



Valuation Office  
Agency

OFFICIAL

# **FORMAL CONTRACT/FRAMWORK AGREEMENT**

**between**

**Valuation Office Agency**

**and**

**for the provision of**

**Version:**

**Contract ref:**

**Start Date:**

**Expiry Date:**

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## Form of Agreement

This Agreement is made between the Valuation Office Agency, "the Client", of 10 South Colonnade, Canary Wharf, London, E14 4PU and (insert name of Contractor) "the Contractor" whose main or registered office is at (insert address), together referred to as "the Parties" and is effective as of (insert date) ("Commencement Date")

It is agreed that:

This Form of Agreement together with the Terms and Conditions and Schedules are the documents that collectively form the "Contract".

The Contract effected by the signing of this Form of Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Contract and supersedes all prior negotiations, representations or understandings whether written or oral.

Signed for and on behalf of:

The Valuation Office Agency	(Insert Contractor / company name)
Signature:	Signature:
Full Name:	Full Name:
Position:	Position:
Date:	Date:
Address:	Contact details
Telephone:	Address:
e-Mail:	Telephone:
	e-Mail:

# Terms and Conditions

## A GENERAL PROVISIONS

### A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Approval” means the written consent of the Client.

“BPSS” means the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group.

“Change Request” means a request by the Contractor for a Variation to the Contract.

“Client” means Valuation Office Agency (VOA) acting as part of the Crown.

“Client Data” means:

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

“Commencement Date” means the effective date shown within the Form of Agreement.

“Commercially Sensitive Information” means Information notified to the Client in writing (prior to the commencement of this Contract) which has been clearly marked by the Contractor as Commercially Sensitive Information, comprising of information:

- (a) which is provided by the Contractor to the Client in confidence; and/or
- (b) that constitutes a trade secret.

“Confidential Information” means all Information:

- (a) however it is conveyed or on whatever media it is stored;
- (b) which comes (or has come) to the attention of or into the possession of a Party before, on or after execution of the Contract; and
- (c) which has been designated as confidential by either Party in writing or which ought to be considered as confidential (whether or not it is

marked at the time of provision to show that it is imparted in confidence);

- (d) including but not limited to 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;
- (e) and which Information is not:
  - (i) in the public domain at the time of disclosure (otherwise then by breach of Clause D4 (Confidential Information)); or
  - (ii) received from a third Party (who has lawfully acquired it) without restriction as to its disclosure; or
  - (iii) independently developed without access to the Confidential Information

“Contract” means this written agreement between the Client and the Contractor consisting of these Clauses and any attached Schedules.

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

“Contractor” means the person, firm or company with whom the Client enters into the Contract.

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

- (a) the date of expiry set out in Clause A2 (Initial Contract Period); or
- (b) following an extension pursuant to Clause E6 (Extension of Initial Contract Period), the date of expiry of the extended period;

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

“Contract Price” means the price (exclusive of any applicable VAT) payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with Clause B6 (Price Adjustment on Extension of Initial Contract Period).

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

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of the relevant

Party or 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.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

“DPA 2018” means Data Protection Act 2018;

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

“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer” take the meaning given in the GDPR;

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

“Data Subject Access Request” means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

“Due Diligence Information” means any information supplied to the Contractor by or on behalf of the Client prior to the Commencement Date.

“E-Sourcing Messaging Facility” means the ability to send and receive messages via the E-Sourcing application.

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

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

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

“FOIA” means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown body in relation to such legislation.

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common Law in respect of fraudulent acts in relation to the

Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

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

“General Anti-Abuse Rule” means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions.

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

“Goods” means the Goods to be supplied as specified in the Specification  
“Information” has the meaning given under section 84 of the FOIA.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in Clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

“Installation Works” means, as the context so requires,

- (a) collectively, all works which the Contractor is to carry out at the beginning of the Contract Period to install the Goods in accordance with the Specification; or
- (b) where there are a series of works to be carried out during the Contract Period to install the Goods in accordance with the Specification, each set of Installation Works

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable 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 registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel” means those persons named in the Specification as being Key Personnel.

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

“Month” means calendar Month.

“Occasion of Tax Non-Compliance” means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

(i) a Relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

(ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) the Contractor’s tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a penalty for civil fraud or evasion.

“Outgoing Contractor” means the Person, firm or company currently providing the Services and whose replacement is envisaged pursuant to the Contract.

“Party” means a Party to the Contract.

“Premises” means the location where the Services are to be supplied, as set out in the Specification.

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

“Property” means the Property, other than real Property, issued or made available to the Contractor by the Client in connection with the Contract.

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

“Regulatory Bodies” means those Crown bodies 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 Client and “Regulatory Body” shall be construed accordingly.

“Relevant Convictions” means a conviction that is relevant to the nature of the Services and/or relevant to the work of the Client as previously agreed between the Client and the Contractor.

“Relevant Transfer” shall have the meaning set out in the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”)

“Replacement Contractor” means any third Party service provider appointed by the Client to supply any Services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” 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).

“Returning Employees” means those persons listed in a Schedule to be agreed by the Parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any sub-contractor) wholly and/or mainly in the provision of the Services immediately before the end of the Contract Period.

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

“Security Plan” means the Contractor's Security Plan prepared pursuant to the Client's instructions.

“Security Policy” means the Client's current Security Policy as updated from time to time.

“Sub-processor” means any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement;

“Services” means the Services to be supplied as specified in the Specification.

“Specification” means the description of the Services to be supplied under the Contract.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

“Tender” means the document(s) submitted by the Contractor to the Client in response to the Client's invitation to suppliers for formal offers to supply it with the Services.

“Transfer Date” means the date that a Relevant Transfer takes place and may or may not be coincidental to the Commencement Date.

“Variation” has the meaning given to it in Clause E3.1 (Variation).

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

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

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) Words importing the masculine include the feminine and the neuter;
- (c) Reference to a Clause is a reference to the whole of that Clause unless stated otherwise;
- (d) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## **A2 Initial Contract Period**

A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on [..... 20--], unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause E6 (Extension of Initial Contract Period).

## **A3 Contractor's Status**

A3.1 At all times during the Contract Period the Contractor shall be an independent Contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

## **A4 Client's Obligations**

A4.1 Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Contractor.

## **A5 Notices**

A5.1 Any notice or other communication which is to be given by either Party to the other shall be issued by the E-Sourcing Messaging Facility. Where, for legal or other reasons, this is not possible, notice shall be given by letter, (sent by hand or post, registered post or recorded delivery), or transmitted by facsimile or e-mail, confirmed in either case by written letter. Such notice or communication shall be deemed to have been given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

## **A6 Mistakes in Information**

A6.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and Information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

## **A7 Conflicts of Interest**

A7.1 The Contractor shall take appropriate steps to ensure that, to the best of its knowledge, neither the Contractor nor any Staff is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

A7.2 The Client reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The actions of the Client 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 Client. The Client shall pay to the Contractor any sums outstanding in the event that the Contract is terminated under this Clause A7.2.

A7.3 Clauses A7.1 and A7.2 shall apply during the continuance of the Contract.

## **A8 Inspection of Premises**

A8.1 Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

## **A9 Access to Client's Premises**

A9.1 The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises to:

- (a) any member of the 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 Client, be undesirable.

- A9.2 At the Client's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.
- A9.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.
- A9.4 If the Contractor fails to comply with Clause A9.2 within 14 days of the date of the request and in the reasonable opinion of the Client such failure may be prejudicial to the interests of the Crown, then the Client 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 Client.
- A9.5 The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with Clause A9.2 shall be final and conclusive.

**A10 Licence to occupy Premises (option see guidance)**

- A10.1 Any land or Premises made available from time to time to the Contractor by the Client in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- A10.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.
- A10.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.
- A10.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed Equipment or fittings therein.
- A10.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any

rights granted pursuant to the Contract, the Client retains the right at any time to use any Premises owned or occupied by it in any manner it sees fit.

