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DATED _____ **2018**

LUTON CULTURAL SERVICES TRUST

- and -

DRAFT

AGREEMENT

**in respect of the provision of
Cleaning Services at
the Cultural Trust Buildings in Luton**

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THIS AGREEMENT is made the _____ day of _____ 2018
BETWEEN LUTON CULTURAL SERVICES TRUST of Luton Central Library St.
George's Square Luton LU1 2NG acting by _____ a Director of the
Company and by _____ a further Director/the Company Secretary
(hereinafter called "the Trust") of the one part and
whose registered office is situate at _____ acting by
a Director of the Company and by _____ a further Director/the Company
Secretary thereof/of _____ trading as
(hereinafter called "the Contractor") of the other part

WHEREAS:

- (1) The Contractor is a Private/Public Limited Company incorporated in the United Kingdom with the object of
- (2) The Trust being desirous of obtaining the provision of the Services (such Services to be provided within the Contract Period (such period commencing on the Commencement Date and terminating on the Completion Date unless such period is extended pursuant to the Terms and Conditions of Contract annexed hereto or this Agreement is terminated prior thereto in accordance with the provisions hereof) subject to and in accordance with the Terms and Conditions of Contract and the Specification annexed hereto) and having made known its requirements to the Contractor the Contractor submitted a Tender dated the _____ day of _____ 201 whereby the Contractor undertook to provide the Services for the sum of (£ _____)
- (4) The Trust has accepted the Tender submitted by the Contractor on the terms that this Agreement shall be entered into

NOW IT IS HEREBY AGREED as follows:-

1. In consideration of the payment by the Trust to the Contractor of the Annual Sum which shall be paid at the times and in the manner and shall be subject to the variations by way of omission and extension all as set out and declared in and provided by the Contract Documents or all or any of them the Contractor agrees with the Trust that the Contractor and its lawful assignees (and Personal Representatives if appropriate) will provide within the Contract Period the Services as defined and shown in the annexed Contract Documents more particularly described and set out in the Schedule hereto (all of which the aforesaid annexed documents are hereinafter collectively described and referred to as "the Contract Documents") and in accordance in every respect with the requirements stipulations and conditions thereof insofar as the same are not hereby varied amended or excluded
2. It is hereby declared and agreed that all the Contract Documents so far as the same are not hereby expressly or impliedly varied amended or excluded shall be as binding upon the Contractor as if the same had been repeated and set out herein and shall be read as part hereof

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3. If there shall be any inconsistency between the Terms and Conditions of Contract and any other of the Contract Documents the Terms and Conditions of Contract shall prevail

IN WITNESS whereof the said _____ and the said _____
and the said _____ and _____ have executed this
Agreement as a Deed and have hereunto set their respective hands the day and
year first before written

IN WITNESS whereof the Parties hereto have executed this Agreement as a
Deed and have caused their respective Common Seals to be hereunto affixed the
day and year first before written

IN WITNESS whereof the Parties hereto have executed this Agreement as a
Deed and the Trust has caused its Common Seal to be hereunto affixed and the
Contractor has hereunto set his hand the day and year first before written

IN WITNESS whereof the Parties hereto have executed this Agreement as a
Deed the Trust having caused its Common Seal to be hereunto affixed and the
Contractor executing the same by _____ a Director thereof and
by _____ a further Director/the Company
Secretary thereof as if the same were executed under the Contractor's Common
Seal pursuant to the provisions of section 44 of the Companies Act 2006 the day
and year first before written

THE SCHEDULE hereinbefore referred to

The Terms and Conditions of Contract

The Specification

The Invitation to Tender

The Tender

Data to be shared by the Trust and Data to be provided to the Trust

SIGNED AS A DEED by)	
LUTON CULTURAL)	Director
SERVICES TRUST acting)	
by [INSERT])	
a Director and [INSERT])	
a further Director/the)	
Company Secretary thereof)	Director/Company Secretary

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SIGNED AS A DEED by)
[INSERT]) Director
acting by [INSERT])
a Director and [INSERT])
a further Director/the)
Company Secretary thereof) Director/Company Secretary

SIGNED AS A DEED by)
[INSERT])
in the presence of:-)

Witness signature

Witness name
Address

Occupation

THE COMMON SEAL of)
LUTON CULTURAL)
SERVICES TRUST)
was hereunto affixed in)
the presence of:-)

