

Call-off Terms and Conditions to apply to Contracts between the Supplier and Customers

Background

- (A) The Authority placed a contract notice 2023/S 000-034115 on 17 November 2023 in the Find A Tender Service seeking expressions of interest from potential suppliers for the provision of Office supplies and services to Contracting Bodies under a framework agreement.
- (B) On the basis of the Supplier's Tender, the Authority selected the Supplier to enter a framework agreement to provide workplace supplies and services to Contracting Bodies who will place Orders in accordance with the Framework Agreement.
- (C) This document sets out the procedure for ordering Goods and Services, the main terms and conditions for the provision of Goods and Services and the related obligations of the Supplier.
- (D) The Customer is a Contracting Body, as specified in the Find A Tender Service Contract Notice. It has selected the Supplier to provide the Goods and Services and the Supplier is willing and able to provide the Goods and 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:

Approval	the prior written approval of the Customer.
Auditor	the National Audit Office or an auditor appointed by the Customer as the context requires.
Authorised Representative	the persons respectively designated as such by the Customer and the Supplier in the Order Notice.
Authority	The Charities Buying Group, being the contracting authority that established the Framework Agreement.
Commencement Date	the commencement date set out in the Order Notice.
Confidential Information	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the Data Protection Legislation.
Contract	the written agreement between the Customer and the Supplier consisting of the Order Notice and these clauses (except that, for the purposes of clause 56.3 only, reference to "Contract" shall not include the Order Notice).

Contract Period	the period from the Commencement Date to: <ul style="list-style-type: none"> (a) the date of expiry set out in clause 3; or (b) [following an extension pursuant to clause 4, the date of expiry of the extended period; (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	means: <ul style="list-style-type: none"> (a) in relation to any Goods, the relevant Goods Price; and (b) in relation to any Services, the relevant Services Price.
Contract Year	a period of 12 months during the Contract Period, commencing on the Commencement Date or an anniversary thereof.
Contracting Authority	any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) other than the Customer.
Contracting Body	a Contracting Authority identified in the contract notice as a potential purchaser of Goods and/or Services under the Framework Agreement.
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.
Customer	means the party identified as the Customer in the Order Notice.
Data Protection Legislation	Means the UK GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time and any successor legislation to the UK GDPR or the Data Protection Act 2018 and all applicable laws and regulations relating to Processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner
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 (if any) listed in the Order Notice.

Dispute Resolution Procedure		the dispute resolution procedure in clause 54.
Environmental Regulations	Information	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.
Equipment		the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.
Fees Regulations		the Freedom of Information and Data Protection Legislation.
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 Information Commissioner or relevant government department in relation to such legislation.
Force Majeure		<p>any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Supplier's or any Sub-Contractor's organisation; or</p> <p>(b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.</p>
Framework Agreement		the framework agreement for the provision of office supplies and services between the Authority and the Supplier dated [date] .
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.
Goods		the goods to be supplied as set out on the Order Notice.
Goods Price		means, in respect of any Goods, the price (excluding any applicable VAT) payable to the Supplier by the Customer for such Goods under the Contract, as set out in the Order Notice.
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, trade marks, 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 customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

KPIs

means the key performance indicators detailed in clause 10.6.

Key Personnel

any individual identified in the Order Notice as being key personnel.

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 Supplier is bound to comply, which for the avoidance of doubt includes the Human Rights Act 1998.

Management Information

means information relating to the Customer's total spend, the range and volume of Goods and Services purchased by the Customer, environmental product usage by the Customer, the Customer's spend by product family, new Customer accounts per month, total Customer spend by account number and any other management information specified in the Order Notice.

Month

calendar month (and "**Monthly**" shall be construed accordingly).

Order

an order placed by the Customer to the Supplier in accordance with the Framework Agreement, which contains, as a minimum, the details set out in Annex A and any other details notified by the Customer to the Supplier from time to time.

Order Notice

the document (including an electronic document) setting out details of and used to place an Order.

Parent Company

any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term **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 Supplier or the Customer and Parties shall mean both the

Supplier and the Customer.

Premises

the location where the Services are to be supplied, as set out in the Order Notice.

Prohibited Act

the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or 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 activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract or any other agreement with the Customer or the Authority;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other agreement with the Customer or the Authority; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Customer or the Authority.

Property

any property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract.