### **A11 Staff Vetting and Government Baseline Security Standard**

- A11.1 The Contractor shall comply with the HMG Baseline Personnel Security Standard (BPSS) in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor have been vetted and recruited in accordance with the BPSS.
- A11.2 The Contractor hereby warrants and represents that the checks specified in the BPSS have been carried out in respect of each person assigned to access Premises, Property or Information belonging to the Client and that the results of those checks are satisfactory.
- A11.3 The Contractor shall maintain full and accurate records of BPSS checks such that the Client (or its authorised agents) may verify that the Contractor has carried out such checks in accordance with the BPSS.
- A11.4 Subject to legal requirements in respect of confidentiality, the Contractor shall grant to the Client (or its authorised agents) the right of reasonable access to all its records of BPSS checks and shall provide all reasonable assistance at all times for the purpose of carrying out an audit of the Contractor's compliance with the BPSS.
- A11.5 The Client may require the Contractor to ensure that any person employed in the provision of the Goods or Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Goods or Services.

### **A12 Security of Premises**

- A12.1 The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Client while on the Premises, and shall ensure that all of its Staff comply with such requirements.
- A12.2 The Contractor shall take all steps reasonably required by the Client to prevent unauthorised persons from being admitted to the Client's Premises. The Client shall afford to the authorised personnel of the Contractor at all reasonable times and with prior agreement such access to the Client's Premises as may be necessary for the performance of the Contract provided always that the Client shall have the right to refuse admittance to or order the removal from the Premises any person employed by or acting on behalf of the Contractor or any sub-contractor who in the opinion of the Client (which shall be final) is not a fit and proper person to be on the Client's Premises. Action taken under this Condition shall be confirmed in writing to the Contractor by the Client and shall not relieve the Contractor of its obligations under the Contract. At all

times personnel of the Contractor shall obey the Client's directions relating to safety.

A12.3 Where Staff are required to have a pass for admission to the Client's Premises, the Client's representative shall, subject to satisfactory completion of Approval procedures, arrange for passes to be issued.

A12.4 The Client shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

### **A13 Property**

A13.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the Property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.

A13.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.

A13.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

A13.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods or Services, in accordance with the Client's reasonable security requirements as required from time to time.

A13.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

### **A14 Due Diligence (Option – see guidance)**

A14.1 The Contractor acknowledges that:

(a) the Client has made available to the Contractor all information, documents and Due Diligence Information that the Contractor considers necessary or relevant for the performance of its obligations under this Contract;

(b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

(c) it has satisfied itself of all relevant details relating to:

(i) the Client's requirements;

(ii) the processes and procedures and working methods of the Client

(iii) the ownership, functionality, capacity, condition and suitability for use in the delivery of the Contract of any Client Property provided.

A14.2 The Contractor shall not be excused from the performance of any of its obligations under the Contract on the grounds of, and shall not be entitled to recover any additional costs or charges arising as a result of, any failure by the Contractor to satisfy itself as to the accuracy and adequacy of the Due Diligence Information.

## **B PAYMENT TERMS AND CONTRACT PRICE**

### **B1 Contract Price (Option 1 - fixed for Contract Period)**

B1.1 The Contract Prices and Rates shall remain firm for the initial Contract Period, but not including any extension of that period.

B1.2 In the event that the Contract Price is increased or decreased as a result of any new legislation or regulation being made after the Commencement Date, the amount of any such increase or decrease shall be treated as a Variation to the Contract and will be assessed on an individual basis. Such Variations will not be allowed where new legislation or regulations are enacted after the commencement of the Contract but were made public prior to the Commencement Date. Any such Variations to price, which can be foreseen by the Contractor prior to the Commencement Date, will be deemed to have been included in the Contract Price.

### **B1 Contract Price (Option 2 - fixed for 12 months)**

B1.1 The Contract Prices and rates, as shown in the appropriate Schedules of the Contract, shall remain fixed for the initial twelve-month period starting from the Commencement Date. Prices will then be subject to annual reviews on each anniversary of Commencement Date. Price reviews will be based on a price index previously agreed between the Client and the Contractor.

B1.2 In the event that the Contract Price is increased or decreased as a result of any new legislation or regulation being made after the Commencement Date, the amount of any such increase or decrease shall be treated as a Variation to the Contract and will be assessed on an individual basis. Such Variations will not be allowed where new legislation or regulations are enacted after the Commencement Date but were made public prior to the Commencement Date. Any such Variations to price, which can be foreseen by the Contractor prior to the Commencement Date, will be deemed to have been included in the Contract Price.

## **B2 Payment Terms and VAT**

- B2.1 The Client shall pay all sums due to the Contractor within 30 days of receipt of a valid invoice, submitted in accordance with the Client's reasonable instructions.
- B2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services or Goods supplied and is supported by any other documentation reasonably required by the Client to substantiate the invoice.
- B2.3 Where the Contractor enters into a sub-contract with a supplier or sub-contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- B2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Client shall pay the VAT to the Contractor following its receipt of a valid VAT invoice.
- B2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause B2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- B2.6 The Contractor shall not suspend the supply of the Goods or Services unless the Contractor is entitled to terminate the Contract under Clause G2.3 (Termination on Default) for failure to pay undisputed sums of money. If any amount payable under this Contract is not paid within 30 days of the due date for payment, interest shall be payable by the Client at a rate of 5% above the base rate of the Bank of England, from the due date to the date of actual payment.

## **B3 Recovery of Sums Due**

- B3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), that sum may be deducted from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or Contract with the Client or the Crown.
- B3.2 Any overpayment by either Party shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

## **B4 Compliance with Value Added Tax and Other Tax Requirements**

- B4.1 The Contractor shall at all times comply with the Value Added Tax Act 1994 and all other statutes relating to direct or indirect taxes.

- B4.2 Failure to comply may constitute a material breach of this Contract and the Client may exercise the rights and provisions conferred by Condition G2 (Termination on Default) hereof.
- B4.3 The Contractor shall provide to the Client the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or Self Assessment reference of any agent, supplier or sub-contractor of the Contractor prior to the commencement of any work under this Contract by that agent, supplier or sub-contractor. Upon a request by the Client, the Contractor shall not employ or will cease to employ any agent, supplier or sub-contractor.

#### **B5 Arrears of Value Added Tax**

- B5.1 Where an amount, including any assessed amount, is due from the Contractor as Value Added Tax under the Value Added Tax Act 1994 (as amended) an equivalent amount may be deducted by the Client from the amount of any sum due to the Contractor under the Contract.
- B5.2 The Client shall give the Contractor at least 14 days notice in writing before exercising the right of deduction under Clause B5.1. The notice shall specify the amount to be deducted and shall contain a description of the VAT due from the Contractor in respect of which the deduction is made.

#### **B6 Price adjustment on extension of the Initial Contract Period (Option)**

- B6.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to Clause E6 (Extension of Initial Contract Period) the Client shall, in the 6 Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a Variation in the Contract Price.
- B6.2 If the Parties are unable to agree a Variation in the Contract Price in accordance with Clause B6.1, the Contract shall terminate at the end of the Initial Contract Period.
- B6.3 If a Variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- B6.4 Any increase in the Contract Price pursuant to Clause B6.1 shall not exceed the percentage change in the Price Index previously agreed between the Client and the Contractor between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

#### **B7 Euro**

- B7.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Client.
- B7.2 The Client shall provide all reasonable assistance to facilitate compliance with Clause B7.1 by the Contractor.

## **C STATUTORY OBLIGATIONS AND REGULATIONS**

### **C1 Prevention of Corruption and the Bribery Act 2010**

- C1.1 The Contractor shall comply, and shall ensure that its employees, agents and sub-contractors comply, with the provisions of the Bribery Act 2010
- C1.2 The Contractor shall not offer or give, or agree to give, to the Client or any other Crown body or any person employed by or on behalf of the Client or any other Crown body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other Contract with the Client or any other Crown body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such Contract.
- C1.3 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other Crown body or any person employed by or on behalf of the Client or any other Crown body in connection with the Contract.
- C1.4 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by Clauses C1.2 or C1.3, the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
  - (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those Clauses.

### **C2 Prevention of Fraud**

- C2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Client.
- C2.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- C2.3 If the Contractor or its Staff commits Fraud in relation to this or any other Contract with the Crown (including the Client) the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or

- (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this Clause.

