



PS6

General Terms and Conditions

September 2018

To find out more about JNCC visit <http://jncc.defra.gov.uk/page-1729>

PS6 GENERAL TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The terms and expressions as set out in Schedule 1 shall have the meanings ascribed therein
- 1.2 The interpretation and construction of this Contract shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4 references to any statutory provision, enactment, order, regulation or other similar instrument shall be construed as a reference to the statutory provision, enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted from time to time and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under it;
 - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
 - 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. PRECEDENCE

- 2.1 In the event of and only to the extent of any conflict between the Service Order, these terms and conditions or the Special Terms, the conflict shall be resolved in accordance with the following order of precedence:
- 2.1.1 the Special Terms;
 - 2.1.2 these General Terms;
 - 2.1.3 the Service Order;
 - 2.1.4 any other document referred to in the Contract

Unless expressly agreed, a document varied pursuant to clause 42 shall not take higher precedence than specified here.

3. **AUTHORITY'S OBLIGATIONS**

Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the 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 the Contract (howsoever arising) on the part of the Authority to the Contractor.

4. **CONTRACTOR'S STATUS**

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

4.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

5. **INITIAL CONTRACT PERIOD**

5.1 The Contract shall take effect on the Commencement Date and shall expire automatically at midnight on the date set out in the Service Order, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause 5.2.

5.2 The Authority may, by giving written notice to the Contractor, extend the Contract for a further period up to the date set out in the Service Order. The provisions of the Contract will apply throughout any such extended period.

6. **NOTICES**

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

6.2 Any notice shall be deemed to have been duly given:

6.2.1 if delivered personally, when left at the address referred to in the Service Order;

6.2.2 if by email, at the time and date identified by a delivery receipt; or

6.2.3 if delivered by commercial courier, on the date of signature of the courier's receipt.

6.3 The provisions of this clause shall not apply to the service of any process in any legal action or proceedings where the normal legal rules as to delivery will apply

7. **MISTAKES IN INFORMATION**

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the

Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

8. **CONFLICTS OF INTEREST**

- 8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.
- 8.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take or require the Contractor 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 Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

THE SERVICES

9. **THE SPECIFICATION**

- 9.1 In consideration of the Contractor supplying the Goods or Services during the Contract Period in accordance with the Specification and the provisions of the Contract the Contractor shall be paid the Contract Price.
- 9.2 The Authority may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice. The Contractor shall provide free of charge all such facilities as the Authority may reasonably require for such inspection and examination. In this clause 9, Services include planning or preliminary work in connection with the supply of the Services.
- 9.3 Wherever reasonably requested to do so by the Authority, the Contractor shall co-ordinate his activities in supplying the Services with those of the Authority and other contractors engaged by the Authority.
- 9.4 Subject to the Authority providing prior Approval in accordance with clause 11 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date. If the Contractor fails to deliver the Services within the time promised or specified in the Specification, the Authority may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

10. **TRAINING**

Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in Schedule 1 (Specification).

11. PROVISION AND REMOVAL OF EQUIPMENT

11.1 The Contractor:

- 11.1.1 will, unless the Service Order specifically states otherwise, be responsible at its own cost and expense for the provision of all necessary Staff, materials and equipment for the management and execution of any obligation under the Agreement;
- 11.1.2 will be responsible for any such Staff materials and/or equipment (including ensuring the equipment is properly maintained at all times) unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default;
- 11.1.3 at the Authority's written request, at its own expense and as soon as reasonably practicable:
 - (a) remove immediately from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment;
- 11.1.4 on completion of the Contract, must remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition;
- 11.1.5 is solely responsible for making good any damage to those Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

11.2 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

11.3 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the Authority. The Contractor will keep a proper inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.

12. MANNER OF DELIVERY

12.1 The Contractor shall perform its obligations under the Contract:

- 12.1.1 with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 12.1.2 in accordance with Good Industry Practice; and
- 12.1.3 in compliance with all applicable Laws.

12.2 The Contractor shall ensure that:

- 12.2.1 the Services conform in all respects with the Specification and, where applicable, with any sample approved by the Authority;

- 12.2.2 the Services operate in accordance with the relevant technical specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;
- 12.2.3 the Services conform in all respects with all applicable Laws; and
- 12.2.4 the Services are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

13. **CONTRACTOR'S STAFF**

- 13.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:
 - 13.1.1 any member of the Staff; or
 - 13.1.2 any person employed or engaged by any member of the Staffwhose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- 13.2 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 13.3 The Contractor shall ensure that all Staff employed or engaged in the provision of the Services and who have access to the Authority's Premises, the Authority System or any data or information of the Authority, or handle any data or information of the Authority, have been cleared in accordance with the Staff Vetting Procedures. The Contractor confirms that all Staff employed or engaged by the Contractor were either vetted by the Authority in accordance with the Staff Vetting Procedures or recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and this was accepted by the Authority.
- 13.4 If the Contractor fails to comply with clause 13.3 immediately upon request and in the reasonable opinion of the Authority, such failure may be prejudicial to the Authority's interests, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 13.5 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause 13.3 shall be final and conclusive.

14. **INSPECTION OF PREMISES**

Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender or other offer to supply the Services and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

15. **PROPERTY**

- 15.1 All Property shall be and remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 15.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within five (5) Working Days of receipt.
- 15.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 15.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.
- 15.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

16. **OFFERS OF EMPLOYMENT**

Except in respect of any transfer of Staff under the "Transfer of Undertakings (Protection of Employment) Regulations" (TUPE), for the duration of the Contract and for a period of twelve (12) Months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the procurement and/or the contract management of the Services without prior Approval.

