

DATED _____

2020

NORTHAMPTONSHIRE COUNTY COUNCIL

and

Provider

**CALL OFF TERMS AND CONDITIONS RELATING TO THE DPS FRAMEWORK AGREEMENT FOR
PASSENGER TRANSPORT SERVICE**

ENV007\2134\CHA



LGSS Law Limited

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DATE

2020

PARTIES

- (1) **NORTHAMPTONSHIRE COUNTY COUNCIL and its successors in title** of One Angel Square, Northampton NN1 (the **Authority**)
- (2) ([FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (the **Provider**)

BACKGROUND

- (A) The Authority placed a contract notice 2020/S 083-197898 on 24th April 2020 in the Official Journal of the European Union seeking expressions of interest from potential Provider s for the provision of Services (divided into Service Categories) to Contracting Bodies under a framework agreement.
- (B) Following receipt of expressions of interest, the Authority invited potential Provider s (including the Provider) on 24th April 2020 to tender for the provision of Passenger Transport services.
- (C) On the basis of the Provider’s Tender, the Authority selected the Provider to enter a framework agreement to provide services to Contracting Bodies who will place Orders in accordance with the Framework Agreement.
- (D) This framework agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Provider under the framework agreement.
- (E) The Authority is a Contracting Body, as specified in the OJEU Notice. It has selected the Provider to provide the Services and the Provider is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

GENERAL PROVISIONS

1. DEFINITIONS

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

1986 Regulations: means the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078).

2000 Regulations: means the Public Service Vehicles Accessibility Regulations 2000 (SI 2000/1970).

Accredited Supplier: means a supplier who has been accepted onto the Authority's DPS for passenger transport or otherwise approved by the Authority.

Achieved Service Levels: means in respect of any Service in any measurement period, the standard of performance actually achieved by the Service Provider in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in Part 1 (Contract Management) of Schedule 6 (Contract Management and Authorised Representatives)).

Applicable Laws: means any statutes, statutory instruments or other legislative provisions (including, without limitation any successor, replacement or amendment statute, statutory instrument or other legislative provision) governing or otherwise relevant to the provision of the Services.

Approval: the prior written approval of the Authority.

Associated Company: any holding company from time to time of the Provider and any subsidiary from time to time of the Provider, or any subsidiary of any such holding company.

Auditor: The National Audit Office or an auditor appointed by the Authority as the context requires.

Authorised Representative: the persons respectively designated as such by the Authority and the Provider in the Order Form.

Authority: the contracting authority that established the Framework Agreement.

Basic Disclosure means a Basic Disclosure check carried out through Disclosure Scotland, which is required where a Provider is engaged in a position of trust but is not eligible for a Standard Disclosure check, Enhanced with Barred List Check or Enhanced without Barred List Check;

Authority Assets: means any materials, plant or equipment owned or held by the Authority and provided by the Authority for use in providing the Services.

Bribery Act: the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Business Continuity Plan means a plan agreed between the Parties to provide effective prevention and recovery in connection with the Services if the Services are exposed to internal or external threats;

Call-off Terms: means these terms and conditions.

Catastrophic Failure: means any action by the Service Provider, whether in relation to the Services and this agreement or otherwise, which in the reasonable opinion of

the Authority's Representative has or may cause significant harm to the reputation of the Authority.

Category: means the categories (or lots) into which the Authority's requirements for passenger transport services have been defined in the DPS Agreement.

CCTV: means closed circuit television.

CEDR: means the Centre for Effective Dispute Resolution.

Change: any change to this agreement including to any of the Services.

Change Control Note: the written record of a Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.

Change in Control any change in control as defined by section 416 of the Income and Corporation Taxes Act 1988

Code of Practice: means the Department of Transport Code of Practice VSE 87/1

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Provider s of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: the written agreement between the Authority and the Provider consisting of the Order Form and these clauses (except that, for the purposes of clause 56.3 only, reference to "Contract" shall not include the Order Form).

Contract Period: the period from the Service Commencement Date to:

- (a) the date of expiry set out in clause 3;
- (b) following an extension pursuant to clause 4, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

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

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Contracting Authority: the contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (*SI 2015/102*) other than the Authority.

Contract Schedules: means the schedules specifying details of the Service to be provided under this agreement, including timetables and other information submitted by the Service Provider and supplied by the Authority as part of the Tender

Council Data means

- (i) all data, records, information, text, drawings, reports diagrams, images, or sounds generated or processed by the Provider or provided to the Provider for processing under this Contract which at all times shall remain the property of the Council which shall include without limitation copies of any retention schedule produced by the Provider in order to comply with Data Protection Legislation; or
- (ii) any documentation and information produced by or received from or on behalf of the Council in relation to the Services and stored on whatever media;

CPC: means Certificate of Professional Competence (Driver CPC) in accordance with the requirements of EU Directive 2003/59.

Criminal Records Checks means one of four checks carried out (as appropriate) under the bureau established pursuant to the Protection of Freedoms Act 2012:

- Enhanced Disclosure with a Barred List Check
- Enhanced Disclosure without a Barred List Check
- Standard Disclosure
- **Basic Disclosure**

CQC means the Care Quality Commission.

CQC Regulations means the Care Quality Commission (Registration) Regulation 2009.

