

## Ministry of Justice

### Terms and Conditions of Contract for Services

#### 1 Interpretation

1.1 In these terms and conditions:

- “Agreement”** means the PO and these terms and conditions between the Authority, acting as part of the Crown, and the Supplier;
- “Authority”** means the Secretary of State for Justice acting through the purchaser named in the PO;
- “Basware”** means Basware eMarketplace, the procurement software used by the Authority for its financial transactions;
- “Central Government Body”** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (a) Government Department;
  - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - (c) Non-Ministerial Department; or
  - (d) Executive Agency;
- “Charges”** means the charges for the Services set out in the PO;
- “Controller”** means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in the UK GDPR or the EU GDPR, as the context requires;
- “Confidential Information”** means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which: (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- “Data Loss Event”** means any event which results, or may result, in unauthorised access to Personal Data held by the Supplier under the Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of the Agreement, including any Personal Data;
- “Data Protection Law”** means the UK GDPR, the LED, DPA and, to the extent that it applies, EU GDPR and all applicable Laws relating to the processing of Personal Data;
- “Data Protection Officer”** means as it is defined in the UK GDPR or the EU GDPR as the context requires;
- “Data Subject”** means as it is defined in the UK GDPR or the EU GDPR as the context requires;
- “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 Law to access their Personal Data;

<b>“DPA”</b>	means the Data Protection Act 2018;
<b>“EIR”</b>	means the Environmental Information Regulations 2004;
<b>“EU GDPR”</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>“Expiry Date”</b>	means the date for expiry of the Agreement set out in the PO;
<b>“FOIA”</b>	means the Freedom of Information Act 2000;
<b>“Government Buying Standards”</b>	means the standards published here: <a href="https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs">https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs</a>
<b>“Information”</b>	has the meaning given under section 84 of the FOIA;
<b>“Key Personnel”</b>	means any persons specified as such in the PO or otherwise notified as such by the Authority to the Supplier in writing;
<b>“Law Enforcement Purposes”</b>	means as it is defined in the DPA;
<b>“LED”</b>	means the Law Enforcement Directive (Directive (EU) 2016/680);
<b>“Party”</b>	means the Supplier or the Authority (as appropriate) and <b>“Parties”</b> means both of them;
<b>“Personal Data”</b>	means as it is defined in the UK GDPR or the EU GDPR as the context requires;
<b>“PO”</b>	means the purchase order for the Services issued to the Supplier;
<b>“Processor”</b>	means, where Personal Data is being processed for Law Enforcement Purposes, as it is defined in the LED; and in all other circumstances, as it is defined in UK GDPR or the EU GDPR as the context requires;
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the measures adopted;
<b>“Request for Information”</b>	has the meaning set out in the FOIA;
<b>“Services”</b>	means the services to be supplied by the Supplier to the Authority under the Agreement;
<b>“Specification”</b>	means the specification for the Services (including as to quantity, description and quality) set out in the PO;
<b>“Staff”</b>	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
<b>“Staff Vetting Procedures”</b>	means vetting procedures that accord with good industry practice or, where requested by the Authority, the Authority’s procedures for the vetting of

- personnel as provided to the Supplier from time to time;
- “Supplier”** means the person named as Supplier in the PO;
- “Term”** means the period from the start date of the Agreement set out in the PO to the Expiry Date as such period may be extended in accordance with clause 3.2 or terminated in accordance with the Agreement;
- “UK GDPR”** means as it is defined in s.3(10) of the DPA, supplemented by s.205(4) of the DPA;
- “VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
- “Working Day”** means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2 Supply of Services**

- 2.1 In consideration of the Authority’s payment of the Charges, the Supplier shall supply the Services to the Authority for the Term subject to and in accordance with the Agreement.
- 2.2 In supplying the Services, the Supplier shall:
- 2.2.1 co-operate with the Authority in all matters relating to the Services and comply with all the Authority’s instructions;
- 2.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier’s industry, profession or trade;
- 2.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Agreement;
- 2.2.4 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
- 2.2.5 comply with the applicable Government Buying Standards;
- 2.2.6 comply with all applicable laws; and
- 2.2.7 provide all equipment, tools and vehicles and other items required to provide the Services.
- 2.3 The Authority may by written notice to the Supplier at any time request a variation of the Services. If the Supplier agrees to a variation, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Parties.