17. **EMPLOYMENT PROVISIONS**

- 17.1 In the event that the termination of this Contract could constitute a "relevant transfer" within the meaning of the Employment Regulations, the Contractor undertakes to the Authority:
- 17.1.1 to comply with any of its obligations under the Employment Regulations and to co-operate with the Authority and or any Replacement Contractor in the event of a relevant transfer;
 - 17.1.2 that it has not made any amendment or change to the terms and conditions of its Staff in the 6 months preceding termination of this Contract;
 - 17.1.3 to indemnify and keep the Authority indemnified against all liabilities, costs, losses, claims, charges, demands or expenses which are attributable to any act or omission by the Contractor prior to or arising from the termination of the Contract in respect of any of the Contractor's obligations or duties (whether arising under common law, statute, custom or otherwise) to or in

relation to any of its Staff or former staff (including but not limited to any liability arising out of the termination or dismissal of any employee or former employee or out of a failure by the Contractor to comply with its obligations under the Employment Regulations);

- 17.1.4 that all amounts payable to or in relation to its Staff engaged in the performance of this Contract (including wages and salaries, overtime, bonus or commission (earned but unpaid), accrued holiday pay, income tax, national insurance contributions, pension contributions and insurance premiums) in respect of the period prior to the termination of this Contract shall be discharged by the Contractor and the Contractor undertakes to indemnify the Authority against any and all costs, charges and expenses arising out of or in connection with such amounts; and
 - 17.1.5 to indemnify the Authority and any Replacement Contractor in respect of any claims arising from any act or omission of the Contractor in relation to any other of the Contractor's Staff who are not employed, assigned or engaged in providing the Services under the Contract.
- 17.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this clause 17 to the extent necessary to ensure that any Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Contractor by the Contractor in its own right pursuant to section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

PAYMENT AND CONTRACT PRICE

18. CONTRACT PRICE

- 18.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause 19 (Payment and VAT).
- 18.2 The Authority shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

19. PAYMENT AND VAT

- 19.1 The Contractor shall submit a Valid Invoice to the Authority at the periods specified by the Authority in the Pricing Schedule. A Valid Invoice must contain the reference number of the relevant Purchase Order.
- 19.2 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable. The Contractor shall show the amount of VAT payable separately on all invoices as an extra charge. Where the Contractor fails to show VAT on any invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.
- 19.3 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing. The Authority shall provide the Contractor with a Purchase Order number and the Contractor shall include that number on every invoice submitted. Invoices without a valid Purchase Order number will be rejected.

- 19.4 The Authority may request, and the Contractor shall provide, such additional information as it may reasonably require to evidence the accuracy of the Valid Invoice which may include, but not be limited to timesheets and delivery notes.
- 19.5 The timesheets must be signed, dated and verified by the Contract Manager or Authority supervising officer on the Premises before the Contractor departs each day. If properly completed and verified timesheets fully covering the work comprised in a Valid Invoice are not received along with a Valid Invoice then the Authority shall have no obligation to pay invoices to which those timesheets relate.
- 19.6 No overhead costs of the Contractor shall be chargeable to or payable by the Authority unless specified in the Service Order. Overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.
- 19.7 Expenses may only be claimed by the Contractor where these are identified in the Service Order as being recoverable, clearly identified, supported by original receipts and agreed in advance by the Authorised Authority Representative in writing.
- 19.8 Where the Authority, at its sole discretion, makes any payment to the Contractor prior to the submission of a Valid Invoice (whether an interim payment or any other payment whatsoever) then this payment shall be on account of and deductible from the next payment to be made. If any overpayment has been made or the payment or any part is not supported by a Valid Invoice or timesheet in accordance with the requirements of this Contract then the Authority shall be entitled to recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to a Contractor shall be on an interim basis pending final resolution of an account with a Contractor in accordance with the terms of this clause 19.
- 19.9 The Authority shall pay all sums due to the Contractor within thirty (30) days of Receipt of a Valid Invoice, to be submitted in arrears. Valid Invoices should be submitted for payment to the email address specified in the Service Order or otherwise notified by the Authority from time to time.
- 19.10 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of three (3) % above the base rate from time to time of Barclays Bank plc.
- 19.11 Where the Contractor enters into a Sub-Contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a Sub-Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a Valid Invoice.
- 19.12 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under clause 19.12 shall be paid by the Contractor 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.

19.13 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause 50 (Termination on Default) for failure to pay undisputed sums of money.

20. RECOVERY OF SUMS DUE

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

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

20.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

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

21. CONTRACT PRICE DURING EXTENSION OF THE INITIAL CONTRACT PERIOD

21.1 Subject to the pricing information in the Service Order or the Specification and the provision in clause 42 (Variation), the Contract Price shall apply for the Initial Contract Period and following an extension pursuant to clause 5.2 (Extension of Initial Contract Period), to 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.

22. EURO

22.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Authority.

22.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause 22 by the Contractor.

STATUTORY OBLIGATIONS AND REGULATIONS AND OTHER REQUIREMENTS

23. PREVENTION OF CORRUPTION

23.1 The Contractor 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 the 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.

23.2 The Contractor 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 the Contract.

23.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 23.1 or 23.2, the Authority may:

23.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

23.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of those clauses.

24. **PREVENTION OF FRAUD**

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

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

24.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Authority may:

24.3.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; and

24.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

25. **DISCRIMINATION**

25.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, all as amended or replaced by the Equality Act 2010 (when in force) and the Human Rights

Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

25.2 The Contractor shall take all reasonable steps to secure the observance of clause 25 (Discrimination) by all Staff.

25.3 The Contractor shall notify the Authority immediately in writing as soon as it becomes aware of any legal proceedings threatened or issued against it by its Staff on the grounds of discrimination arising in connection with the provision of the Services under this Contract.

26. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

27. **ENVIRONMENTAL REQUIREMENTS**

27.1 The Contractor shall in the performance of the Contract have due regard to the Authority's Environmental, Sustainable Procurement and Ethical Procurement policy statements and in addition, shall assist the Authority in achieving the Sustainable Development in Government targets ("SDIG"). These statements and targets require the Authority through its procurement and management of suppliers to inter alia:

27.1.1 conserve energy, water, wood, paper and other resources and reduce waste;

27.1.2 phase out the use of ozone depleting substances;

27.1.3 minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;

27.1.4 minimise the use of products harmful to health and the environment such as hazardous substances and solvents, replacing them with more benign substances where feasible and, where such substances are necessary, to ensure that they are stored in properly labelled containers, used and disposed of in compliance with legal and regulatory requirements and any instructions from the Authority;

27.1.5 reduce fuel emissions wherever possible;

27.1.6 maximise the use of recovered materials in its provision of the Services under this Contract and, if recycled materials are not suitable or not readily available, to maximise the use of materials taken from renewable sources; and

27.1.7 promote the design of products that are capable of reuse or remanufacture or easily separable into recyclable parts consisting of one material (e.g. steel, plastic, textile).

27.2 The Contractor shall ensure that any equipment and materials used in the provision of the Services do not contain:

- 27.2.1 ozone depleting substances such as hydrochlorofluorocarbons (HCFCs), halons, carbon tetrachloride, 111 trichloroethane, bromochloromethane or any other damaging substances, and/or
- 27.2.2 HFCs and other gaseous and non – gaseous substances with a high global warming potential unless given written permission by the Authority to do so.
- 27.3 In accordance with the Authority's commitments under SDIG, the Contractor shall where relevant to its delivery of the Services under this Contract assist the Authority in achieving its departmental sustainable operations targets by: conserving energy and water; reducing carbon emissions and other greenhouse gases; minimising the use of substances damaging or hazardous to health and the environment; reducing waste by, for example, using resources more efficiently and reusing, recycling and composting; and respecting biodiversity.
- 27.4 The Authority is required to report to Ministers, the Government Procurement Service and others on the progress that it is making in delivering Government policies through procurement and in meeting targets for SDIG and sustainable procurement. Where required by the Authority in writing, the Contractor shall provide the Authority with the information requested in order to enable the Authority to comply with those reporting requirements within ten (10) Working Days of such request being made.
- 27.5 The Contractor shall ensure that its Staff assigned to the Contract are aware of the Authority's sustainability objectives and how this Contract will facilitate the achievement of those objectives.
- 27.6 The Contractor shall comply with the minimum environmental mandatory standards in the "Government Buying Standards" and in addition where required by the Authority, comply with any relevant "Best Practice" and "Class Leader" standards in relation to any goods on that list which are supplied to the Authority by or on behalf of the Contractor under this Contract.
- 27.7 In relation to climate change adaptation, the Contractor shall:
 - 27.7.1 Identify any risks arising from climate change and variable weather such as higher temperatures, droughts, flooding, sea and river level rises, coastal and riparian erosion, water scarcity, and loss of water quality which may disrupt and/or affect the supply of the Services to the Authority under this Contract; and
 - 27.7.2 Where such risks have been identified, enhance the resilience of its organisation to enable it to adapt and deal with the effects of such extreme events, including by having the necessary awareness-raising, evaluation preventive, preparatory, recovery measures and support systems in place in order to minimise any disruption to the supply of the Services under this Contract.

28. **HEALTH AND SAFETY**

- 28.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of its obligations under the Contract.

- 28.2 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- 28.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 28.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's Premises in the performance of its obligations under the Contract.
- 28.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

PROTECTION OF INFORMATION

29. AUTHORITY DATA

- 29.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 29.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 29.3 To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification.
- 29.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.
- 29.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.
- 29.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the HMG Security Policy Framework.
- 29.7 The Contractor shall ensure that any Authority Data marked as 'OFFICIAL-SENSITIVE' or higher under the Government Security Classification is appropriately protected through systems and procedures to ensure the outcomes described in the relevant Cabinet Office guidance.
- 29.8 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:
- 29.8.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or

29.8.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

29.9 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

30. **DATA PROTECTION**

30.1 The Parties acknowledge that for the purposes of the Data Protection Legislation¹, the Authority is the Controller and the Contractor is the Data Processor.

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

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

- (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.

30.3 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
 - (ii) nature of the data to be protected;
 - (iii) harm that might result from a Data Loss Event;
 - (iv) state of technological development; and
 - (v) cost of implementing any measures;
- (b) ensure that:

¹ Data Protection Legislation means (i) the Data Protection Act 1998 (ii) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (iii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy.

- (i) the Staff do not process Personal Data except in accordance with this Contract.
- (ii) it takes all reasonable steps to ensure the reliability and integrity of any Staff who have access to the Personal Data and ensure that they:
 - (a) are aware of and comply with the Contractor's duties under this clause;
 - (b) are subject to appropriate confidentiality undertakings with the Contractor 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 Authority or as otherwise permitted by this Contract; and
 - (d) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (c) not transfer Personal Data outside of the European Union unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with the General Data Protection Regulation (GDPR) Article 46 or Law Enforcement Directive (LED) Article 37) as determined by the Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

30.4 Subject to clause 30.5 the Contractor shall notify the Authority immediately if it:

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

- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (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.
- 30.5 The Contractor's obligation to notify under clause 30.4 shall include the provision of further information to the Authority in phases, as details become available.
- 30.6 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 30.4 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
- (a) the Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Authority following any Data Loss Event;
 - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 30.7 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
- (a) the Authority determines that the processing is not occasional;
 - (b) the Authority determines the processing does not include 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; and
 - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 30.8 The Contractor shall allow for audits of its Data processing activity by the Authority or the Authority's designated auditor.
- 30.9 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 30.10 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

- (a) notify the Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Authority; and
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 30.2 such that they apply to the Sub-processor; and.
- (d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

30.11 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

30.12 The Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

30.13 The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioners Officer.

30.14 This clause 30 shall apply during the Contract Period and indefinitely after its expiry.

31. **OFFICIAL-SENSITIVE INFORMATION**

31.1 Under the Government Security Classification, any information received from the Authority by the Contractor with a mark of 'OFFICIAL-SENSITIVE' or higher, must be protected in accordance with Cabinet Office guidance and any specific instructions supplied by the Authority.

