



Home Office

CONTRACT FOR THE SUPPLY OF GOODS

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CONTRACT FOR THE PROVISION OF GOODS

This Contract is made this **[day]** of **[month]** two thousand and **[year]** between:

- (1) **the Secretary of State for the Home Department** of 2, Marsham Street, London SW1P 4DF (“the Authority”) and
- (2) **[insert company name]**, (company number **[insert company number]**) whose registered office is at **[insert address of Contractor’s registered office]** (“the Contractor”).

WHEREAS:

The Authority requires the provision of **[insert description of goods and any other relevant details]** as specified in **Schedule One (the “Specification”)**, and the Contractor is able and willing to provide these Goods on the terms and conditions set out below.

THE FOLLOWING IS NOW AGREED:

A. GENERAL PROVISIONS

A1 Definitions

A1.1 In this Contract the following definitions apply:

“Approval” and “Approved” means the written consent of the Contract Manager.

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

“Authority’s Representative” means the individual nominated by the Authority as the primary contact point for all matters relating to this Contract.

“Commencement Date” means [the date of this Contract] [] 20[].

“Commercially Sensitive Information” means the subset of Confidential Information listed in Schedule 3 to this Contract consisting of information:

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

“Condition” means a condition within the Contract.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or information that a reasonably person who received it would consider to be information that the disclosing Party disclosing would want them to keep confidential. Confidential Information includes information on the trade secrets,

Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information.

“Contract” means the agreement between the Authority and the Contractor consisting of these Conditions and any attached Schedules, the Invitation to Tender, [the Contractor’s Tender] [and any other documents (or parts thereof) specified by the Authority].

“Contract Manager” means the person for the time being appointed by the Authority as being authorised to administer the Contract on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf.

“Contract Period” means the period of duration of the Contract in accordance with Condition A3.

“Contract Price” means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its part of the Contract as determined under the Conditions of the Contract but before taking into account the effect of any adjustment of price in accordance with Condition C4.

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

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

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Contract.

"Data Controller" shall have the same meaning as set out in the Data Protection Act 1998.

"Data Processor" shall have the same meaning as set out in the Data Protection Act 1998.

"Data Subject" shall have the same meaning as set out in the Data Protection Act 1998

"Default" means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors 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.

"Environmental Information Regulations" means the Environmental Information Regulations 2004.

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

"General Change in Law" means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of goods of the same or a similar nature to the supply of the Goods.

"Goods" means any such goods as are to be supplied by the Contractor (or by the Contractor's Sub-Contractor) under the Contract as specified in the Specification.

"Information" has the meaning given under section 84 of the Freedom of Information Act 2000.

“Invitation to Tender” means an invitation for contractors to bid for the Goods required by the Authority.

“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.

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

“Month” means calendar month.

“Party” means a party to this Contract and “Parties” shall be construed accordingly.

“Personal Data” shall have the meaning given in the Data Protection Act 1998.

“Premises” means the location where the Goods are to be delivered.

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

“Process” has the meaning given to it under the Data Protection Act 1998 but, for the purposes of this Contract, it shall include both manual and automatic processing.

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees 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 this Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party provider appointed by the Authority from time to time, to provide any goods which are substantially similar to any of the Goods, and which the Authority receives in substitution for any of the Goods following the termination or partial termination of this Contract, whether those goods are provided by the Authority internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations.

“Schedule” means a schedule attached to this Contract.

“Security Policy” means the Security Policy Framework, as the same is published by the Cabinet Office from time to time.

“Specification” means the description of the Goods to be provided under the Contract and attached as the Specification Schedule.

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

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of goods of the same or a similar nature to the supply of the Goods.

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

“Tender” means the Contractor’s response to the Invitation to Tender.

“Tax” means Value Added Tax.

A2 Interpretation

A2.1 The headings in these Conditions and the Index of Conditions are for ease of reference only and shall not effect the interpretation or construction of the Conditions.

A2.2 Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders.

A2.3 References to an Act of Parliament shall be deemed to include any subordinate legislation of any sort made from time to time under that Act.

A2.4 References to any statute, enactment, order, regulation, code or similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code or instrument as subsequently amended or re-enacted.