### **C3 Discrimination**

C3.1 The Contractor shall not unlawfully discriminate either directly or indirectly because of race, colour, ethnic or national origin, disability, sex, sexual orientation, gender reassignment, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (which replaces the following: Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2007, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006), the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

C3.2 The Contractor shall take all reasonable steps to secure the observance of Clause C3.1 by all Staff.

### **C4 The Contracts (Rights of Third Parties) Act 1999**

C4.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This Clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

### **C5 Environmental Requirements**

C5.1 The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client'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.

### **C6 Health and Safety**

C6.1 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

C6.2 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.

C6.3 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working there.

C6.4 The Contractor shall notify the Client 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.

## **D DATA SECURITY AND PROTECTION OF INFORMATION**

### **D1 Client Data**

D1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to Client Data.

D1.2 The Contractor shall not store, copy, disclose, or use Client Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Client.

D1.3 To the extent that Client Data is held and/or processed by the Contractor, the Contractor shall supply that Client Data to the Client as may be requested by the Client and in the format specified by the Client.

D1.4 The Contractor shall take responsibility for preserving the integrity of Client Data and shall take all necessary steps to prevent the corruption or loss of Client Data.

D1.5 The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Client's instructions. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at agreed intervals.

D1.6 The Contractor shall ensure that any system on which the Contractor holds Client Data, including back-up data, is a secure system that complies with the Client's current Security Policy. If any Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Client Data to the extent required by the Client and in accordance with the Client's security requirements and the Contractor shall do so as soon as practicable but not later than any agreed timescale; and/or
- (b) itself restore or procure the restoration of the Client Data, and shall be reimbursed by the Contractor any reasonable expenses incurred in doing so to the extent required by the Client and in accordance with the Client's security requirements.

D1.7 If at any time the Contractor suspects or has reason to believe that Client Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Client immediately and inform the Client of the remedial action the Contractor proposes to take.

## **D2 Data Protection Act**

D2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is detailed generally in clauses D1.1 – D1.8, and listed in Schedule I by the Customer and may not be determined by the Contractor.

D2.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

D2.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

D2.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule I, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that:
  - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule I);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

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

D2.5 Subject to clause D2.6, the Contractor shall notify the Customer immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (e) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (f) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (g) becomes aware of a Data Loss Event.

D2.6 The Contractor's obligation to notify under clause D2.5 shall include the provision of further information to the Customer in phases, as details become available.

D2.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause D2.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Customer with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Customer following any Data Loss Event;
- (e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

D2.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

- (a) the Customer determines that the processing is not occasional;
- (b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

D2.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

D2.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

D2.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- (b) notify the Customer in writing of the intended Sub-processor and processing; 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 D2.1 – D2.14 such that they apply to the Sub-processor; and
- (d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

D2.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

D2.13 The Contractor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

D2.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

### **D3 Official Secrets Acts and related Legislation**

D3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989; and
- (c) Section 18 and Section 19 of the Commissioners for Revenue and Customs Act 2005

D3.2 In the event that the Contractor or its Staff fail to comply with this Clause, the Client reserves the right to terminate the Contract with immediate effect.

### **D4 Confidential Information**

D4.1 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 Information owner's prior written consent.

D4.2 Clause D4.1 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, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause D5 (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.
- D4.3 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the Goods and 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.
- D4.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.
- D4.5 Where deemed appropriate by the Client, and at the written request of the Client, the Contractor shall procure that its Staff sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- D4.6 Nothing in this Contract shall prevent the Client from disclosing the Contractor's Confidential Information (including the Management Information obtained under Schedule D to this Contract):
- (a) to the Crown or any other Contracting Authority. The Crown and any Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to the Crown 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 the Crown or any Contracting Authority;
  - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (c) to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause D4.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
  - (e) for the purpose of the examination and certification of the Client's accounts; or
  - (f) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
  - (g) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this clause D4.

- D4.7 The Client shall use all reasonable endeavours to ensure that any Crown body, Contracting Authority, employee, third Party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to Clause D4.6 is made aware of the Client's obligations of confidentiality.
- D4.8 Nothing in this Clause D4 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 disclosure of the other Party's Confidential Information or an infringement of its Intellectual Property Rights.

## **D5 Freedom of Information**

- D5.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its information disclosure obligations.
- D5.2 The Contractor shall and shall procure that any sub-contractors shall:
- (a) transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receiving a Request for Information;
  - (b) provide the Client with a copy of all information in its possession or power in the form that the Client requires within 5 Working Days (or such other period as the Client may reasonably specify) of the Client's request; and
  - (c) provide all necessary assistance as reasonably requested by the Client to enable the Client 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.
- D5.3 The Client 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 Code of Practice on Government Information, FOIA or the Environmental Information Regulations.
- D5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.
- D5.5 If the Client receives a Request for Information relating to information previously considered by the Parties to be Commercially Sensitive Information that is exempt under the FOIA the Client shall:
- (a) consider whether the information is, in fact, exempt and;
  - (b) consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information (unless the Information benefits from an absolute exemption) and;
  - (c) consult with the Contractor prior to disclosure of the information whenever reasonably practicable.

- D5.6 Without prejudice to Clause D5.5 the Client shall consult with the Contractor before disclosing any Confidential Information of the Contractor unless the Client is obliged under the FOIA to disclose such Information without consulting the Contractor.
- D5.7 The Client shall not be liable for any loss or damage suffered by the Contractor, whether in Contract, tort or any other way, as a result of the Client disclosing Information in response to a request made under the FOIA.
- D5.8 The Contractor shall ensure that all information is retained for disclosure in accordance with any legislation or guidelines from time to time in place and shall permit the Client to inspect such records as requested from time to time.

**D6 Security Requirements (D6.2 to D6.8 option – see guidance)**

- D6.1 In the performance of this Contract, the Contractor shall comply with (and shall ensure that its Staff comply with) the Client's specific security requirements as described in the Specification of Requirements at Schedule A as appropriate. Failure to do so may result in the termination of the Contract in accordance with Clause G2. The Contractor shall be obliged to inform the Client of any security incident, regardless of its size or perceived impact on the Client's business, as soon as the Contractor becomes aware of such an incident, and shall maintain auditable records of such events.
- D6.2 Where required by the Client, the Contractor shall comply, and shall procure the compliance of its Staff, with the VOA Security Policy and the Security Plan at Schedule H of this Contract and the Contractor shall ensure that its Security Plan fully complies with the Security Policy.
- D6.3 The Client shall notify the Contractor of any changes or proposed changes to the Security Policy.
- D6.4 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Goods or Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate these costs. Any such change shall then be agreed in accordance with the change procedures previously agreed between the Client and the Contractor.
- D6.5 Unless and/or until such a change is agreed by the Client pursuant to Clause D6.4 the Contractor shall continue to perform the Services in accordance with its existing obligations under the Contract.
- D6.6 The Contractor shall, as an enduring obligation for the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- D6.7 Notwithstanding Clause D6.6, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption

of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

- D6.8 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause D6.7 shall be borne by the parties as follows:
- (a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and
  - (b) by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

## **D7 Publicity, Media and Official Enquiries**

D7.1 The Contractor shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way; or
- (b) use the Client's name or brand in any promotion or marketing or announcement of orders;

Without the prior written consent of the Client, which shall not be unreasonably withheld or delayed.

- D7.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or Services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such Approval or endorsement.
- D7.3 Both Parties shall take all reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause D7.1.

## **D8 Intellectual Property Rights (Option 1 - IPR remains with Contractor)**

- D8.1 All Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials") furnished to or made available to the Contractor by the Client shall remain the Property of the Client and the Contractor shall not, and shall ensure that its Staff shall not (except when necessary for the performance of the Contract) without Prior Approval, use or disclose any Intellectual Property Rights in the IP materials.
- D8.2 The Client acknowledges that ownership in all Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "IP Materials") prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall remain with the Contractor.