### **3 Term**

- 3.1 The Agreement takes effect on the date specified in the PO and expires on the Expiry Date, unless it is otherwise extended in accordance with clause 3.2 or terminated in accordance with the Agreement.
- 3.2 The Authority may extend the Agreement for up to 6 months by giving not less than 10 Working Days' notice in writing to the Supplier prior to the Expiry Date. The Agreement applies throughout any extended period.

### **4 Charges, Payment and Recovery of Sums Due**

- 4.1 The Charges are set out in the PO and are the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Authority, the Charges include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 4.2 The Authority will issue POs via Basware. The Supplier shall register, when invited, on Basware in order to receive POs unless the Authority has approved another means of payment.
- 4.3 Following Delivery, the Supplier shall invoice the Authority via Basware. Invoices submitted via Basware are valid unless:
  - 4.3.1 lines have been added which are not in the PO;
  - 4.3.2 line descriptions are significantly different from the line descriptions in the PO; and/or
  - 4.3.3 prices and/or quantities are different from those in the POunless approved in writing by the Authority.
- 4.4 If the Authority has agreed to a different means of payment, the Supplier shall invoice the Authority as specified in the PO. Each invoice shall include:
  - 4.4.1 a unique identification number (invoice number);
  - 4.4.2 the Supplier's name, address and contact information;
  - 4.4.3 the name and address of the department/agency in the Authority with which the Supplier is working;
  - 4.4.4 a clear description of the Services being invoiced for;
  - 4.4.5 the date the Services were delivered;
  - 4.4.6 the date of the invoice;
  - 4.4.7 the amount being charged;
  - 4.4.8 VAT amount if applicable;
  - 4.4.9 the total amount owed;
  - 4.4.10 the PO number; and
  - 4.4.11 the amount of the invoice in sterling or any other currency which is approved by the Authority in writing.
- 4.5 All invoices submitted pursuant to clause 4.4 must satisfy the following criteria:
  - 4.5.1 email size must not exceed 4mb;
  - 4.5.2 one invoice per file attachment (PDF). Multiple invoices can be attached as separate files; and
  - 4.5.3 any supporting information, backing data etc must be contained in the invoice PDF file.

- 4.6 If required by the Authority, the Supplier shall submit a structured electronic invoice in an Electronic Data Interchange or XML formats.
- 4.7 The Authority shall not pay an invoice which does not comply with the requirements set out in this clause 4.**
- 4.8 In consideration of the supply of the Services by the Supplier, the Authority shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice. The Authority may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 4.9 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Authority shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.
- 4.10 If there is a dispute between the Parties as to the amount invoiced, the Authority shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 15.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 18.
- 4.11 If a payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 4.12 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Authority from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Authority. The Supplier cannot assert any credit, set-off or counterclaim against the Authority in order to justify withholding payment of any such amount in whole or in part.

## **5 Premises and equipment**

- 5.1 If necessary, the Authority shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Authority's premises by the Supplier or the Staff is at the Supplier's risk.
- 5.2 If the Supplier supplies all or any of the Services at or from the Authority's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Authority's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave the Authority's premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Authority's premises or any objects contained on the Authority's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 5.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, the Authority may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 5.4 The Authority is responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Authority's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Authority's security requirements.
- 5.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Authority in writing.
- 5.6 Without prejudice to clause 2.2.7, any equipment provided by the Authority for the purposes of

the Agreement remains the property of the Authority and shall be used by the Supplier and the Staff only for the purpose of carrying out the Services. Such equipment shall be returned promptly to the Authority on expiry or termination of the Agreement.