31.2 Except to the extent set out in this clause the Contractor shall not disclose or publish any OFFICIAL-SENSITIVE Information belonging to the Authority to any other person without the prior written consent of the Authority.

31.3 The Contractor hereby gives its consent for the Authority to publish the Contract in its entirety (but with any information which is OFFICIAL-SENSITIVE Information belonging to the Authority redacted), including from time to time agreed changes to the Contract, to the general public.

31.4 Where required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non disclosure agreement prior to commencing any work in connection with the Contract in the form specified by the Authority from time to time. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause 31.4. Where requested by the Authority, the Contractor shall provide the Authority with a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

- 31.5 The Contractor may only disclose the Authority's OFFICIAL-SENSITIVE Information to the Staff who are directly involved in 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.
- 31.6 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's OFFICIAL-SENSITIVE Information received otherwise than for the purposes of this Contract.
- 31.7 Clause 31.6 does not apply to the extent that:
- 31.7.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
 - 31.7.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 31.7.3 such information was obtained from a third party without obligation of confidentiality;
 - 31.7.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 31.7.5 it is independently developed without access to the other Party's Confidential Information.
- 31.8 Nothing in clause 31.2 shall prevent the Authority disclosing any OFFICIAL-SENSITIVE Information obtained from the Contractor:
- 31.8.1 for the purpose of the examination and certification of the Authority's accounts;
 - 31.8.2 for the purpose of 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;
 - 31.8.3 to any government department or any other Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such OFFICIAL-SENSITIVE Information may further disclose the OFFICIAL-SENSITIVE Information to other government departments or other Contracting Authorities on the basis that the information is restricted and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
 - 31.8.4 to any consultant, contractor or other person engaged by the Authority, provided that in disclosing information under clauses 31.8.3 and 31.8.4 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 31.9 Nothing in clauses 31.1 to 31.8 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the

Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

- 31.10 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's OFFICIAL-SENSITIVE Information is disclosed pursuant to clause 31.8 is made aware of the Authority's obligations of confidentiality.
- 31.11 In the event that the Contractor fails to comply with clauses 31.1 to 31.6, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- 31.12 In order to ensure that no unauthorised person gains access to any OFFICIAL-SENSITIVE Information or any data obtained in the supply of the Services under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 31.13 The Contractor will immediately notify the Authority of any breach of security in relation to OFFICIAL-SENSITIVE Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such OFFICIAL-SENSITIVE Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clauses 31.1 to 31.6. The Contractor 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 OFFICIAL-SENSITIVE Information or data.
- 31.14 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause 31.12.

32. FREEDOM OF INFORMATION

- 32.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.
- 32.2 The Contractor shall (and shall procure that any Sub-Contractor shall) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information:
 - 32.2.1 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
 - 32.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the Environmental Information Regulations.
- 32.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether

the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the Environmental Information Regulations.

32.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

32.5 The Contractor acknowledges that (notwithstanding the provisions of clause 31 (OFFICIAL-SENSITIVE Information)) the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

32.5.1 without consulting the Contractor; or

32.5.2 following consultation with the Contractor and having taken its views into account;

provided always that where clause 32.5.1 applies the Authority shall, in accordance with any recommendations of the Codes of Practice under the FOIA or the Environmental Information Regulations, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

32.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

32.7 The Contractor acknowledges that the Commercially Sensitive Information identified in the Service Order is of indicative value only and that the Authority may be obliged to disclose it in accordance with this clause 32.

32.8 The Authority shall not be liable for any loss, damage, harm or other detriment suffered by the Contractor arising from the disclosure of any Information falling within the scope of the FOIA and/or the Environmental Information Regulations.

33. **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

33.1 Without prejudice to the Authority's obligations under the FOIA, the Environmental Information Regulations or any obligations under the Public Contracts Regulations 2006 (as amended), or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

33.2 The Contractor shall use its best endeavours to ensure that its Staff, professional advisors and consultants comply with clause 33 (Publicity, Media and Official Enquiries).

34. **SECURITY**

34.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

34.2 The Authority shall provide to the Contractor upon request copies of its written security procedures.

- 34.3 The Contractor shall, as an enduring obligation throughout the Contract, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 34.4 Notwithstanding clause 34.3, if Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency.
- 34.5 Any cost arising out of the actions of the Parties taken in compliance with clause 34.4 shall be borne by the Parties as follows:
- 34.5.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
- 34.5.2 by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority).

35. INTELLECTUAL PROPERTY RIGHTS

- 35.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:
- 35.1.1 furnished to or made available to the Contractor by or on behalf of the Authority;
- 35.1.2 prepared by or for the Contractor on behalf of the Authority for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract; or
- 35.1.3 the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services
- (together the "IP Materials") vests in the Authority and the Contractor must not, and must ensure that the Staff shall not, use or disclose any IP Materials without prior Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.
- 35.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause 35.1.2 and 35.1.3. This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.
- 35.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.