- D8.3 The Contractor hereby grants to the Client a non-exclusive licence to use, reproduce, modify, develop and maintain the material prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract including but not limited to all Intellectual Property Rights in the same. Such licence shall be non-exclusive, perpetual, royalty free and irrevocable.
- D8.4 The Contractor shall not infringe any Intellectual Property Rights of any third Party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Client; or
  - (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.
- D8.5 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- D8.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor.
- D8.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:
- (a) modify any or all of the Goods or Services without reducing the performance or functionality of the same, or substitute alternative Goods or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply to such modified Goods or Services or to the substitute Goods or Services; or
  - (b) procure a licence to use and supply the Goods or Services which are the subject of the alleged infringement on terms which are acceptable to the Client, and in the event that the Contractor is unable to comply with Clauses D8.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.
- D8.8 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Goods or Services provided.

**D8 Intellectual Property Rights (Option 2 IPR belongs to VOA)**

- D8.1 All Intellectual Property Rights in any guidance, Specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the “IP Materials”):
- (a) furnished to or made available to the Contractor by or on behalf of the Client shall remain the Property of the Client; and
  - (b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client; and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- D8.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with Clause D8.1(b). This assignment shall take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- D8.3 The Contractor shall execute all documentation necessary to execute the assignment under Clause D8.2. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contractor or the performance of the Contract.
- D8.4 The Contractor shall not infringe any Intellectual Property Rights of any third Party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Client; or
  - (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.
- D8.5 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- D8.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor.
- D8.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the

Client (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Goods or Services without reducing the performance or functionality of the same, or substitute alternative Goods or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply to such modified Goods or Services or to the substitute Goods or Services; or
- (b) procure a licence to use and supply the Goods or Services which are the subject of the alleged infringement on terms which are acceptable to the Client, and in the event that the Contractor is unable to comply with Clauses D8.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

D8.8 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Goods or Services provided.

**D8 Intellectual Property Rights (option 3 – no IPR, just basic protection)**

D8.1 Not Applicable

D8.2 Not Applicable

D8.3 Not Applicable

D8.4 The Contractor shall not infringe any Intellectual Property Rights of any third Party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

- (a) items or materials based upon designs supplied by the Client; or
- (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

D8.5 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

D8.6 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor.

D8.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall

notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Goods or Services without reducing the performance or functionality of the same, or substitute alternative Goods or Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply to such modified Goods or Services or to the substitute Goods or Services; or
- (b) procure a licence to use and supply the Goods or Services which are the subject of the alleged infringement on terms which are acceptable to the Client, and in the event that the Contractor is unable to comply with Clauses D8.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

D8.8 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Contract including the Goods or Services provided.

#### **D9 Audit and the National Audit Office**

D9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods or Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

#### **D10 Client's Right to Publish the Contract**

D10.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Client to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.

D10.2 The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision at its absolute discretion.

D10.3 The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract

## **E CONTROL OF THE CONTRACT**

### **E1 Transfer, Sub-Contracting and Novation**

- E1.1 The Contractor shall not assign, novate or otherwise transfer or dispose of any of its rights or obligations under the Agreement without the prior written consent of the Client, which may be withheld at the Client's absolute discretion, and any attempt by the Contractor to assign, novate or otherwise transfer or dispose of its rights or obligations in violation hereof shall be null and void as between the Parties.
- E1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- E1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- E1.4 Notwithstanding Clause E1.1, the Contractor may assign to a third Party (the "Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under the Contract. Any assignment under this Clause E1.4 shall be subject to:
- (a) deduction of any sums in respect of which the Client exercises its right of recovery under Clause B3 (Recovery of Sums Due); and
  - (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid;
- E1.5 In the event that the Contractor assigns the right to receive the Contract Price under Clause E1.4, the Contractor shall notify the Client if future payments are to be made directly to the Assignee and shall provide the Client with the relevant Information. The provisions of Clause B2 (Payment Terms and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.
- E1.6 Subject to Clause E1.8, the Client 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 Client; or
  - (c) any private sector body which substantially performs the functions of the Client,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- E1.7 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to Clause E1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

- E1.8 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause E1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client 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 Client in Clauses G1 (Termination on insolvency and change of control) and G2 (Termination on Default) shall be available to the Contractor in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee;
  - (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 Contractor.
- E1.9 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- E1.10 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.
- E1.11 The Client hereby consents that, by giving the Contractor prior written notice, the Client may assign, novate, sub-contract or otherwise dispose of, and be released from, any or all of its rights and/or obligations under the Agreement:
- to any Contracting Authority; or
  - to any successor Client following a reorganisation within government or to any body (including any private sector body) other than a Contracting Authority which substantially performs any of the functions that previously had been performed by the Client provided that
    - (i) there will be, in the Contractor’s reasonable opinion, no change to the risks and their allocation within the Agreement; and
    - (ii) in the case of a private sector body only, if such body does not have a credit rating substantially similar to that of the Client, then the Parties shall agree a reasonable adjustment to the Service Charges to compensate the Contractor for any increase in its funding costs necessarily incurred as a result of such assignment, novation or other disposal); or
- (only with the prior written consent of the Contractor (which shall not be unreasonably withheld or delayed)) to any other person, provided that the

Client's assignee or successor in title undertakes in writing to the Contractor to be bound by the obligations of the Client under the Agreement.

- E1.12 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not affect the validity of the Agreement. In such circumstances, the Agreement shall be binding on any successor body to the Client.

## **E2 Waiver**

- E2.1 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.
- E2.2 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 A5 (Notices).
- E2.3 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.

## **E3 Variation**

- E3.1 Subject to the provisions of this Clause E3.1, the Client may request a Variation of the Specification provided that such Variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".
- E3.2 The Client may request a Variation by notifying the Contractor in writing giving the Contractor sufficient Information to assess the extent of the Variation and any additional cost that may be incurred by the Contractor. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- E3.3 In the event that the Contractor is unable to provide the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;
- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification;
  - (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause H2.

#### **E4 Severability**

- E4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **E5 Remedies Cumulative**

- E5.1 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.

#### **E6 Extension of Initial Contract Period (Option - see guidance)**

- E6.1 This Contract contains the option to extend for a further period of up to [ ] subject to the agreement of both parties. The Contract terms and conditions will apply throughout any such extended period.

#### **E7 Entire Agreement**

- E7.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or Fraudulent misrepresentation.
- E7.2 In the event of, and only to the extent of, any conflict between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses of the Contract;
  - (b) the Schedules; and
  - (c) any other document referred to in the Clauses of the Contract.

### **F LIABILITIES AND WARRANTIES**

#### **F1 Liability, Indemnity and Insurance**

- F1.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused directly or indirectly by its negligence; or
  - (b) Fraud; or
  - (c) Fraudulent misrepresentation; or

- (d) any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- F1.2 Subject to Clauses F1.3 and F1.4, the Contractor shall indemnify the Client and keep the Client indemnified against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of or in consequence of the supply, or the late or purported supply, of the Goods or Services, or the performance or non-performance by the Contractor of its obligations under the Contract, or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to the Client's Property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any negligent act or omission of the Contractor.
- F1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is solely caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.
- F1.4 Subject always to Clause F1.1, the liability of either Party for Defaults shall be subject to the following financial limits:
- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the Property of the other under or in connection with the Contract shall in no event exceed ( ) million pounds; and
  - (b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by Clauses D8.4 (Intellectual Property Rights) or F1.4(a) shall in no event exceed the greater of ( ) or ( %) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises;
  - (c) The aggregate liability of the Contractor under Clause D8.4 (Intellectual Property Rights) where applicable shall in no event exceed ( ) million pounds.
- F1.5 Subject always to Clause F1.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits, business, revenue or goodwill; and/or
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) indirect or consequential loss or damage.
- F1.6 The Contractor 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 Contractor, arising out of the Contractor's performance of its obligations under the Contract, including in respect of death or personal injury, loss of or damage to Property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor and shall be maintained for the Contract Period

- F1.7 The Contractor shall hold employer's liability insurance to a minimum of £5,000,000 in respect of Staff in accordance with any legal requirement from time to time in force.
- F1.8 The Contractor shall give the Client, 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.
- F1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- F1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause F1.2.
- F1.11 (option – see guidance)
- F1.11 The Contractor shall effect and maintain with a reputable insurance company a fidelity insurance policy or policies to cover the loss, theft or misappropriation of moneys held on behalf of the Client up to the sum of [(words/figures)] whilst in the custody or possession of the Contractor, or its Staff.

