulations within a timescale to be agreed on a case by case basis, but in any event, not to exceed the timescale that the Parties must comply with as defined with FOIA and the Environmental Information Regulations.
- E4.3 The Supplier shall and shall procure that any sub-contractors shall transfer to the Authority all Requests for Information that it receives relating to the services provided to the Authority as soon as practicable and in any event within [two (2)] Working Days of receiving a Request for Information;
- (a) provide the Authority with a copy of all Information in its possession, or power in the form that the Authority requires within [five (5)] Working Days (or such other period as the Authority may specify) of the Authority's request; and
  - (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of FOIA or Regulation 5 of the Environmental Information Regulations.

- E4.4 The Supplier shall ensure that all such Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- E4.5 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in these General Terms and Conditions of Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations
- E4.6 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- E4.7 The Supplier acknowledges that (notwithstanding the provisions of Clause E4) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of FOIA (“**the Code**”), be obliged under FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and/or the Services in certain circumstances:-
- (a) without consulting the Supplier; or
  - (b) following consultation with the Supplier and having taken their views into account;

provided always that where Clause E4.6(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier’s attention after any such disclosure.

- E4.8 The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with this Clause E4.

## **E5 Publicity, Media and Official Enquiries**

- E5.1 Without prejudice to the Authority’s obligations under FOIA, neither Party shall make any press announcement or publicise any Contract or any part thereof in any way, except with the written consent of the other Party.
- E5.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause E5.1.

## **E6 Security**

- E6.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with all security requirements of the Authority while on the Premises, and shall ensure that all of its Staff comply with such requirements.

E6.2 The Authority shall provide the Supplier copies of its written security procedures.

## **E7 Intellectual Property Rights**

E7.1 Save as granted elsewhere in these General Terms and Conditions of Contract, neither the Authority nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.

E7.2 The Authority hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use the Authority Background Rights and the Project Specific Intellectual Property Rights during any Contract Period for the sole purposes of enabling the Supplier to supply the Goods and/or provide the Services.

E7.3 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):-

- (a) furnished to or made available to the Supplier by or on behalf of the Authority shall remain the property of the Authority; and
- (b) prepared by or for the Supplier on behalf of the Authority for use, or intended use, in relation to the performance by the Supplier of its obligations under any Contract shall belong to the Authority;

and the Supplier shall not, and shall ensure that its Staff shall not, (except when necessary for the performance of any Contract) without prior Approval, use or disclose any Intellectual Property Rights and/or Project Specific Intellectual Property Rights in the IP Materials to any third party.

E7.4 The Supplier hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause E7.3 (b). This assignment shall take effect on the date of any Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Supplier. The Supplier shall execute all documentation necessary to execute this assignment.

E7.5 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced by any Contract or the performance of any Contract.

E7.6 All title to and all rights and interest in Project Specific Intellectual Property Rights shall vest in the Authority. The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific Intellectual Property Rights and/or shall procure the first owner of the Project Specific Intellectual Property Rights also does so. The assignment shall either take effect on the date of the Contract or as a present assignment of future rights that will immediately take effect on the coming into existence of the relevant Project Specific Intellectual Property Rights, as appropriate.



- E7.7 The Supplier shall ensure that any relevant third party owner of any Intellectual Property Rights that are embedded in or are an integral part of the Project Specific Intellectual Property Rights or may be used to perform any Contract, grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Supplier or to any other third party supplying Goods and/or providing the Services to the Authority.
- E7.8 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Goods and/or providing the Services and the Supplier shall, during and after any subsequent Contract Period, indemnify and keep indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:-
- (a) items or materials based upon designs supplied by the Authority; or
  - (b) the use of data supplied by the Authority which is not required to be verified by the Supplier under any provision of any Contract.
- E7.9 The Authority shall notify the Supplier in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:-
- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Authority; and
  - (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- E7.10 The Authority shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Supplier by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Supplier's obligations under any Contract and the Supplier shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Supplier shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in Clause E7.8 (a) or (b).
- E7.11 The Authority shall not make any admissions which may be prejudicial to the defence

or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Supplier in connection with the performance of its obligations under any Contract.