A3 Contract Period

A3.1 The Contract shall take effect on the Commencement Date and shall expire automatically on [the date specified in the Specification] [..... 20-], unless it is extended or terminated in accordance with these Conditions.

A3.2 The Parties may agree to extend the period of this Contract by up to [n] years provided that the total duration does not exceed [n] years.

A4 Entire Agreement

A4.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that nothing in this Contract shall be taken as excluding or limiting the liability of either Party for fraud or fraudulent misrepresentation.

A5 Contractor's Status

A5.1 Nothing in the Contract shall be construed as creating a partnership, a contract of employment nor a relationship of principal and agent between the Authority and the Contractor.

A6 Inspection of Premises

A6.1 The Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Contract to be carried out and be satisfied in relation to all matters connected with the performance of the Contract including delivery requirements.

A7 Mistakes in Information

A7.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the provision of the Goods and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A8 Conflicts of Interest

A8.1 The Contractor shall take appropriate steps to ensure that neither it nor any employee, servant, agent, supplier or sub-contractor 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 or such persons and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which has arisen or which appears reasonably likely to arise.

A8.2 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

A9 Fraud

A9.1 The Contractor shall safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Contractor's directors and suppliers. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

B. THE GOODS

B1 The Specification

B1.1 The quantity, quality and description of the Goods shall be as specified by the Authority in the Specification.

B2 The Goods

B2.1 If required by the Authority, samples of Goods shall be submitted by the Contractor to the Authority for evaluation and approval at the Contractor's cost and expense and all subsequent deliveries of the Goods shall be equal to or better than approved samples in terms of quality and shall not differ from the sample in any material respect.

B2.2 The Goods shall be fully compatible with the Authority's equipment.

B2.3 The Contractor acknowledges that the Authority is relying on its skill and judgment in the supply of the Goods and the execution of the Contract.

B3 Delivery

B3.1 The Goods shall be delivered at the times and dates specified in the Specification or otherwise agreed by the Authority in writing.

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

- B3.3 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 Authority or duly authorised person shall reasonably direct.
- B3.4 Where any access to the Authority's Premises is necessary in connection with delivery or installation, the Contractor and the Contractor's sub-contractors or suppliers shall at all times comply with the reasonable requirements of the Authority's security procedures.
- B3.5 Time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Authority (at the Authority's option) to release itself from any obligation to accept and pay for the Goods and/or cancel all or part of the Contract, in either case without prejudice to other rights and remedies.
- B3.6 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall be entitled to give notice in writing to the Contractor to remove them within 7 days of receipt by the Contractor of such notice and to refund to the Authority any expenses incurred by the Authority as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the Authority shall be entitled to dispose of such Goods and to charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor until they are collected by or on behalf of the Contractor or disposed of or purchased by the Authority, as appropriate.
- B3.7 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- B3.8 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority 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 Authority, entitle the Authority to terminate the

whole of any unfulfilled part of the Contract without further liability to the Authority.

B3.9 If the Authority is affected by circumstances of Force Majeure, the Authority shall be entitled to suspend partially or totally the date or dates for delivery of the Goods until such time as the circumstances of Force Majeure have ceased and such suspension shall not give rise to any claim by the Contractor against the Authority nor entitle the Contractor to terminate the Contract.

B4 Property and Risk

B4.1 Property and risk in the Goods shall without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under **Condition B6** hereof) pass to the Authority at the time of acceptance of delivery.

B5 Damage in Transit

B5.1 On dispatch of any consignment of the Goods the Contractor shall send to the Authority at the address for delivery of the Goods 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 are either damaged in transit or having been placed in transit fail to be delivered to the Authority, the Authority shall elect:

- (a) to reject the consignment; or
- (b) require the Contractor free of charge to the Authority, to repair or replace the damaged Goods, and deliver the repaired or replaced Goods in accordance with the timescales specified in the Contract provided that:
 - (i) in the case of damage to such Goods in transit the Authority shall within thirty days of delivery give notice to the Contractor that the Goods have been damaged;

- (ii) in the case of non-delivery the Authority shall (provided that the Authority has been advised in writing of the dispatch of the Goods) within ten days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

B6 Inspection, Rejection and Guarantee

B6.1 The Contractor shall permit the Authority or authorised representatives to make any inspections or tests which may reasonably be required and the Contractor shall afford all reasonable facilities and assistance free of charge at the Contractor's premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, in particular, the Authority retains the right to reject the Goods.