Critical Performance Default means a Performance Default which significantly or materially affects the Provider's provision of the Services to the Contract Standard or undermines the fundamental purpose of the Contract;

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

Data Controller: shall have the same meaning as set out in the Data Protection Legislation.

Data Processor: shall have the same meaning as set out in the Data Protection Legislation.

Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) [and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

DBS Check(s) means a Criminal Records Check(s) on individuals carried out through the DBS;

DBS Update Service means a service available through the DBS, where an individual has subscribed for the update service for free, instant online checks to be carried out by an employer on individuals to see if any new information has come to light since the criminal records certificate was first issued in respect of an individual;

Disclosure & Barring Service

DBS means(a) the Disclosure and Barring Service established under the Protection of Freedoms Act 2012.

(b) the Non-Departmental Public Body which helps employers make safer recruitment decisions and prevents unsuitable people from working with vulnerable groups, including children and vulnerable adults;

“Deprivation of Liberty”/“DoL” means the framework of safeguards set out in Schedule A1 of the Mental Capacity Act 2005 (as amended, updated and/ or replaced from time to time);

“Disclosure Scotland” is an [executive agency](#) of the [Scottish Government](#), providing [criminal records disclosure](#) services by way of a Basic Disclosure check for

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

Deliverables: those deliverables listed in the Order Form.

DPS: means a dynamic purchasing system awarded in accordance with regulation 34 of the Procurement Regulations.

DPS Agreement: means the terms of the agreement made between the Authority and the Service Provider and accepted by the Service Provider as a condition of the appointment of the Service Provider by the Authority as an eligible service provider to join the Authority's DPS for passenger transport services (following the Service Provider's submission of the standard selection questionnaire submitted to the Authority).

Driver: means Vehicle driver.

Dispute Resolution Procedure: the dispute resolution procedure in clause 50.

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

Employment Checks”

means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks.

Enhanced DBS & Barred List Check”

means an Enhanced DBS & Barred List Check (child) or Enhanced DBS & Barred List Check (adult) or Enhanced DBS & Barred List Check (child & adult) (as appropriate).

Enhanced DBS & Barred List Check (adult)”

means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS adult's barred list

Enhanced DBS & Barred List Check (child)”

means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children's barred list.

Enhanced DBS & Barred List Check (child & adult)”

means a disclosure of information comprised in an Enhanced DBS Check together with information from the DBS children’s and adult’s barred list

Enhanced DBS Check”

means a disclosure of information comprised in a Standard DBS Check together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for

“Enhanced DBS Position”

means any position listed in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended), which also meets the criteria set out in the Police Act 1997 (Criminal Records) Regulations 2002 (as amended), and in relation to which an Enhanced DBS Disclosure or an Enhanced DBS & Barred List Check (as appropriate) is permitted

Enhanced Disclosure With:

Barred List Check” means a type of Criminal Records Check, which includes a check of the DBS barred list and any additional information held by the police that is reasonably considered relevant to the role being applied for and includes roles that do not work with children or vulnerable adults specifically but potentially both and should be used for jobs that involve caring for, supervising or being in sole charge of children and/or vulnerable adults;

“Enhanced Disclosure Without a:

Barred List Check” means a type of Criminal Records Check, which includes an enhanced disclosure check without a barred list check that is required where a Provider is engaged in a role that meets the previous definition of Regulated Activity as defined by the Rehabilitation of Offenders Act (ROA) 1974 (Exceptions) Order 1975, and in Police Act Regulations;

“Equalities Legislation” means all Law which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 as amended, the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and / or any preceding, successor or amending Legislation concerning the same;

Exit Management Plan: the plan set out in clause 49

Equipment: the Provider's equipment, plant, materials and such other items supplied and used by the Provider in the performance of its obligations under the Contract.

Fees Regulations: the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (*SI 2004/3244*).

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the, natural or man-made,

but excluding: means any circumstance not within a party's reasonable control including, without limitation:

- (a) any industrial action occurring within the Provider 's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Framework Agreement: the framework agreement for the provision of Passenger Transport Services between the Authority and the Provider.

GDPR: means the General Data Protection Regulation ((EU) 2016/679).

GDPR Schedule is annexed at Schedule 4 of this agreement

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

information: has the meaning given under section 84 of the FOIA.

Initial Contract Period: the period set out in clause 3.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of Authority s, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Key Personnel: any individual identified in the Order Form as being key personnel.

Licence: means a public service vehicle operator's licence, a community bus permit, a small bus permit, a large bus permit, a hackney carriage licence, a private hire operator's licence or any other licence or permit required by law in order to provide the Services in accordance with this agreement.

LOLER: means the Lifting Operations and Lifting Equipment Regulations 1998 (SI 1998/2307).

Loss: means losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with suppliers and or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss and the reasonable cost to the Authority for the time spent by its officers in terminating this agreement and in making alternative arrangements for the provision of the Services

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

Management Information: the management information specified in the Order Form.

Modern Slavery Legislation: means the legislation referred to in section 54 of the Modern Slavery Act 2015.

Month: calendar month.

Necessary Consents: means all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Service.

Order: the order placed by the Authority to the Provider in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards.

Order Form: the document used to place an Order.

Passenger or passenger: means a Client.

