

## SUPPLIER AGREEMENT

### DPS FOR TECHNOLOGY ENABLED CARE SOLUTIONS - 00895

#### Parties

- 1) Customer
- 2) Supplier

#### Background

- A. YPO placed a Contract Notice in the Official Journal of the European Union to establish a Dynamic Purchasing System ("DPS") for the procurement of Technology Enabled Care Solutions.
- B. In accordance with Regulation 34 of the Public Contracts Regulations 2015 ("Regulations"), YPO has used the restricted procedure to establish a DPS.
- C. YPO has contracted with adam HTT Limited trading as adam (registered company 07716565 – the "Technology Provider") to provide a web-based software system namely SProc.Net, or such other technology as agreed between the Parties from time to time (the "Technology"), to procure Goods and/or Services via the DPS as set out in the Regulations, as amended from time to time, and for such Services to be transacted as further set out in this Supplier Agreement.
- D. YPO shall admit to the DPS each Supplier that satisfies the Selection Criteria and has submitted a request to participate in the DPS which complies with the Supplier Entry Guide and any additional documents produced by YPO.
- E. This Agreement sets out the award and ordering procedure for Goods and/or Services (as applicable) which may be required by Contracting Authorities and the obligations of the Supplier during and after the term of this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

<b>"Agreement"</b>	means the Agreement for DPS Establishment Terms and Conditions between YPO and the Supplier entered in to by the named parties during enrolment on to the DPS;
<b>"Accreditation and Enrolment"</b>	means the evaluation of a supplier's request to participate in the DPS and the subsequent admittance to the DPS of suppliers that fulfil YPO's Selection Criteria.
<b>"Approval" and "Approved"</b>	means the written consent of the Customer
<b>"Application Guide"</b>	The guide issued by YPO detailing the process for joining the DPS and details the Selection Criteria. The guide is made available at <a href="http://demand.sproc.net/ClientDetails">http://demand.sproc.net/ClientDetails</a> .
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Customer

<b>"Award Criteria"</b>	means the award criteria to be applied to Offers received in response to a Requirement as set out in the Supplier Entry Guide and as may be further specified in the Requirement.
<b>"Charges"</b>	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Service Agreement, for the full and proper performance by the Supplier of its obligations under the Contract
<b>"Commencement Date"</b>	means the date set out in the Service Agreement
<b>"Commercially Sensitive Information"</b>	means the Confidential Information listed in the Service Agreement comprised of information which is provided by the Supplier and designated as commercially sensitive information by the Customer for the period set out in that Service Agreement
<b>"Confidential Information"</b>	<p>means: -</p> <p>(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and</p> <p>(b) the Commercially Sensitive Information,</p> <p>and does not include any information: -</p> <p>(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 36 (Confidential Information));</p> <p>(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</p> <p>(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</p> <p>(iv) is independently developed without access to the Confidential Information</p>
<b>"Contract"</b>	<p>means the agreement in respect of the provision of the Goods and/or Services consisting of the following listed documents which shall be interpreted as a single contractual arrangement:</p> <ol style="list-style-type: none"> <li>1. The Supplier Agreement</li> <li>2. The Supplier Entry Guide</li> <li>3. The Service Agreement(s)</li> </ol>

Collectively called the "Contract Documents".

<b>"Contract Period"</b>	means the period from the Commencement Date to: -  (a) the date of expiry set out in Clause 2; or  (b) following an extension pursuant to Clause 3 the date of expiry of the extended period; or  (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract
<b>"Contracting Authority"</b>	means YPO and any of YPO's permissible users: <a href="http://www.ypo.co.uk/customers/ojeu-permissible-users.aspx">http://www.ypo.co.uk/customers/ojeu-permissible-users.aspx</a> )
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"Customer(s)"</b>	means the Contracting Authority(s) identified in the Requirement and with whom the Supplier enters into the Contract Documents if awarded a Service Agreement.
<b>"Data Loss Event"</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data breach
<b>"Data Controller"</b>	Has the meaning given to it in the Data Protection Legislation, as amended from time to time.
<b>"Data Processor"</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time
<b>"Data Protection Legislation" or "DPA"</b>	means the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
<b>"Data Subject Access Request"</b>	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
<b>"Default"</b>	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

<b>"Deliverables"</b>	means those deliverables listed in the Service Agreement
<b>"Dynamic Purchasing System" or "DPS"</b>	means a completely electronic system of limited duration which is (a) established by a Contracting Authority to purchase commonly used Goods, Services and/or Works (if applicable); and (b) open throughout its duration for the admission of economic operators which satisfy the selection criteria specified by the Contracting Authority, which is operated via the Technology, which applies the procurement methodology provided for by Regulation 34 of the Regulations, as amended from time to time;
<b>"Environmental Information Regulations"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
<b>"Equipment"</b>	means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract
<b>"FOIA "</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
<b>"Force Majeure"</b>	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <ul style="list-style-type: none"> <li>(a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or</li> <li>(b) the failure by any sub-contractor to perform its obligations under any sub-contract</li> <li>(c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;</li> </ul>
<b>"Fraud"</b>	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 a Contracting Authority
<b>"Good Industry Practice"</b>	means standards, codes, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
<b>"Goods and/or Services"</b>	means the Goods and/or Services to be supplied as specified in the Service Agreement

<b>“Improvement Notice”</b>	means a Notice issued on the Supplier to improve minor breaches of the Contract or the Service Agreement instructing the Supplier to improve or remedy any minor breaches in the provision of the Goods, Services and or Works
<b>“Independent Testing Engineer”</b>	means an independent engineer appointed by either the Customer or the Supplier to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer’s decision shall be final as to whether or not the Goods have been installed to the required standard/specification.
<b>“Independent Testing House/Organisation”</b>	means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Contract. It is agreed that the Independent Testing House/Organisation’s decision shall be final as to whether or not the Goods meet the required standard/specification.
<b>"Information"</b>	has the meaning given under section 84 of the FOIA
<b>"Initial Contract Period"</b>	means the period from the Commencement Date to the date of expiry set out in Clause 2 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
<b>"Intellectual Property Rights" and "IPRs"</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>"Key Personnel"</b>	means any individual identified in the Service Agreement as being key personnel
<b>"Law"</b>	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 of which the Supplier is bound to comply
<b>“Material Default”</b>	means any breach of clauses 13 (Conflicts of Interest), 14 (Prevention of Fraud), 29 (Statutory Obligations and Regulations), 30 (Discrimination), 34 (Data Protection), 35 (Freedom of Information), 36 (Confidential Information), 39 (Records and Audit Access), 40 (Transfer and Sub-contracting), 49 (Warranties and Representations)
<b>“Minor Breach”</b>	means any breach of the Contract or the Service Agreement which may be either a partial breach or a breach not so severe to warrant a Material Default.
<b>"Month"</b>	means calendar month
<b>“Offer”</b>	means the Supplier’s tender for the desired Goods and/or Services in response to the Customer’s Requirement.