B6.2 The Authority 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 Authority of the Goods concerned. If the Authority shall reject any of the Goods pursuant to this Condition the Authority shall be entitled (without prejudice to other rights and remedies) either:

- (a) to have the Goods concerned as quickly as possible and in any event within 7 days either repaired by the Contractor or (as the Authority shall elect) 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) to treat the Contract as discharged by the Contractor's breach and require a refund from the Contractor in respect of the Goods concerned together with payment of any additional expenditure over and above the price reasonably incurred by the Authority in obtaining other goods in replacement.

B6.3 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods regardless of the wording on the receipt note.

B6.4 Unless agreed otherwise, the Contractor shall guarantee the Goods for the shorter of 12 months from putting into service or 18 months from delivery. If the Authority shall within such guarantee period or within 30 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 Authority may have) as quickly as possible remedy such defects (whether by repair or replacement as the Authority shall elect) without cost to the Authority.

B6.5 Any Goods rejected or returned by the Authority as described in **Condition B6.2** shall be returned to the Contractor at the Contractor's risk and expense.

B7 Labelling and Packaging

B7.1 The Goods shall be packed and marked in a clear and proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular, the packaging of the Goods shall be marked with the contract number (or other reference number if appropriate), the weight, a description of the contents, and any handling requirements. All containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

B7.2 All packaging materials will be considered non-returnable and will be destroyed unless the Contractor's advice note states that such materials will be charged for unless returned. Such materials shall be collected by the Contractor free of charge or delivered to the Contractor at the Contractor's cost. The Authority accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the Authority unless the Contractor notifies the Authority of their non-arrival within ten days of receiving notice from the Authority that the packages have been dispatched.

B8 Training

B8.1 Where appropriate, the Contract Price shall include the cost of instruction of the Authority's personnel in the use of the Goods, such instruction to be in accordance with the Specification.

B9 Manner of Carrying out the Installation Work

B9.1 The Contractor shall make no delivery of materials, plant or other things nor commence any work on the Authority's Premises without obtaining prior Approval.

B9.2 Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and Contractor's suppliers as are necessary to enable the performance of the Contract concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Authority may reasonably require.

B9.3 The Authority shall have the right at any time during the progress of the Contract to order in writing:

- (a) the removal from the Authority's Premises of any materials which in the opinion of the Authority are either hazardous, noxious or not in accordance with the Contract; and/or
- (b) the substitution of proper and suitable materials; and/or
- (c) the removal and proper re-execution (notwithstanding any previous testing and/or interim payment) of any work or Goods which, in respect of material or workmanship, is not in the opinion of the Authority in accordance with the Contract.

B9.4 The Contractor shall (and shall ensure that its employees, agents and sub-contractors shall) cooperate with any security and safety requirements of the Authority that apply to the installation works.

B9.5 On completion of the Contract the Contractor shall remove the Contractor's plant, equipment and unused materials and shall clear away from the Authority's Premises all rubbish arising out of the Contract and leave the Authority's Premises in a neat and tidy condition.

B10 Purchasing on behalf of the Authority

B10.1 In the event that the Contractor procures Goods or Services including equipment from third parties on behalf of the Authority then it shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2006 as though the Contractor were a Contracting Authority within the meaning of the said Regulations.

B11 Non-Exclusivity

B11.1 For the avoidance of doubt, this Contract shall not be exclusive. The Authority shall be entitled to appoint another supplier or suppliers of Goods during the Contract Period.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 In consideration of the performance of the Contractor's obligations under the Contract by the Contractor, the Authority shall pay the Contract Price.

C1.2 In the event that the cost to the Contractor of performing its obligations under the Contract increases or decreases as a result of a change of Law within the scope of **Condition C6**, the provisions of **Condition C6** shall apply.

C1.3 The Authority shall pay the Contractor, in addition to the Contract Price, a sum equal to the Tax chargeable on the value of the Goods provided in accordance with the Contract.