Passenger Assistant: means an employee or agent of the Authority travelling on a Vehicle to assist one (1) or more passengers.

PCV: means a passenger carrying vehicle.

PCV Regulations: means regulations issued from time to time pursuant to the Public Passenger Vehicles Act 1981 or similar legislation

Parent Company: any company which is the ultimate Holding Company of the Provider or any other company of which the ultimate Holding Company of the Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged by the same or similar business to the Provider. The term **Holding Company:** shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: the Provider or the Authority and Parties shall mean both the Provider and the Authority.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Personnel: means all persons engaged by the Service Provider from time to time in connection with the provision of the Services whether such persons are Drivers, operatives, supervisors, directors, nurses, medical assistants or in any manner employed by the Service Provider or by other contractors of the Service Provider or are employed on their own account as independent contractors or the Service Provider's sub-contractors, servants or agents.

Price: means the sum specified in (or calculated by reference to) the Tender.

Policies: shall mean the policies listed in Schedule 3 (Policies), as amended from time to time.

Procurement Regulations: means the Public Contracts Regulations 2015 (SI 2015/102).

Premises: the location where the Services are to be supplied, as set out in the Order Form.

Prohibited Act the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or
 - (a) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
 - (b) committing any offence:
 - (i) under the Bribery Act or under section 117(2) of the Local Government Act 1972;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this agreement or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.

Property: the property, other than real property, issued or made available to the Provider by the Authority in connection with the Contract.

PRU: means Pupil Referral Unit.

PSV: means public service vehicle.

Pupils: means the school children or students referred to in this agreement.

PUWER: means the Provision and Use of Work Equipment Regulations 1998 (SI 1998/2306).

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with.

Regulated Activity: (in relation to children) shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and (in relation to vulnerable adults) shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

Regulated Activity Provider: shall have the same meaning as set out in section 6 of the Safeguarding Vulnerable Groups Act 2006.

Regulations: means the Road Vehicles (Construction and Use) Regulations 1986 (SI 1986/1078).

Relevant Transfer: means a relevant transfer for the purposes of TUPE.

Replacement Services: means any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Service Provider.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority

Replacement Provider: any third party service provider appointed by the Authority to supply any services that are substantially the same as or similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Safeguarding means the Safeguarding Vulnerable Groups Act 2006 (as amended under the Protection of Freedoms Act 2012);

SQ Response: the response to the selection questionnaire issued by the Authority and submitted by the Provider.

Section 19/22: means sections 19 and 22 of the Transport Act 1985.

SEND: means special educational needs and disabilities.

Self-Billing Agreement: an agreement between the Provider and the Authority, whereby the Provider agrees to receive pre-populated Self-Bill Invoices generated through the Technology for the billing of the appropriate price and payment.

Service Commencement Date: the service commencement date set out in the Order Form.

Services: means the services to be delivered by the Provider under this agreement, as more particularly described in the Specification attached at Schedule 1 of this agreement.

Service Receipt: the agreed record within the Technology of the completed delivery of Services as quantified and agreed between the Parties.

Staff: all persons employed by the Provider to perform its obligations under the Contract together with the Provider's agents, Provider s and Sub-Contractors used in the performance of its obligations under the Contract.

Staff Vetting Procedures: the Authority's procedures and departmental policies for the vetting of personnel for:

- (a) eligibility to work in the UK;
- (b) the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measure [including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989];
- (c) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Sub-Contract: any contract between the Provider and a third party under which the Provider agrees to source the provision of any of the Services from that third party.

Sub-Contractor: the contractors or service providers that enter into a Sub-Contract with the Provider.

Technology: the proprietary web-based software owned and operated by the Technology Provider, currently called SProc.Net or such other technology as agreed between the Parties.

Technology Provider: the owner and provider of the Technology, Adam HTT Limited t/a adam (registered company #07718565), who shall also act as the Authority's payment service provider.

Tender: the document(s) submitted by the Provider to the Authority for admission onto the Framework Agreement [as supplemented by the documents submitted to the Authority in response to the Authority's Order, including the Provider's Supplemental Tender.

TUPE: means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

TUPE Event: means the transfer of an identifiable economic unit for the purposes of TUPE

Variation: has the meaning given to it in clause 37

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

Working Day: any day other than a Saturday or Sunday or public holiday in England and Wales.

2. INTERPRETATION

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3. INITIAL CONTRACT PERIOD

- 3.1 The Contract shall take effect on the Service Commencement Date and shall expire automatically on the date set out, unless it is otherwise terminated in accordance with the provisions of the Contract.

4. EXTENSION OF INITIAL CONTRACT PERIOD

- 4.1 The Authority may, by giving written notice to the Provider not less than seven [7] days before the last day of the Initial Contract Period, extend the Contract, provided that the total Contract Period does not exceed four [4] years. The provisions of the Contract will apply throughout any such extended period.