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 Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Notice) and any other quality standards set out in the Order Notice.

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

Customer (and “**Regulatory Body**” shall be construed accordingly).

Replacement Supplier

any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer 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 for the purposes of clause 30).

Services Price

means, in respect of any Services, the price (exclusive of any applicable VAT), payable to the Supplier by the Customer for such Services under the Contract, as set out in the Order Notice.

Services

the services to be supplied as specified in the Order Notice.

Staff

all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier’s agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

Staff Vetting Procedures

the Customer’s procedures and departmental policies for the vetting of personnel:

- (a) for eligibility to work in the UK

Sub-Contract

means, except as otherwise provided in clause 23.6, any contract between the Supplier and a third party under which the Supplier agrees to source the provision of any of the Services from, or sub-contract any of its obligations under the Contract to, that third party.

Sub-Contractor

the contractors or service providers that enter into a Sub-Contract with the Supplier.

Supplier

means Bates Office Services Ltd incorporated and registered in England and Wales with company number 3352929 whose registered office is at Unit A1-A4 Knights Park Industrial Estate, Rochester, Kent, ME2 2LS

Tender

the document(s) submitted by the Supplier to the Authority for admission onto the Framework Agreement.

UK GDPR

means the United Kingdom General Data Protection Regulations which came into force on 01/01/2021 via the DPPEC (Data Protection, Privacy and Electronic Communications (Amendment Etc.) (EU Exit) Regulations 2019 (as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2020).

Variation	has the meaning given to it in clause 42.
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

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

- 2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 2.2 words importing the masculine include the feminine and the neuter;
- 2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 2.4 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;
- 2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 2.8 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;
- 2.9 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
- 2.10 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

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

4. Extension of Initial Contract Period

The Customer may, by giving written notice to the Supplier not less than 3 months before the last day of the Initial Contract Period, extend the Contract for any further period or periods specified in the Order Notice

provided that the total Contract Period does not exceed 48 Months. The provisions of the Contract will apply throughout any such extended period.

5. Supplier's Status

At all times the Supplier 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. Customer's Obligations

Except as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer 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 Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.

7. Mistakes in Information

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

8. Supply of Goods and Services

8.1 The Supplier shall supply the Goods and Services in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the relevant Contract Price.

8.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

8.3 The Supplier shall:

- (a) at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body; and
- (b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

8.4 The Customer may cancel any Order for Goods and/or Services on the following basis:

- (a) except as provided in clause 8.4(b) below, the Customer shall be entitled to cancel the delivery of the Goods or the performance of the Services free of charge provided that such cancellation is made at any time prior to delivery or performance (as the case may be);
- (b) the Customer shall be entitled to cancel the delivery of Goods free of charge provided that such cancellation is made not less than 7 days' prior to delivery; and
- (c) the Supplier may impose a cancellation charge on the Customer in respect of any cancellation other than a cancellation of the nature described in clause 8.4(a) or 8.4(b) above, provided that the amount of any such charge shall not exceed an amount equal to the actual costs incurred by the Supplier as a result of the cancellation,

and for the avoidance of doubt the Supplier shall not be entitled to charge the Customer a restocking charge in respect of any cancellation of Goods regardless of the timing of the cancellation or the nature of the Goods.

9. The Goods

9.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description, any applicable specification and any relevant samples previously provided by the Supplier to the Customer pursuant to clause 9.2 below;
- (b) be of good quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- (c) be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
- (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

9.2 The Customer may request samples of, inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such sampling, inspection or testing and any such sampling, inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

9.3 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 9.1 above, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

9.4 The Customer may conduct further inspections and tests after the Supplier has carried out any remedial actions pursuant to clause 9.3 above.

9.5 The Supplier shall have in place appropriate quality assurance arrangements, defined quality assurance and control regimes to apply throughout the manufacturing, design and delivery of the Goods.