<b>“Open for Offers”</b>	means the period during which time the Supplier can create and submit their Offer within the Technology.
<b>“Operational Guide”</b>	The guide issued by YPO detailing the operation of the procurement process and steps in the DPS and made available at <a href="http://demand.sproc.net/ClientDetails">http://demand.sproc.net/ClientDetails</a>
<b>"Parent Company"</b>	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term <b>"Holding Company"</b> shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
<b>"Party"</b>	means the Supplier or the Customer
<b>“Personal Data”</b>	has the meaning given to it in the Data Protection Legislation as amended from time to time;
<b>"Premises"</b>	means the location where the Goods and/or Services (if applicable) are to be provided, as set out in the Requirement and resultant Service Agreement
<b>“Processing”</b>	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and <b>"Process"</b> and <b>"Processed"</b> shall be interpreted accordingly;
<b>“Prohibited Act”</b>	means any of the following acts, as described in the Bribery Act 2010: <ul style="list-style-type: none"> <li style="margin-left: 40px;">(a) to directly or indirectly offer, promise or give any person working for or engaged by a Contracting Authority a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li style="margin-left: 40px;">(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;</li> <li style="margin-left: 40px;">(c) committing any offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act;</li> <li>(ii) under legislation creating offences concerning fraudulent acts;</li> <li>(iii) at common law concerning fraudulent acts relating to this Contract; or</li> </ul> </li> </ul>

defrauding, attempting to defraud or conspiring to defraud a Contracting Authority.

<b>"Property"</b>	means the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract
<b>"Supplier"</b>	means the person, firm or company with whom the Customer enters into the Contract Documents
<b>"Quality Standards"</b>	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Service Agreement) and any other quality standards set out in the Service Agreement
<b>"Regulations"</b>	means the Public Contract Regulations 2015, as amended from time to time.
<b>"Regulatory Bodies"</b>	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 Contracting Authority
<b>"Replacement Services"</b>	means services that are identical or substantially similar to any of the Services to be provided the Supplier, which the Customer receives in substitution by a Replacement Supplier who has already been admitted to the DPS, following the termination or expiry of a Service Agreement with the Supplier.
<b>"Replacement Supplier"</b>	means any third party supplier appointed by the Customer and admitted to the DPS, to provide any Goods and/or Services (if applicable) which are substantially similar to any of the Goods and/or Services, and which the Customer receives in substitution for any of the Goods and/or Services (if applicable) following the expiry, termination or partial termination of the Contract
<b>"Requirement"</b>	means a detailed specification and request for Goods and/or Services made by the Customer via the Technology, which may include terms and conditions applicable to the provision of those Goods and/or Services which supplement and/or override the terms and conditions set out in this Supplier Agreement;
<b>"Request for Information"</b>	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)
<b>"Selection Criteria"</b>	means the requisite criteria that a supplier must meet and maintain throughout the term of the DPS in order to successfully complete their Accreditation and Enrolment into the DPS.
<b>"Self-Bill Procedure"</b>	means the arrangements agreed between the Supplier and the Customer, and set out in Schedule 1 under which invoices billing the Customer for Goods and/or Services

provided to it by the Supplier are generated at regular intervals through the Technology and payment in respect of the invoices is processed, whereby the Supplier agrees to receive pre-populated Self-Bill Invoices generated through the Technology for the billing of the appropriate Charges.

<b>“Self-Bill Invoice”</b>	means the invoice produced via the Technology on the Supplier’s behalf in accordance with the Self-Billing Procedure.
<b>“Service Agreement”</b>	means the Parties’ acceptance of a supplier’s final Offer in response to the Customer’s corresponding Requirement incorporating the terms of this Supplier Agreement and sets out the description of the Goods and/or Services (if applicable) to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards
<b>“Service Receipt”</b>	means the agreed record within the Technology of the completed delivery of Goods and/or Services as quantified and agreed between the Parties
<b>"Staff"</b>	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents and sub-contractors used in the performance of its obligations under the Contract
<b>“Staff Vetting Procedures”</b>	means the Customer’s Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989.
<b>“Sub-Processor”</b>	means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Contract;
<b>“Supplier Agreement”</b>	The terms and conditions set out in this document;
<b>“Supplier Entry Guide”</b>	The Application Guide and Operational Guide taken together.
<b>“Technology”</b>	the proprietary web-based software called SProc.Net, which is owned and operated by the Technology Provider, or such other technology as may be agreed between the Parties
<b>“Technology Enabled Care Solutions”</b>	Also referred to as “Care Technology”.
<b>“Technology Provider”</b>	means adam HTT Limited t/a adam, whose company registration number is 07718565 and whose registered office is located at The Pinnacle, 170 Midsummer Boulevard, Milton Keynes, MK9 1BP, VAT number 198 5733 49
<b>“Term”</b>	means the period commencing on the Commencement Date and ending on the date set out in the Service Agreement or on earlier termination of this Agreement unless the Agreement is extended up to a maximum of 12 months
<b>"Variation"</b>	has the meaning given to it in Clause 42 (Variation)



"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales
"Year"	means a calendar year
"YPO"	means YPO, whose principal place of business is at 41 Industrial Park, Wakefield, WF2 0XE, or any employee, agent, servant or representative of YPO or any other public body or person employed on behalf of YPO or any other public body.

### **Interpretation**

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

- 1.2 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.3 Words importing the masculine include the feminine and the neuter;
- 1.4 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.5 References to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.6 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.7 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.8 Reference to a clause is a reference to the whole of that clause unless stated otherwise.
- 1.9 Reference to any employees of the Supplier shall not be deemed to include the Supplier's agents and sub-contractors unless expressly stated.
- 1.10 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

## **2. INITIAL CONTRACT PERIOD**

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Service Agreement, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

## **3. EXTENSION OF INITIAL CONTRACT PERIOD**

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

## **4. SCOPE OF SUPPLIER AGREEMENT**

- 4.1 This Supplier Agreement governs the relationship between the Customer and the Supplier in respect of the provision of Goods and/or Services by the Supplier to the Customer when procured and/or transacted through the DPS. The Supplier must agree to the terms of the Supplier Agreement prior to acceptance into

the DPS. For the avoidance of doubt, the Supplier's acceptance of the Supplier Agreement shall not guarantee the Supplier's acceptance into the DPS, which shall be subject to successful completion of the Accreditation and Enrolment and subject to the terms of the Agreement.