5. PROVIDER 'S STATUS

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

6. AUTHORITY'S OBLIGATIONS

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

7. MISTAKES IN INFORMATION

- 7.1 The Provider shall be responsible for the accuracy of all drawings, documents and information supplied to the Authority by the Provider in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

SUPPLY OF SERVICES

8. SERVICES

- 8.1 The Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Authority may inspect and examine the manner in which the Provider supplies the Services at the Premises during normal business hours on reasonable notice.
- 8.2 The Provider acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Authority before submitting its Tender so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

- 8.3 The Provider shall:
- (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (b) to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Authority before the supply of the Services;] and
 - (c) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 8.4 The Provider shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 8.5 Subject to the Authority providing Approval in accordance with clause 9, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

9. PROVISION AND REMOVAL OF EQUIPMENT

- 9.1 Unless otherwise agreed between the Parties, the Provider shall provide all the Equipment necessary for the supply of the Services.
- 9.2 The Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior written Approval.
- 9.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Authority 's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Provider.
- 9.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 9.5 The Provider shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

- (a) remove from the Premises any Equipment that in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 9.6 On completion of the Services, the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.

STAFFING

10. KEY PERSONNEL

- 10.1 The Parties have agreed to the appointment of the Key Personnel. The Provider shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Authority before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least on months written notice must be provided by the Provider of its intention to replace Key Personnel.
- 10.2 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Provider or Sub-Contractor, but the Authority may interview the candidates for Key Personnel positions before they are appointed.
- 10.3 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 10.4 The Authority may also require the Provider to remove any Key Personnel that the Authority considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

11. PROVIDER 'S STAFF

- 11.1 The Authority may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:

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

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

- 11.2 At the Authority's written request, the Provider shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 11.3 If the Provider fails to comply with clause 11.2 within two Months of the date of the request then the Authority may exclude Provider Staff from entry to the Premises. Exercise of the Authority's rights under this clause shall not excuse the Provider from any attributable failure to perform the Services.
- 11.4 The Provider 's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Provider from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 11.5 The Provider warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Provider at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

12. NON-SOLICITATION

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

PREMISES

13. LICENCE TO OCCUPY PREMISES

- 13.1 Any land or Premises made available from time to time to the Provider by the Authority in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 13.2 The Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Provider shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.
- 13.3 Should the Provider require modifications to the Premises, such modifications shall be subject to prior written Approval and shall be carried out by the Authority at the Provider's expense. The Authority shall undertake modification work approved by the Authority in writing without undue delay. Ownership of such modifications shall rest with the Authority. Before the end of the Contract Period, the Provider shall, at the request of the Authority remove any modifications made to the Premises and reinstate or rebuild the Premises in a manner equivalent in size, quality, layout and facilities to the Premises prior to the modifications.
- 13.4 Without prejudice to clause 11.4, the Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Premises notified to it by the Authority, and the Provider shall pay for the cost of making good any damage caused by the Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 13.5 The Parties agree that there is no intention on the part of the Authority to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted under the Contract, the Authority retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

14. SECURITY OF PREMISES

14.1 The Authority shall be responsible for maintaining the security of the Premises and all assets and information used in performance of the Services in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Authority while on the Premises and shall ensure that all Staff comply with such requirements.

14.2 On request, the Authority shall:

- (a) provide the Provider copies of its written security procedures; and
- (b) afford the Provider an opportunity to inspect its physical security arrangements.

15. PROPERTY

15.1 Where the Authority issues Property to the Provider, such Property shall be and remain the property of the Authority and the Provider irrevocably licences the Authority and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Provider shall possess the Property as fiduciary agent and Bailee of the Authority. The Provider shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority .

15.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Authority otherwise within five [5] Working Days of receipt.

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

15.4 The Provider shall ensure the security of all the Property while in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

- 15.5 The Provider shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Provider shall inform the Authority within [two] Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

16. ENVIRONMENTAL REQUIREMENTS

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

17. HEALTH AND SAFETY

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

PAYMENT AND CONTRACT PRICE

18. CONTRACT PRICE

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

19. PAYMENT AND VAT

- 19.1 In consideration of the provision of the Services by the Provider in accordance with the Contract, the Authority shall pay the Contract Price to the Provider in accordance with the Self-Billing Agreement.
- 19.2 The Parties acknowledge and agree that the Provider shall submit Service Receipts to the Authority through the Technology system on a weekly basis.
- 19.3 The Provider shall ensure that each Service Receipt contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Authority to approve the Service Receipt.
- 19.4 A Self-Bill Invoice shall be generated automatically on behalf of the Provider via the Technology once the appropriate Service Receipt has been created and agreed between the Parties within the Technology and becomes payable in accordance with the Self Billing Agreement.
- 19.5 Subject to clause 19.6 of this Contract, the Technology Provider shall pay the Self Bill Invoice which has become payable in accordance with the Self-Billing Agreement within thirty (30) days of the appropriate undisputed Self-Bill Invoice having been raised.
- 19.6 For the avoidance of doubt, the Provider acknowledges and accepts that the Self-Bill Invoice due for the Services provided under the Contract shall be paid by the Authority via the Technology Provider, acting as the Authority's payment service provider. To this extent, the Provider

acknowledges and accepts the Technology Provider can only pay the Provider once it has received cleared funds from the Authority.

- 19.7 Where the Provider enters into a Sub-Contract, the Provider shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 19.4 to clause 19.6 of this agreement; and
 - (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clause 19.2 to clause 19.4 of this agreement.