Director

Director/Company Secretary

THE COMMON SEAL of)
)
was hereunto affixed in)
the presence of:-)

Director

Director/Company Secretary

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SIGNED AS A DEED by)
LUTON CULTURAL)
SERVICES TRUST acting)
by **[INSERT]**)
a Director and **[INSERT]**)
a further Director/the)
Company Secretary thereof) Director/Company Secretary

SIGNED AS A DEED by)
[INSERT])
acting by **[INSERT]**)
a Director and **[INSERT]**)
a further Director/the)
Company Secretary thereof) Director/Company Secretary

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THE TERMS AND CONDITIONS OF CONTRACT

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1 Interpretation

1.1 In this Agreement the following words shall have the meanings set out in this Clause 1.1 unless specified otherwise or the context otherwise requires:-

1.1.1 “Additional Terms and Conditions of Contract” means those Additional Terms and Conditions of Contract which relate specifically to and are attached to and form part of the Specification; in the event of any conflict between the Additional Terms and Conditions of Contract or any of them and any other Terms and Conditions of Contract attached hereto the Additional Terms and Conditions of Contract shall prevail,

1.1.2 "Annual Sum" means the lump sum payable annually stated by the Contractor in its Tender or otherwise specified in this Agreement and supported by the Specification in respect of the provision of the Services which figure shall be exclusive of VAT; this sum shall be inclusive of all direct and indirect overheads and incidental or other costs, disbursements and expenses except as otherwise provided herein and shall be based on the Usual Working Hours on each working day,

1.1.3 “appropriate know-how” shall include inter alia proven expertise in the provision of the Services,

1.1.4 “Authorised Officer” means any person or persons appointed pursuant to Clause 51 hereof authorised by or on behalf of the Trust in writing with authority to act on the behalf of the Trust for the purposes of this Agreement as notified in writing by the Trust to the Contractor including any person or persons who may be nominated or appointed by the Authorised Officer as his representative ("the Nominated Person") for a particular purpose and/or period all as specified in a written notification by the Authorised Officer to the Contractor,

1.1.5 “Commencement Date” means the day of 2018 and the term “Contract Year” shall be defined as any period of twelve (12) months (or if this Agreement is terminated in accordance with the provisions hereof such part thereof as is appropriate) commencing on the Commencement Date and each anniversary thereof during the Contract Period,

1.1.6 “Completion Date” means the day of 2023 unless the Contract Period has been extended in accordance with the provisions of this Agreement or this Agreement has been terminated prior thereto in accordance with the provisions hereof,

1.1.7 “Contract Areas” means the locations of those areas as more particularly described and referred to in the Specification and

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such other areas as the Authorised Officer may specify in accordance with this Agreement being a Variation pursuant to Condition **11** hereof where the Services are to be provided,

- 1.1.8 “Contract Period” means three (3) years starting on the Commencement Date unless the same has been extended in accordance with the provisions of Clause 5 hereof or this Agreement has been terminated prior thereto in accordance with the provisions hereof,
- 1.1.9 “Contract Price” means the sum inclusive of VAT payable in accordance with the provisions of this Agreement together with any variation thereto in accordance with the same which sum shall be inclusive of all direct and indirect overheads and incidental or other costs or expenses incurred by the Contractor in respect of the provision of the Services,
- 1.1.10 “Contractor” means the Person, Firm or Company whose Tender has been accepted by the Trust for the provision of the Services,
- 1.1.11 “Contractor’s Representative” means the Contractor’s Employee appointed pursuant to Clause **51** hereof,
- 1.1.12 “Trust’s premises” means any premises owned or occupied by the Trust which may be used or occupied by the Contractor or to which the Contractor may be given access but shall not include any of the Contract Areas,
- 1.1.13 "criminal conviction" means any criminal conviction whether or not under United Kingdom law and in any country,
- 1.1.14 “Data Protection Authority” means any organisation which is responsible for the supervision, promotion and enforcement of the Data Protection Legislation, including the Information Commissioner's Office (or any joint, like, replacement or successor organisation from time to time),
- 1.1.15 “Data Protection Legislation” means all privacy laws applicable to the Personal Data which is processed under or in connection with this Contract, including the Data Protection Act 1998 and any subordinate legislation made thereunder and where applicable, EU Directive 95/46/EC, 2002/58/EC, and the GDPR (amongst others) as implemented by the applicable English laws, including the Data Protection Act 1998 and any subordinate legislation made thereunder, or as directly applicable, and all regulations made pursuant to and in relation to such legislation together with all codes of practice and other statutory guidance on the foregoing issued by any relevant Data Protection Authority, all as amended, updated and/or replaced from time to time,