- 4.2 In the event of a conflict between the terms of any of the Contract Documents, then the documents shall take precedence in the following order:
- (a) Legislation
  - (b) The terms of the Agreement;
  - (c) The Service Agreement
  - (d) The Supplier Agreement
  - (e) The Supplier Entry Guide
  - (f) Any other document referred to in the clauses of the Supplier Agreement
- 4.3 The Customer may at its absolute discretion and from time to time, order Services from the Supplier in accordance with the procedure set out in the Supplier Entry Guide. The Supplier acknowledges that there is no obligation whatsoever on the Customer to purchase any Goods and/or Services from the Supplier during the Term. Notwithstanding the fact that the Customer has followed the procedure set out in this Supplier Agreement or Supplier Entry Guide, the Customer shall be entitled at all times to decline to make an award for its Requirement.
- 4.4 The Supplier warrants that all information submitted part of the Request to Participate and assessed during the Accreditation and Enrolment is correct and accurate at the time of submission and shall ensure that all necessary and appropriate Accreditation and Enrolment checks and details are kept up to date throughout the Term. In the event that the Supplier's status or compliance to any of the Selection Criteria changes throughout the Term of the Contract, then the Supplier shall inform YPO immediately and the Supplier acknowledges that YPO reserves the right to, at its sole discretion, expel or suspend the Supplier from the DPS, dependent upon the nature of such changes, particularly if such changes are to the detriment of the performance or standards of this Contract.
- 4.5 The Supplier acknowledges that once agreed via the Technology, a Service Agreement is a legally binding agreement between the Supplier and the Customer and must be adhered to in accordance with the terms of the Contract.

## **5. DPS PROCESS**

- 5.1 The Customer shall:
- a) invite all applicable suppliers who have been admitted to the DPS to submit an Offer for each applicable Requirement within a time limit specified by the Customer.
  - b) enter into a Service Agreement with the supplier who submits the Offer which best meets the Requirement and its appropriate Award Criteria, as may be specified in the Contract Documents, when choosing to enter into a contract via the DPS.

## **6. PROCUREMENT PROCESS**

- 6.1 The Supplier acknowledges and accepts that Goods and/or Services shall be procured and/or transacted in accordance with the procedures detailed in the Contract.
- 6.2 The Supplier shall submit all Offers within the Technology in accordance with the procedures detailed in the Supplier Entry Guide, this Supplier Agreement, and as may be further supplemented within the Requirement.
- 6.3 The Supplier shall submit all Offers within the Technology within a timely manner and no later than the deadlines established within the requisite Requirement or shall otherwise be excluded from the procurement process within the Technology.

- 6.4 The Supplier shall submit all Service Receipts within the Technology within a timely manner. The Customer reserves the right to consolidate each Service Receipt into such frequent Self-Bill Invoices as set out in the Self-Billing Procedure.
- 6.5 The Supplier agrees and acknowledges that all transactions governed by the Contract will be processed via the Technology. The Supplier shall not endeavour to process Requirements or Services for the Customer that have been subject to the DPS outside of the Technology.
- 6.6 The Supplier shall ensure that the Services are provided in accordance with the Requirements, the consequent Service Agreement and the Contract Documents overall. Further, on request at any time, the Supplier must be able to evidence compliance with the same.
- 6.7 Where a Requirement is issued to the Supplier it shall state the type of or part of the Services required including the Customer's necessary timescale for delivery of those Services.
- 6.8 The Supplier acknowledges that users of the Technology may submit a quality review or summary of the Supplier's performance under this Contract. Such reviews shall comprise the opinion of those submitting such comments only and not those of the Customer. The Technology shall have a facility to report any abusive or derogatory comments, and the Customer shall deal with such instances as the Customer deems reasonably necessary.
- 6.9 If an Offer appears to be abnormally low, the Customer may reject the Offer but only if it has:
- a) requested in writing from the Supplier details of the constituent elements of the Offer which are considered to contribute to the Offer being abnormally low;
  - b) taken account of the evidence supplied by the Supplier; and
  - c) verified those constituent elements with the Supplier;

and concludes that the Supplier would not be able to carry out the Services to the required standards.

- 6.10 The amount of time provided to the Supplier to respond to a Requirement shall be detailed within the Technology.
- 6.11 The Supplier shall neither subject the Customer, the Technology Provider or the Technology, to derogatory or abusive treatment nor commit any act or omissions that would, bring the Customer or the Technology Provider into disrepute. The Supplier acknowledges that in any such circumstances the Customer or Technology Provider has the right to suspend the Supplier from activities within the Technology, in addition to any other remedies available in this Contract.
- 6.12 A Service Agreement shall be formed on the Customer's acceptance of the awarded supplier's Offer in the Technology.

## **7. SUPPLIER'S STATUS**

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

## **8. TECHNOLOGY PROVIDER'S STATUS**

- 8.1 The Supplier and Customer acknowledge that the Technology Provider shall act as the Customer's payment service provider for making payments to the Supplier in respect of the Charges that have become payable in accordance with clauses 24 and 25 below.

## **9. CUSTOMER'S OBLIGATIONS**

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

- 9.2 The Customer shall select a Supplier's Offer in accordance with the Supplier Entry Guide and any Award Criteria outlined in the Requirements.
- 9.3 The Customer shall respond to any reasonable request for information from the Supplier via the requirement messaging tool within the Technology.
- 9.4 The Customer will assign an Authorised Representative who will liaise with the Supplier's Contract Manager, to ensure both parties use reasonable endeavours to meet the milestones determined in the Implementation Plan where such a plan is appropriate.
- 9.5 The Customer shall ensure that all Service Agreements are awarded in accordance with the provisions of this Contract and in accordance with the Regulations (and any subsequent re-enactment thereof).

## **10. ENTIRE AGREEMENT**

- 10.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 10.2 Each of the Parties acknowledge and agree that by entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 10.3 Nothing in Clauses 10.1 and 10.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 10.4 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict these Supplier Agreement terms shall be excluded and not form part of the Service Agreement and/or the Contract.
- 10.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

## **11. NOTICES**

- 11.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 11.2 Any notice or other communication which is to be given by either Party to the other shall be given either (a) electronic messaging through the Technology or (b) letter sent by hand, post, registered post or by the recorded delivery service) or (c) e-mail by letter ( Letters shall be addressed to the other Party in the manner referred to in Clause 11.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of e-mail or electronic messaging through the Technology or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of such electronic message, e-mail or letter
- 11.3 For the purposes of Clause 11.2, the address of each Party shall be: -
- (a) For the Customer: the address set out in the Technology.
  - (b) For the Supplier: the address set out in the Technology or Service Agreement.
- 11.4 Either Party may change its address for service by serving a notice in accordance with this clause. Both parties must ensure that the relevant changes are made in the Technology, as this shall be the primary mechanism for communication between the Parties.