In this clause 19.6, "Sub-Contract" means a contract between two or more Provider's, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 19.8 The Parties acknowledge and agree that the system will automatically calculate the VAT in accordance with the price provided.
- 19.9 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause 19.8 shall be paid by the Provider to the Authority not less than five Working Days before the date on which the tax or other liability is payable by the Authority.
- 19.10 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under clause 45 for failure to pay undisputed sums of money.

20. RECOVERY OF SUMS DUE

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

- 20.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 20.3 The Provider shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Provider has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Provider .
- 20.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

21. CONFLICTS OF INTEREST

- 21.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Authority), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Authority under the provisions of the Contract.
- 21.2 The Provider shall promptly notify the Authority (and provide full particulars to the Authority) if any conflict referred to in clause 21.1 above arises or is reasonably foreseeable.
- 21.3 The Authority reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

22. PREVENTION OF BRIBERY

22.1 The Provider:

- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Contract commit a Prohibited Act; and
- (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.

22.2 The Provider shall:

- (a) if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within an agreed number of Working Days of the Commencement Date, and annually thereafter, certify to the Authority in writing (such certification to be signed by an officer of the Provider) compliance with this clause 22 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as the Authority may reasonably request.

22.3 The Provider shall have an anti-bribery policy (which shall be disclosed to the Authority) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

22.4 If any breach of clause 22.1 is suspected or known, the Provider must notify the Authority immediately.

22.5 If the Provider notifies the Authority that it suspects or knows that there may be a breach of clause 22.1, the Provider must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documents.

22.6 The Authority may terminate this Contract by written notice with immediate effect if the Provider, its Staff or Sub-Contractors (in all cases whether or not acting with the Provider's knowledge) breaches clause 22.1. [In determining whether to exercise the right of termination under this clause 22.6, the Authority shall give all due consideration, where appropriate, to action other than termination of this Contract unless the

Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Contractor or Provider not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority or with the actual knowledge of any one or more of the directors of the Provider or the Sub-contractor (as the case may be); or
- (b) in circumstances where any one or more of the directors of the Provider ought reasonably to have had such knowledge.]

22.7 Any notice of termination under clause 22.6 must specify:

- (a) the nature of the Prohibited Act;
- (b) the identity of the party whom the Authority believes has committed the Prohibited Act; and
- (c) the date on which this Contract will terminate.

22.8 Despite clause 50, any dispute relating to:

- (a) the interpretation of clause 22; or
- (b) the amount or value of any gift, consideration or commission,

shall be determined by the Authority and its decision shall be final and conclusive.

22.9 Any termination under clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

23. DISCRIMINATION

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

23.2 The Provider shall take all reasonable steps to secure the observance of clause 23 by all servants, employees or agents of the Provider and all Provider s and Sub-contractors employed in the execution of the Contract.

INFORMATION

24. CONFIDENTIALITY

- 24.1 Subject to clause 24.2, the parties shall keep confidential [the Confidential Information of the other Party][all matters relating to this Contract] and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.
- 24.2 Clause 24.1 shall not apply to any disclosure of information:
- (a) required by any applicable law, provided that clause 26 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
 - (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
 - (c) that is reasonably required by the Authority;
 - (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 24.1;
 - (e) by the Authority of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
 - (f) to enable a determination to be made under clause 50;
 - (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
 - (h) by the Authority to any other department, office or agency of the government, provided that the Authority informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
 - (i) by the Authority relating to this Contract and in respect of which the Provider has given its prior written consent to disclosure.
- 24.3 On or before the expiry of the Contract, the Provider shall ensure that all documents and/or computer records in its possession, custody or control which contain Confidential Information or relate to personal information of the Authorities' employees, rate-payers or service users, are delivered up to the Authority or securely destroyed.

25. DATA PROTECTION

- 25.1 Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 25.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the data controller and the Provider is the data processor. Schedule 4 sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 25.3 Without prejudice to the generality of clause 25.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.
- 25.4 Without prejudice to the generality of clause 25.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Authority (as set out in Schedule 4), unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union (**Applicable Laws**) applicable to the Provider to otherwise process the Personal Data. Where the Provider is so required, it shall promptly notify the Authority before processing the Personal Data, unless prohibited by the Applicable Laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);

- (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
 - (i) the Authority or the Provider has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Provider complies with the reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
- (d) notify the Authority immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Authority immediately [and in any event within 24 hours] on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- (g) at the written direction of the Authority, delete or return Personal Data and copies thereof to the Authority on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for audits by the Authority or its designated auditor pursuant to clause 30;
- (i) indemnify the Authority against any loss or damage suffered by the Authority arising from or in connection with any breach by the Provider of its obligations under this clause 25.

25.5 Where the Provider intends to engage a Sub-Contractor pursuant to clause 36 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Authority in writing of the intended processing by the Sub-Contractor;
- (b) obtain prior written consent to the processing;
- (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 25.

25.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 25 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

25.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

26. FREEDOM OF INFORMATION

26.1 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Provider shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
- (b) 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;
- (c) 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
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Authority.