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- 1.1.16 “day” means a period from midnight to midnight,
- 1.1.17 “Documentation” means all computer programmes, correspondence, data, drawings, documents, information, papers, photographs, materials, reports, software, specifications and any other material whatsoever produced on whatever media as part of the provision of the Services,
- 1.1.18 "Drawings" includes Plans,
- 1.1.19 “Employees” means those employees employed or engaged by the Contractor upon or in connection with the provision of the Services including apprentices and shall include the Contractor’s servants, agents and any sub-contractor properly appointed pursuant to Clause **26** hereof and any other person properly acting on its behalf (including any volunteers and whether paid or unpaid) in accordance with the provisions of this Agreement in the provision of the Services,
- 1.1.23 “Equipment” means any or all vehicles, plant, equipment or machinery (including any necessary computer system) to be provided by the Contractor to allow the Contractor to provide the Services,
- 1.1.20 "Financial Year" means the period from the 1st day of April to the following 31st day of March,
- 1.1.21 “GDPR” means the General Data Protection Regulation as set out in Regulation (EC) 2016/679 which comes into force in the United Kingdom on 25 May 2018,
- 1.1.22 “Index” means the Consumer Prices Index,
- 1.1.23 “Materials” means any and all materials to be provided by the Contractor to allow the Contractor to provide the Services,
- 1.1.24 “month” means a period of four (4) weeks and the term “monthly” shall be construed accordingly,
- 1.1.25 “Party” means either the Trust or the Contractor,
- 1.1.26 “Parties” means both the Trust and the Contractor,
- 1.1.27 "Plans" includes Drawings,
- 1.1.28 “Premises” means any premises provided by the Contractor to allow the Contractor to provide the Services,
- 1.1.29 “Professional Advice” means advice given by the Contractor in

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relation to the Services which is relied upon by the Trust based on the specialist or implied knowledge of the Contractor,

- 1.1.30 “Prohibited Act”: the following shall constitute Prohibited Acts:-
- 1.1.30.1 to directly or indirectly offer, promise or give any person working for or engaged by the Trust a financial or other advantage to:-
 - 1.1.30.1.1 induce that person to perform improperly a relevant function or activity, or
 - 1.1.30.1.2 reward that person for improper performance of a relevant function or activity,
 - 1.1.30.2 to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement, and/or
 - 1.1.30.3 committing any offence:-
 - 1.1.30.3.1 under the Bribery Act 2010 and any subordinate legislation made thereunder,
 - 1.1.30.3.2 under legislation creating offences concerning fraudulent acts,
 - 1.1.30.3.3 at common law concerning fraudulent acts relating to this Agreement or any other contract with the Trust,
 - 1.1.34.3.4 defrauding, attempting to defraud or conspiring to defraud the Trust, or
 - 1.1.30.3.5 any activity, practice or conduct which would constitute one of the offences listed under Clause 1.1.30.3 if such activity, practice or conduct had been carried out in the United Kingdom,
- 1.1.31 “Rates” means the rates stated by the Contractor in its Tender or otherwise specified in this Agreement which are to be used for the

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performance of the Services which are to be used for any modification of the Services which figures shall be exclusive of VAT and which figures which are to be used for the performance thereof; these rates shall be inclusive of all direct and indirect overheads and incidental or other costs, disbursements and expenses except as otherwise provided herein and shall be based on the Usual Working Hours on each working day,