## **12. MISTAKES IN INFORMATION**

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

### **13. CONFLICTS OF INTEREST**

- 13.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 13.2 The Supplier shall promptly notify the Customer via the Technology (and provide full particulars to the Customer) if any conflict referred to in Clause 13.1 above arises or is reasonably foreseeable.
- 13.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 13.4 This Clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

### **14. PREVENTION OF FRAUD**

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

### **15. PROVISION OF GOODS**

- 15.1 The Supplier shall supply and, where relevant, install the Goods in accordance with the specification in the Contract Documents, the Requirement, the Service Agreement and in accordance with all Laws.
- 15.2 If requested by the Customer, the Supplier shall submit products to an Independent Testing House/Organisation for testing at the Customer's cost and expense. Where the Goods are too large to be sent to an Independent Testing House/Organisation or need to be tested in situ then the Supplier shall arrange for an Independent Testing Engineer to test the Goods and/or the installation of the Goods at the Customer's reasonable expense. Such requests for Testing should be acted upon immediately.
- 15.3 The Supplier shall ensure that the Goods are fully compatible with any of the Customer's Equipment, to the extent specified in the Service Agreement.
- 15.4 The Supplier acknowledges that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under the Contract.
- 15.5 The Supplier, its agents, sub-contractors and suppliers shall employ sufficient staff to ensure that the Goods are provided at all times and in accordance with the Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to provide the Goods in accordance with the Contract during staff holidays or absence through sickness or any other cause.

## **DELIVERY**

- 15.6 The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Service Agreement.
- 15.7 Unless otherwise stated in the Service Agreement, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.
- 15.8 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 15.9 All deliveries shall be accompanied wherever possible by the appropriate paperwork including but not limited to any certificates authorised by an Independent Testing House/Organisation, evidencing that all Goods are manufactured to an agreed Specification/Standard, weighbridge produced delivery notes or equivalent automated delivery notes. If deliveries are made with incomplete paperwork the Customer has the right to reject the Goods in accordance with Clause 15.15.
- 15.10 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time specified in the Service Agreement, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 15.11 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered with the exception of any tolerances mutually agreed in advance between the Customer and the Supplier. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Customer.
- 15.12 The Customer shall be under no obligation to accept any part delivery of Goods unless such shortfall has been mutually agreed in advance between the Customer and the Supplier. If the Supplier delivers a shortfall they must ensure that they arrange in advance with the Customer the date, time and balance of Goods to be provided to ensure the Customer has sufficient capacity/resource to accept this in line with any other anticipated deliveries.
- 15.13 The Customer shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Service Agreement unless this has been mutually agreed in advance between the Customer and the Supplier.
- 15.14 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments unless agreed in accordance with clause 15.12 above. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer.
- 15.15 The Supplier will need to ensure that sufficient "waiting time" is included in their delivery schedule at such levels as may be agreed between the Supplier and the Customer as indicated in the Service Agreement.
- 15.16 The Supplier must ensure that adequate vehicles are used to transport the required volume of Goods ordered by the Customer. The Customer will not be liable for additional transport costs incurred as a result of the use of inadequately sized vehicles unless this has been mutually agreed in advance between the Customer and the Supplier. Any charges in relation to part loads must be agreed with the Customer prior to delivery.

## **OWNERSHIP AND RISK**

- 15.17 Risk in the Goods shall without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery. Ownership of the Goods shall without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of payment.

## **NON-DELIVERY**

15.18 Where specified by the Customer on dispatch of any consignment of the Goods, the Supplier shall send the Customer an advice note via the Technology specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume and such other information as requested in clause 15.9 above or specified in the Service Agreement. Where the Goods, having been placed in transit, fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier free of charge to deliver substitute Goods within the timescales specified by the Customer or terminate the Contract.

#### **INSPECTION, REJECTION AND GUARANTEE**

15.19 The Customer or its authorised representatives may inspect or test the Goods either when complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Customer of any rights or remedies in respect of the Goods and the Customer reserves the right to reject the Goods in accordance with Clause 15.20 below.

15.20 If the Customer becomes aware that Goods have been provided which fail to conform to the approved sample, do not have valid certification, or fail to meet the Service Agreement requirements they may arrange for such Goods to be tested in accordance with clause 15.19 above and other clauses within this Contract. Should the testing show that the Goods provided did not meet the required specification the Customer may terminate the Contract in accordance with clause 50 (Termination) and/or seek reimbursement in the form of damages payable by the Supplier.

15.21 The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.

15.22 The Supplier hereby guarantees the Goods for the period from the date of delivery to the date of either (i) (twelve [12] Months thereafter; or (ii) such other guarantee period or warranty period notified by the Supplier in their response to the Requirement against faulty materials or workmanship. If the Customer shall within such guarantee period or within twenty five (25) Working Days thereafter give notice in writing via the Technology to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by reinforcement or replacement as the Customer shall elect) free of charge.

15.23 Any Goods rejected or returned by the Customer as described in Clause 15.22 shall be returned to the Supplier at the Supplier's risk and expense.

#### **16. LABELLING AND PACKAGING (IF Applicable)**

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

#### **17. TRAINING**

17.1 Where indicated in the Service Agreement, the Charges shall include the cost of instruction of the Customer's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements specified in the Service Agreement.

#### **18. PROVISION OF THE GOODS AND/OR SERVICES**

18.1 The Supplier shall provide the Goods and/or Services (if applicable) during the Contract Period in accordance with the Customer's requirements as set out in the Contract and the Service Agreement. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and/or Services (if applicable) at the Premises during normal business hours on reasonable notice.

18.2 If the Customer informs the Supplier via the Technology that the Customer reasonably believes that any part of the Goods and/or Services do not meet the requirements of the Service Agreement or differs in any

way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Supplier shall at its own expense re-schedule and provide or carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

- 18.3 The Supplier acknowledges that in entering into this contract no form of exclusivity has been granted by the Customer and that the Customer is at all times entitled to enter into other contracts and arrangements with other suppliers for the provision of any or all Goods and/or Services which are the same as or similar to the Goods and/or Services provided under the terms of the Contract.

## **19. MANNER OF PROVIDING GOODS AND/OR SERVICES**

- 19.1 The Supplier shall at all times comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods and/or Services.
- 19.2 Where applicable the Supplier shall maintain and shall ensure that any agents, staff or sub-contractors utilised in the provision of the Goods and/or Services maintain accreditation and certification with the relevant authorisation body. To the extent that the standard of Goods and/or Services has not been specified in the Contract the Supplier shall agree the relevant standard of the Goods and/or Services with the Customer prior to the supply of the Goods and provision of the Services, in any event the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 19.3 The Supplier shall ensure that all Staff providing the Goods and/or Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper supply of the Goods and provision of the Services.

## **20. KEY PERSONNEL**

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

## **21. SUPPLIER'S STAFF**

- 21.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:-

- (a) any member of Staff; or
- (b) any person employed or engaged by any member of the Staff;

whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.