10. Delivery of the Goods

10.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination safely and in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Customer's Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of the Goods remaining to be delivered; and
- (c) if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

- 10.2 The Supplier shall deliver the Goods:
- (a) within 24 hours of receipt of the relevant Order Notice or by such alternative delivery date set out on the relevant Order Notice (“**Delivery Date**”);
 - (b) to the address for delivery of the Goods as set out in the Order Notice (“**Delivery Location**”), which the Supplier acknowledges may be a specific room within a building, on a floor other than the ground floor, and may be an office, store room or other location; and
 - (c) during the Customer’s normal business hours, or as instructed by the Customer; and
 - (d) in accordance with any other delivery requirements notified by the Customer to the Supplier.
- 10.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location by the Supplier. Time of delivery shall be of the essence.
- 10.4 The Supplier shall not deliver the Goods in instalments without the Customer’s prior written consent. Where it is agreed with the Customer that the Goods are to be delivered by instalments, they may be invoiced and paid for separately in accordance with clause 23 below. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 11 below.
- 10.5 Title and risk in the Goods shall pass to the Customer on completion of delivery.
- 10.6 The Supplier shall achieve the following KPIs:
- (a) Maximum of 2% Items out of stock at time of order.
 - (b) Maximum of 2% of orders not delivered on time – either late or missed delivery.
 - (c) Maximum of 1% order pick errors.
 - (d) Maximum of 1% of goods returned due to them being faulty goods.
 - (e) Maximum of 2% of damaged delivery parcels.
 - (f) On-Line Portal Availability - 99% uptime.
 - (g) Diagnosis of portal faults – 98% by close of business working day following fault report.
 - (h) Time to Fix – 97% within two business days of fault report.

11. **Goods Remedies**

- 11.1 If the Goods are not delivered on the Delivery Date in accordance with the Order, or do not comply with any of the undertakings set out in clause 9.1 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following remedies:
- (a) to terminate the Contract;
 - (b) to reject the Goods and cancel the Order (in whole or in part), in which case the Supplier shall, at the Supplier’s risk and expense, promptly collect any previously delivered rejected Goods from the Customer. For the avoidance of doubt, the Customer may reject any Goods delivered in excess of the ordered quantity;

- (c) to require the Supplier to repair or replace the rejected Goods, in which case the Supplier shall, at the Supplier's risk and expense, promptly collect any previously delivered rejected Goods from the Customer;
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and
- (f) to claim damages for any other costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract,

and, provided that the Customer has taken reasonable care of any previously delivered rejected Goods which are awaiting collection by the Supplier pursuant to clause 11.1(b) or 11.1(c) above, the Customer shall not be liable to the Supplier for any damage or deterioration to such Goods prior to collection.

11.2 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

11.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

12. Goods Price

12.1 The Goods Price includes the cost of delivery, packaging and insurance of the Goods.

12.2 No extra charges for the Goods shall be effective unless agreed in writing with the Customer.

13. The Services

13.1 The Supplier shall, to the extent that the standard of Services has not been specified in the Contract, agree the relevant standard of the Services with the Customer before the supply of the Services.

13.2 The Supplier 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.

13.3 Subject to the Customer providing Approval in accordance with clause 14, 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.

13.4 The Customer may inspect and examine the manner in which the Supplier supplies the Services during the Supplier's normal business hours on reasonable notice.

13.5 The Customer may request samples of any of the Services in order to assist in the Customer's quality evaluation processes.

14. Provision and Removal of Equipment

14.1 Unless otherwise stated in the Order Notice, the Supplier shall provide all the Equipment necessary for the supply of the Services.

- 14.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining prior written Approval.
- 14.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Supplier 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 Supplier.
- 14.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 14.5 The Supplier shall, at the Customer'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 Customer is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 14.6 On completion of the Services, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier 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 Supplier or any Staff.

Staffing for the Services

15. Key Personnel

- 15.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Customer before removing or replacing any Key Personnel, and, where possible, at least two Months' written notice must be provided by the Supplier of its intention to replace Key Personnel.
- 15.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor, but the Customer may interview the candidates for Key Personnel positions before they are appointed.
- 15.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Supplier 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.
- 15.4 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

16. Supplier's Staff

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

- (a) any member of 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 Customer, be undesirable.

- 16.2 At the Customer's written request, the Supplier 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 Customer may reasonably request.
- 16.3 If the Supplier fails to comply with clause 16.2 within two Months of the date of the request then the Customer may exclude Supplier Staff from entry to the Premises. Exercise of the Customer's rights under this clause shall not excuse the Supplier from any attributable failure to perform the Services.
- 16.4 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Supplier from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 16.5 The Supplier warrants that
 - (a) 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.

17. Non-Solicitation

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

The Premises

18. Licence to Occupy Premises

- 18.1 Any land or Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract.
- 18.2 The Supplier 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 Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Customer may reasonably request.
- 18.3 Without prejudice to clause 16.4, the Supplier 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 Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier 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.