## **F2 Warranties and Representations**

- F2.1 The Contractor 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 and that the Contract is executed by a duly authorised representative of the Contractor;
  - (b) in entering the Contract it has not committed any Fraud;
  - (c) as at the Commencement Date, all Information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
  - (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
  - (e) it is not subject to any Contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the 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;
  - (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 a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

### **F3 Professional Indemnity (option – see guidance)**

- F3.1 The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this Clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [ ] for each individual claim or such higher limit as the Client may reasonably require (and as required by Law) from time to time. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 12 Months thereafter.
- F3.2 Any excess or deductibles under the insurance referred to in Clause F3.1 shall be the sole and exclusive responsibility of the Contractor or the Contractor's agents, professional consultants or sub-contractors, as applicable.
- F3.3 The terms of any insurance or the amount of insurance cover shall not relieve the Contractor of any liabilities arising under the Contract.
- F3.4 The Contractor shall, on request, provide the Client with copies of all insurance policies referred to in Clause F3.1 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.
- F3.5 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Clause then the Client may make alternative

arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

#### **F4 Tax Non-compliance (Option – see guidance)**

F4.1 The Contractor represents and warrants that as at the Commencement Date, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

F4.2 If, at any point during the Initial Contract Period, or any extension thereof, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

(a) notify the Client in writing of such fact within 5 Working Days of its occurrence; and

(b) promptly provide to the Client:

(i) details of the steps which the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require.

### **G DEFAULT, DISRUPTION AND TERMINATION**

#### **G1 Termination on insolvency and change of control**

G1.1 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (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 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in G1.1(a)-(g) occurs under the Law of any other jurisdiction.

G1.2 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor 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 Contractor’s creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’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 Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

G1.3 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or

- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
  - (i) an application for an interim order is made pursuant to Section 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, his creditors; or
  - (ii) a petition is presented for his bankruptcy; or
  - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets.

G1.4 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) an application is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given within Part II of the Insolvency Act 1986; or
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986; or
- (e) a petition is presented for its winding up (which is not dismissed within 14 days or its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986; or
- (f) a receiver, or similar officer is appointed over the whole of any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (h) a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.

G1.5 References to the Insolvency Act 1986 in Clause G1.3(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

G1.6 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of section 450 of the Corporation Tax Act 2010 ("Change of Control"). The Client 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 Client 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.

## **G2 Termination on Default**

G2.1 Either Party may terminate the Contract, or terminate a provision of any part of the Contract by written notice to the other Party with immediate effect if the other Party commits a Default and:

(a) has not remedied the Default to the satisfaction of the injured Party within 25 Working Days or such other period as may be agreed between the Parties, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the injured Party, capable of remedy; or

(c) the Default is a material breach of the Contract.

G2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such Default in accordance with Clause D1.

G2.3 If the Client fails to pay the Contractor any undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under Clause B3 (Recovery of Sums Due).

## **G3 Break**

G3.1 The Client shall have the right to terminate the Contract or to terminate a provision of any part of the Contract at any time by giving 3 Months' written notice to the Contractor. The Client may extend this period of notice at any time before it expires subject to agreement on the level of performance to be provided by the Contractor during the period of extension.

## **G4 Consequences of Expiry or Termination**

- G4.1 Where the Client terminates the Contract under Clause G2 (Termination on Default) and then makes other arrangements for the supply of Goods or Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause G2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (for Goods or Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this Clause.
- G4.2 Subject to Clause F1, where the Client terminates the Contract under Clause G3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause G3 (Break).
- G4.3 The Client shall not be liable under Clause G4.2 to pay any sum which:
- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
  - (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
  - (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.
- G4.4 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 Client or the Contractor under Clauses B2 (Payment Terms and VAT), B3 (Recovery of Sums Due), C1 (Prevention of Corruption), D2(Data Protection Act), D3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989, Section 18 and Section 19 Commissioners for Revenue and Customs Act 2005), D4 (Confidential

Information), D5 (Freedom of Information), D8 (Intellectual Property Rights), D9 (Audit and National Audit Office), E5 Remedies Cumulative), F1 (Liability, Indemnity and Insurance), G4 (Consequences of Expiry or Termination), G6 (Recovery upon Termination) and H1 (Governing Law and Jurisdiction).

## **G5 Disruption**

- G5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Client, the Client's employees or any other Contractor employed by the Client.
- G5.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action is by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- G5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- G5.4 If the Contractor's proposals referred to in Clause G5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.
- G5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **G6 Recovery upon Termination**

- G6.1 At the end of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Client upon request all Property (including all materials, documents, Information and access keys) used in the performance of its obligations under the Contract that are in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in the event the Contractor fails to do so, the Client may recover immediate possession thereof and the Contractor hereby grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any Premises of the Contractor where any such items may be held.
- G6.2 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall provide such assistance to the Client and the Replacement Contractor as the Client may reasonably require in order to ensure an effective handover of all work in progress at the material time. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance free of charge otherwise the Client shall pay the Contractor's reasonable costs of providing such assistance provided that the Contractor shall take all reasonable steps to mitigate such costs.

## **G7 Termination for Tax Non-Compliance (Option – See guidance)**

G7.1 In the event that:

(a) the warranty given by the Contractor pursuant to Clause F4.1 is materially untrue; or

(b) the Contractor commits a material breach of its obligation to notify the Client of any Occasion of Tax Non-Compliance as required by Clause F4.2; or

(c) the Contractor fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Client, are acceptable

the Client shall be entitled to terminate this Contract in accordance with Clause G2.

## **H DISPUTES AND LAW**

### **H1 Governing Law and Jurisdiction**

H1.1 Subject to the provisions of Clause H2, the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-Contractual obligations and other matters arising from or connected with the Contract are to be governed and construed according to English Law.

### **H2 Dispute Resolution**

H2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

H2.2 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.

H2.3 If the dispute cannot be resolved by the Parties pursuant to Clause H2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause H2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

H2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times during the Contract Period.

H2.5 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' notice to either Party that the Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") or other mediation provider 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 from the CEDR or other mediation provider to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

## **I SUPPLY OF SERVICES (Option – see guidance)**

### **I1 The Services**

I1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Specification and the provisions of the Contract in consideration of the payment of the Contract Price. The Client may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

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

I1.3 Option – see guidance

- I1.2 Subject to the Client providing written consent, in accordance with Clause I5 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

## **I2 Manner of Carrying Out the Services**

- I2.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- I2.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

## **I3 Remedies in the event of inadequate performance**

- I3.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with Clause G2 (Termination on Default) of the Contract.
- I3.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under Clause G2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third Party to supply such part of the Services; and/or
  - (c) terminate, in accordance with Clause G2 (Termination on Default), the whole of the Contract.
- I3.3 Without prejudice to its right under Clause B3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third Party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable

endeavours to mitigate any additional expenditure in obtaining replacement Services.

13.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.

13.5 In the event that:

(a) the Contractor fails to comply with Clause 13.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with Clause 13.4 above,

the Client may terminate the Contract with immediate effect by notice in writing.

## **I4 Key Personnel**

- I4.1 Where Key Personnel are essential to the proper provision of specific Services to the Client, those Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- I4.2 Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- I4.3 The Client shall not unreasonably withhold its agreement under Clause I4.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

## **I5 Provision and Removal of Equipment (option – see guidance)**

- I5.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- I5.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- I5.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at the Contractor's sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the Property of the Contractor.
- I5.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- I5.5 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
  - (a) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.

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

## **16 Offers of Employment**

- 16.1 For the duration of the Contract Period and for a period of 12 Months thereafter neither the Client nor the Contractor 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 Services without that other Party's prior written consent.