- 35.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying goods and/or services to the Authority.
- 35.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 35.5, except to the extent that any such claim results directly from:
- 35.5.1 items or materials based upon designs supplied by the Authority; or
 - 35.5.2 the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 35.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.
- 35.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("Third Party IP Claim"), provided that the Contractor shall at all times:
- 35.7.1 consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
 - 35.7.2 take due and proper account of the interests of the Authority; and
 - 35.7.3 not settle or compromise any claim without prior Approval (not to be unreasonably withheld or delayed).
- 35.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the Authority under this clause in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clause 35.5.1 or 35.5.2.
- 35.9 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

35.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses 35.4 and 48.1.7 (Warranties and Representations)) use its best endeavours to:

35.10.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

35.10.2 procure a licence to use the Intellectual Property Right(s) and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and in the event that the Contractor is unable to comply with clauses 35.10.1 or 35.10.2 within twenty (20) Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract with immediate effect by notice in writing.

35.11 The Contractor grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

36. **AUDIT**

36.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

36.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

36.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

36.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

CONTROL OF THE CONTRACT

37. FAILURE TO MEET REQUIREMENTS

- 37.1 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

38. MONITORING OF CONTRACT PERFORMANCE

- 38.1 The Contractor shall immediately inform the Authority if any aspect of the Contract is not being or is unable to be performed, the reasons for non-performance, any corrective action and the date by which that action will be completed.
- 38.2 At or around six (6) Months from the Commencement Date and each anniversary of the Commencement Date thereafter (each being a "Review Date"), the Authority shall carry out a review of the performance of the Contractor ("Checkpoint Review") in respect of this Contract. Without prejudice to the generality of the foregoing, the Authority may in respect of the period under review consider such items as (but not limited to): the Contractor's performance in respect of the Services supplied under the Contract; the Contractor's contribution to innovation within the Authority; whether the Services provide the Authority with best value for money; consideration of any changes which may need to be made to the Services; a review of future requirements in relation to the Services and progress against key milestones.
- 38.3 The Contractor shall provide at its own cost any assistance reasonably required by the Authority to perform such Checkpoint Review including the provision of data and information.
- 38.4 The Authority may (at its absolute discretion) produce a report (a "Checkpoint Review Report") of the results of each Checkpoint Review stating any areas of exceptional performance and areas for improvement in the provision of the Services and where there is any shortfall in any aspect of performance reviewed as against the Authority's expectations and the Contractor's obligations under this Contract .
- 38.5 The Authority shall provide the Contractor with a copy of the Checkpoint Review Report (if applicable) for any comments the Contractor may have. The Authority shall consider such comments and at its absolute discretion produce a revised Checkpoint Review Report.
- 38.6 The Contractor shall, within ten (10) Working Days of receipt of the Checkpoint Review Report (revised as appropriate) provide the Authority with a plan to address resolution of any shortcomings and implementation of improvements identified by the Checkpoint Review Report.
- 38.7 Actions required to resolve shortcomings and implement improvements (either as a consequence of the Contractor's failure to meet its obligations under this Contract identified by the Checkpoint Review Report, or those which result from the Contractor's failure to meet the Authority's expectations notified to the Contractor or of which the Contractor ought reasonably to have been aware) shall be implemented at no extra charge to the Authority.

39. **REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OR FAILURE TO PERFORM**

- 39.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Authority shall notify the Contractor, and where considered appropriate by the Authority, investigate the complaint. The Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause 50 (Termination on Default) of the Contract.
- 39.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights under clause 50 (Termination on Default), do any of the following:
- 39.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
 - 39.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - 39.2.3 withhold or reduce payments to the Contractor, in such amount as the Authority reasonably deems appropriate in each particular case; and/or
 - 39.2.4 terminate, in accordance with clause 50 (Termination on Default), the whole of the Contract.
- 39.3 Without prejudice to its right under clause 20 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.
- 39.4 Where in the opinion of the Authority the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor written notice specifying the way in which its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory.
- 39.5 Where the Contractor has been notified of a failure in accordance with Clause 39.4 the Authority may:
- 39.5.1 direct the Contractor, to investigate, identify and remedy the failure within such time as may be specified by the Authority and to apply all such

additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

- 39.5.2 withhold or reduce payments to the Contractor, in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.
- 39.6 Where the Contractor has been notified of a failure in accordance with clause 39.4, the Contractor shall:
 - 39.6.1 use all reasonable endeavours to immediately minimise the impact of such failure(s) to the Authority and to prevent such failure(s) from recurring; and
 - 39.6.2 shall immediately provide the Authority with such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause and the progress of those measures until resolved to the satisfaction of the Authority.
- 39.7 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause 39.6 within the time specified by the Authority, the Authority may treat the continuing failure as a material breach of the Contract and may terminate the Contract with immediate effect by notice in writing.

40. **TRANSFER AND SUB-CONTRACTING**

- 40.1 Except where clauses 40.5 and 40.6 both apply, the Contractor shall not transfer, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- 40.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. Where appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.
- 40.3 The Contractor shall ensure that all its Sub-Contractors and suppliers retain each record, item of data and document relating to the Services for a period of not less than six (6) years from the date of its creation, and shall make them available to the Authority on request in accordance with the provisions of clause 36 (Audit). Should any Sub-Contractor or supplier refuse to permit the Authority to access the required records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.
- 40.4 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 Contractor to the Authority immediately.
- 40.5 Notwithstanding clause 40.1, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Authority incurs under clause 19 (Payment and VAT)). Any assignment under this clause is subject to:

- 40.5.1 reduction of any sums in respect of which the Authority exercises its right of recovery under clause 20 (Recovery of Sums Due);
 - 40.5.2 all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
 - 40.5.3 the Authority receiving notification under both clauses 40.6 and 40.7.
- 40.6 In the event that the Contractor assigns the right to receive the Contract Price under clause 40.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.
- 40.7 The Contractor 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.
- 40.8 The provisions of clause 19 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without Approval.
- 40.9 Subject to clause 40.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 40.9.1 any Contracting Authority; or
 - 40.9.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - 40.9.3 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 Contractor's obligations under the Contract.
- 40.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause 50.11, affect the validity of the Contract. In such circumstances the Contract shall bind and inure to the benefit of any successor body to the Authority.
- 40.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 40.9 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"):
- 40.11.1 the rights of termination of the Authority in clauses 49 (Termination on Insolvency and Change of Control) and 50 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 40.11.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- 40.12 The Authority may disclose to any Transferee any OFFICIAL-SENSITIVE Information of the Contractor which relates to the performance of the Contractor's obligations

under the Contract. In such circumstances the Authority shall authorise the Transferee to use such OFFICIAL-SENSITIVE Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such OFFICIAL-SENSITIVE Information.