26.2 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider . The Authority shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public

Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

27. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 27.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Authority 's prior written Approval.
- 27.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation on the Authority, including any examination of the Contract by the Auditor.
- 27.3 The Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

28. INTELLECTUAL PROPERTY RIGHTS

- 28.1 The Provider shall retain ownership of all Intellectual Property created by the Provider or any Staff or Sub-Contractor of the Provider :
 - (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 28.2 The Provider hereby grants, or shall procure the direct grant, to the Authority of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Authority to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Authority provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement Provider or other third party invited by the Authority to participate in a tendering process for the award of a contract to deliver replacement services).
- 28.3 The Provider shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the

defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

29. RECORDS AND AUDIT ACCESS

- 29.1 The Provider shall keep and maintain until six years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Authority and the amounts paid by the Authority.
- 29.2 The Provider shall keep the records and accounts referred to in clause 29.1 above in accordance with good accountancy practice.
- 29.3 The Provider shall on request afford the Authority, the Authority's representatives and/or the Auditor such access to such records and accounts as may be required by the Authority from time to time.
- 29.4 The Provider shall provide such records and accounts (together with copies of the Provider 's published accounts) during the Contract Period and for an agreed period of years after the expiry of the Contract Period to the Authority and the Auditor.
- 29.5 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services, except insofar as the Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.
- 29.6 Subject to the Authority's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the Authority within the scope of the audit;
 - (b) reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 29.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 29, unless the audit reveals a material Default by the Provider

in which case the Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

30. REPLACEMENT OF CORRUPTED DATA

- 30.1 If, through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

CONTROL OF THE CONTRACT

31. PROVISION OF INFORMATION AND MEETINGS

- 31.1 The Provider shall submit Management Information to the Authority throughout the Contract Period [on the last day of every Month].
- 31.2 The Authorised Representatives [and Key Personnel] shall meet in accordance with the details set out in the Order Form and the Provider shall, at each meeting, present its previously circulated Management Information.

32. MONITORING OF CONTRACT PERFORMANCE

- 32.1 The Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

33. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 33.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Authority shall take reasonable steps to investigate the complaint. The Authority may, in its sole discretion, uphold the complaint, and may, acting reasonably:
- (a) Subject to clause 33.4, withhold a sum; or
 - (b) deduct a sum,

in each case equal to a maximum of five [5]% of the Contract Price payable in respect of the Month in which the complaint arose.

- 33.2 The parties agree that a deduction made pursuant to clause 33.1(b) represents a genuine pre-estimate of the loss likely to be suffered by the Authority.
- 33.3 Where the Authority withholds a sum pursuant to clause 33.1(a) then that sum shall be paid to the Provider when, in the reasonable opinion of the Authority, the matters complained of have been rectified and there has been no repeat of those matters for an agreed number of Month(s).
- 33.4 If the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Authority may, without prejudice to its rights under clause 45, do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
 - (c) charge the Provider for and the Provider shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 33.5 If the Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Provider to remedy the failure and the Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten [10] Working Days of the Authority's instructions or such other period of time as the Authority may direct.

33.6 If the Provider :

- (a) fails to comply with clause 33.5 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- (b) persistently fails to comply with clause 33.5 above,

the Authority may terminate the Contract with immediate effect by giving the Provider notice in writing.

34. RIGHTS AND REMEDIES

34.1 [Except as expressly provided in this Contract, the **OR** The] rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

35. TRANSFER AND SUB-CONTRACTING

35.1 The Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract.

35.2 Provided that the Authority has given prior written consent, the Provider shall be entitled to novate the Contract following the novation of the Framework Agreement where:

- (a) the specific change in contractor was provided for in the procurement process for the award of the Framework Agreement;
- (b) there has been a universal or partial succession into the position of the Provider , following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.

35.3 The Provider shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

35.4 Where the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Provider to the Authority as soon as reasonably practicable.

- 35.5 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Authority; or
 - (c) any private sector body which substantially performs the functions of the Authority,

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

36. WAIVER

- 36.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 36.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 36.3 [A party that waives a right or remedy provided under this Contract or by law in relation to one party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.]

37. VARIATION

- 37.1 Subject to the provisions of this clause 37, the Authority may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 37.2 The Authority may request a Variation by completing and sending the Variation form attached at 0 (the **Variation Form**) to the Provider, giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

37.3 If the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Authority may:

- (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- (b) terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

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

38. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

38.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

39. SEVERANCE

39.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

39.2 If [one party gives notice to the other of the possibility that] any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

40. LIABILITY, INDEMNITY AND INSURANCE

- 40.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) any claim under clause 19.9;
 - (e) any claim under clause 42; or
 - (f) any claim under the indemnity in clause 28.3.
- 40.2 Subject to clause 40.3 and clause 40.4, the Provider shall indemnify and keep indemnified the Authority in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract or the presence of the Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Authority or by breach by the Authority of its obligations under the Contract.
- 40.3 Subject always to clause 40.1 and clause 40.4, the liability of either Party for Defaults shall be subject to the following financial limits:
- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed an agreed amount; and
 - (b) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of the agreed amount of the Contract Price payable by the Authority to the Provider in the Contract Year in which the liability arises.

40.4 Subject to clause 40.1, in no event shall either Party be liable to the other for any:

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

40.5 The Authority may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Provider 's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Provider 's Default; and
- (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider .

40.6 Nothing in the Contract shall impose any liability on the Authority in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Authority to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, or the Authority's employees, servants or agents.