18.4 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted under the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

19. Security of Premises

19.1 The Customer 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 Supplier shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that all Staff comply with such requirements.

19.2 On request, the Customer shall:

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

20. Property

20.1 Where the Customer issues Property to the Supplier, such Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer 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 Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

20.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five Working Days of receipt.

20.3 The Supplier 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.

20.4 The Supplier 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 Customer's reasonable security requirements as required from time to time.

20.5 The Supplier 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 Customer's Default. The Supplier shall inform the Customer within two Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

21. Environmental and Sustainability Requirements

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

21.2 The Supplier shall:

- (a) assist the Customer in achieving the Customer's environmental and sustainability objectives (including but not limited to by assisting the Customer in monitoring the Customer's usage of sustainable Goods and Services as part of the reporting, monitoring and review procedures referred to in clauses 35 and 36); and
- (b) continually demonstrate the Supplier's commitment to sustainability

22. Health and Safety

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

Payment

23. Payment and VAT

- 23.1 The Supplier shall ensure that each invoice for Goods and/or Services is submitted in accordance with clause 23.2 and contains all appropriate references (including the date of the relevant Order, the invoice number, the Customer's relevant Order number, the Supplier's VAT registration number) and a detailed breakdown of the Goods and/or Services supplied and that it is supported by any other documents reasonably required by the Customer to substantiate the invoice.
- 23.2 Unless an alternative payment profile is agreed by the Customer, the Supplier shall issue each invoice for the Goods and Services supplied to the Customer in the Month following the Month in which the relevant Goods and Services were supplied.
- 23.3 Where the Supplier submits an invoice to the Customer in accordance with clauses 23.1 and 23.2 , the Customer will consider and verify that invoice within 7 days.
- 23.4 The Customer shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 23.5 Where the Customer fails to comply with clause 23.4, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Customer.

- 23.6 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- (a) provisions having the same effect as clause 23.3 to clause 23.5 of this Contract; 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 23.3 to clause 23.5 of this Contract.

In this clause 23.6, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer 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 Contract.

- 23.7 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable. The Customer shall, in addition to the Goods Price and the Services Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and Services supplied in accordance with the Contract.
- 23.8 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 23.8 shall be paid by the Supplier to the Customer not less than five Working Days before the date on which the tax or other liability is payable by the Customer.
- 23.9 The Supplier shall not suspend the supply of the Goods or the Services unless the Supplier is entitled to terminate the Contract under clause 50 for failure to pay undisputed sums of money.
- 23.10 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. This clause shall not apply to payments the Customer disputes in good faith.

24. Recovery of Sums Due

- 24.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract.
- 24.2 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.
- 24.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 24.4 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

25. Conflicts of Interest

- 25.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 25.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 25.1 above arises or is reasonably foreseeable.
- 25.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

26. Prevention of Bribery

- 26.1 The Supplier:
- (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 Customer, 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 Customer before execution of this Contract.
- 26.2 The Supplier shall:
- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer 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 ten Working Days of the Commencement Date, and annually thereafter for so long as the Contract is in force, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 26 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 26.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer upon request) to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.
- 26.4 If any breach of clause 26.1 is suspected or known, the Supplier must notify the Customer immediately.
- 26.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clause 26.1, the Supplier must respond promptly to the Customer's enquiries, co-operate with any

investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for six years following the expiry or termination of this Contract.

26.6 The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 26.1.

26.7 Any notice of termination under clause 26.6 must specify:

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

26.8 Notwithstanding clause 54, any dispute relating to:

- (a) the interpretation of clause 26; or
- (b) the amount or value of any gift, consideration or commission,

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

26.9 Any termination under clause 26 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

27. Discrimination

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

27.2 The Supplier shall take all reasonable steps to secure the observance of clause 27.1 by all servants, employees or agents of the Supplier and all suppliers and Sub-contractors employed in the execution of the Contract.

28. Confidentiality

28.1 Subject to clause 28.2, the parties shall keep confidential the Confidential Information of the other Party and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

28.2 Clause 28.1 shall not apply to any disclosure of information:

- (a) required by any applicable Law, provided that clause 30 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 Customer;
- (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 28.1;

- (e) by the Customer 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 54;
- (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 Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Customer relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

28.3 On or before the expiry of the Contract, the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which contain the Customer's Confidential Information or relate to personal information of the Customer's employees, rate-payers or service users, are delivered up to the Customer or securely destroyed.