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

41. **WAIVER**

41.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

41.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 6 (Notices).

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

42. **VARIATION**

No variation of the Agreement or of any document referred to in it by the Contractor shall be effective unless the costs of the variation shall be agreed and details of the variation are agreed in writing and signed by the Parties.

43. **SEVERABILITY**

If any provision of the Contract which is not of a fundamental nature 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.

44. **REMEDIES CUMULATIVE**

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

45. **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral,

except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

46. **COUNTERPARTS**

This 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.

LIABILITIES

47. **LIABILITY, INDEMNITY AND INSURANCE**

47.1 Neither Party excludes or limits liability to the other Party for:

47.1.1 death or personal injury caused by its negligence;

47.1.2 fraud;

47.1.3 fraudulent misrepresentation; or

47.1.4 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or Parts I and II of the Supply of Goods and Services Act 1982.

47.2 Subject to clauses 47.3 and 47.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

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

47.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

47.5 Subject always to clause 47.1, in no event shall either Party be liable to the other for any:

47.5.1 loss of profits, business, revenue or goodwill;

47.5.2 loss of savings (whether anticipated or otherwise); and/or

47.5.3 indirect or consequential loss or damage.

47.6 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of

cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

- 47.7 The Contractor shall hold employer's liability insurance in respect of Staff and such insurance shall be in accordance with any legal requirement from time to time in force.
- 47.8 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 47.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- 47.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.
- 47.11 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

48. **WARRANTIES AND REPRESENTATIONS**

- 48.1 The Contractor warrants and represents for the duration of the Contract that:
 - 48.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
 - 48.1.2 in entering the Contract it has not committed any Fraud;
 - 48.1.3 as at the Commencement Date, all information contained in the Tender or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;
 - 48.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- 48.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- 48.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 48.1.7 it owns, or has obtained or is able to obtain valid licences for, all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- 48.1.8 any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;
- 48.1.9 in the three (3) years (or period of existence where the Contractor has not been in existence for three (3) years) prior to the date of the Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
- 48.1.10 it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Contractor's obligations under the Contract; and
- 48.1.11 it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged in the provision of the Services and that all Staff employed or engaged by Contractor at the Commencement Date were either vetted by the Authority in accordance with the Staff Vetting Procedures or vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures and this was accepted by the Authority.

DEFAULT, DISRUPTION AND TERMINATION

49. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 49.1 The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

- 49.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 49.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
 - 49.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
 - 49.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 49.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
 - 49.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
 - 49.1.7 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
 - 49.1.8 any event similar to those listed in 60.1(a)-60.1(g) occurs under the law of any other jurisdiction.
- 49.2 The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is an individual and:
- 49.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
 - 49.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Contractor's bankruptcy;
 - 49.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
 - 49.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986;
 - 49.2.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fourteen (14) days;

- 49.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
 - 49.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
 - 49.2.8 any event similar to those listed in 49.2.1-49.2.7 occurs under the law of any other jurisdiction.
- 49.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor 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 the Contract with immediate effect by notice in writing and without compensation to the Contractor within six (6) Months of:
- 49.3.1 being notified that a Change of Control has occurred; or
 - 49.3.2 where no notification has been made, the date that the Authority becomes aware of the Change of Control
- but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.
- 49.4 The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a partnership and:
- 49.4.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
 - 49.4.2 it is for any reason dissolved;
 - 49.4.3 a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator;
 - 49.4.4 a receiver, or similar officer is appointed over the whole or any part of its assets;
 - 49.4.5 the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994;
 - 49.4.6 any of the following occurs in relation to any of its partners:
 - (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, his creditors;
 - (b) a petition is presented for his bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of his assets;

or

49.4.7 any event similar to those listed in 49.4.1-49.4.6 occurs under the law of any other jurisdiction.

49.5 The Authority may terminate the Contract with immediate effect by notice in writing and without compensation to the Contractor where the Contractor is a limited liability partnership and:

49.5.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;

49.5.2 it is for any reason dissolved;

49.5.3 an application 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 within Part II of the Insolvency Act 1986;

49.5.4 any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;

49.5.5 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;

49.5.6 a receiver, or similar officer is appointed over the whole or any part of its assets;

49.5.7 it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

49.5.8 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

49.5.9 any event similar to those listed in 49.5.1-49.5.8 occurs under the law of any other jurisdiction.

49.5.10 References to the Insolvency Act 1986 in clause 49.5.1 shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

50. **TERMINATION ON DEFAULT**

50.1 The Authority may terminate the Contract by written notice in accordance with clause 6 (Notices) to the Contractor with immediate effect if the Contractor commits a Default and if:

50.1.1 the Contractor 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

50.1.2 the Default is not, in the opinion of the Authority, capable of remedy; or

50.1.3 the Default is a material breach of the Contract.

50.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor 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.

50.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor 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 Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 20 (Recovery of Sums Due).