- 5.7 The Supplier shall reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Authority is deemed to be in a good condition when received by the Supplier or relevant Staff unless the Authority is notified otherwise in writing within 5 Working Days.

## **6 Staff and Key Personnel**

- 6.1 If the Authority reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:

- 6.1.1 refuse admission to the relevant person(s) to the Authority's premises;
- 6.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
- 6.1.3 require that the Supplier replace any person removed under this clause 6 with another suitably qualified person and procure that any security pass issued by the Authority to the person removed is surrendered,

and the Supplier shall comply with any such notice.

- 6.2 The Supplier shall:

- 6.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- 6.2.2 if requested, provide the Authority with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Authority's premises in connection with the Agreement; and
- 6.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Authority.

- 6.3 Any Key Personnel are not released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

- 6.4 Any replacements to the Key Personnel are subject to the prior written agreement of the Authority (not to be unreasonably withheld). 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.

## **7 Assignment and sub-contracting**

- 7.1 The Supplier shall not without the written consent of the Authority assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the Agreement or any part of the Agreement.

- 7.2 The Authority may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal.

- 7.3 The Supplier is responsible for the acts and omissions of its sub-contractors as though those acts and omissions are its own.

- 7.4 If the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within 30 days from the receipt of a valid invoice.

- 7.5 If the Authority consents to a sub-contract, the Supplier shall, at the request of the Authority, send copies of the sub-contract to the Authority as soon as is reasonably practicable.

7.6 The Authority may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Supplier provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

## **8 Intellectual Property and Indemnity**

8.1 All intellectual property rights in any materials provided by the Authority to the Supplier for the purposes of the Agreement remain the property of the Authority but the Authority hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.

8.2 All intellectual property rights in any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services vest in the Supplier. If, and to the extent, that any intellectual property rights in such materials vest in the Authority by operation of law, the Authority hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).

8.3 The Supplier hereby grants the Authority:

8.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-licence) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and

8.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use:

(a) any intellectual property rights vested in or licensed to the Supplier on the date of the Agreement; and

(b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services

including any modifications to or derivative versions of any such intellectual property rights, which the Authority reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

8.4 The Supplier indemnifies the Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Authority as a result of or in connection with any claim made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff.

## **9 Governance and Records**

9.1 The Supplier shall:

9.1.1 attend progress meetings with the Authority at the frequency and times specified by the Authority and ensure that its representatives are suitably qualified to attend such meetings; and

9.1.2 submit progress reports to the Authority at the times and in the format specified by the Authority.

9.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement full and accurate records of the Agreement including the Services supplied under it and all payments made by the Authority. The Supplier shall allow the Authority access to those records as may

be reasonably requested by the Authority.

## **10 Confidentiality, Transparency and Publicity**

10.1 Subject to clause 10.2, each Party shall:

10.1.1 treat all Confidential Information it receives as confidential, protect it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

10.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

10.2 Notwithstanding clause 10.1, a Party may disclose Confidential Information which it receives from the other Party:

10.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

10.2.2 to its auditors or for the purposes of regulatory requirements;

10.2.3 on a confidential basis, to its professional advisers;

10.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

10.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 10.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and

10.2.6 where the receiving Party is the Authority:

(a) on a confidential basis to the employees, agents, consultants and contractors of the Authority;

(b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Authority transfers or proposes to transfer all or any part of its business;

(c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or

(d) in accordance with clause 11.

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 Authority under this clause 10.

10.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby consents to the Authority publishing the Agreement in its entirety to the public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Authority may consult the Supplier regarding any redactions but has the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the FOIA.

10.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Authority.