C2 Payment and Tax

- C2.1 The Authority shall pay the undisputed sums due to the Contractor within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed and/or Goods delivered to the satisfaction of the Authority.
- C2.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Goods and shall be supported by any other documentation required by the Contract Manager to substantiate the invoice.
- C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Contract, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.
- C2.4 Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- C2.5 The Authority may reduce payment in respect of any Goods which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- C2.6 The Contractor shall not suspend the supply of the Goods or related services unless the Contractor is entitled to terminate the Contract under [Condition H2.3](#) for failure to pay undisputed charges.

C3 Recovery of Sums Due

C3.1 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 Authority in respect of any breach of this Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.

C3.2 Any overpayment by the Authority to the Contractor, whether of the Contract Price or of Tax, shall be a sum of money recoverable by the Authority from the Contractor.

C3.3 The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C4 Price adjustment on extension of the Contract Period

C4.1 The Contract Price shall be firm for the initial Contract Period. In the event of an extension being considered beyond the Contract Period the Authority may review the charges with the Contractor in the six months prior to the expiry of the Contract.

C4.2 During this six month period, the Contractor may, following agreement with the Authority and by giving the Authority 3 Months' notice in writing to take effect at the end of the Contract Period increase or reduce the Contract Price subject to **Condition C4.3** below.

C4.3 Any claim for an increase in the Contract Price will only be considered if the increase does not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in a Schedule to this Contract) between the Commencement Date and the date of any notice given under **Condition C4.2**.

C5 Euro

C5.1 Any legislative requirement to account for the goods in euros (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at no cost to the Authority.

C6 Change of Law

C6.1 The Contractor shall neither be relieved of its obligations to supply the Goods in accordance with the terms of this Contract nor be entitled to an increase in the Contract Price as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is known at the Commencement Date.

C6.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in **Condition C6.1**), the Contractor shall notify the Authority of the likely effects of that change, including:

- (a) whether any Change is required to the Goods, the Contract Price or this Contract; and
- (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

C6.3 As soon as practicable after any notification in accordance with **Condition C6.1** the Parties shall discuss and agree the matters referred to in that Condition and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;

- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Goods; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

C6.4 Any increase in the Contract Price or relief from the Contractor's obligations agreed by the parties pursuant to this **Condition C6** shall be implemented in accordance with **Condition F3**.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption and Anti-Bribery

D1.1 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

D1.3 The Contractor shall:

- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (the "**Relevant Requirements**");

- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
- (c) have and shall maintain in place throughout the Contract Period its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and **Condition D1.3(b)**, and shall enforce them where appropriate;
- (d) promptly report to the Authority any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract;
- (e) [immediately notify the Authority [in writing] if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor, and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the Commencement Date;]
- (f) within [INSERT] months of the Commencement Date, and annually thereafter, certify to the Authority in writing signed by an officer of the Contractor, compliance with this **Condition D1** by the Contractor and all persons associated with it under **Condition D1.4**. The Contractor shall provide such supporting evidence of compliance as the Authority may reasonably request.

D1.4 The Contractor shall ensure that any person associated with the Contractor who is [performing services or] providing goods in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this **Condition D1** (the “**Relevant Terms**”). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Relevant Terms.

D1.5 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by **Conditions D1 or D2** or commits any offence under the Bribery Act 2010, the Authority may:

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

D1.6 For the purpose of this **Condition D1**, the meaning of adequate procedures [and foreign public official] and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purpose of this **Condition D1**, a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment.

D2.2 The Contractor shall take all reasonable steps to secure the observance of **Condition D2.1** by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

D3 The Contracts (Rights of Third Parties) Act 1999

D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this **Condition D3**. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

D4 Corporate Social Responsibility

D4.1 The Contractor shall conduct an annual self-assessment of its corporate social responsibility policy to include equality & diversity and environmental and socio-economic practices. The Contractor shall report such findings to the Authority's Representative in such format as the Authority's Representative may request.

D4.2 The Authority may make available a particular self-assessment tool to assist its suppliers (including the Contractor) in conducting the self-assessment referred to in Clause D4.1 above and if the Authority does so, the Contractor shall use that self-assessment tool.