29. Data Protection

29.1 The Supplier shall (and shall procure that any of its Supplier's Personnel involved in the provision of this Agreement shall) comply with any notification requirements under the Data Protection Legislation, provide the Authority with all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.

29.2 Notwithstanding the general obligation in clause 29.1, where the Supplier is Processing Personal Data as a Data Processor for the Authority acting as Data Controller, the Supplier shall comply with the obligations in Annex B (Data Processor Obligations).

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

30. Freedom of Information

30.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Customer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request For Information which is in its possession or control in the form that the

Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

- (d) not respond directly to a Request For Information unless authorised in writing to do so by the Customer.

30.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier 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 Contract) the Customer 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.

31. Publicity, Media and Official Enquiries

31.1 The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.

31.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.

31.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

32. Intellectual Property Rights

32.1 Subject to clause 32.4, the Supplier shall retain ownership of all Intellectual Property created by the Supplier or any Staff or Sub-Contractor of the Supplier:

- (a) in the course of supplying the Goods or performing the Services; or

- (b) exclusively for the purpose of supplying the Goods or performing the Services.

32.2 The Supplier hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Customer to use any Intellectual Property of the nature described in clause 32.1 above for any purpose relating to the exercise of the business or function of the Customer. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any Replacement Supplier or other third party invited by the Customer to participate in a tendering process for the award of a contract to deliver replacement services).

32.3 The Supplier shall indemnify the Customer 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 Goods and Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

32.4 The Supplier acknowledges and agrees that:

- (a) Nothing in the Contract shall operate to transfer or assign to the Supplier any Intellectual Property Rights owned by the Customer (“**Customer IPR**”); and
- (b) in the event that the Customer agrees that the Supplier may use any Customer IPR in connection with the Contract, the Supplier shall only use such Customer IPR for the purposes expressly permitted by the Customer and for no other purpose.

33. Records and Audit Access

- 33.1 The Supplier shall keep and maintain until six years after the completion or termination (whichever is earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Customer and the amounts paid by the Customer.
- 33.2 The Supplier shall keep the records and accounts referred to in clause 33.1 above in accordance with good accountancy practice.
- 33.3 The Supplier shall on request afford the Customer, the Customer’s representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 33.4 The Supplier shall provide such records and accounts (together with copies of the Supplier’s published accounts) to the Customer and the Auditor upon request until six years after the completion or termination (whichever is earlier) of the Contract (or as long a period as may be agreed between the Parties).
- 33.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services, except insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 33.6 Subject to the Customer’s rights of confidentiality, the Supplier 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 Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 33.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 33, unless the audit reveals a material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer’s reasonable costs incurred in relation to the audit.

34. Replacement of Corrupted Data

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

Control of the Contract

35. Provision of Information and Meetings

- 35.1 The Supplier shall submit Management Information to the Customer throughout the Contract Period within 5 calendar days of the last day of every Month.
- 35.2 The Authorised Representatives and Key Personnel shall meet in accordance with the details set out in the Order Notice and the Supplier shall, at each meeting, present its previously circulated Management Information.

36. Monitoring of Contract performance

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

37. Inadequate Performance of the Services

37.1 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 Supplier's obligations under the Contract, then the Customer shall take reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, and may, acting reasonably:

- (a) subject to clause 38.1, withhold a sum; or
- (b) deduct a sum,

in each case equal to a maximum of 5% of the Services Price payable in respect of the Month in which the complaint arose.

37.2 The parties agree that a deduction made pursuant to clause 37.1(b) represents a genuine pre-estimate of the loss likely to be suffered by the Customer.

37.3 Where the Customer withholds a sum pursuant to clause 37.1(a) then that sum shall be paid to the Supplier when, in the reasonable opinion of the Customer, the matters complained of have been rectified and there has been no repeat of those matters for two Month(s).