E7.12 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with any Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:-

- (a) modify any or all of the Goods and/or the Services without reducing the performance or functionality of the same, or substitute alternative Goods and/or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Goods and/or Services or to the substitute Goods and/or Services; or
- (b) procure a licence to use and supply the Goods and/or the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority,

and in the event that the Supplier is unable to comply with Clauses E7.10 (a) or (b) within twenty (20) Working Days of receipt of the Supplier's notification the Authority may terminate any Contract with immediate effect by notice in writing.

E7.13 The Supplier shall not unreasonably withhold from the Authority the ability to use any Intellectual Property that the Supplier owned or developed prior to the Commencement Date which the Authority reasonably requires in order to take the benefit of these General Terms and Conditions of Contract.

## **E8 Audit**

E8.1 The Supplier shall keep and maintain until six (6) years after the end of any subsequent Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of any Contract including the Goods and/or the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority.

E8.2 For any examination pursuant to Section 6(1) of the National Audit Act 1983 the Supplier shall on request afford the Authority or the Authority's representatives such access to those records as may be requested by the Authority in connection with any Contract.

## **F. CONTROL OF THE CONTRACT**

### **F1 Transfer and Sub-Contracting**

F1.1 Except where Clauses F1.4 and F1.5 apply, the Supplier shall not assign, sub-contract or in any other way dispose of any Contract or any part of it without prior Approval. Sub-contracting any part of any Contract shall not relieve the Supplier of

any of its obligations or duties under any Contract.

- F1.2 The Supplier shall be responsible for the acts and omissions of its sub-Suppliers as though they are its own.
- F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Supplier to the Authority as soon as reasonably practicable.
- F1.4 Notwithstanding Clause F1.1, the Supplier may assign to a third party (“**the Assignee**”) the right to receive payment of any Contract Price or any part thereof due to the Supplier under these General Terms and Conditions of Contract (including any interest which the Authority incurs under Clause C2.6). Any assignment under this Clause F1.4 shall be subject to:-
- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under Clause C3;
  - (b) all related rights of the Authority under the contract in relation to the recovery of sums due but unpaid; and
  - (c) the Authority receiving notification under both Clauses F1.5 and F1.6.
- F1.5 In the event that the Supplier assigns the right to receive any Contract price under Clause F1.4, the Supplier or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Supplier shall ensure that the Assignee notifies the Authority of the Assignee’s contact information and bank account details to which the Authority shall make payment.
- F1.7 The provisions of Clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Authority.
- F1.8 Subject to Clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under any Contract or any part thereof to:-
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
  - (c) any private sector body which substantially performs the functions of the Authority,

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

- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting

Authority shall not, subject to Clause F1.8, affect the validity of any Contract. In such circumstances, any Contract shall bind and inure to the benefit of any successor body to the Authority.

- F1.10 If the rights and obligations under any Contract are assigned, novated or otherwise disposed of pursuant to Clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as the “**Transferee**”):-
- (a) the rights of termination of the Authority in Clauses H1 and H2 shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under any Contract or any part thereof with the prior consent in writing of the Supplier.
- F1.11 The Authority may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier’s obligations under any Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier’s obligations under any Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of any Contract.

## **F2 Waiver**

- F2.1 The failure of either Party to insist upon strict performance of any provision of any Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by any Contract.
- F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A7.
- F2.3 A waiver of any right or remedy arising from a breach of any Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of any Contract.

## **F3 Variation**

- F3.1 Subject to the provisions of this Clause F3, the Authority may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a “**Variation**”.

- F3.2 The Authority may request a Variation by notifying the Supplier in writing of the “Variation” and giving the Supplier sufficient information to assess the extent of the Variation and consider whether any change to any Contract Price is required in order to implement the Variation. The Authority shall specify a time limit within which the Supplier shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Supplier accepts the Variation it shall confirm the same in writing.
- F3.3 In the event that the Supplier is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to any Contract Price, the Authority may:-
- (a) allow the Supplier to fulfil its obligations under any Contract without the variation to the Specification;
  - (b) modify the Variation to the Specifications in consultation with the Supplier; or
  - (c) terminate any Contract with immediate effect, except where the Supplier has already supplied all or part of the Goods and/or all of the Services or where the Supplier can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause I2.