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



- 21.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 21.4 If the Supplier fails to comply with Clause 21.2 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 21.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 21 shall be final and conclusive.
- 21.6 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.
- 21.7 Where specified by the Customer in the Requirement that enhanced disclosure checks are required, the Supplier shall:
- a) Ensure that all appropriate Supplier Staff individuals engaged in the provision of the Services are subject to valid enhanced disclosure checks undertaken through the Disclosure and Barring Service ("DBS") including a check against the adults barred list or the children's barred list, as appropriate; and
  - b) Monitor the level and validity of the checks under this clause for each member of Supplier Staff.
- 21.8 At the Customer's written request the Supplier shall provide a list of the names of all Supplier Staff who will be used in the provision of the Services specifying the capacities in which they are concerned with the Contract and the status of their DBS checks.
- 21.8 The Supplier warrants that at all times for the purposes of this Contract that it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Goods and/or Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 21.9 The Supplier shall ensure that all Supplier Staff are aware of and comply with the Customer's safeguarding policies and procedures as issued to the Supplier by the Customer.

## **22. OFFERS OF EMPLOYMENT**

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

## **23. CONTRACT PERFORMANCE**

- 23.1 In supplying the Goods and/or Services the Supplier shall perform its obligations under the Contract:
- (a) with appropriately experienced, accredited, certified, qualified and trained Staff;
  - (b) in a timely manner; and in compliance with all applicable Laws,
- 23.2 The Supplier shall ensure that:
- (a) the Goods and/or Services conform in all respects with the specifications set out, in the Requirement, the Service Agreement and where applicable the Contract or any sample approved by the Customer Authority;
  - (b) the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Service Agreement;
  - (c) the Goods and/or Services conform in all respects with all applicable Laws; and

(d) the Goods and/or Services comply with the relevant Legislation, Codes of Conduct and Regulations governing the provision of Goods and/or Services.

23.3 The Supplier shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause 23.3) in accordance with its own established internal procedures.

#### **24. PAYMENT AND CHARGES**

24.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Charges to the Supplier in accordance with clause 25 and the Self-Billing Procedure.

24.2 The Customer shall, in addition to the Charges and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.

24.3 Unless otherwise expressly stated in the Contract or the Service Agreement, no claim by the Supplier will be allowed for any addition to the Charges on the grounds of any matter relating to any document forming part of the Contract or the Service Agreement or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Customer or any other appropriate means.

#### **25. PAYMENT AND VAT**

25.1 The Customer or the Technology Provider shall only raise a Self-Bill Invoice on behalf of the Supplier once the appropriate Service Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.

25.2 The Customer shall pay the Charges which have become payable in accordance with the Self-Billing Procedure within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.

25.3 For the avoidance of doubt, the Supplier acknowledges and accepts that the Charges due for the Goods and/or Services provided under the Contract shall be paid by the Customer via the Technology Provider, acting as the Customer's payment service provider. To this extent, the Supplier acknowledges and accepts the Technology Provider can only pay the Supplier once it has received cleared funds from the Customer. Any disputes regarding payment or the amount payable must first be directed to the Customer via the Technology.

25.4 The Charges are exclusive of VAT which shall be added at the prevailing rate as applicable and paid by the Customer following delivery of a VAT invoice.

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

25.6 The Supplier shall add VAT to the Charges at the prevailing rate as applicable.

25.7 The Supplier has sole responsibility for ensuring that their tax status is reflected correctly within the Technology on an ongoing basis.

25.8 The Supplier shall indemnify the Technology Provider and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Technology Provider and/or the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 25.8 shall be paid by the Supplier to the Technology Provider and/or the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable.

25.9 The Supplier shall not suspend the provision of the Goods and/or Services unless the Supplier is entitled to terminate the relevant Service Agreement and/or Contract under Clause 50 (Termination) for failure to pay undisputed sums of money.

25.10 For the avoidance of doubt, nothing in this Supplier Agreement will operate to transfer any debt or amount owed by the Customer to the Supplier to the Technology Provider.

25.11 Nothing in this Supplier Agreement shall create any contractual relationship between the Technology Provider and the Supplier, however the Technology Provider shall be entitled to enforce the Customer's rights under this Clause 25 pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **26. SET OFF**

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

26.2 If the payment or deduction of any amount referred to in Clause 26.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

## **27. RECOVERY OF SUMS DUE**

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

27.2 Any overpayment by either Party, whether of the Charges 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.

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

27.4 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.

## **28. EURO**

28.1 Any requirement of Law to account for the Goods and/or Services in Euro (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

28.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 28.1 by the Supplier.

## **29. STATUTORY OBLIGATIONS AND REGULATIONS**

### **PREVENTION OF BRIBERY AND CORRUPTION**

29.1 The Supplier:

- a) has not, will not, and will procure that its staff (and any agents or sub-contractors) have not committed and will not commit a Prohibited Act in connection with this Contract;
- b) has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive
- c) represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer or that a contract has been reached to that effect in connection with the securing or execution of this contract, or any other contract with the Customer, excluding any arrangements of which full details have been disclosed in writing to the Customer prior to the execution of this contract

29.2 The Supplier will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Supplier arising as a result.

29.3 The Supplier will provide to the Customer certification (if requested to do so) in writing and signed by an officer of the Supplier, of the compliance with this Clause 29 by:

- a) the Supplier and
  - b) all persons associated with the Supplier; and
  - c) any other persons who are supplying Goods and/or Services in connection with this contract.
- 29.4 Where requested to provide certification under clause 29.3, certification will be provided to the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Supplier will provide any evidence of compliance as may reasonably be requested by the Customer.
- 29.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer upon request and enforced by the Supplier where appropriate.
- 29.6 Should the Supplier become aware of or suspect any breach of Clause 29 it will notify the Customer immediately via the Technology.
- 29.7 Following notification under Clause 29.6 the Supplier will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 29.7 shall survive the expiry or termination of this Contract for a further period of 6 years.
- 29.8 The Customer may recover in full from the Supplier and the Supplier shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 29 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.
- 29.9 The Customer may terminate this Contract and any Service Agreement immediately upon serving written notice if the Supplier, its staff or any sub-contractor's staff whether or not acting with the Supplier's knowledge, breaches Clause 29.1. Before exercising its right of termination under this Clause 29.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- a) the Supplier or a senior officer of the Supplier; or
  - b) a member of Staff, agents or sub-contractors who are not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier or sub-contractor) means and shall be construed as acting:
    - i. with the authority of; or
    - ii. with the actual knowledge; of any one or more of the Supplier's, agents or sub-contractor's (as applicable) directors (or Partners) orin circumstances where any one or more of the directors (or Partners) of the Supplier, their agent or sub-contractor (as applicable) ought reasonably to have had knowledge.
- 29.10 Any notice of termination by the Customer under Clause 29.9 must specify:
- a) the nature of the Prohibited Act;
  - b) the identity of the person whom the Customer believes has committed the prohibited act
  - c) the date on which this Contract will terminate.
- 29.11 In the event of any breach of Clause 29.1 the Customer is entitled to recover from the Supplier the value of any gift, consideration or commission.
- 29.12 Notwithstanding Clause 59 (Dispute Resolution) any dispute relating to:
- a) the interpretation of this Clause 29 or
  - b) the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Customer and its decision shall be final and conclusive

29.13 Termination under Clause 29 will:

- a) be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract.
- b) prohibit the Supplier from claiming any damages for early termination; and
- c) allow the Customer to recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; or
- d) entitle the Customer to be indemnified by the Supplier for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods and/or Services from another party.