41. INSURANCES

41.1 The Provider shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing [an adequate level of cover] **OR** [as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £10m **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- (c) professional indemnity insurance in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover; and/or
- (d) product liability insurance in relation to any one claim or series of claims.]

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider '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 Provider.

- 41.2 The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 41.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider .
- 41.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.
- 41.5 The Provider shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract.

42. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

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

43. WARRANTIES AND REPRESENTATIONS

The Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

- (b) the Contract is executed by a duly authorised representative of the Provider ;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Authority before execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider 's assets or revenue;
- (h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

DEFAULT, DISRUPTION AND TERMINATION

44. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 44.1 Without affecting any other right or remedy available to it, the Authority may terminate this Contract with immediate effect by giving [written] notice to the Provider if:
 - (a) the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the

meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];

- (b) the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Provider with one or more other companies or the solvent reconstruction of the Provider];
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider];
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Provider (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Provider or a receiver is appointed over the assets of the Provider ;
- (g) [the Provider (being an individual) is the subject of a bankruptcy petition or order;]
- (h) a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Provider 's assets and such attachment or process is not discharged within [14] days;
- (i) any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 44.1(a) to clause 44.1(h) (inclusive); [or]
- (j) the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

44.2 The Provider shall notify the Authority immediately if the Provider undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (**Change of Control**). The Authority may terminate the Contract by notice in writing with immediate effect within six Months of:

- (a) being notified that a Change of Control has occurred; or

- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control,

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

45. TERMINATION ON DEFAULT

- 45.1 The Authority may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a material breach and if:
 - (a) the Provider has not remedied the material breach to the satisfaction of the Authority within [20] Working Days, or such other period as may be specified by the Authority after issue of a written notice specifying the material breach and requesting it to be remedied; or
 - (b) the material breach is not, in the opinion of the Authority, capable of remedy.

- 45.2 [For the purposes of clause 45.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:
 - (a) a substantial portion of this Contract; or
 - (b) any of the obligations set out in clauses above, over [the term of this Contract OR any period of Months during the term of this Contract].

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.]

- 45.3 The Authority may terminate the Contract by giving written notice to the Provider with immediate effect if:
 - (a) the Provider repeatedly breaches any of the terms of this Contract 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 of this Contract;
 - (b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
 - (c) any warranty given by the Provider in clause 43 of this Contract is found to be untrue or misleading.

- 45.4 If the Authority fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within [90] Working Days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause 20.

46. BREAK CLAUSE

The Authority may terminate this Contract at any time.

47. CONSEQUENCES OF TERMINATION OR EXPIRY

- 47.1 Where the Authority terminates the Contract under clause 45 and then makes other arrangements for the supply of Services, the Authority may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 45, no further payments shall be payable by the Authority to the Provider until the Authority has established the final cost of making those other arrangements.
- 47.2 [Subject to clause 40, where the Authority terminates the Contract under clause 47, the Authority shall indemnify the Provider against any reasonable commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause 47].
- 47.3 The Authority shall not be liable under clause 47.2 to pay any sum that:
- (a) was claimable under insurance held by the Provider, and the Provider 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 Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the

Contract had not been terminated before the expiry of the Contract Period.

47.4 Except as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Provider under clause 18, clause 19, clause 20, clause 21, clause 24, clause 25, clause 26, clause 27, clause 29, clause 30, clause 35, clause 41, clause 42, clause 43, clause 48, and clause 50.

48. DISRUPTION

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

48.2 The Provider 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.

48.3 In the event of industrial action by the Staff, the Provider shall seek the Authority's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.

48.4 If the Provider's proposals referred to in clause 48.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Authority may:

- (a) require the Provider to provide alternative proposals; or
- (b) undertake the services itself and recover from the Provider the additional costs incurred in the process.

Subject to clause 48.5, nothing in this clause shall release the Provider from the proper performance of its obligations under the Contract.

48.5 If the Provider 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 reasonably incurred by the Provider as a direct result of such disruption.

49. RECOVERY ON TERMINATION

- 49.1 On the termination of the Contract for any reason, the Provider shall:
- (a) immediately return to the Authority all Confidential Information, Personal Data and Authority's Intellectual Property in its possession or in the possession or under the control of any permitted Provider s or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Provider under clause 9. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to any Replacement Provider and/or the completion of any work in progress; and
 - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Provider to conduct due diligence.
- 49.2 If the Provider fails to comply with clause 49.1(a) and clause 49.1(b), the Authority may recover possession thereof and the Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted Provider s or Sub-Contractors where any such items may be held.
- 49.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clause 49.1(c) and clause 49.1(d) free of charge. Otherwise, the Authority shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

50. TUPE

- 50.1 The Supplier recognises that TUPE may apply in respect of this Agreement and should TUPE apply for the purposes of this Agreement,

for the avoidance of doubt, any staff affected by TUPE shall transfer to the Supplier

51. DISPUTE RESOLUTION

51.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then [except as expressly provided in this Contract,] the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Authority and the Provider shall attempt in good faith to resolve the Dispute;
- (b) if the Authority and the Provider are for any reason unable to resolve the Dispute within [30] days of service of the Dispute Notice, the Dispute shall be referred to the senior officer of the Authority and senior officer of the Provider who shall attempt in good faith to resolve it; and
- (c) if the senior officer of the Authority and senior officer of the Provider are for any reason unable to resolve the Dispute within [30] days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start an agreed number of days after the date of the ADR notice.