#### **F4 Severability**

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

#### **F5 Remedies Cumulative**

Except as otherwise expressly provided by any Contract, all remedies available to either Party for breach of any Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

#### **F6 Remedies in respect of poor performance**

- F6.1 Where a complaint is received about the standard of Goods and Services or about the manner in which any Goods have been supplied and/or any Services have been provided or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier’s obligations under any Contract, then the Authority shall notify the Supplier, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance

with Clause H2 of any subsequent Contract.

F6.2 In the case of rejection of the Goods and/or the Services by the Authority Clause B6.2 applies.

F6.3 In the event that the Supplier fails to comply with Clause B6.2 and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; the Authority may terminate any Contract with immediate effect by notice in writing.

F6.4 In the event that the Authority is of the reasonable opinion that there has been a material breach of any Contract by the Supplier, then the Authority may, without prejudice to its rights under Clause H2, do any of the following:-

(a) without terminating any Contract, itself supply or procure the supply of all or part of the Goods and/or provide or procure the provision of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Authority that the Supplier will once more be able to supply all or such part of the Goods and/or all or part of the Services in accordance with any Contract;

(b) without terminating the whole of any Contract, terminate any Contract in respect of part of the Goods and/or the Services only (whereupon a corresponding reduction in any Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or to provide such parts the Services; or

(c) terminate, in accordance with Clause H2 t), the whole of any Contract.

F6.5 Without prejudice to its right under Clause C3, the Authority may charge the Supplier for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Goods and/or the provision of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and/or the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

F6.6 Rejected Goods or materials remain the property of the Supplier and shall be removed from the Premises as quickly as possible at the Supplier's expense. If Goods are not removed by the Supplier within a reasonable period the Authority may cause the Goods or materials to be removed and charge the Supplier with all the expenses thereby incurred.

## **F7 Liquidated Damages**

F7.1 If the Supplier fails to supply the Goods and/or to provide the Services by the date(s) agreed, specified in the Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "**Agreed Delivery Date**"):-

- (a) the Supplier shall pay the Authority a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are supplied and/or the Services are provided to the Authority, equal to 1% of the Contract Price for the relevant Goods and Services, up to a maximum amount of 15% of the Contract Price for the relevant Goods and Services (the “**Liquidated Damages Threshold**”). Subject to Clause F7.3, during the period in which liquidated damages are payable under this Clause F7.1 (a) (the “**Liquidated Damages Period**”) the liquidated damages payable in accordance with this Clause F7.1 (a) shall be the Authority’s only remedy for any loss or damage suffered or incurred by the Authority in relation to the failure by the Supplier to supply the Goods and/or to provide the Services by the Agreed Delivery Date; and
- (b) where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Authority shall be entitled to:-
  - (i) claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
  - (ii) without prejudice to Clause F7.1(b)(i), the Authority shall be entitled to terminate any Contract with immediate effect by giving notice in writing to the Supplier.

F7.2 The Supplier shall not be obliged to pay any sums pursuant to Clause F7.1 (a) if and to the extent the failure by the Supplier to supply the Goods and/or to provide the Services by the Agreed Delivery Date directly results from the Authority’s Default provided that the Supplier notifies the Authority immediately of such circumstances in sufficient detail to enable the Authority to remedy the situation. Except as set out in this Clause F7.2, no payment or concession to the Supplier by the Authority or other act or omission of the Authority shall in any way affect its rights to liquidated damages pursuant to Clause F7.1 or be deemed to be a waiver of the right of the Authority to recover any damages unless such waiver has been expressly made in writing by the Authority.

F7.3 Notwithstanding Clause F7.1(a), the Supplier does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Authority, whether or not such performance or re-performance gives rise to additional costs for the Supplier and the cost of re-performance shall be borne solely by the Supplier and shall not be re-charged to the Authority whether by way of costs, reimbursement or otherwise.