### **30. DISCRIMINATION**

- 30.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 30.2 The Supplier shall take all reasonable steps to secure the observance of Clause 30.1 by all servants, employees or agents of the Supplier and all Suppliers and sub-contractors employed in the execution of the Contract.

### **31. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999**

- 31.1 With the exception of the provision set out in clause 25.11a a person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

### **32. ENVIRONMENTAL REQUIREMENTS**

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

### **33. HEALTH AND SAFETY**

- 33.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 33.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 33.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 33.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the provision of the Goods and/or Services under the Contract.
- 33.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

### **PROTECTION OF INFORMATION**

### 34. DATA PROTECTION

34.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

34.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
  - (i) are aware of and comply with the Supplier's duties under the Contract;
  - (ii) 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 Customer or as otherwise permitted by this Contract; and
  - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify the Customer immediately via the Technology if it becomes aware of a Data Loss Event or if it receives:
  - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
  - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
  - (iii) 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;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 34.2(e)) including by promptly providing:
  - (i) the Customer with full details and copies of the complaint, communication or request;
  - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
  - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 34 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

34.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:

- a) the Supplier shall propose a Variation to the Customer which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
- b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
  - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
  - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
  - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
  - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
- d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
  - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
  - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
    - (1) a direct data processing agreement with the Customer on such terms as may be required by them; or
    - (2) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
  - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

34.3 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of their obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

34.4 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

34.5 Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Supplier shall:

- (a) notify the Customer in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Customer;

- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 34.1 such that they apply to the Sub-Processor; and provide the Customer with such information regarding the Sub-Processor as they may reasonably require.

34.6 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

## **35 FREEDOM OF INFORMATION**

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

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

- a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

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

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

35.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 35.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier of the Goods and/or Services (if applicable):

- a) in certain circumstances without consulting the Supplier; or
- b) following consultation with the Supplier and having taken their views into account;
- c) provided always that where Clause 35.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

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

35.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Service Agreement is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 35.5.

## **36 CONFIDENTIAL INFORMATION**

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



- a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

36.2 Clause 36.1 shall not apply to the extent that:

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 35 (Freedom of Information);
- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c) such information was obtained from a third party without obligation of confidentiality;
- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- e) it is independently developed without access to the other party's Confidential Information.

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

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

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

- a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- b) to any consultant, Supplier or other person engaged by the Customer or any person conducting a gateway review;
- c) for the purpose of the examination and certification of the Customer's accounts;
- d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.

36.6 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 36 is made aware of the Customer's obligations of confidentiality.

36.7 Nothing in this Clause 36 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

36.8 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Agreement, the Contract or any Service Agreement or disclose any information relating to or contained in the Agreement, the Contract or any Service Agreement to any person who is not engaged in the provision of the Goods and/or Services (if applicable).

36.9 In the event that the Supplier fails to comply with this Clause 36 the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.

36.10 The provisions of this Clause shall apply notwithstanding termination of the Contract

### **37 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 37.1 The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this Clause 37.
- 37.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 37.3 The Supplier shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

### **38 INTELLECTUAL PROPERTY RIGHTS**

- 38.1 Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's IPR.
- 38.2 The parties shall not, and shall procure that Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose the other's IPR to any third party.
- 38.3 The Parties hereby grant to each other a non-exclusive, revocable, non-assignable licence to use the others IPR during the Contract Period for the sole purpose of enabling the Supplier to supply and the Customer to receive the Goods and/or Services and/or supply the Deliverables.
- 38.4 Prior to using any third party Intellectual Property Rights, the Supplier shall obtain the Approval of the Customer. The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third party IPR. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 38.5 Where the Supplier is granted Approval by the Customer to use the third party rights, the Supplier shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
- 38.6 The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Goods and/or Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- (1) items or materials based upon designs supplied by the Customer; or
  - (2) the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 38.7 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - b) shall take due and proper account of the interests of the Customer; and
  - c) shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
- 38.8 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-

- a) modify the relevant part of the Goods and/or Services (as applicable) or the Deliverables without reducing the performance or functionality of the same, or substitute alternative Goods and/or Services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Goods and/or Services [or deliverables] or to the substitute Goods and/or Services; or
- b) procure a licence to use and provide the Goods and/or Services [or the Deliverables], which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Supplier is unable to comply with Clause 38.8 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Goods and/or Services [or Deliverable] that is subject to the Claim.

38.9 In the event that a modification or substitution in accordance with Clause 38.8 a).1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 38.8 b). 2 the Customer shall be entitled to delete the relevant Service from the Contract.

38.10 This Clause 38.10 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Goods and/or Services [and/or the provision of the Deliverables] hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise hereunder.

### **39 RECORDS AND AUDIT ACCESS**

39.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including: the Goods and/or Services provided under the Contract entered into with the Customer and the amounts paid by the Customer and each Contracting Authority.

39.2 The Supplier shall keep the records and accounts referred to in Clause 39.1 above in accordance with good accountancy practice.

39.3 The Supplier shall on request afford the Customer, the Technology Provider and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.

39.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer and the Auditor.

39.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

39.6 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-

- (a) all information requested by the Customer within the scope of the audit;
- (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and/or Services; and
- (c) access to the Staff.

39.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## CONTROL OF THE CONTRACT

### 40 TRANSFER AND SUB CONTRACTING

- 40.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.
- 40.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own. All sub-contractors must be appropriately managed and responsibility for the quality of workmanship, warranties and guarantees will remain the responsibility of the Supplier.
- 40.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 40.4 Subject to Clause 40.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- a) any Contracting Authority; or
  - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
  - c) any private sector body which substantially performs the functions of the Customer,

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

- 40.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 40.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 40.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 40.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**):-
- a) the rights of termination of the Customer in Clause 50 (Termination) shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier

- 40.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 40.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

### 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 11 (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**

42.1 Subject to the provisions of this Clause 42.1, the Customer may request a variation to the Goods and/or Services ordered provided that such variation does not amount to a material change to the Service Agreement. Such a change is hereinafter called a "Variation".

42.2 The Customer may request a Variation by completing and sending the Variation form attached at Appendix 2 ("**the Customer Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Service Agreement.