- 1.1.32 “review” means the dialogue between the Trust and the Contractor to review the provision of the Services; review meetings shall be in accordance with the provisions hereof and the term “review date” shall be construed accordingly,
- 1.1.33 “Services” means all or any of the services relating to the cleaning of the Central Library, Leagrave Library and Stopsley Library Luton as more particularly described in the Specification and any reference thereto herein contained shall where the context so admits or requires be construed as a reference to the whole and/or to any/every part and/or every relevant or specified part thereof,
- 1.1.34 “Specification” means the Specification annexed to this Agreement,
- 1.1.35 "Tender" means the Contractor's offer to provide the Services in the form accepted by the Trust together with all documents evidence and information required by the Trust and insofar as the Trust advise the Contractor in writing that they are accepted as part of the Tender any documents evidence and information provided by the Contractor even though not required and the term “Form of Tender” shall be construed accordingly,
- 1.1.36 “Terms and Conditions of Contract” means the Terms and Conditions of Contract annexed hereto together with any Additional Terms and Conditions of Contract,
- 1.1.37 “Transparency Requirements” means the the Public Contracts Regulations 2015 and any other laws which oblige any of the Parties to publish and/or disclose information or documentation,
- 1.1.38 “Trust” means the Luton Cultural Services Trust
- 1.1.39 “Trust’s equipment” means any or all vehicles, plant, equipment or machinery (including any necessary computer system) provided by the Trust pursuant to Clause **56** hereof to and used by the Contractor to allow the Contractor to provide the Services,
- 1.1.40 “Trust’s materials” means any and all materials provided by the Trust pursuant to Clause **56** hereof to and used by the Contractor

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to allow the Contractor to provide the Services,

- 1.1.41 "TUPE" means the European Amended Acquired Rights Directive 2001/23/EC and/or the Transfer of Undertaking (Protection of Employment) Regulations 2006,
 - 1.1.42 "Usual Working Hours" means such working hours as shall be agreed with the Authorised Officer from time to time **SAVE THAT** such Usual Working Hours shall not commence before 7.00 a.m. or terminate after 7.00 p.m. on any working day without the express prior written consent of the Authorised Officer,
 - 1.1.43 "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland but for the avoidance of doubt shall not include the Channel Islands or the Isle of Man,
 - 1.1.44 "VAT" means Value Added Tax or any similar tax from time to time replacing it or performing a similar fiscal function,
 - 1.1.45 "week" means a period of seven (7) consecutive days whenever commencing,
 - 1.1.46 "working day" means from midnight to midnight on any day Sunday to Saturday including Public Holidays and any additional days on which the Trust's offices at the Town Hall are closed to Members of the Public which apart from this provision would form part of the working day, and
 - 1.1.47 "working week" means a period of seven (7) consecutive days starting on Sunday and ending on the following Saturday including Public Holidays and any additional days on which the Trust's offices at the Town Hall are closed to Members of the Public which apart from this provision would form part of the working day.
- 1.2 Where the context so admits words importing the one gender shall include the other gender and neuter.
 - 1.3 Where the context so admits words in the singular include the plural and vice versa.
 - 1.4 Words importing an individual shall be treated as importing a firm, partnership, company or corporation and vice versa.
 - 1.5 The Index and Headings are for ease of reference only and shall not affect the interpretation or otherwise of this Agreement.
 - 1.6 References to Clauses or Paragraphs and to Schedules or Appendices are references to Clauses or Paragraphs and Schedules or Appendices in this

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Agreement.

- 1.7 Stipulations as to time of payment by the Trust to the Contractor are not of the essence of the Contract. Other stipulations as to time in this Agreement and any variation in those times or any other times specified by the Authorised Officer are of the essence.
- 1.8 Reference to time shall be construed during the period of Summer Time to be British Summer Time and otherwise Greenwich Mean Time.
- 1.9 Any references to any subordinate legislation or to any Enactment, Order, Statutory Instrument, Regulation, Code of Practice, Code of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaw and any European Union Directive or other European Union legislation shall be construed as a reference to that subordinate legislation or that Enactment, Order, Statutory Instrument, Regulation, Code of Practice, Code of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaw or European Union Directive or other European Union legislation as amended or re-enacted by any subsequent subordinate legislation or Enactment, Order, Statutory Instrument, Regulation, Code of Practice, Code of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaw or European Union Directive or other European Union legislation or any statutory modification or re-enactment thereof for the time being in force.
- 1.10 Any cost to the Contractor in meeting the provisions of this Agreement shall, unless the contrary intention is shown, be borne by the Contractor.
- 1.11 References to Public Holidays mean any Public Holiday, Statutory Holiday or Bank Holiday applicable to England.
- 1.12 Any Plans and Drawings forming part of this Agreement are for identification purposes only and are not guaranteed to be to scale.
- 1.13 The accuracy of any measurements given in the Specification is not guaranteed.
- 1.14 Where the Contractor comprises two (2) or more individuals:-
 - 1.14.1 any obligations herein contained or implied on the part of the Contractor shall be deemed to be joint and several on the part of those persons, and
 - 1.14.2 any reference herein contained to the Contractor shall be deemed to be a reference to those persons.
- 1.15 For the avoidance of doubt it is specifically hereby provided that the provisions of the Contracts (Rights of Third Parties) Act 1999 and any subordinate legislation made thereunder shall not apply to this Agreement