D4.3 The Contractor shall comply with current Government Buying Standards for the provision of commodity goods and services. These are available at: <http://sd.defra.gov.uk/advice/public/buying/>

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 The Contractor shall (and shall procure that any of its Staff involved in the provision of this Contract) be notified under the Data Protection Act 1998 ("DPA") and both Parties will duly observe all their obligations under the Act which arise in connection with the Contract.

E1.2 Notwithstanding the general obligation in Condition E1.1, where the Contractor is processing personal data (as defined by the DPA) as a data

processor for the Authority (as defined by the DPA) the provisions set out at Conditions E1.3 – E1.13 shall apply.

- E1.3 The Contractor shall not disclose or allow access to any Personal Data provided by the Authority, or acquired by the Contractor during the course of tendering or executing its obligations under the Contract, other than to a person employed or engaged by the Contractor or a Sub-Contractor or to data subjects to the extent that they are entitled to receive such Personal Data in accordance with the DPA, without the prior written permission of the Authority.
- E1.4 Any disclosure or access to Personal Data allowed under this Condition E1 shall be made in confidence and shall extend only so far as necessary for the purposes of the Contract except as otherwise required by the requirements of the DPA.
- E1.5 The Contractor shall obtain the prior written agreement of the Authority to store or process Personal Data at sites outside the United Kingdom.
- E1.6 The Contractor agrees that it, its servants and agents and Sub-Contractors or any other person in the control of the Contractor shall store or process Personal Data in accordance with the DPA and any statutory re-enactment or modification thereof.
- E1.7 The Contractor shall fully indemnify the Authority against the costs of dealing with any successful civil claims made in respect of information subject to the DPA, or any statutory re-enactment or modification thereof, which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, its servants, agents or Sub-Contractors.
- E1.8 All Personal Data, which is the subject of this Condition E1, shall be retained at all times in the possession and under the control of the Contractor. All rights in any compilation or database of such Personal Data shall vest in and be the property of the Authority. The Contractor

shall ensure that the Authority at all times has full rights of access to all such Personal Data and may take copies thereof.

E1.9 With respect to the parties' rights and obligations under this Contract, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor.

E1.10 The Contractor shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Contractor during the Term);
- (b) Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by relevant Legislation or any Regulatory Body;
- (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (d) take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- (e) obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;
- (f) ensure that all Contractor Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Condition E1;
- (g) ensure that none of the Contractor's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- (h) notify the Authority (within [five] Working Days) if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the Data Protection Legislation;
- (i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Authority with full details of the complaint or request;
 - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
 - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - (iv) providing the Authority with any information requested by the Authority;
- (j) permit the Authority or the Authority's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- (k) provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and
- (l) not Process Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with:

- (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- (ii) any reasonable instructions notified to it by the Authority

E11 The Contractor shall comply at all times with the DPA and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E2 Official Secrets Acts 1911 to 1989

E2.1 The Contractor undertakes to abide by, and ensure that its Staff abide by, the provisions of the Official Secrets Acts 1911 to 1989.

E2.2 In the event that the Contractor and its Staff fail to comply with this Condition, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E2.3 The provisions of **Condition E2.1** shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

E3 Confidentiality

E3.1 Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract or except where disclosure is otherwise expressly permitted by the provisions of this Contract.

- E3.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Contract:-
- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
 - (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants otherwise than for the purposes of the Contract.
- E3.3 [Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.] [The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract.]
- E3.4 The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Contract.
- E3.5 The provisions of Conditions E3.1 to E3.4 shall not apply to any Confidential Information received by one Party from the other:-
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
 - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to **Condition E4**.

E3.6 Nothing in this Condition shall prevent the Authority:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Authority's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:-
 - i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or
 - ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E3.7 Nothing in this Condition 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 does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

E3.8 In the event that the Contractor fails to comply with this **Condition E3**, the Authority reserves the right to terminate the Contract by notice in writing with immediate effect.

E3.9 The provisions under this **Condition E3** are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

E4 Freedom of Information

E4.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

E4.2 The Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within **[two]** Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within

[five] Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA [or regulation 5 of the Environmental Information Regulations].

E4.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;

- (b) is to be disclosed in response to a Request for Information, and

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

E4.4 The Contractor acknowledges that the Authority may be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-

- (a) without consulting with the Contractor, or

- (b) following consultation with the Contractor and having taken its views into account.