## **17 TUPE (Option 1 – Re-tender)**

### Definitions and Interpretation

- 17.1 In this Clause 17 (except where context otherwise requires) the following words and expressions will have the following meanings:

“Disclosure Letter” means the disclosure letter communicated between the Parties

“Fair Deal Policy” means a non-statutory government policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services

“Participation Agreement” means an agreement which describes the terms on which Transferring Employees are eligible for a Civil Service Pension scheme under the Fair Deal policy

“Service Provider” means whosoever will provide the Services after the Transfer Date

“Subsequent Transfer Date” means the date from which the Replacement Contractor will provide the Services

“Transferring Employees” means all those employees of the Outgoing Contractor wholly and/or mainly engaged in the Services immediately before the Transfer Date save for those who object to their transfer pursuant to Regulation 4(7) of TUPE.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

- 17.2 The Parties hereby acknowledge that, pursuant to TUPE, there will be a Relevant Transfer on the Transfer Date and the contracts of employment for the Transferring Employees made between the Outgoing Contractor and the Transferring employees, together with the collective agreements listed in the Disclosure Letter (save insofar as such contracts and such agreements relate to benefits pertaining to age, invalidity, or survivors under any occupational pension scheme), will take effect as if originally made between the Service

Provider and the Transferring Employees (or the relevant trades union as the case may be).

17.3 The Client shall indemnify and keep indemnified and hold the Service Provider harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Service Provider may suffer or incur as a result of or in connection with:

- (a) any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature in each case arising directly or indirectly from any act, fault or omission of the Client or Outgoing Contractor in respect of any Transferring Employee on or before the Transfer Date;
- (b) any failure by the Client or Outgoing Contractor to comply with their obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Transferee to comply with its duties under Regulation 13 of TUPE;
- (c) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union, body, or person representing any Transferring Employees arising from or connected with any failure by the Client or Outgoing Contractor to comply with any legal obligation to such trade union, body or person.

17.4 The Service Provider shall indemnify the Client (for both itself and the Outgoing Contractor) against all costs, claims, liabilities, and expenses (including reasonable legal expenses) incurred by the Client or Outgoing Contractor in connection with or as a result of:

- (a) any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault, or omission of the Service Provider or any sub-contractor in respect of any Transferring Employee on or after the Service Transfer Date;
- (b) any failure by the Service Provider or any sub-contractor to comply with its obligations under Regulation 13 of TUPE;
- (c) any claim (including any individual entitlement of a Transferring Employee under or consequent on such claim) by any trades union or other body or person representing the Transferring Employee arising from or connected with any failure by the Service Provider or any sub-contractor to comply with any legal obligation to such trade union, body or person;
- (d) any change or proposed change in the terms and conditions of employment or working conditions of the Transferring Employees on or after the Transfer Date, or to the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation or decision to treat their employment as

terminated under Regulation 4(9) TUPE on or before the Transfer Date as a result of any such changes.

- 17.5 The Client shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Transfer Date (including bonuses or commission which are payable after the Transfer Date but attributable in whole or in part to the period on or before the Transfer Date), and will indemnify/keep indemnified and hold the Service Provider (both for itself and any sub-contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses (including reasonable legal expenses) and other liabilities which the Service Provider or any sub-contractor may incur in respect of the same.
- 17.6 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Transfer Date but which are attributable in whole or in part to the period after the Transfer Date and will indemnify/keep indemnified and hold the Client (both for itself and the any Outgoing Contractor) harmless from and against all actions, suits, claims, damages, costs and expenses (including reasonable legal expenses) and other liabilities which the Client may incur as a result of the same.
- 17.7 The Service Provider shall provide the Transferring Employees with access to a Public Service pension scheme, where those employees are covered by the Fair Deal policy, and shall comply with the Participation Agreement provided by the scheme under the Fair Deal Policy. Failure to enter into or comply with the Participation Agreement shall entitle the Client to terminate the Contract in accordance with clause G2.
- 17.8 The Contract envisages that, subsequent to the commencement of the provision of the Services by the Contractor, the identity of the provider of the Services may change (whether as a result of termination or expiry of this Contract, or part, or otherwise) resulting in Services identical or substantially similar to the Services (or any part thereof) being undertaken by the Client or a Replacement Contractor in substitution. Such change in the identity of the supplier of such Services shall be a "Subsequent Transfer". The parties acknowledge that a Subsequent Transfer will be a Relevant Transfer within the meaning of TUPE and in such event, the Client, or a Replacement Contractor, would inherit liabilities in respect of the Transferring Employees.
- 17.9 Not later than 12 Months prior to the end of the Contract Period or if earlier within 28 days of notice being given of termination of the Contract (or any other reasonable time indicated by the Client), the Outgoing Contractor, shall fully and accurately disclose to the Client all Information that the Client may reasonably request in relation to the Contractor's Staff including the following:
- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;

- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in Clause 17.9 (a);
- (c) the terms and conditions of employment/engagement of the Staff referred to in Clause 17.9 (a), their job titles and qualifications;
- (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
- (e) a list of agency workers, agents and independent contractors engaged by the Contractor and any sub-contractor;
- (f) details of any employees who may be regarded as a key employee in the context of the maintenance of the Services; and
- (g) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

17.10 At intervals to be stipulated by the Client (which shall not be more frequent than every 30 days) and immediately prior to the end of the Contract Period the Outgoing Contractor shall deliver to the Client a complete update of all such Information disclosed pursuant to Clause 17.9.

17.11 At the time of providing the Information disclosed pursuant to Clauses 17.9 and 17.10, the Outgoing Contractor shall warrant the completeness and accuracy of all such Information and the Client may assign the benefit of this warranty to any Replacement Contractor.

17.12 The Client may use the Information it receives from the Outgoing Contractor pursuant to Clause 17.9 and 17.10 for the purposes of TUPE and/or any re-tendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Outgoing Contractor shall provide the Client and/or Replacement Contractor with such assistance as it shall reasonably request and shall allow the Client and/or Replacement Contractor to communicate and meet with the Staff and/or their representatives.

17.13 If the Outgoing Contractor becomes aware that any Information it has provided pursuant to Clause 17.9 and/or 17.10 has become untrue, inaccurate or misleading, it shall notify the Client immediately and provide the Client with up to date Information as soon as reasonably practicable.

17.14 The preceding Clause 17.13 applies during the Contract Period and indefinitely thereafter.

17.15 The Outgoing Contractor undertakes to the Client that during the 12 Months prior to the end of the Contract Period or, if earlier, at time after notice has been served to terminate the Contract and in respect of that part of the Services which will be ceased to be provided by the Outgoing Contractor at the Subsequent Transfer Date, the Outgoing Contractor shall not and shall procure

that any sub-contractor shall not without the prior consent of the Client (such consent not to be unreasonably withheld or delayed):

- (a) amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement) (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Outgoing Contractor and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
- (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
- (c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal:
  - (i) was planned as part of the individual's career development;
  - (ii) takes place in the normal course of business; and
  - (iii) will not have any adverse impact upon the delivery of the Services by the Contractor, (provided any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services));
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## **I7 TUPE (Option 2 - Outsourcing)**

### Definitions and Interpretation

17.1 In this Clause I7 (except where context otherwise requires) the following words and expressions will have the following meanings:

“Disclosure Letter” means the disclosure letter communicated between the Parties

“Fair Deal Policy” means a non-statutory government policy setting out how pensions issues are to be dealt with when staff are compulsorily transferred from the public sector to independent providers delivering public services

“Participation Agreement” means an agreement which describes the terms on which Transferring Employees are eligible for a Civil Service Pension scheme under the Fair Deal policy

“Service Provider” means whosoever will provide the Services after the Transfer Date

“Subsequent Transfer Date” means the date from which the Replacement Contractor will provide the Services

“Transferring Employees” means all those employees of the Client wholly and/or mainly engaged in the Services immediately before the Transfer Date save for those who object to their transfer pursuant to Regulation 4(7) of TUPE.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006