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and no person other than the Parties to this Agreement shall have any rights under it nor shall it be enforceable by any person other than the Parties to it.

- 1.16 A reference to “**writing**” or “**written**” includes faxes and e-mail.
- 1.17 Where the words “**include(s)**”, “**including**” or “**in particular**” are used in this Agreement, they are deemed to have the words “**without limitation**” following them. Where the context permits, the words “**other**” and “**otherwise**” are illustrative and shall not limit the sense of the words preceding them.
- 1.18 A “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.19 Except as expressly provided otherwise in this Agreement the Contractor shall provide the Services entirely at its own cost save for payment of the Contract Price and any other sums due to it in accordance with the provisions hereof.
- 1.20 In the event of any inconsistency or conflict between the main body of this Agreement and the documents referred to in the Schedule, the order or precedence as set out below shall prevail:-
- 1.20.1 these Terms and Conditions of Contract,
 - 1.20.2 the Specification,
 - 1.20.3 the Invitation to Tender,
 - 1.20.4 the Tender and
 - 1.20.5 Data to be shared by the Trust and Data to be provided to the Trust.
- 1.21 In the event of a conflict (or any inconsistency) between the provisions of Clause 1.20 and any Variations made to this Agreement after the Commencement Date, the Variation as agreed between the Parties shall take precedence.

2 Pre-Contract Information

- 2.1 The Contractor shall be deemed to have examined the requirements specified in these Terms and Conditions of Contract and the Specification and where appropriate the Contract Areas and satisfied itself before submitting its Tender as to inter alia the extent and nature of inter alia the Premises, the Equipment and the Materials necessary for the performance of this Agreement and the accuracy and sufficiency of the sums and rates stated by it in the Tender which shall (except insofar as otherwise provided herein) cover all its obligations under this Agreement and the Contractor shall be deemed to have obtained for itself all necessary information as to any matters

which might reasonably influence or affect the Tender.

- 2.2 No claim from the Contractor for additional payment will be allowed on the ground of misinterpretation of any matter relating to requirements specified in these Terms and Conditions of Contract or the Specification or otherwise on which the Contractor could reasonably have satisfied itself by reference to the Trust or such other means as may be appropriate.
- 2.3 The Trust has relied on the information provided by the Contractor prior to the Trust entering into this Agreement and any material misrepresentation contained therein shall entitle the Trust to terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

3 Contract Documents

- 3.1 As at the date of this Agreement this document is the sole Contract Document to the exclusion of all other terms and conditions including any terms and conditions which the Contractor purports to apply under any proposal, quotation, confirmation of order or similar document and no terms and conditions endorsed upon delivered with or contained in the Contractor's Proposal or similar documents will form part of these Terms and Conditions of Contract simply as a result of reference to such document herein.
- 3.2 Any Additional Terms and Conditions of Contract shall be read together with and as part of these Terms and Conditions of Contract and to the extent that the Additional Terms and Conditions of Contract or any of them conflict with these Terms and Conditions of Contract or any of them then the Additional Terms and Conditions of Contract shall prevail.
- 3.3 These Terms and Conditions of Contract shall override any of the procedures or policies of the Contractor and any terms and conditions that may be printed on notepaper, Invoices, delivery notes and/or the like which may be submitted by the Contractor.
- 3.4 Save in respect of any Variation made pursuant to Clause **11** hereof, any amendment, variation or modification to this Agreement including these Terms and Conditions of Contract and any representations about the Services shall have no effect unless expressly agreed in writing and signed by an authorised Officer of the Trust and an authorised representative of the Contractor prior to implementation, and appended to this Agreement.
- 3.5 If the Trust at any time wishes to amend the Specification it may do so at its sole discretion in accordance with the provisions of Clause **11** hereof and if it does so it shall ensure that any amendment, alteration, postponement or cancellation of the Services or the specified part thereof is notified in writing to the Contractor immediately.