E4.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E4.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the

Authority may nevertheless be obliged to disclose Confidential Information in accordance with [Condition E4.4](#).

E5 Publicity, Media and Official Enquiries

E5.1 Without prejudice to the Authority's obligations under the FOIA, neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E5.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of [Condition E5.1](#) by all their servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of [Condition E5.1](#) by its sub-contractors.

E5.3 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E6 Security

E6.1 The Authority 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 Authority while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

E6.2 The Contractor shall comply, and shall procure the compliance of its Staff, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

E6.3 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.

E6.4 The Contractor shall conduct an annual self-assessment of its compliance with the Security Policy, reporting such findings to the Authority's Representative in the manner requested by the Authority's Representative.

E6.5 The Authority may make available a particular self-assessment tool to assist its suppliers (including the Contractor) in conducting the self-assessment referred to in Condition E6.4. and if the Authority does so, the Contractor shall use that self assessment tool.

E7 Contractor's Staff

E7.1 The Authority reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Crown:

(a) any member of the Staff; or

(b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the opinion of the Authority, inappropriate.

E7.2 If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Crown, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably require.

E7.3 The Contractor's Staff, engaged within the boundaries of a Government establishment, 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 that establishment and when outside that establishment.

E7.4 If the Contractor shall fail to comply with **Condition E7.2** above the Authority (whose decision shall be final and conclusive) may decide that such failure is prejudicial to the interests of the State. Further, if the Contractor does not comply with the provisions of **Condition E7.2** within a reasonable time of written notice from the Authority so to do then the Authority may terminate the Contract provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

E7.5 The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Crown and as to whether the Contractor has failed to comply with **Condition E7.2** shall be final and conclusive.

E8 Intellectual Property Rights

E8.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Authority,

and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

- E8.2 The Contractor shall obtain Approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.
- E8.3 It is a condition of the Contract that the materials supplied or licensed by the Contractor will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and shall keep indemnified the Authority and the Crown against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this Condition, except where any such claim refers to:
- (a) designs furnished by the Authority;
 - (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- E8.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- E8.5 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Right in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Authority;
and
- (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

E8.6 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and client basis) incurred in doing so.

E8.6 The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of the Contract.

E8.7 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 may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

- (a) modify any or all of the Goods without reducing the performance or functionality of the same, or substitute alternative Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutates mutandis to such modified Goods or to the substitute Goods; or

- (b) procure a licence to use and provide the Goods, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

E8.8 At the termination of the Contract the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

E8.9 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E9 Audit and the National Audit Office

E9.1 The Contractor shall keep and maintain until [six years] after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Goods provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Contract.

F. CONTROL OF THE CONTRACT

F1 Assignment and Sub-Contracting

F1.1 The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract.

F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Authority within [2] working days of issue.

F1.4 The Contractor shall not use the services of self-employed individuals without prior Approval.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise 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 this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of **Condition F8**.

F2.3 A waiver of any right or remedy arising from a breach of Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Variation

F3.1 The Contractor shall not alter any of the Goods except as directed by the Authority, but the Authority shall have the right from time to time during the execution of the Contract, by written notice to the Contractor to change the Specification and add to or omit, or otherwise vary, the Goods including the order in which the Goods are to be delivered. Such a change is hereinafter called "a Variation". The Contractor shall carry out such Variations and be bound by the same Conditions so far as is applicable, as though the said Variations were stated in the Contract.

F3.2 In the event that the Contractor is unable within the timescale reasonably directed by the Authority to carry out the Variation in accordance with **Condition F3.1**. above, the Authority may terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination.

F3.3 In the event of any Variation of the Specification in accordance with Condition F3.1 which would occasion an amendment to the Contract Price, such amendment to the Contract Price shall be calculated by the Authority and agreed in writing with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation with the provisions of **Condition I2**.

F3.4 If, in the opinion of the Contractor, any such Variation in accordance with **Condition F3.1** is likely to prevent the Contractor from fulfilling any of their obligations under the Contract, the Contractor shall notify the Authority immediately, whereupon the Authority shall inform the Contractor within 14 days whether or not the said Variations shall be carried out. Until the Authority confirms such instructions in writing they shall be deemed not to have been given.