F7.4 Having given careful consideration to this matter, all monies payable by the Supplier under Clause F7.1(a) are considered by the Parties to be a genuine pre-estimate of the losses which the Authority will incur in relation to the Supplier’s failure to supply the Goods and/or to provide the Services by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Authority in terms of both loss of revenue as well as loss of reputation and prestige (the Parties

acknowledging that hypothetically the losses sufferable by the Authority might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of any Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause F5. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

F7.5 Each Party confirms that:-

- (a) it has taken specific legal advice on the effect of this Clause F7 and
- (b) based on such advice, it does not enter into any Contract in anticipation that, or with any expectation that this Clause F7 will be unenforceable for any reason.

#### **F8 Monitoring of Contract Performance**

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

#### **F9 Extension of Initial Contract Period**

Subject to the Schedule 1 and Clause C4 (Pricing and price adjustment on extension of the Initial Contract Period), the Authority may, by giving written notice to the Supplier not less than three (3) Month(s) prior to the last day of the Initial Contract Period, extend any subsequent Contract for a further period of up to twelve (12) Month(s). The provisions of any subsequent Contract will apply (subject to any Variation or adjustment to any subsequent Contract Price pursuant to Clause C4) throughout any such extended period.

#### **F10 Entire Agreement**

F10.1 Any Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. Any Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by either Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F10.2 In the event of, and only to the extent of, any conflict between the Clauses of any Contract, any document referred to in those Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:-

- (a) the Clauses of any Contract;



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

## **F11 Counterparts**

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

## **G. LIABILITIES**

### **G1 Liability, Indemnity and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for:-

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to Clauses G1.3 and G1.4, the Supplier shall indemnify the Authority fully on a continuing basis against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods and/or the provision, or the late or purported provision, of the Services or the performance or non-performance by the Supplier of its obligations under any Contract or the presence of the Supplier or any of its Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

G1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under any Contract.

G1.4 Subject always to Clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:-

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with any subsequent Contract shall in no event exceed One million Pounds (£1,000,000); and
- (b) the annual aggregate liability under any subsequent Contract of either Party for all Defaults (other than a Default governed by Clauses E7 (Intellectual

Property Rights) or G1.4 (a) shall in no event exceed the greater of fifty per cent (50%) of any Contract Price paid or payable by the Authority to the Supplier in the year in which the liability arises].

- G1.5 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:-
- (a) loss of profits, business, revenue or goodwill; and/or
  - (b) indirect or consequential loss or damage.
- G1.6 The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Supplier.
- G1.7 [The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover not less than One million Five hundred thousand Pounds (£1,500,000) in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under any Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of any Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of any Contract].
- G1.8 The Supplier shall hold employer's liability insurance in respect of its Staff in accordance with any legal requirement from time to time in force.
- G1.9 The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this Clause G1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.10 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of any Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- G1.11 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under any Contract. It shall be the responsibility of the Supplier to provide insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause G1.2, in the sum of
- (a) Five million Pounds (£5,000,000) in respect of Public Liability; and
  - (b) Five million Pounds (£5,000,000) in respect of Employers Liability;
  - (c) Not Used;
- each in respect of any one (1) incident the number of incidents being unlimited.

**G2 Professional Indemnity**

Not Used

**G3 Warranties and Representations**

The Supplier warrants and represents that:-

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under any Contract and that any Contract is executed by a duly authorised representative of the Supplier;
- (b) in entering any Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of any Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under any Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under any Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under any Contract;
- (h) in the three (3) years prior to the date of any Contract:-
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; or
- (i) it has not done or omitted to do anything which could have a material adverse

effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under any Contract.

## **H. DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on insolvency and change of control**

H1.1 The Authority may terminate any Contract with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier:-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (i) any event similar to those listed in Clauses H1.1(a) to (h) (inclusive) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate any Contract with immediate effect by notice in writing where the Supplier is an individual and:-

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;

or

- (b) a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days; or
- (f) dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Supplier shall notify the Authority immediately if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**change of control**"). The Authority may terminate any Contract by notice in writing with immediate effect within six (6) Months of:-

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## **H2 Termination on Default**

H2.1 The Authority may terminate any Contract by written notice to the Supplier with immediate effect if the Supplier commits a Default and if:-

- (a) the Supplier has not remedied the Default to the satisfaction of the Authority within twenty five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of any Contract.

H2.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with any Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate any Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause C3.1.