## **11 Freedom of Information**

- 11.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall:
- 11.1.1 provide all necessary assistance and cooperation reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and the EIR;
  - 11.1.2 transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
  - 11.1.3 provide the Authority with a copy of all Information belonging to the Authority requested in the Request for Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 11.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Authority.
- 11.2 The Supplier acknowledges that the Authority may be required under the FOIA and the EIR to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Authority shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 11.3 Notwithstanding any other provision in the Agreement, the Authority shall be responsible for determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the EIR.

## **12 Protection of Personal Data and Security of Data**

- 12.1 The Parties acknowledge that, for the purposes of Data Protection Law, the Authority is the Controller and the Supplier is the Processor. The only processing which the Authority has authorised the Supplier to do is described in the Specification.
- 12.2 The Supplier shall:
- 12.2.1 notify the Authority immediately if it considers any Authority instructions infringe the Data Protection Law;
  - 12.2.2 process Personal Data only in accordance with the Agreement unless the Supplier is required to do otherwise by law. If it is so required, the Supplier shall promptly notify the Authority before processing the Personal Data unless prohibited by law;
  - 12.2.3 ensure that it has in place Protective Measures which have been approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the nature of the data to be protected, harm that might result from a Data Loss Event, the state of technological development and the cost of implementing any measures;
  - 12.2.4 ensure that Staff do not process Personal Data except in accordance with the Agreement;
  - 12.2.5 take all reasonable measures to ensure the reliability and integrity of Staff who have access to Personal Data and have undergone adequate training in the use, care, protection and handling of Personal Data;

- 12.2.6 at the direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Supplier is required by law to retain it;
- 12.2.7 subject to clause 12.3, notify the Authority immediately if it:
- (a) receives a 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 Law;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under the Agreement;
  - (e) receives a request from any third party for disclosure of Personal Data where compliance with the request is required or purported to be required by law; or
  - (f) becomes aware of a Data Loss Event.
- 12.3 The Supplier's obligation to notify under clause 12.2.7 includes the provision of further information to the Authority in phases as details become available.
- 12.4 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under the Data Protection Law and any complaint, communication or request made under clause 12.2.7.
- 12.5 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 1 and allow the Authority to audit its Data Processing activity on reasonable notice.
- 12.6 The Supplier shall designate a Data Protection Officer if required by the Data Protection Law.
- 12.7 When handling Authority data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Authority as notified to the Supplier from time to time.
- 12.8 In relation to Personal Data processed for Law Enforcement Purposes, the Supplier shall:
- 12.8.1 where automated processing is used, keep logs in accordance with section 62 of the DPA;
  - 12.8.2 where applicable and as far as possible, make a clear distinction between Personal Data of different categories of Data Subjects including (without limitation) suspects, convicted criminals, victims and witnesses; and
  - 12.8.3 as far as is possible, distinguish Personal Data based on facts from Personal Data based on personal assessments or opinions.

### **13 Liability**

- 13.1 The Supplier is not responsible for any injury, loss, damage, cost or expense suffered by the Authority if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Agreement.

13.2 Subject to clauses 13.3 and 13.4:

13.2.1 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall not exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

13.2.2 except in the case of claims arising under clauses 8.4 and 17.3, the Supplier is not liable to the Authority for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of savings (whether anticipated or otherwise); and/or
- (f) any indirect, special or consequential loss or damage.

13.3 Nothing in the Agreement is construed to limit or exclude either Party's liability for:

13.3.1 death or personal injury caused by its negligence or that of its Staff;

13.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

13.3.3 any other matter which, by law, may not be excluded or limited.

13.4 The Supplier's liability under the indemnity in clause 8.4 and 17.3 is unlimited.

#### **14 Force Majeure**

Neither Party has any liability under or is in breach of the Agreement for any delays or failures in performance of its obligations under the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 2 months, either Party may terminate the Agreement by written notice to the other Party.

#### **15 Termination**

15.1 The Authority may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least one month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

15.2 Without prejudice to any other right or remedy it might have, the Authority may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

15.2.1 (without prejudice to clause 15.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

15.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;

15.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

15.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

15.2.5 breaches any of the provisions of clauses 6.2, 10, 11, 12 and 16; or

15.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or

reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 15.2.6) in consequence of debt in any jurisdiction.