F4 Severability

F4.1 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.

F4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

F5 Liquidated Damages

F5.1 Without prejudice to any other remedies available to the Authority whether under the Contract or otherwise:

- (a) if delivery of the Goods shall not have been achieved by the date(s) agreed, specified in the Specification or, where an extension of time has been agreed, the revised date for delivery, the Contractor shall pay to the Authority as liquidated damages for

each day of delay, after the date for delivery or the revised date for delivery, as applicable, a sum of []% of the total Contract Price stated in the Contract, up to a maximum amount of []% of the total Contract Price. Such payment shall be in full and final settlement of the Contractor's liability for any loss or damage incurred by the Authority up to the end of the period in which liquidated damages are payable under this Condition in respect of such delay.

- (b) if delivery of the Goods shall not have been achieved by the end of the period in which liquidated damages are payable under **Condition F5.1(a)**, the Authority shall be entitled to claim any remedy available to it for loss or damage incurred by it after the end of that period.

F5.2 No payment or concession to the Contractor by the Authority or other act or omission of the Authority shall in any way affect its rights to the said liquidated damages or be deemed to be a waiver of the right of the Authority to recover any damages unless such waiver has been expressly made in writing by the Authority.

F6 Remedies Cumulative

F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this 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.

F7 Novation

F7.1 Subject to **Condition F7.3**, the Authority shall be entitled to:

- (a) assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to any Contracting Authority provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Contract; or

- (b) novate this Contract to any other body established by the Crown or under statute in order substantially to perform any of the functions that previously had been performed by the Authority provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract; or
- (c) novate this Contract to any private sector body which substantially performs the function of the Authority provided that any such novation shall not increase the burden of the Contractor's obligations pursuant to this Contract.

F7.2 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to [Condition F7.3](#), affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Authority.

F7.3 If the Contract is novated pursuant to [Condition F7.1\(b\)](#) to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this Condition both such bodies being referred to as "the Transferee"):

- (a) the rights of termination of the Authority in [Condition H1](#) and [H2](#) shall be available to the Contractor in the event of the bankruptcy, 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 this Contract or any part thereof with the prior consent in writing of the Contractor;
- (c) the following Conditions shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the Contract had been amended by the Parties:
 - i) in [Condition E8.3](#) delete the words "and the Crown" and "or the Crown";

- ii) **Conditions E9** and **B10** cease to be applicable in the event that the contract is novated to a private sector body;

F7.4 The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contract by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

F8 Notices

F8.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

F8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in **Condition F8.3**. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given [2] working days after the day on which the letter was posted, or four hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

F8.3 For the purposes of **Condition F8.2**, the address of each Party shall be:

- (a) For the Authority:
 - []
 - [Address:]
 - []
- For the attention of:

Tel:

Fax:

Email:

(b) For the Contractor:

[]

[Address:]

[]

For the attention of:

Tel:

Fax:

Email:

F8.4 Either Party may change its address for service by serving a notice in accordance with this Condition.

G LIABILITIES

G1 Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979.

G1.2 The Contractor shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This Condition shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its staff or sub-contractors, or by any circumstances within its or their control.

G1.3 Subject always to *Condition G1.1*, the liability of either Party for Defaults shall be subject to the financial limits set out in this *Condition G1.3*.

(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 this Contract shall in no event exceed *[words]* million pounds *[figures]*.

(b) The annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by *Condition E8.3* or *Condition G1.3(a)*) shall in no event exceed the greater of *[words (figures)]* or *[words]* per cent (*[figures]*%) of the amount paid and payable by the Authority for the Goods (as determined at the date on which the liability arises).

G1.4 Subject always to *Condition G1.1*, in no event shall either Party be liable to the other for:

(a) loss of profits, business, revenue, goodwill or anticipated savings; and/or

(b) indirect or consequential loss or damage.

G1.5 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 the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor.

G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

G1.7 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this Condition or a broker's

verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by this Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.9 The terms 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 [Condition G1.2](#).