- 17.2 The Parties hereby acknowledge that, pursuant to TUPE, there will be a Relevant Transfer on the Transfer Date and the contracts of employment for the Transferring Employees made between the Client and the Transferring Employees, together with the collective agreements listed in the Disclosure Letter (save insofar as such contracts and such agreements relate to benefits pertaining to age, invalidity, or survivors under any occupational pension scheme), will take effect as if originally made between the Service Provider and the Transferring Employees (or the relevant trades union as the case may be).
- 17.3 The Client shall indemnify and keep indemnified and hold the Service Provider harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Service Provider may suffer or incur as a result of or in connection with:
- (a) any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature in each case arising directly or indirectly from any act, fault or omission of the Client in respect of any Transferring Employee on or before the Transfer Date;
  - (b) any failure by the Client (or any sub-contractor) to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Client to comply with its duties under Regulation 13 of TUPE;
  - (c) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees, or other employees of the Client, arising from or connected with any failure by the Client to comply with any legal obligation to such trade union, body or person.
- 17.4 The Service Provider shall indemnify the Client against all costs, claims, liabilities, and expenses (including reasonable legal expenses) incurred by the Client in connection with or as a result of:
- (a) any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) including, without limitation, any claim for unfair dismissal, wrongful dismissal, a redundancy payment, breach of contract, unlawful deduction from wages, discrimination on the grounds of sex, race, age, disability, sexual orientation, religion or religious belief, a protective award or a claim or demand of any other nature, in each case arising directly or indirectly from any act, fault, or omission of the Service Provider or any Sub-Contractor

in respect of any Transferring Employee on or after the Transfer Date;

- (b) any failure by the Service Provider or any sub-contractor to comply with its obligations under Regulation 13 of TUPE;
  - (c) any claim (including any individual entitlement of a Transferring Employee under or consequent on such claim) by any trade unions or other body or person representing the Transferring Employee arising from or connected with any failure by the Service Provider or any sub-contractor to comply with any legal obligation to such trade union, body or person;
  - (d) any change or proposed change in the terms and conditions of employment or working conditions of the Transferring Employees on or after the Transfer Date, or to the terms and conditions of employment or working conditions of any person who would have been a Transferring Employee but for their resignation or decision to treat their employment as terminated under Regulation 4(9) TUPE on or before the Transfer Date as the result of any changes.
- 17.5 The Client shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the Transfer Date (including bonuses or commission which are payable after the Transfer Date but attributable in whole or in part to the period on or before the Transfer Date), and will indemnify/keep indemnified and hold the Service Provider (both for itself and any sub contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses (including reasonable legal expenses) and other liabilities which the Service Provider or any subcontractor may incur in respect of the same.
- 17.6 The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including, without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Transfer Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Transfer Date but which are attributable in whole or in part to the period after the Transfer Date and will indemnify/keep indemnified and hold the Client harmless from and against all actions, suits, claims, damages, costs and expenses (including reasonable legal expenses) and other liabilities which the Client may incur as a result of the same.
- 17.7 The Service Provider shall provide the Transferring Employees with continued access to their relevant Public Service pension scheme and shall comply with the Participation Agreement provided by the scheme under the Fair Deal Policy. Failure to enter into or comply with the Participation Agreement shall entitle the Client to terminate the Contract in accordance with clause G2.
- 17.8 The Contract envisages that, subsequent to the commencement of the provision of the Services by the Service Provider, the identity of the provider of the Services may change (whether as a result of termination or expiry of this Contract, or part, or otherwise) resulting in Services identical or substantially similar to the Services (or any part thereof) being undertaken by the Client or a Replacement Contractor in substitution. Such change in the identity of the supplier of such Services shall be a "Subsequent Transfer". The parties

acknowledge that a Subsequent Transfer will be a Relevant Transfer within the meaning of TUPE and in such event, the Client, or a Replacement Contractor, would inherit liabilities in respect of the Transferring Employees.

17.9 If a Transferring Employee has taken holiday in excess of holiday entitlement which has accrued in respect of that employee at the Transfer Date, the Service Provider shall pay to the Client within 1 Month of the Transfer Date a sum equivalent to pay in lieu of such excess holiday. If any Transferring Employee has not taken all holiday which has accrued to that employee at the Transfer Date the Client will pay to the Service Provider a sum equivalent to pay in lieu of such accrued but untaken holiday.

17.10 Within 1 Month of the Transfer Date, the Service Provider shall pay to the Client a sum equal to the outstanding balance on the Transfer Date of any loan, salary, advance, or other agreed indebtedness of any Transferring Employee due to the Client immediately prior to the Transfer Date.

17.11 Not later than 12 Months prior to the end of the Contract Period or if earlier within 28 days of notice being given of termination of the Contract (or any other reasonable time indicated by the Client), the Service Provider shall fully and accurately disclose to the Client all Information that the Client may reasonably request in relation to the Service Provider's Staff including the following:

- (a) the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law;
- (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in Clause 17.11(a);
- (c) the terms and conditions of employment/engagement of the Staff referred to in Clause 17.11(a), their job titles and qualifications;
- (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened;
- (e) a list of agency workers, agents and independent contractors engaged by the Contractor and any sub-contractor;
- (f) details of any employees who may be regarded as a key employee in the context of the maintenance of the Services; and
- (g) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

17.12 At intervals to be stipulated by the Client (which shall not be more frequent than every 30 days) and immediately prior to the end of the Contract Period the Service Provider shall deliver to the Client a complete update of all such Information disclosed pursuant to Clause 17.11.

17.13 At the time of providing the Information disclosed pursuant to Clauses 17.11 and 17.12, the Service Provider shall warrant the completeness and accuracy of all

such Information and the Client may assign the benefit of this warranty to any Replacement Contractor.

- 17.14 The Client may use the Information it receives from the Service Provider pursuant to Clause 17.11 and 17.12 for the purposes of TUPE and/or any re-tendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Service Provider shall provide the Client and/or Replacement Contractor with such assistance as it shall reasonably request and shall allow the Client and/or Replacement Contractor to communicate and meet with the Staff and/or their representatives.
- 17.15 If the Service Provider becomes aware that any Information it has provided pursuant to Clause 17.11 and/or 17.12 has become untrue, inaccurate or misleading, it shall notify the Client immediately and provide the Client with up to date Information as soon as reasonably practicable.
- 17.16 The preceding Clause 17.15 applies during the Contract Period and indefinitely thereafter.
- 17.17 The Service Provider undertakes to the Client that during the 12 Months prior to the end of the Contract Period or, if earlier, at time after notice has been served to terminate the Contract and in respect of that part of the Services which will be ceased to be provided by the Service Provider at the Subsequent Transfer Date, the Service Provider shall not (and shall procure that any sub-contractor shall not) without the prior consent of the Client (such consent not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or Variation has previously been agreed between the Service Provider and the Staff in the normal course of business, and where any such amendment or Variation is not in any way related to the transfer of the Services);
  - (b) terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
  - (c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services other than where such transfer or removal:
    - (i) was planned as part of the individual's career development;
    - (ii) takes place in the normal course of business; and
    - (iii) will not have any adverse impact upon the delivery of the Services by the Service Provider, (provided that any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services);
  - (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

## **J SUPPLY OF GOODS (Optional – see guidance)**

### **J1 The Goods**

- J1.1 The Contractor shall supply and, where relevant, install the Goods in accordance with the Specification.
- J1.2 If requested by the Client, the Contractor shall provide the Client with samples of Goods for evaluation and Approval, at the Contractor's cost and expense.
- J1.3 The Contractor shall ensure that the Goods are fully compatible with any Equipment, to the extent specified in the Specification.
- J1.4 The Contractor acknowledges that the Client relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.

### **J2 Contract Performance**

- J2.1 The Contractor shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
  - (b) in accordance with Good Industry Practice; and
  - (c) in compliance with all applicable Laws.
- J2.2 The Contractor shall ensure that:
- (a) the Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Client;
  - (b) the Goods operate in accordance with the relevant technical Specifications and correspond with the requirements of the Specification and any particulars specified in the Contract;
  - (c) the Goods conform in all respects with all applicable Laws; and
  - (d) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Client.

### **J3 Delivery (Option – choice to make re J3.7 – see guidance)**

- J3.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified in the Specification.
- J3.2 Unless otherwise stated in the Specification, where the Goods are delivered by the Contractor, 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 Client, the point of delivery shall be when the Goods are loaded on the Client's vehicle.

- J3.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's suppliers or carriers at such place as the Client or duly authorised person shall reasonably direct.
- J3.4 The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Client elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the Client 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 Client may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Client.
- J3.5 The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- J3.6 Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client 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 Client, entitle the Client to terminate the whole of any unfulfilled part of the Contract without further liability to the Client.
- J3.7 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time promised or specified, in the Specification, the Client 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 Client.