### **H3 Break**

The Authority shall have the right to terminate any Contract at any time by giving three (3) Months' written notice to the Supplier.

### **H4 Consequences of Expiry or Termination**

H4.1 Where the Authority terminates any Contract under Clause H2 and then makes other arrangements for the supply of Goods and Services, the Authority may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of any subsequent Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where any Contract is terminated under Clause H2, no further payments shall be payable by the Authority to the Supplier (for Goods supplied and/or the Services provided by the Supplier prior to termination and in accordance with any Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this Clause.

H4.2 Subject to Clause G1, where the Authority terminates any Contract under Clause H3, the Authority shall indemnify the Supplier against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Supplier by reason of the termination of any Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Authority shall only indemnify the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Authority, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause H3.

H4.3 The Authority shall not be liable under Clause H4.2 to pay any sum which:-

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

- (b) when added to any sums paid or due to the Supplier under any Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Supplier for loss of profit, due to early termination of any Contract.

H4.4 Save as otherwise expressly provided in any Contract:-

- (a) termination or expiry of any Contract shall be without prejudice to any rights, remedies or obligations accrued under any Contract prior to termination or expiration and nothing in any Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of any Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Supplier under Clauses C2, C3 , D1, E1, E2, E4, E7, E8, F6, G1, G2, H4, H6 ( and I1.

## **H5 Disruption**

- H5.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under any Contract it does not disrupt the operations of the Authority, its employees or any other Supplier employed by the Authority.
- H5.2 The Supplier shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under any Contract.
- H5.3 In the event of industrial action by its Staff, the Supplier shall seek approval to its proposals to continue to perform its obligations under any Contract.
- H5.4 If the Supplier's proposals referred to in Clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then any Contract may be terminated with immediate effect by the Authority by notice in writing.
- H5.5 If the Supplier is temporarily unable to fulfil the requirements of any Contract owing to disruption of normal business of the Authority, the Supplier may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **H6 Recovery upon Termination**

- H6.1 On the termination of any Contract for any reason, the Supplier shall:-
  - (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, obtained or produced in the course of supplying the Goods and/or providing the Services;

- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Supplier under Clause B14. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Goods to the Replacement Supplier and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the supply of the Goods and/or the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Goods and/or the Services have been provided or for the purpose of allowing the Authority or the Replacement Supplier to conduct due diligence.

H6.2 If the Supplier fails to comply with Clause H6.1(a) and (b), the Authority may recover possession thereof and the Supplier grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any of the Supplier's premises or its permitted suppliers or sub-Suppliers where any such items may be held. Such entry shall take place during normal working hours and by appointment, and shall not be unreasonably withheld.

H6.3 Where the end of any Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause H6(c) and (d) free of charge. Otherwise, the Authority shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

## **H7 Force Majeure**

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under any Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under any Contract for the duration of such Force Majeure.

H7.2 Any failure or delay by the Supplier in performing its obligations under any Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or other supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.

H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in Clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

H7.4 The Authority shall within one (1) month after the cessation of the impediment determine whether they require the quantity not delivered owing to that Force



Majeure to be cancelled or delivered. In the latter event any Contract shall be performed in the agreed manner disregarding a period of time equal to the duration of the impediment. However, if such Force Majeure prevents either Party from performing its material obligations under any Contract for a period in excess of six (6) Months, either Party may terminate any Contract with immediate effect by notice in writing.

## **I. DISPUTES AND LAW**

### **I1 Governing Law and Jurisdiction**

Subject to the provisions of Clause I2, the Authority and the Supplier accept the exclusive jurisdiction of the English courts and agree that any Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

### **I2 Dispute Resolution**

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with any Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the Head of Finance and Asset Management (or equivalent) of either Party.

I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

I2.3 If the dispute cannot be resolved by the Parties pursuant to Clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause I2.5 unless:-

(a) the Authority considers that the dispute is not suitable for resolution by mediation; or

(b) the Supplier does not agree to mediation.

I2.4 The obligations of the Parties under any Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and its Staff shall comply fully with the requirements of any Contract at all times.

I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:-

(a) A neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to The Centre for Effective Dispute Resolution (“**CEDR**”) or

equivalent agency to appoint a Mediator.