- 3.6 This Agreement shall supersede all other written understandings and agreements with respect to all matters referred to but is without prejudice to any routine arrangements between the Contractor and any other person howsoever arising provided those arrangements do not conflict in any way with this Agreement.

4 Engagement

- 4.1 The Contractor confirms that it both:-

4.1.1 has the appropriate know-how, qualifications and necessary resources, ability and experience to provide the Services in accordance with the provisions of this Agreement, and

4.1.2 is not disbarred in any way from providing the Services.

- 4.2 Subject to the above the Trust hereby engages the Contractor and the Contractor hereby accepts such engagement to serve the Trust as a Contractor in the provision of the Services in accordance with the provisions of this Agreement.

- 4.3 The Contractor's Employees employed in or about the provision of the Services shall be properly, appropriately and sufficiently qualified, competent, skilled, honest and experienced and shall at all times exercise all due care and attention in the execution of their duties and the Contractor shall ensure that such persons are properly and sufficiently instructed and supervised with regard to the provision of the Services and in particular:-

4.3.1 the task or tasks such Employee has to perform,

4.3.2 all relevant provisions of this Agreement,

4.3.3 all relevant Policies, Rules, Procedures and Standards of the Trust,

4.3.4 all relevant Policies, Rules, Codes, Procedures and Statutory requirements (whether under European or United Kingdom law) concerning health and safety and environmental issues, and

4.3.5 all relevant professional and accounting standards.

- 4.4 The Contractor shall also ensure that its Employees employed in or about the provision of the Services where appropriate hold a valid current Great Britain driving licence or such other valid current licence as is required or acceptable under United Kingdom law in respect of the appropriate classes relevant to any Equipment.

- 4.5 The Contractor shall be entirely responsible for the employment and conditions of service of its Employees including, without limitation, the

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payment of salaries, wages, Income or other taxes, National Insurance Contributions, sick and holiday pay.

- 4.6 The Contractor shall itself and shall ensure that its Employees comply with the arrangements, Policies, Rules, Codes, Procedures and Standards referred to in this Clause 4 and in Clauses 10 and 34 hereof and with any Enactment, Order, Statutory Instrument, Regulation, Code of Practice, Code of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaw or European Union Directive or other European Union legislation that shall be applicable to this Agreement including compliance with any obligations which may be imposed by the same upon the Trust and is solely responsible for obtaining and retaining without interruption any necessary consents or licences whatsoever as may be necessary to perform the Services and failure to so comply or obtain shall be a fundamental breach of contract and of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause 30 hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.
- 4.7 The Contractor will, at its own expense, ensure that it is at all times properly registered with any appropriate Body (whether Professional or otherwise) (and provide the Trust with evidence if this has been done and if not already done when it is done) and shall have particular regard to and comply with the child and adult protection legislation including if appropriate gaining registration (and provide the Trust with evidence if this has been done and if not already done when it is done) under the Children Act 1989 or any subordinate legislation made thereunder before any payment is made.
- 4.7.1 A failure to obtain such registration as is referred to in this Clause 4.7, if such registration is appropriate, will be a fundamental breach of contract and of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause 30 hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

5 Contract Period

- 5.1 Notwithstanding the date of this Agreement, the Contract Period will commence on the Commencement Date and, subject to the earlier termination of this Agreement in accordance with these Terms and Conditions of Contract or the extension thereof as hereinafter provided, shall continue thereafter until the Completion Date.
- 5.2 If, after the award of the Contract, the Contractor shall have been delayed or impeded by any act or omission of the Trust and, providing the Contractor

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shall without delay have notified the Trust in writing of such delay or impedance, the Trust shall grant the Contractor from time to time in writing such extension of time as may be reasonable and the Completion Date referred to above shall be amended accordingly.