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

37.5 If the Supplier:

- (a) fails to comply with clause 37.4 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with clause 37.4 above,

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

38. Breach

38.1 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to any of its other rights and remedies set out elsewhere under the Contract or available in Law, do any of the following:

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

38.2 The Supplier agrees that, in the event that the Customer receives a complaint from a third party relating to the Supplier's supply of the Goods and/or provision of the Services and any Regulatory Body (including but not limited to the Local Government Ombudsman) investigates the complaint, the Supplier:

- (a) shall co-operate fully with the Customer and such Regulatory Body in respect of any such investigation; and
- (b) shall, in the event that such Regulatory Body finds the Supplier guilty of maladministration or injustice, indemnify and hold harmless the Customer in respect of any losses, damage, costs and expenses incurred by the Customer in connection with maladministration or injustice.

39. Rights and Remedies

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by Law.

40. Transfer and Sub-contracting

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

40.2 Provided that the Customer has given prior written consent, the Supplier 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; or

- (b) there has been a universal or partial succession into the position of the Supplier, 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 Contract.

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

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

40.5 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (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 Customer; or
- (c) any private sector body which substantially performs the functions of the Customer,

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

41. Waiver

41.1 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.

41.2 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.

42. Variation

42.1 Subject to the provisions of this clause 42, the Customer may request a variation to the Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "**Variation**".

42.2 The Customer may request a Variation by giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within a reasonable time limit. Such time limits shall be reasonable having regard to the nature of the Order.

42.3 If the Supplier is unable to provide the Variation to the Goods and/or Services (as the case may be) or where the Parties are unable to agree a change to the Goods Price and/or the Services Price (as the case may be), the Customer 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 Supplier has already delivered part or all of the Order in accordance with the Order Notice or where the Supplier 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.

42.4 If the Parties agree the Variation and any variation in the Goods Price and/or Services Price (as the case may be), the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

43. The Contracts (Rights of Third Parties) Act 1999

43.1 Except as expressly provided elsewhere in this Contract, 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.

43.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person.

44. Severance

44.1 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.

44.2 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

45. Liability, Indemnity and Insurance

45.1 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 23.8;
- (e) any claim under the indemnity in clause 32.3;
- (f) any claim under the indemnity in clause 38.2(b); or
- (g) any claim under clause 47.

45.2 Subject to clause 45.3 and clause 45.4, the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and

any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods or the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any claim made against the Customer for death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

45.3 Subject always to clause 45.1 and clause 45.4, each Party's total liability to the other Party for each and any claim arising under or in connection with the Contract, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation or otherwise, shall in all circumstances be limited to £5 million.

45.4 Subject to clause 45.1, 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.

45.5 The Customer may, among other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Supplier's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and
- (c) the additional cost of any replacement goods and/or services.

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

46. Insurances

46.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

- (a) public liability insurance with a limit of indemnity of not less than £5 million in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity 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 with a limit of indemnity of not less than £2 million 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 with a limit of indemnity of not less than £5 million 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 Supplier, arising out of the Supplier’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 Supplier.

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

47. Taxation, National Insurance and Employment Liability

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

48. Warranties and Representations

The Supplier warrants and represents that:

- 48.1 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;
- 48.2 the Contract is executed by a duly authorised representative of the Supplier;
- 48.3 in entering the Contract it has not committed any Prohibited Act;
- 48.4 as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will advise

the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

- 48.5 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;
- 48.6 it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- 48.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 48.8 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;
- 48.9 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence; and
- 48.10 it has in place robust processes and practices in place to guard against unforeseen disaster in the Supplier's supply of the Goods and the Services.

Default, Disruption and Termination

49. Termination on insolvency and change of control

- 49.1 Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving written notice to the Supplier if:
 - (a) the Supplier 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 Supplier 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 Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - (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 Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

- (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 Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (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 Supplier or a receiver is appointed over the assets of the Supplier;
- (g) the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 49.1(a) to clause 49.1(h) (inclusive); or
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

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

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

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

50. Termination on Default

50.1 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Supplier commits a material breach and if:

- (a) the Supplier has not remedied the material breach to the satisfaction of the Customer 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 Customer, capable of remedy.

50.2 For the purposes of clause 50.1, **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 substantial portion 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.

50.3 The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if:

- (a) the Supplier 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; or
- (c) any warranty given by the Supplier in clause 48 of this Contract is found to be untrue or misleading.

50.4 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 20 Working Days of the date of such written notice, the Supplier 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 Customer exercising its rights under clause 24.