- (b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR (or an equivalent) to provide guidance on a suitable procedure.
- (c) 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.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in Clause I2.6.

I2.6 Subject to Clause I2.2, the Parties shall not institute court proceedings until the procedures set out in Clauses I2.1 and I2.3 have been completed save that:-

- (a) the Authority may at any time before court proceedings are commenced, serve a notice on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with Clause I2.7;
- (b) if the Supplier intends to commence court proceedings, it shall serve written notice on the Authority of its intentions and the Authority shall have twenty one (21) days following receipt of such notice to serve a reply on the Supplier requiring the dispute to be referred to and resolved by arbitration in accordance with Clause I2.7; or
- (c) the Supplier may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with Clause I2.7, to which the Authority may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to Clause I2.6:-

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the Authority shall give a written notice of arbitration to the Supplier (the “**Arbitration Notice**”) stating:-
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;

- (c) the London Court of International Arbitration (“**LCIA**”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to any Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Authority under Clause 12.7 (b) or if the person appointed dies or is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

**J TUPE**

J1 Not Used

## **SPECIFICATION SCHEDULE**

## PRICING SCHEDULE

## **MONITORING SCHEDULE**

The chief objectives of Contract Monitoring are cost control and to ensure effective results.

The Authority views Contract Monitoring as:-

1. a protective function;
2. a source of information concerning the quality, effectiveness and efficiency of the services provided; and
3. an opportunity to determine the Supplier's need for assistance.

The Authority's Contract Monitoring and Review process takes place over the lifetime of a contract. This is conducted along the following lines by the Authority's receiver (the responsible individual) of the Goods and/or the Services:-

1. by day to day communications between the Supplier and the responsible individual, monitoring performance against Key Performance Indicators, including any combination of telephone conversations, email or SMS messaging, formal written communications, meetings, webinars, tracking logs, checkpoints and progress reports, fiscal monitoring, Goods and/or Services testing, risk assessments and other monitoring tools;
2. at completion of a project or bi-annually (whichever is the earlier) reviewing against Key Performance Indicators or metrics, and Deliverables and Benefits Reports;
3. annually:- Stakeholder feedback, audit of effectiveness and efficiency against performance targets, equality monitoring; and
4. every three (3) years:- Strategic relevance, ongoing eligibility criteria, Value for money monitoring.

The Authority's Procurement Team will use a Contract Register to highlight when a Contract is due for renewal.

### **Key Performance Indicators**

<b>No.</b>	<b>Key Performance Indicator</b>	<b>When</b>	<b>Minimum Acceptable Performance</b>
1.	Insert KPIs for Contract		

## SCHEDULE 4 – GENERAL DATA PROTECTION REGULATION

### (Replaces E1 – Data Protection)

**Party:** a Party to this Agreement

**Agreement:** this contract;

**Law:** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

**Processor Personnel:** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

#### **DEFINITIONS:**

**Contractor:** the Supplier

**Customer:** the Authority

**Data Protection Legislation:** (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

**Data Subject Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** Data Protection Act 2018

**GDPR:** the General Data Protection Regulation (*Regulation (EU) 2016/679*)

**Joint Controllers:** where two or more Controllers jointly determine the purposes and means of processing

**LED:** Law Enforcement Directive (*Directive (EU) 2016/680*)

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity,

availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule [x] (Security).

**Sub-processor:** any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

## 1. DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Processor is authorised to do is listed in this Schedule 4 and associated Annexes by the Controller and may not be determined by the Processor.
- 1.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 1.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
  - (a) process that Personal Data only in accordance with this Schedule 4 and associated Annexes, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and
    - (iv) cost of implementing any measures;



- (c) ensure that :
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular this Schedule 4 and associated Annexes);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 1.6 The Processor's obligation to notify under clause 1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 1.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event;
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 1.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 1.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
  - (b) obtain the written consent of the Controller;
  - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 1.11 such that they apply to the Sub-processor; and
  - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 1.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 1.13 The Controller 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 Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.15 Where the Parties include two or more Joint Controllers as identified in this Schedule 4 and associated Annexes in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Annex B of this Schedule 4 in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.