51. **TERMINATION ON NOTICE**

The Authority shall have the right to terminate the Contract at any time by giving thirty (30) days written notice to the Contractor.

52. **CONSEQUENCES OF EXPIRY OR TERMINATION**

52.1 Where the Authority terminates the Contract under clause 50 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under clause 50 (Termination on Default), no further payments shall be payable by the Authority to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

52.2 Where the Authority terminates the Contract under clause 51 (Termination on Notice), no further payments shall be payable by the Authority to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

52.3 Save as otherwise expressly provided in the Contract:

52.3.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

52.3.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses 19 (Payment and VAT), 20 (Recovery of Sums Due), 23 (Prevention of Corruption), 30 (Data Protection Act Compliance), 0 (OFFICIAL-SENSITIVE Information), 32 (Freedom of Information), 35 (Intellectual Property Rights), 36 (Audit), 44 (Remedies Cumulative); 47 (Liability, Indemnity and Insurance), 52 (Consequences of Expiry or Termination), 54 (Recovery upon Termination) and 60 (Governing Law and Jurisdiction).

53. DISRUPTION

- 53.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- 53.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 53.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- 53.4 If the Contractor's proposals referred to in clause 53.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- 53.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Authority, the Contractor may request a reasonable allowance of time and in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

54. RECOVERY UPON TERMINATION

- 54.1 On the termination of the Contract for any reason, the Contractor shall at its cost:
 - 54.1.1 immediately return to the Authority all OFFICIAL-SENSITIVE Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - 54.1.2 immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - 54.1.3 assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
 - 54.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.
- 54.2 If the Contractor fails to comply with clause 54.1.1 and 54.1.2, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

55. FORCE MAJEURE

55.1 Neither party shall be liable to the other for any delay in or failure to perform its obligations under the Agreement if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform its obligations under the Agreement. If a party is unable to perform its obligations under the Agreement as a result of a Force Majeure event for a period in excess of 6 months, the other party may terminate the Agreement by notice in writing with immediate effect.

55.2 If either party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its party it shall notify the other as soon as reasonably possible and shall estimate the period such failure or delay shall continue.

56. **RETENDERING AND HANDOVER**

56.1 Within twenty-one (21) days of being so requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

56.2 The Authority shall take all necessary precautions to ensure that the information referred to in 56.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

56.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

56.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause 56.1.

56.5 The Contractor shall allow access to the Premises, in the presence of the Authorised Authority Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.

56.6 For the purpose of access to the Premises in accordance with clause 56.5, where the Premises is on the Contractor's premises, the Authority shall give the Contractor seven (7) days' notice of a proposed visit together with a list showing the names of all persons who will be attending those premises. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

56.7 The Contractor shall co-operate fully with the Authority during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the period of the new Contractor setting up operations, shall extend to allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

56.8 Within ten (10) Working Days of being so requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

57. EXIT MANAGEMENT

Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor of the Services in accordance with the following procedure set out in clause 58 (Exit Procedures).

58. EXIT PROCEDURES

58.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

58.2 The following commercial approach shall apply to the transfer of the Services:

58.2.1 Where the Contractor does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Contract Price;

58.2.2 Where the Contractor reasonably incurs additional costs, the Parties shall agree a Variation to the Contract Price based on the Contractor's rates either set out in the Service Order or forming the basis for the Contract Price.

58.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

58.4 Within one (1) Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

59. KNOWLEDGE RETENTION

The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than fifteen (15) Working Days from the date that that request was made.

DISPUTES AND LAW

60. **GOVERNING LAW AND JURISDICTION**

Subject to the provisions of clause 61 (Dispute Resolution), the Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

61. **DISPUTE RESOLUTION**

- 61.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director of the Contractor and the Director of Resources of the Authority.
- 61.2 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.
- 61.3 If the dispute cannot be resolved by the Parties pursuant to clause 61.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 61.5 unless:
- 61.3.1 the Authority considers that the dispute is not suitable for resolution by mediation; or
- 61.3.2 the Contractor does not agree to mediation.
- 61.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 61.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 61.5.1 A neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator.
- 61.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure.

- 61.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- 61.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- 61.5.5 Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- 61.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause 61.6.
- 61.6 Subject to clause 61.2, the Parties shall not institute court proceedings until the procedures set out in clauses 61.1 and 61.3 have been completed save that:
- 61.6.1 the Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 61.7;
- 61.6.2 If the Contractor 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 Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 61.7;
- 61.6.3 The Contractor may request by notice in writing to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 61.7, to which the Authority may consent as it sees fit.
- 61.7 In the event that any arbitration proceedings are commenced pursuant to clause 61.6:
- 61.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- 61.7.2 the Authority shall give a written notice of arbitration to the Contractor (the "Arbitration Notice") stating:
- (a) that the dispute is referred to arbitration; and
 - (b) providing details of the issues to be resolved;
- 61.7.3 the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 61.7.2 shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- 61.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- 61.7.5 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 61.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 61.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 61.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1

DEFINITIONS

Affiliate: means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

Approval: means the written consent of the Authority;

Authorised Authority Representative: means the Authority representative named in a Change Control Note as authorised to approve agreed Variations to the Contract;

Authority: means JNCC Support Co (JNCC) a company registered in England and Wales with company number 05380206 and whose registered office is at Monkstone House, City Road, Peterborough, Cambridgeshire, PE1 1JY;

Authority Data: means -

1. the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to this Contract; or
2. any Personal Data for which the Authority is the Data Controller;

Authority Software: means software which is owned by or licensed to the Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;

Authority System: means the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services;

Authority's Premises: means any premises occupied by or under the control of the Authority where the Services are to be supplied, as set out in the Specification;

BPSS: means the recognised standard for HMG for staff vetting which comprises verification of (1) identity, (2) employment history, (3) nationality and immigration status (including the right to work), and Criminal Records Bureau check (including a five (5) year address history check);

Code: means the Department for Constitutional Affairs Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of FOIA.