- 15.3 The Supplier shall notify the Authority as soon as practicable of any change of control as referred to in clause 15.2.4 or any potential such change of control.
- 15.4 The Supplier may terminate the Agreement by written notice to the Authority if the Authority has not paid any undisputed amounts within 90 days of them falling due.
- 15.5 Termination or expiry of the Agreement is without prejudice to the rights of either Party accrued prior to termination or expiry and do not affect the continuing rights of the Parties under this clause and clauses **Error! Reference source not found.**2.2, 5.1, 5.2, 5.6, 5.7, 6, 8, 9.2, 10, 11, 12, 13, 15.6, 16.4, 17.3, 18 and 19.7 or any other provision of the Agreement that either expressly or by implication has effect after termination or expiry.
- 15.6 Upon termination or expiry of the Agreement, the Supplier shall:
- 15.6.1 give all reasonable assistance to the Authority and any incoming supplier of the Services; and
  - 15.6.2 return all requested documents, information and data to the Authority as soon as reasonably practicable.

## **16 Compliance**

- 16.1 The Supplier shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Authority shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 16.2 The Supplier shall:
- 16.2.1 comply with all the Authority's health and safety measures while on the Authority's premises; and
  - 16.2.2 notify the Authority immediately if any incident occurs in the performance of its obligations under the Agreement on the Authority's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 16.3 The Supplier shall:
- 16.3.1 perform its obligations under the Agreement in accordance with all applicable equality law and the Authority's equality and diversity policy as provided to the Supplier from time to time; and
  - 16.3.2 take all reasonable steps to secure the observance of clause 16.3.1 by all Staff.
- 16.4 The Supplier shall supply the Services in accordance with the Authority's environmental policy as provided to the Supplier from time to time.
- 16.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with:
- 16.5.1 the Official Secrets Acts 1911 to 1989; and
  - 16.5.2 section 182 of the Finance Act 1989.

## **17 Prevention of Fraud and Corruption**

- 17.1 The Supplier shall not offer, give, or agree to give anything, to any person 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 Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

- 17.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 17.3 If the Supplier or the Staff engages in conduct prohibited by clause 17.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Authority) the Authority may:
- 17.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Agreement; or
  - 17.3.2 recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause.

## 18 **Dispute Resolution**

- 18.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 18.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 18.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 18.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## 19 **General**

- 19.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 19.2 A person who is not a Party has no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 19.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 19.4 Save where the Authority has issued the PO pursuant to a written contract for the Services signed by both Parties (an "**Existing Contract**"):
- 19.4.1 the Agreement contains the whole agreement between the Parties and replaces any prior agreements, representations or understandings between them; and
  - 19.4.2 the Parties do not enter into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement.
- 19.5 If there is a conflict between these terms and conditions and the PO or any other terms and conditions the conflict will be resolved in the following order of precedence:
- 19.5.1 the Existing Contract;

19.5.2 these terms and conditions;

19.5.3 the PO; and

19.5.4 any other terms and conditions.

19.6 Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

19.7 Any waiver or relaxation either partly, or wholly, of any part of the Agreement is valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. 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 breach of the Agreement.

19.8 The Agreement does not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party has any authority to make any commitments on the other Party's behalf.

19.9 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

19.10 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **20 Notices**

20.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 20.3, e-mail to the address of the relevant Party set out in the PO, or such other address as that Party may from time to time notify to the other Party in accordance with this clause 20.

20.2 Notices served as above are deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery occurs on the next Working Day. An email is delivered when sent unless an error message is received.

20.3 Notices under clauses 14 and 15 may be served only by personal delivery or recorded delivery in the manner set out in clause 20.1.

## **21 Governing Law and Jurisdiction**

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, are governed by English law and are subject to the exclusive jurisdiction of the English courts to which the Parties submit.