## SCHEDULE 4 – GENERAL DATA PROTECTION REGULATION

### ANNEX A Processing, Personal Data and Data Subjects

This Annex A shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: **[Insert Contact details]**
2. The contact details of the Processor's Data Protection Officer are: **[Insert Contact details]**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data being Processed	
Categories of Data Subject	

<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	
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**SCHEDULE 4 – GENERAL DATA PROTECTION REGULATION**

**ANNEX B Joint Controller Agreements**

**NOT USED**

## **SCHEDULE 5 - COMMERCIALY SENSITIVE INFORMATION**

The Authority has a statutory obligation to release information that is requested under FOIA). FOIA recognises that there are valid reasons for withholding some information in response to a request. FOIA lays out twenty three (23) situations in which information is considered exempt. A public authority cannot attempt to contract out of its responsibilities under FOIA and unless information is covered by an exemption it must be released if requested (subject to the “public interest” test).

Of the twenty three (23) exemptions, the two most relevant are likely to be the following:-

- Section 41:- Information that has been provided in confidence, including but not limited to, intellectual property, proprietary systems and procedures, and pricing schedules; and
- Section 43:- where the release of information is likely to prejudice someone’s commercial interests.

The Authority are of the view that it is not practical to try to identify all the information that may be commercially sensitive at the outset of a business relationship. A such, the Authority can only provide a general level of assurance to it’s Suppliers that information deemed to be commercially sensitive as outlined above, will be protected (subject to the “public interest” test).

Where a Freedom of Information request is received information will be disclosed unless it is covered by an exemption. In deciding whether to make a disclosure under FOIA, the Authority may look to common case law for guidance.

In the event that such a request is received, the following procedures would be followed to enable the Supplier to provide advice and information as to what information would prejudice its commercial interest were it to be released:-

1. the Supplier would be formally notified in writing within five (5) Working Days of determining the necessity to reveal potentially sensitive information relevant to the Supplier’s specific areas of interest;
2. the Supplier will be given five (5) Working Days to formally respond with a schedule of information deemed to be covered by exemption under FOIA;
3. a teleconference or meeting will be held within five (5) Working Days following receipt of the Supplier’s response, in order that the Authority may satisfy itself that the release of such information would or would not prejudice the interests of either party, or provide a basis for actionable breach of confidence; and
4. in the event of disagreement regarding what constitutes “exempt information”, the matter may be referred to mediation as defined in Clause 11.2.

Source:- Freedom of Information Act - Annexe to Awareness Guidance No 5  
Commercial Interests:-

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_5\\_annexe\\_-\\_public\\_sector\\_contracts.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_5_annexe_-_public_sector_contracts.pdf)



## SCHEDULE 6 - DEFINITIONS

In these General Terms and Conditions of Contract unless the context otherwise requires the following provisions shall have the meanings given to them below.

**“Approval”** means the written consent of the Authority.

**“Authority”** means the Bedfordshire Fire and Rescue Authority.

**“Background Rights”** means any Intellectual Property Rights already in existence before any new work is undertaken and also known as “Background Intellectual Property Rights” or “Prior Rights”.

**“Commencement Date”** means the date of any Contract.

**“Commercially Sensitive Information”** means the information listed in the Commercially Sensitive Information Schedule comprised of information:-

- (a) which is provided by the Supplier to the Authority in confidence for the period set out in that Schedule; and/or
- (b) that constitutes a trade secret.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning given to it in Schedule 4. Confidential Information shall not include information which:-

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause E3);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**“Contract”** means any Contract made by the acceptance by the Authority in whole or in part, of a Tender and shall include a reference to the Tender (including any Schedule thereto) or such part of that Tender as is accepted, the memorandum of acceptance, the Special Conditions of Contract, the Specification (if any), the Authority’s official order form, and these General Terms and Conditions of Contract. All of these documents shall be construed together as one instrument.

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

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

- (a) the date of expiry set out in Clause A4 , or
- (b) following an extension pursuant to Clause F9, the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Supplier by the Authority under any Contract, as set out in the Pricing Schedule, for the full and proper performance by the Supplier of its obligations under any Contract but before taking into account the effect of any adjustment of price in accordance with Clause C4.

**“Crown”** means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies.

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its Staff in connection with or in relation to the subject-matter of any Contract and in respect of which such Party is liable to the other.