Commencement Date: means the date set out in the Service Order;

Commercially Sensitive Information: means the information identified by the Contractor and listed in the Service Order as being commercially sensitive which comprises information:

1. which is provided by the Contractor to the Authority in confidence for the period set out in the Service Order; and/or

2. that constitutes a trade secret;

Completion Date: means the date of expiry of the Contract set out in the Service Order;

OFFICIAL-SENSITIVE Information: means any information which has been designated as such under the Government Security Classification, or has been supplied with specific instructions for use, by either Party in writing or that ought to be protected (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 or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. OFFICIAL-SENSITIVE Information shall not include information which–

1. was public knowledge at the time of disclosure (otherwise than by breach of clause 0 (OFFICIAL-SENSITIVE Information));
2. was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
3. is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
4. is independently developed without access to the OFFICIAL-SENSITIVE Information.

Contract: means these general terms and conditions together with the Service Order and any Special Terms specified in the Service Order and any other document specified within the Service Order;

Contract Period: means the period from the Commencement Date to–

1. Completion Date, or
2. following an extension pursuant to clause 5.2, the date of expiry of the extended period

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

Contract Price: means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Service Order, for the full and proper performance by the Contractor of its obligations under the Contract;

Contracting Authority: means any contracting authority (other than the Authority) as defined in regulation 3 of the Public Contracts Regulations 2006 (SI 2006/5).

Contractor: means the person, firm or company with whom the Authority enters into the Contract;

Contractor Software: means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is specified as such in the Service Order;

Contractor System: means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System);

Control: means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

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

“Data Protection Impact Assessment” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Data Protection Legislation” means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable Law about the processing of personal data and privacy.

“Data Protection Officer” has the meaning given in the GDPR.

“Data Subject” has the meaning given in the GDPR.

“Data Subject Request” means 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.

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

“DPA 2018” means the Data Protection Act 2018.

Employment Regulations: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

Environmental Information Regulations (EIR): means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

Equipment: means the Contractor's equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract;

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that 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 the party concerned, including (but not limited to) governmental regulations, fire, flood or any disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

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

General Terms: these terms and conditions.

“**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679).

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;

Goods: means any such goods as are to be supplied by the Contractor (or by the Contractor's Sub-Contractor) under the Contract as specified in the Service Order (including any modified or alternative goods as may be provided in accordance with clause 35 (Intellectual Property Rights));

Services: means the Goods and/or Services;

HMG Security Policy Framework: means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division) as updated from time to time;

ICT Environment: means the Authority System and the Contractor System;

Information: has the meaning given under section 84 of the FOIA;

Initial Contract Period: means the period from the Commencement Date to the Completion Date (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract;

Installation Works: means, as the context so requires–

1. collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or
2. where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of installation works;

Intellectual Property Rights: means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, plant variety rights, Know-How, 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;

IP Materials: has the meaning given to it in clause 35 (Intellectual Property Rights);

Key Personnel: mean those persons named in Service Order as being key personnel;

Know-How: means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component

lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods);

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 of any Regulatory Body with which the Contractor is bound to comply;

“**LED**” means Law Enforcement Directive (Directive (EU) 2016/680).

Malicious Software: means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence; "Month" means calendar month; "Party" means a party to the Contract;

Month: means calendar month;

Party: means a party to the Contract;

“**Personal Data**” has the meaning given in the GDPR.

Premises: means the location where the Services are to be supplied, as set out in the Service Order;

Property: means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract;

Purchase Order: means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the 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 Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Service Order;

Receipt: means the physical or electronic arrival of the invoice at the address of the Authority detailed at clause 6 (Notices) or at any other address given by the Authority to the Contractor 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 the Contract or any other affairs of the Authority and "Regulatory Body": shall be construed accordingly;

Relevant Conviction: means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority;

Replacement Contractor: means any third party supplier appointed by the Authority to supply any goods and/or services which are substantially similar to any of the Services and which the

Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract;

Request for Information: means a request for information under the FOIA or the Environmental Information Regulations;

Returning Employees: means those persons listed in a schedule to be agreed by the Parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period;

Schedule: means a schedule attached to, and forming part of, the Contract;

Services: means the services to be supplied as specified in the Service Order (including any modified or alternative services as may be provided in accordance with clause 35 (Intellectual Property Rights));

Service Order: the order form from the Authority to the Contractor setting out the specification, requirements, price, Special Terms and such other information as the Authority deems appropriate which for the avoidance of doubt may in the form of Purchase Order;

Special Terms: means any additional conditions of contract specified in the Service Order;

Specification: means the specification for Services as included or attached to the Service Order;

Staff: means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract;

Staff Vetting Procedure: means the Authority's procedures for the vetting of personnel to the HMG standard of BPSS who have access to any of the Authority's Premises, the Authority's IT systems, or whose role will involve the handling of any data, information (including personal data as defined in the DPA and/or data to which any security classification has been applied), or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Acts 1911-1989 and as advised by the Authority to the Contractor;

Sub-Contractor: means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services and/or goods are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and "Sub-Contract" shall be construed accordingly;

Tender: means the document(s) submitted by the Contractor to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services;

Third Party IP Claim: has the meaning given to it in clause 35 (Intellectual Property Rights);

Third Party Software: means software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services including the software and which is specified as such in the Service Order;

Timetable: the timetable for the provision and completion of the Services as specified in the Service Order for the Services.

Valid Invoice: means an invoice containing the detailed information set out in clause 19 (Payment and VAT);

Variation: means any amendment of or change to the Contract;

VAT: means value added tax charged or regulated 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;