42.3 In the event that the Supplier is unable to provide the Variation to the Goods and/or Services or where the Parties are unable to agree a change to the Charges, the Customer may:

a) agree to allow the Supplier to continue to perform their obligations under the Contract without the Variation; or

b) terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Goods and/or Services in accordance with the Service Agreement or where the Supplier can show evidence of substantial work being carried out to fulfil the Service Agreement, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 59.

42.4 If the Parties agree the Variation and any variation in the Charges, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

## **43. SEVERABILITY**

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

43.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

## **44. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE GOODS AND/OR SERVICES**

44.1 Where a complaint is received about the standard of Goods and/or Services or about the manner in which any Goods and Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint.

44.2 Where a complaint is received about the quality of the Goods or of installation of the Goods then the Supplier may at their own cost and expense arrange for the Goods to be tested either at an Independent Testing House/Organisation or inspected in situ by an Independent Testing Engineer.

44.3 The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 50 (Termination) of the Contract.

44.4 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 50 (Termination), do any of the following:

- a) without terminating the Contract, itself provide or procure the provision of all or part of the Goods and/or Services (if applicable) until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to provide all or such part of the Goods and/or Services (if applicable) in accordance with the Contract;
- b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself provide or procure a third party to provide such part of the Goods and/or Services (as applicable);
- c) terminate, in accordance with Clause 50 (Termination), the whole of the Contract; and/or
- d) charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the provision of any part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Goods and/or Services provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services (as applicable).

44.5 If the Supplier fails to provide any of the Goods and/or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

44.6 In the event that the Supplier:

44.6.1 fails to comply with Clause 44.4 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

44.6.2 persistently fails to comply with Clause 44.4 above;

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

#### **45. CUMULATIVE REMEDIES**

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

#### **46. MONITORING OF CONTRACT PERFORMANCE**

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

### **LIABILITIES**

#### **47. LIABILITY, INDEMNITY AND INSURANCE**

47.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for: -

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

47.2 Subject to Clause 47.2 and Clause 47.4 the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the provision, or late or purported provision of the Goods or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or

damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

- 47.3 Subject always to Clause 47.3 and Clause 47.4, the liability of either Party for Defaults shall be subject to the following financial limits: -
- 47.3.1 the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed £1,000,000; and
  - 47.3.2 the annual aggregate liability under the Contract of either Party for all other Defaults shall in no event exceed £1,000,000.
- 47.4 Subject to Clause 55 (Recovery Upon Termination), in no event shall either Party be liable to the other for any:
- a) loss of profits;
  - b) loss of business;
  - c) loss of revenue;
  - d) loss of or damage to goodwill;
  - e) loss of savings (whether anticipated or otherwise); and/or
  - f) any indirect or consequential loss or damage.
- 47.5 The Customer may, amongst other things, recover as a direct loss: -
- a) any additional operational and/or administrative expenses arising from the Supplier's Default;
  - b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and
  - c) the additional cost of procuring replacement Goods and/or Services (if applicable) for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.
- 47.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 47.7 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 47.8 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 47.9 The Supplier shall hold public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 47.10 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

47.11 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

47.12 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability referred to in Clause 47.

#### **48. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY**

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

#### **49. WARRANTIES AND REPRESENTATIONS**

49.1 The Supplier warrants and represents that: -

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- b) the Contract is executed by a duly authorised representative of the Supplier;
- c) in entering the Contract it has not committed any Fraud;
- d) as at the Commencement Date, all information, statements and representations contained in their submission to both the request to participate and the Requirement for the Goods and/or Services (as applicable) are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- i) the Goods and/or Services (as applicable) shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- j) in the three (3) years prior to the date of the Contract: -
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and



- (iii) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
- k) all obligations of the Supplier pursuant to this Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
- l) it will ensure that the Supplier and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Supplier in connection with the Goods and/or Services (as applicable) will comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods and performance of Services.

## **DEFAULT, DISRUPTION AND TERMINATION**

### **50. TERMINATION**

#### **Termination - Insolvency and Change of Control**

- 50.1 Either Party may terminate the Contract with immediate effect by giving notice in writing where the other is a company and:-
- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
  - d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
  - g) being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - h) any event similar to those listed in Clause 50.1 occurs under the law of any other jurisdiction.
- 50.2 Either Party may terminate the Contract with immediate effect by notice in writing where the other is an individual and:
- a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
  - b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
  - c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
  - d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
  - e) a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any

part of the Supplier's assets and such attachment or process is not discharged within 14 days;  
or

- f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- g) the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

50.3 The Supplier shall notify the Customer immediately via the Technology if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

- a) being notified that a Change of Control has occurred; or
- b) where no notification has been made, the date that the Customer becomes aware of the Change of Control;

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

50.4 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier and its Staff, agents, sub-contractors, or personnel employed by the Supplier in connection with the Goods and/or Services have failed to comply with the relevant Legislation, Codes of Conduct and Regulations governing the delivery of Goods and performance of Services (as applicable).

#### **Termination on Default – Minor Breaches**

50.5 Where the Supplier commits a Minor Breach of the Contract, the Customer shall be entitled to issue the Supplier with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Breach and give the Supplier a minimum of ten (10) Working Days to remedy the Minor Breach.

50.6 If the Supplier commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 50.7 (c).

#### **Termination on Default – Material Default**

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

- a) the Supplier has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied; or
- b) the Material Default is not, in the reasonable opinion of the Customer, capable of remedy; or
- c) if the Supplier has committed three (3) or more Minor Breaches within a twelve (12) month rolling period.
- d) where the Customer terminates a Service Agreement awarded to the Supplier under this Agreement as a consequence of a default by the Supplier.
- e) where any Goods have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and Installation Services do not meet the minimum required standards/specification, the Service Agreement or Contracts may be terminated and all outstanding Service Agreements may be cancelled at no cost and without any liability to the Customer.

50.8 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 27(Recovery of Sums Due).

## **51. BREAK**

51.1 The Customer shall have the right to terminate the Contract with effect from the 30 November of any year by giving notice in writing to the Supplier on or before the 31 May of that year.

## **52. TERMINATION OF THE DYNAMIC PURCHASING SYSTEM**

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

## **53. CONSEQUENCES OF EXPIRY OR TERMINATION**

53.1 Where the Customer terminates the Contract under Clause 50 (Termination) and then makes other arrangements for the provision of Goods and/or Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 50 (Termination), no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

53.2 Where the Customer terminates the Contract under Clause 51 (Break), the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 51 (Break).

53.3 The Customer shall not be liable under Clause 53.2 to pay any sum which: -

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

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

53.4 Save as otherwise expressly provided in the Contract: -

a) 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

b) Termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under [Clauses 24 (Payment and Charges), 27 (Recovery of Sums Due), 34 (Data Protection Act), 35 (Freedom of Information), 36 (Confidential Information), 38 (Intellectual Property Rights), 39 (Records and Audit Access), 45 (Cumulative Remedies), 47 (Liability, Indemnity and Insurance), 53 (Consequences of Expiry or Termination), 55 (Recovery upon Termination) and 57 (Governing Law and Jurisdiction)].