51.2 The commencement of mediation shall not prevent the parties commencing or continuing [court or arbitration] proceedings in relation to the Dispute under clause 50 which clause shall apply at all times.

52. FORCE MAJEURE

52.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances [the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed **OR** the affected party shall be entitled to a reasonable extension of the time for performing such obligations]. If the period of delay or non-performance continues for a set number of weeks **OR** months, the party not affected may terminate this Contract by giving a defined period's written notice to the affected party.

53. SAFEGUARDING

53.1 The Parties acknowledge that, in the event that the Service Provider in the delivery of the Services is a Regulated Activity Provider, then they shall have ultimate responsibility for the management and control of the Regulated Activity provided under this agreement and for the purposes of the Safeguarding Vulnerable Groups Act 2006.

53.2 The Service Provider shall ensure that all individuals engaged in the provision of the Services are:

- a. subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate (the Parties acknowledging that taxi and private hire vehicle drivers are required to satisfy this requirement as a condition of their licence and for PSV drivers the requirement applies to unescorted journeys only); and
- b. the Service Provider shall monitor the level and validity of the checks under this Clause 52.2 for each member of staff.

53.3 The Service Provider warrants that at all times for the purposes of this agreement it has no reason to believe that any person who is or will be employed or engaged by the Service Provider in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.

53.4 The Service Provider shall immediately notify the Authority of any information that it reasonably requests to enable it to be satisfied that the obligations of this Clause 52 have been met.

52.5 The Service Provider shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to any Clients, service users, children or vulnerable adults.

53.5 The Service Provider shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Clients.

53.6 The Authority shall provide the Service Provider in Appendix 4 (Safeguarding, Contract Compliance and Driver's Safety Code) of Schedule 1 (General Specification) with details of the Authority's "Safeguarding, Contract Compliance and Driver's Safety Code" policy document which forms part of the Authority's safeguarding procedures. This document shall be updated and circulated to all the Authority's service providers at least annually to remind service providers of the importance of this policy and any amended, superseded or new policy document which imposes more onerous obligations onto the Service Provider shall (where not already implemented as a Change by the Authority) be a deemed Change by the Authority entitling the Service Provider to protection established by the Change Control Procedure. The Service Provider must ensure that all Personnel engaged in connection with the provision of the Services are fully aware of this policy and its importance. Any material breach of the Authority's safeguarding procedures by the Service Provider or its Personnel shall be an irreparable material breach of this agreement.

54. EXIT PLAN

54.1 Exit Arrangements must be provided within the first 12 months of the Commencement Date and the exit arrangements shall be in line with the Specification of Requirements at Schedule 1 of this agreement.

55. BUSINESS CONTINUITY

55.1 The Service Provider shall ensure that it has in place Business Continuity Plan at all times, and that the Business Continuity Plan is adequate to minimise the effect of any Disaster.

55.2 Following the declaration of a Disaster in respect of any of the Services, the Service Provider shall:

55.3 implement the Business Continuity Plan;

55.4 continue to provide the affected Services in accordance with the Business Continuity Plan; and]

55.5 restore the affected Services to normal within the period laid out in the Business Continuity Plan.

56. ENTIRE AGREEMENT

- 56.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 56.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Contract, provided that nothing in this clause 52 shall operate to exclude any liability for fraud.
- 56.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the clauses of the Contract;
 - (b) the Order Form except Appendices B (Provider's Tender) and C (Supplemental Tender) to the Order Form;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix B (the Provider 's Tender), and Appendix C to the Order Form ;
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) Schedule 1, part 2 of the Framework Agreement and Appendix B to the Order Form (the Provider's Tender), and Appendix C to the Order Form.
- 56.4 This Contract may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

57. NOTICES

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

57.2 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 fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 57.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax, or sooner where the other Party acknowledges receipt of such letters, fax

57.3 For the purposes of clause 57.2 the address of each Party shall be:

- (a) for the Authority: the address set out in the Order Form.
- (b) for the Provider : the address set out in the Order Form.

57.4 Either Party may change its address for service by serving a notice in accordance with this clause.

58. GOVERNING LAW AND JURISDICTION

58.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

58.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

This Call Off Contract has been signed by the duly authorised signatories of the Parties

Authorised Signatory

For and on behalf of the Northamptonshire County Council

Insert Name]

[Insert Title]

[Insert Department]

Authorised Signatory

For and on behalf of the Provider

Insert Name]

[Insert Title]

[Insert Department]

SCHEDULE 1

SPECIFICATION (Please see Service Specification)

Schedule 2

Payment Schedule

Schedule 3

Provider's Tender

Schedule 4
GDPR Data Processing

Requirements of Processing, Personal Data and Data

1. The Provider shall comply with any further written instructions with respect to processing by the Council.
2. Any such further instructions shall be incorporated into this Appendix.

Description	Details
Subject matter of the Processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]
Duration of the Processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, sharing, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc.]</p>
Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc.]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), Authority s/ clients, Provider s, patients, students / pupils, members of the public, users of a particular website etc.]
2Plan for return and	[Describe how long the data will be retained for, how it be

destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	returned or destroyed]
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