G2 Warranties and Representations

G2.1 The Contractor warrants and represents that:-

- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
- (c) the Goods shall be to the reasonable satisfaction of the Authority;
- (d) the Goods shall conform in all respects with any sample approved by the Authority in the absence of a sample, all Goods supplied shall be within the normal limits of industrial quality;

- (e) the Goods shall operate in accordance with the relevant technical specifications and shall correspond with the requirements of the Specification and with any particulars specified in this Contract;
- (f) the Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bye-laws from time to time in force;
- (g) the Goods shall be free from defects in design, materials and workmanship and be fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority;
- (h) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (i) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on change of control and insolvency

H1.1 The Authority may terminate the Contract by notice in writing with immediate effect where:-

- (a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which impacts adversely and materially on the performance of the Contract; or

- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
- (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- (d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

H1.2 The Authority may only exercise its right under **Condition H1.1(a)** within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

H1.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate this Contract

by notice to the Contractor or the Contractor's Representative with immediate effect.

H2 Termination on Default

H2.1 The Authority may terminate the Contract, or terminate the provision of any part of the Contract by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 30 days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not capable of remedy; or
- (c) the Default is a fundamental breach of the Contract.

H2.2 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 provide a full credit in respect of any charge levied for its transmission.

H2.3 The Contractor may terminate this Contract if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 90 days notice specifying the breach and requiring its remedy. The Contractor's right of termination under this **Condition H2.3** shall not apply to non payment of the charges where such non payment is due to the Authority exercising its rights under **Condition C3.1**.

H3 Break

The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving three

Months' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires.

H4 Consequences of Termination

H4.1 Where the Authority terminates the Contract under **Condition H2**, or terminates the provision of any part of the Contract under that Condition, and then makes other arrangements for the provision of Goods the Authority shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the Contract is terminated under **Condition H2**, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

H4.2 Where the Authority terminates the Contract under **Condition H3**, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by 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 Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under **H3**.

H4.3 The Authority shall not be liable under **Condition H4.2** 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; or
- (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 initial Contract Period.

H5 Disruption

H5.1 The Contractor shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H5.3 In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Authority's Approval to its proposals to perform its obligations under the Contract.

H5.4 If the Contractor's proposals referred to in **Condition H5.3** are considered insufficient or unacceptable by the Authority, then the Contract may be terminated by the Authority by notice in writing with immediate effect.

H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense incurred by the Contractor in fulfilling the provisions of the Contract as a result of such disruption.

H6 Recovery upon Termination

H6.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such 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.

H6.2 At the end of the Contract Period (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority's Property (including but not limited to materials, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this Condition the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 At the end of the Contract Period (howsoever arising) and/ or after the Contract Period the Contractor shall co-operate free of charge with the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

H6.4 The provisions of this Condition shall survive the continuance of this Contract and indefinitely after its termination.

H7 Force Majeure

H7.1 For the purpose of this Condition, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

H7.2 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the

Contract for a period in excess of 6 months, either Party may terminate the Contract by notice in writing with immediate effect.

H7.3 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

H7.4 **Condition H7** does not affect the Authority's rights under **Condition H6.4**.

H7.5 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in **Condition H7.3** it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

H7.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

I DISPUTES AND LAW

I1 Governing Law

I1.1 This Contract shall be governed by English law and subject to the exclusive jurisdiction of the courts of England and Wales.

I2 Dispute Resolution

I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within **[30]** days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the **[finance director]** (or equivalent) of each Party.

- 12.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.
- 12.3 If the dispute cannot be resolved by the Parties pursuant to [Condition 12.1](#) the dispute shall be referred to mediation pursuant to the procedure set out in sub [Condition 12.5](#).
- 12.4 The performance of the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 12.5 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 and shall be appropriately qualified to act as a mediator . If the Parties are unable to agree upon a Mediator within 14 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 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - (b) The Parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
 - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be

conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 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.

IN WITNESS of which this Contract has been duly executed by the parties.

SIGNED for and on behalf of [**Authority**] **SIGNED** for and on behalf of [**Contractor**]

Signature.....

Signature.....

.

Name:

Name.....

..

Position:

Position.....

Date.....

Date.....

..

SPECIFICATION SCHEDULE

[insert specifications as appropriate]

Home Office Standard Terms for Purchase of Goods

PRICING SCHEDULE

[insert pricing provisions as appropriate]

COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

[insert commercially sensitive information schedule as appropriate]