## **54. DISRUPTION**

54.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other supplier employed by the Customer.

54.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

- 54.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the provision of the Goods and/or Services in accordance with its obligations under the Contract.
- 54.4 If the Supplier's proposals referred to in Clause 54.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 54.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

## **55. RECOVERY UPON TERMINATION**

- 55.1 On the termination of the Contract for any reason, the Supplier shall:
- a) immediately return to the Customer all Confidential Information, Personal Data and Customer's IPR in its possession or in the possession or under the control of any permitted providers or sub-contractors, which was obtained or produced in the course of providing the Goods and/or Services;
  - b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or the completion of any work in progress.
  - d) promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 55.2 If the Supplier fails to comply with Clause 55.1 (a) and (b), the Customer may recover possession thereof and the Supplier grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted providers or sub-contractors where any such items may be held.
- 55.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 55.1(c) and (d) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 55.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 38.3 shall automatically terminate without the need to serve notice.

## **56. FORCE MAJEURE**

- 56.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 56.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or provider shall be regarded as due to Force Majeure only if that agent, sub-contractor or provider is itself impeded by Force Majeure from complying with an obligation to the Supplier.

- 56.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 56.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 56.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 56.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

## **DISPUTES AND LAW**

### **57. GOVERNING LAW**

- 58.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts or, if different, to the jurisdiction of the courts and agree that the Contract is to be governed exclusively by and construed under English law.
- 58.2 This Agreement is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

### **58. TUPE**

- 59.1 During the period of six months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) Working Days of being so requested by the Customer, the Supplier shall fully and accurately disclose to the Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Goods and/or Services under the Contract, in particular but not necessarily restricted to, the following:
- a) the total number of Staff whose employment with the Supplier is liable to be terminated at the expiry of the Contract but for any operation of law; and
  - b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and
  - c) full information about the other terms and conditions on which the affected or about where that information can be found; and
  - d) details of pensions entitlements, if any; and
  - e) job titles of the members of Staff affected and the qualifications required for each position.
- 59.2 The Supplier shall permit the Customer to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the Goods and/or Services by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.
- 59.3 The Supplier agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 58.
- 59.4 In the event that the information provided by the Supplier in accordance with Clause 59.1 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Customer of the inaccuracies and provide the amended information.

59.5 The provisions of this Clause 58 shall apply during the continuance of the Contract and indefinitely after its termination.

## **59. DISPUTE RESOLUTION**

60.1 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] (or equivalent) of each Party.

60.2 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.

60.3 If the dispute cannot be resolved by the Parties pursuant to Clause 60 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 60.4 unless: -

- a) the Customer considers that the dispute is not suitable for resolution by mediation; or
- b) the Supplier does not agree to mediation.

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

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

- a) A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to appoint a Mediator;
- b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance to provide guidance on a suitable procedure;
- c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- f) 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.

## Schedule 1: Self-Billing Procedure

- 1.1 The Customer and the Supplier have agreed to use the below Self-Billing Procedure for all Charges in respect of the Goods and/or Services, to be recorded managed and processed via the Technology.
  - 1.2 The Customer and the Supplier shall adhere to the conditions imposed by HM Revenue and Customs in respect of the self-billing invoices, as may be amended from time to time.
2. The Supplier agrees:
- 2.1 to complete and submit in the Technology, at such regular (e.g. weekly or monthly) intervals as shall be determined by the Customer, a Service Receipt relating to the period preceding its submission;
  - 2.2 to accept the electronic delivery of Self-Billing Invoices raised on its behalf by the Customer in respect of Goods and/or Services provided to the Customer based on the Service Receipts submitted under paragraph (i);
  - 2.3 not to issue VAT invoices in respect of the Goods and/or Services;
  - 2.4 where for internal compliance reasons the Supplier raises dummy invoices, that it will reconcile such dummy invoices against the Self-Billing Invoices
  - 2.5 to reconcile its accounts with any factoring company as may be applicable from time to time;
  - 2.6 to only submit a paper-copy Service Receipt where pre-agreed in writing with the Customer;
  - 2.7 subject to (vi) above, to ensure the Technology's Service Receipt submission system is used to capture all Charges for the provision of the Goods and/or Services;
  - 2.8 to ensure that hours, hour types, rates and expenses are verified prior to submission of Service Receipts;
  - 2.9 to raise any discrepancies between a Self-Billing Invoice raised by the Customer and invoicing data in its internal records within seven (7) days of its receipt of such Self-Billing Invoice;
  - 2.10 to notify the Customer and the Technology Provider immediately if it changes its VAT registration number, ceases to be VAT registered or sells or otherwise disposes of all or part of its business;
  - 2.11 to respond to any request for confirmation of its VAT registration details within seven (7) days of receipt of the request.
3. The Supplier agrees and acknowledges that:
- 3.1 the Customer's obligations under this Self-Billing Procedure will be carried out on its behalf via the Customer's third-party payment agent, the Technology Provider;
  - 3.2 where there is a material breach of paragraph 2 above, the Customer may in its sole discretion delay processing payment of the Charges due to the Service Provider under the Self-Billing Invoice that the breach pertains to until or unless the breach is remedied.
4. The Supplier warrants the accuracy of the information it completes and uploads within the Technology including but not limited to the bank details it submits and undertakes to inform the Customer and/or the Technology Provider immediately of any changes to this information.
5. The Customer agrees:
- 5.1 to only raise a Self-Billing Invoice on behalf of the Supplier once an appropriate Service Receipt has been created and agreed between the parties within the Technology;

- 5.2 wherever reasonably possible, to deliver a valid Self-Billing Invoice electronically to the Supplier at regular (e.g. weekly or monthly) intervals;
  - 5.3 to include on each such invoice the Supplier's name, address and VAT registration number, invoice total and details of applicable VAT at the prevailing rate;
  - 5.4 to inform the Supplier of any relevant changes to the Customer's VAT registration status and to agree a new Self-Billing Procedure with the Supplier should this be necessary as a result.
6. The Customer will not accept any liability for payment of any of the Supplier's services where the Supplier does not hold a valid signed/approved Service Receipt, as applicable, or where the Service Receipt has not been authorised via the Technology's online Service Receipt system, or such other application as directed by the Customer from time to time.
  7. For the avoidance of doubt, any payment properly due to the Supplier will be made in accordance with the terms and conditions of this Supplier Agreement.
  8. The parties shall, without limitation to the foregoing, comply at all times with all conditions imposed by HM Revenue and Customs in respect of self- billing invoicing procedures.
  9. For the avoidance of doubt, this Self-Billing Procedure shall be conterminous with the duration of this Supplier Agreement but shall be subject to annual review by the parties.