51. Consequences of termination or expiry

51.1 Where the Customer terminates the Contract under clause 50 and then makes other arrangements for the supply of the Goods and Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 50, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

51.2 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) clauses of the Contract that expressly or by implication survive termination of the Contract shall continue in full force and effect, which for the avoidance of doubt includes the following clauses: clause 23, clause 24, clause 25, clause 28, clause 29, clause 30, clause 32, clause 33, clause 38.2, clause 45, clause 46, clause 47, clause 51, clause 53, and clause 58.

52. Disruption

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

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

52.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Goods and the Services in accordance with its obligations under the Contract.

52.4 If the Supplier's proposals referred to in clause 52.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:

- (a) require the Supplier to provide alternative proposals; or
- (b) procure the Goods from elsewhere and/or undertake the Services itself and recover from the Supplier the additional costs incurred in the process,

save that, subject to clause 52.5, nothing in this clause shall release the Supplier from the proper performance of its obligations under the Contract.

52.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

53. Recovery on Termination

53.1 On the termination of the Contract for any reason, the Supplier shall:

- (a) immediately return to the Customer all Confidential Information and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 20. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Supplier 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 Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

53.2 If the Supplier fails to comply with clause 53.1(a) and clause 53.1(b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

53.3 Where the Contract terminates due to the Supplier's Default, the Supplier shall provide all assistance under clause 53.1(c) and clause 53.1(d) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

54. Dispute Resolution

54.1 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 Customer's Authorised Representative and the Supplier's Authorised Representative shall attempt in good faith to resolve the Dispute;
- (b) if the Customer's Authorised Representative and the Supplier's Authorised Representative 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 Customer and the senior officer of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the senior officer of the Customer and senior officer of the Supplier 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 not later than 20 Working Days after the date of the ADR notice.

54.2 The commencement of mediation pursuant to clause 54.1(c) shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 58 which clause shall apply at all times.

55. Force Majeure

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. If the period of delay or non-performance continues for 60 days, the party not affected may terminate this Contract immediately by giving written notice to the affected party.

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 56 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 Notice, 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 Notice;
- (c) the terms of the Framework Agreement; and

(d) any other document referred to in the clauses of the Contract.

56.4 This Contract may be executed in any number of counterparts, each of which when executed 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 Subject to clause 57.5, 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 e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.

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

(a) for the Customer: the address set out in the Order Notice.

(b) for the Supplier: the address set out in the Order Notice.

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

57.5 Notice of termination shall not be capable of being served by electronic means.

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 laws 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).

Annex A. Details to be included in each Order Notice

Details relevant to all Contracts

- Customer Name
- Customer Address
- Customer Invoice Address
- Customer's Authorised Representative (i.e. point of contact) for the Order (name, telephone number, email address)
- Order Number
- Order Date

- Supplier Name
- Supplier's Authorised Representative (i.e. point of contact) for the Order (name, telephone number, email address)
- Supplier's Address

- Goods, Services and deliverables required
- Price payable by Customer (and any alternative payment profile)

Details relevant to contracts for Goods

- Required delivery date for Goods (if not specified, delivery will be due within 24 hours of the Order)
- Required delivery location for Goods

Details relevant to contracts for Services (which includes where any services are provided in respect of goods supplied, such as installation)

- Date on which Services are to be provided
- Completion date for listed Services
- Key Personnel of the Supplier to be involved in the Services and deliverables (if any)
- Performance standards for the Services
- Location(s) at which the Services are to be provided
- Any specific Quality Standards for Services
- Contract monitoring arrangements
- Additional management information and meeting requirements (if any)
- Any information deemed to be confidential information
- Duration of period within which such information shall be deemed confidential