**“Deliverable”** means any document, plan, report, review or any other materials to be provided by or on behalf of the Supplier pursuant to the Goods and/or the Services.

**“DPA”** Data Protection Act 2018.

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Equipment”** means the Supplier’s equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under any Contract.

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“Force Majeure”** means any event or occurrence which is outside the reasonable

control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-

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

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

**"Goods"** shall mean any goods, articles, or things which are the subject of any Contract, and/or as specified in the Specification.

**"Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**"Information"** has the meaning given under section 84 of the FOIA.

**"Initial Contract Period"** means the period from the Commencement Date to the date of expiry set out in Clause A4, or such earlier date of termination of any Contract in accordance with the Law or the provisions of any Contract.

**"Intellectual Property Rights"** means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**"Key Personnel"** means those persons named in the Specification as being key personnel.

**"Law"** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Supplier is bound to comply.

**"Monitoring Schedule"** means the Schedule containing details of the monitoring arrangements.

**“Month”** means calendar month.

**“Party”** means a party to any Contract.

**“Pre-Existing Intellectual Property Rights”** means any Intellectual Property Rights vested in or licenced to the Authority or the Supplier prior to, or independently of, the performance by the Authority or the Supplier of their obligations under these General Terms and Conditions of Contract.

**“Premises”** means the Authority’s premises (including land) where the Goods are to be supplied and/or the Services are to be provided as set out in the Specification.

**“Project Specific Intellectual Property Rights”** means:-

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of these General Terms and Conditions of Contract including, any Deliverables and updates and amendments of these items; and/or
- (b) Intellectual Property Rights arising as a result of performance of the Supplier’s obligations under these General Terms and Conditions of Contract.

**“Pricing Schedule”** means the Schedule containing details of any Contract Price.

**“Property”** means the property, other than real property, issued or made available to the Supplier by the Authority in connection with any Contract.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

**“Receipt”** means the physical or electronic arrival of the invoice at the address of the Authority detailed at Clause A7.3 or at any other address given by the Authority to the Supplier for the submission of invoices.

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in any Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

**“Relevant Convictions”** means a conviction that is relevant to the nature of the Goods and/or the Services [or as listed by the Authority and/or relevant to the work of the Authority]

**“Replacement Supplier”** means any third party service provider appointed by the Authority to supply any Goods and/or Services which are substantially similar to any of the Goods and/or the Services and which the Authority receives in substitution for any of the Goods and/or the Services following the expiry, termination or partial termination of any Contract.

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Responsible person”** means any employee of BLFRS that has personal responsibility and accountability for the performance and deliverables of any Supplier.

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

**“Services”** shall mean any services which are the subject of any Contract, and/or as specified in the Specification.

**“Specification”** means the description of the Goods and/or the Services to be supplied under any Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises, the Quality Standards, the Budget, and the Timelines.

**“Specification Schedule”** means the Schedule containing details of the Specification.

**“Staff”** means all persons employed by the Supplier to perform its obligations under any Contract together with the Supplier’s servants, agents, suppliers and sub-contractors or other suppliers or any other person acting on its behalf used in the performance of its obligations under any Contract.

**“Staff Vetting Procedure”** means the Authority’s procedures for the vetting of personnel and as advised to the Supplier by the Authority.

**“Supplier”** means the person, firm, or company whose price, made by offer, quotation or via tender response, or part thereof, is accepted by the Authority and with whom the Authority enters into any Contract, and shall include (where the context so admits) the personal representatives and permitted assigns of that person, the successor of the partners for the time being in the firm and their permitted assigns and the permitted assigns of the company.

**“Tender”** means the document(s) submitted by the Supplier to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply it with the Goods and/or the Services.

**“Variation”** has the meaning given to it in Clause F3.1 (Variation).

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

**“Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

IN WITNESS whereof the parties hereto have signed the day and year first above written

Signed on behalf of the Bedfordshire Fire and Rescue Authority

By ]  
]

.....  
Duly Authorised

..... ]  
Duly Authorised

Signed on behalf of [Insert Supplier Name]

By ]

.....

Duly Authorised ]  
Witnessed by ]

.....