#### **J4 Ownership and Risk**

- J4.1 Subject to Clause J4.2, risk in the Goods shall, without prejudice to any other rights or remedies of the Client (including the Client's rights and remedies under Clause J6 (Inspection, Rejection and Guarantee)), pass to the Client at the time of delivery.
- J4.2 Ownership in the Goods shall, without prejudice to any other rights or remedies of the Client (including the Client's rights and remedies under Clause J6 (Inspection, Rejection and Guarantee)), pass to the Client at the time of delivery (or payment, if earlier).

#### **J5 Non-Delivery**

- J5.1 On dispatch of any consignment of the Goods the Contractor shall send the Client an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Client on the due date for delivery, the Client shall, (provided that the Client has been

advised in writing of the dispatch of the Goods), within 10 Working Days of the notified date of delivery, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by the Client or terminate the Contract in accordance with Clause J3.4 (Delivery).

## **J6 Inspection, Rejection and Guarantee**

- J6.1 The Client or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Contractor's Premises and the Contractor 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 Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with Clause J6.2.
- J6.2 The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this Clause the Client may (without prejudice to other rights and remedies) either:
- (a) have such Goods promptly, and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - (b) treat the Contract as discharged by the Contractor's breach and obtain a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other Goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods. For the avoidance of doubt, the Client will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this Clause J6.2.
- J6.3 The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.
- J6.4 The Contractor hereby guarantees the Goods for the period from the date of delivery to the date 18 Months thereafter against faulty materials or workmanship. If the Client shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge.

J6.5 Any Goods rejected or returned by the Client as described in Clause J6.2 shall be returned to the Contractor at the Contractor's risk and expense.

#### **J7 Labelling and Packaging**

J7.1 The Goods shall be packed and marked in a proper manner and in accordance with the Client's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the Contract 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.

#### **J8 Training (option – see guidance)**

J8.1 Where indicated in the Specification, the Contract Price shall include the cost of instruction of the Client's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements specified in the Specification.

#### **J9 Manner of Carrying out Installation Work (option – see guidance)**

J9.1 The Contractor shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Client's written request, remove from the Premises any materials brought into the Premises by the Contractor, which in the reasonable opinion of the Client are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expense as soon as reasonably practicable.

J9.2 When the Contractor reasonably believes it has completed the Installation Works it shall notify the Client in writing. Following receipt of such notice, the Client shall inspect the Installation Works and shall, by giving written notice to the Contractor:

- (a) accept the Installation Works, or
- (b) reject the Installation Works and provide reasons to the Contractor if, in the Client's reasonable opinion, the Installation Works do not, meet the requirements set out in the Specification.

J9.3 If the Client rejects the Installation Works in accordance with Clause J9.2(b), the Contractor shall immediately rectify or remedy any defects and if, in the Client's reasonable opinion, the Installation Works do not, within 5 Working Days, meet the requirements set out in the Specification, the Client may terminate the Contract with immediate effect by notice in writing.

J9.4 The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Client in accordance with Clause A5.1. Notwithstanding acceptance of any Installation Works in accordance with that Clause, the Contractor shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of

estoppel or waiver shall arise as a result of the acceptance by the Client of the Installation Works.

J9.5 Throughout the Contract Period, the Contractor shall:

- (a) have at all times all licences, Approvals and consents necessary to enable the Contractor and Staff to carry out the Installation Works;
- (b) provide all tools and Equipment (or procure the provision of all tools and Equipment) necessary for completion of the Installation Works;
- (c) not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

J9.6 On completion of any Installation Works the Contractor shall remove its plant, Equipment and unused materials and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Staff.

#### **J10 Liquidated Damages (option – see guidance)**

J10.1 If the Contractor fails to deliver the Goods by the date(s) agreed, specified in the Specification or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the “**Agreed Delivery Date**”):

- (a) the Contractor shall pay the Client a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods are delivered to the Client, equal to [ ]% of the Contract Price for the relevant Goods, up to a maximum amount of [ ]% of the Contract Price for the relevant Goods (“**Liquidated Damages Threshold**”). Subject to Clause J10.3, during the period in which liquidated damages are payable under this Clause J10.1(a) (“**Liquidated Damages Period**”) the liquidated damages payable in accordance with this Clause J10.1(a) shall be the Client’s only remedy for any loss or damage suffered or incurred by the Client in relation to the failure by the Contractor to deliver the Goods by the Agreed Delivery Date; and
- (b) where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Client shall be entitled to:
  - (i) claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
  - (ii) without prejudice to Clause J10.1(b)(i), the Client shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Contractor.

J10.2 The Contractor shall not be obliged to pay any sums pursuant to Clause J10.1(a) if and to the extent the failure by the Contractor to deliver the Goods

by the Agreed Delivery Date directly results from the Client's Default provided that the Contractor notifies the Client immediately of such circumstances in sufficient detail to enable the Client to remedy the situation. Except as set out in this Clause J10.2, no payment or concession to the Contractor by the Client or other act or omission of the Client shall in any way affect its rights to liquidated damages pursuant to Clause J10.1 or be deemed to be a waiver of the right of the Client to recover any damages unless such waiver has been expressly made in writing by the Client.

J10.3 Notwithstanding Clause J10.1(a), the Contractor does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Client, whether or not such performance or re-performance gives rise to additional costs for the Contractor and the cost of re-performance shall be borne solely by the Contractor and shall not be re-charged to the Client whether by way of costs, reimbursement or otherwise.

J10.4 Having given careful consideration to this matter, all monies payable by the Contractor under Clause J10.1(a) are considered by the Parties to be a genuine pre-estimate of the losses which the Client will incur in relation to the Contractor's failure to deliver the Goods by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Client in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Client might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Contractor waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause J10. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in Law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

J10.5 Each Party confirms that (a) it has taken specific legal advice on the effect of this Clause and (b) based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.

## Schedules

## **Schedule A      Specification of Requirements**

(Notes: Include definitions of additional technical terms where appropriate at the beginning of this section. Add Specification of requirements / statement of work here)

## **Schedule B      Pricing Schedules**

(Add Pricing Schedules here)

## **Schedule C      Specific Responsibilities of the Parties**

(Insert details of any particular responsibilities, e.g. particularly where VOA needs to provide something to enable the Contractor to meet the requirement – from prompt payment to providing access to Premises)

## Schedule D Contract Management and Management Information

### 1. General Contract Management

#### 1.1 Reviews

1.1.1 (Insert details of the frequency and nature of review meetings)

#### 1.2 Variation

1.2.1 This Contract can be varied at any time by mutual agreement of the parties subject to a notice period of (insert details e.g. 30 days), such agreement to be in writing and signed by the representatives of both parties using Standard Document SD 23.

#### 1.3 Extension

(ensure details are in line with T&C ref extensions)

Prompt: Is there an option to extend? YES insert:

1.3.1 This Contract contains the option to extend for a further (insert period) subject to the agreement of both parties. The Contract terms and conditions will apply throughout any such extended period.

NO insert:

1.3.2 There is no provision for extension of the Contract Period beyond the date of expiry

#### 1.4 Contact details

VOA Contract Manager	Contractor's Contract Manager
Name:	Name:
Address:	Address:
Telephone:	Telephone:
e-Mail	e-Mail

### 2.0 Specific Contract Management Requirements

2.1 The Contractor shall comply with the monitoring and management Information arrangements set out in this Schedule in addition to providing such data and information as the Contractor may be required to produce under the Contract, as described in the Requirement at Schedule A.

2.2 Where requested by the client, the contractor shall supply the Management information to the client in the form set out in this schedule during the Contract period. (insert any specific requirements for this Contract such as frequency and nature of Management Information)



## **Schedule E      Service levels and KPIs**

(Insert details of the service levels and KPIs you have agreed with the Contractor e.g. lead times, delivery times, quality issues etc. Much of this can be extrapolated from the Tender response)

## **Schedule F      Exit Management**

(Add details here)

## **Schedule G      Certificates and additional Information**

(Insert copies of any certificates requested from the Contractor as part of the requirement e.g. ISO accreditation etc. if relevant, and any other Information not included elsewhere that will for part of the Contract)

## **Schedule H      Security Plan**

(Insert security plan where applicable)

## SCHEDULE I - Processing, Personal Data and Data Subjects

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

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.]</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>