Annex B. Data Processor Obligations

1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Annex B is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
2. Without prejudice to the generality of paragraph 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 Supplier for the duration and purposes of this Agreement.
3. Where the Supplier is Processing Personal Data as a Data Processor for the Authority acting as Data Controller, the Supplier:
 - i. undertakes that it shall Process that Personal Data only on the **written instructions** of the Authority unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to Process Personal Data (the "**Applicable Laws**"). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for Processing Personal Data, the Supplier shall promptly notify the Authority of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Authority; and
 - ii. Process Personal Data in accordance with the Annex to this Annex B;
 - iii. shall treat Personal Data as **confidential**, and shall ensure that access to Personal Data is limited to only those Supplier's Personnel who require access to it for the purpose of the Supplier carrying out the permitted Processing and complying with its obligations under this Agreement and that all such Supplier's Personnel have undergone training in Data Protection Legislation, their duty of confidentiality under this Agreement and in the care and handling of Personal Data;
 - iv. shall, on demand and without delay of a **Subject Access Request**, provide the Authority with all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to respond to the Subject Access Request;
 - v. assist the Authority in ensuring **compliance with its obligations** under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - vi. shall **not disclose** Personal Data to a third party in any circumstances other than at the specific written request of the Authority, or the disclosure is required by law or the order of a court;
 - vii. shall **not sub-contract** any of the Processing without the explicit written consent of the Authority (for the avoidance of doubt each and every sub-contract requires the explicit written consent of the Authority). Where consent is granted by the Authority, the Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Annex B. As between the Authority and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph;
 - viii. shall ensure that it has in place appropriate **technical and organisational measures** in accordance with the Annex to this Annex B, 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);

- ix. shall **not transfer** 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:
 - a) the Supplier has provided appropriate safeguards in relation to the transfer;
 - b) the Data Subject has enforceable rights and effective legal remedies;
 - c) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - d) the Supplier complies with reasonable instructions notified to it in advance by the Authority with respect to the Processing of the Personal Data.
 - x. shall not keep Personal Data on any laptop or other removable drive or device unless that device is protected by being fully encrypted, and the use of the device or laptop is necessary for the provision of the Services under this Agreement. Where this is necessary, the Supplier shall keep an audit trail of which laptops/drives/devices Personal Data are held on;
 - xi. shall without undue delay notify the Authority of any **information security incident** that may impact the Processing of Personal Data on discovering or becoming aware of any such incident. Following the report of the incident, the Supplier shall cooperate with the Authority whilst it carries out a risk assessment, root cause analysis and identifies any corrective action required and the Supplier shall cooperate with the Authority in implementing any required corrective action agreed between the Parties;
 - xii. shall maintain **complete and accurate records** of Processing activities and provide, upon request, the recorded information to the Authority for auditing purposes;
 - xiii. shall at the written direction of the Authority, **return** Personal Data to the Authority before or on termination of this Agreement and ensure that all Personal Data is **securely removed/deleted** from its systems and any printed copies securely destroyed. In complying with this Annex B, electronic copies of Personal Data shall be securely destroyed by either physical destruction of the storage media or secure deletion using appropriate electronic shredding software that meets HM Government standards. Any hard copy shall be destroyed by cross-cut shredding and secure re-cycling of the resulting paper waste;
 - xiv. shall designate a Data Protection Officer if required by the Data Protection Legislation.
4. Instructions given by the Authority acting as Data Controller to the Supplier acting as Data Processor in respect of Personal Data shall at all times be in accordance with the laws of the United Kingdom. The Supplier shall immediately notify the Authority if it reasonably believes that any instruction from the Authority is in breach of the Data Protection Legislation.
5. The Authority reserves the right upon giving reasonable notice and within normal business hours to carry out **compliance and information security audits** of the Supplier in order to satisfy itself that the Supplier is adhering to the terms of this Agreement. Where a Sub-contractor(s) is used, the Supplier agrees that the Authority may also, upon giving reasonable notice and within normal business hours, carry out compliance and information security audits and checks of the Sub-contractor(s) to ensure adherence to the terms of this Agreement.
6. Either Party may, at any time on not less than 30 days' notice, revise this Annex B 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 replaced by attachment to this Agreement).
7. The Supplier's total **aggregate liability** is unlimited in respect of any breach of this Annex B. For the avoidance of doubt, the Authority will not indemnify the Supplier against fines or court claims under the Data Protection Legislation.

ANNEX TO THIS ANNEX C - PROCESSING BY THE SUPPLIER

THE SUBJECT MATTER	Customer details
NATURE OF PROCESSING	Collection and recording
PURPOSE OF PROCESSING	To enable order delivery and invoicing, and marketing purposes.
DURATION OF THE PROCESSING	For the period of the framework or individual order notice
TYPES OF NON-SENSITIVE PERSONAL DATA	Name and address
TYPES OF SENSITIVE PERSONAL DATA	N/A
CATEGORIES OF DATA SUBJECT (current, past or prospective Data Subjects)	Customers
PLAN FOR RETURN AND DESTRUCTION OF THE DATA once the processing is complete	Destroyed once the order notice period has ended.