- 5.3 At the sole option of the Trust, which shall be exercised after a reasonable period of written notice to the Contractor, the Contract Period may be extended by that period specified in the Notice the maximum period by which the Contract Period may be extended on any one (1) occasion being up to twelve (12) months the number of such extensions being unlimited but up to a maximum of twenty four (24) months.
- 5.4 In the event that the Trust exercises its option to extend the Contract Period in accordance with Clause 5.3 hereof and up to the maximum therein referred to the provisions of this Agreement (with the exception of Clause 5.3 hereof), unless previously amended in accordance with the provisions hereof, will remain in force.
- 5.5 If the Contract Period is extended in accordance with Clause 5.3 hereof the Agreement will be reviewed in accordance with Clause 15 hereof.
- 5.7 On the expiry or termination of this Agreement any liability of the Trust to make payment to the Contractor under this Agreement generally shall, unless this Agreement otherwise provides, terminate at that time.

6 Standard and Quality of the provision of the Services and Monitoring

- 6.1 The provision of the Services shall conform in every respect to the level and with the quality and other standards specified in this Agreement. Subject to the provisions of this Agreement and to any instructions that may be given by the Authorised Officer hereunder it shall be the responsibility of the Contractor throughout the Contract Period to plan, schedule, organise, manage and supervise the provision of the Services. The Contractor shall comply with all reasonable requirements of the Authorised Officer as to such matters and shall supply the Authorised Officer with written particulars if requested by the Authorised Officer.
- 6.2 The Contractor shall provide the Services (and any modifications thereof made in accordance with these Terms and Conditions of Contract) in strict accordance with this Agreement and in a timely, effective, efficient, proper, safe, skilful and workmanlike manner to the professional standard required by this Agreement and to the entire satisfaction of the Trust exercising all reasonable skill, care and diligence without causing unreasonable noise, disturbance or unlawful interference with the rights of any other person and in all respects comply with the provisions of this Agreement.
- 6.3 The Contractor shall meet with the Trust as, when and where the Trust reasonably requires and provide the Trust with such additional information as the Trust reasonably requires.

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- 6.4 The Contractor will maintain and make available on reasonable request a true and systematic set of records to demonstrate compliance with the requirements of this Agreement, in a format to be agreed with the Trust and which is consistent with the provisions of this Agreement.
- 6.5 The Contractor will complete and return such Monitoring Forms (which shall be in a form previously approved in writing by the Authorised Officer) as shall be required by the Trust promptly and on time, and prior to any scheduled monitoring visits.
- 6.6 The Contractor will submit an Annual Report within one (1) month of the end of each Financial Year during the Contract Period and at the end of that period whensoever occurring to the Trust containing such information as shall be required by the Authorised Officer.
- 6.7 The Contractor at its own expense will provide such other information that the Trust may require at any time to monitor this Agreement.
- 6.8 The Contractor at its own expense will co-operate with the Trust's inspection, monitoring, evaluation, quality and other audit procedures as required by the Authorised Officer at his absolute discretion and shall supply him with such information as he shall require.
- 6.9 The Contractor will allow access by the Trust's Officers to the Premises and any and all of the locations from which the Services are provided. The Trust will normally arrange such access by appointment giving at least five (5) working days notice unless investigating a possible breach of contract, when the Trust reserves the right, at its sole discretion, to visit at any reasonable time without appointment and without giving that notice.
- 6.10 To the extent that the standard has not been specified the Contractor shall use good quality materials, techniques and any appropriate standards and carry out its obligations under this Agreement with all care, skill and diligence required and in accordance with best practice.
- 6.11 The Services shall conform in every respect to any sample provided or given by either Party, shall be capable of meeting the standard or performance specified in this Agreement and, where the purpose for which they are required is indicated, be fit for that purpose.
- 6.12 The Contractor shall ensure that the Services maintain the standard of performance specified in this Agreement.
- 6.13 If the Trust can demonstrate that the standard of performance specified in this Agreement has not been maintained due to the fault of the Contractor then, notwithstanding prior acceptance of the Services, the Contractor shall forthwith, at its own expense, provide to the Trust such replacement Services or additional services as may be necessary to achieve the standard of performance specified in this Agreement.

- 6.14 The Contractor when providing any part of the Services under this Agreement shall comply with any timetable as determined by the Trust.
- 6.15 Subject to any specific requirement in the Specification and unless the Authorised Officer otherwise agrees where a specification or code of practice issued by the British Standards Institution or approved by the European Union is current at the date of this Agreement all the Equipment and the Materials used shall be in accordance with that standard. If a higher standard is specified in or required by the Authorised Officer pursuant to this Agreement all the Equipment and the Materials shall be in accordance with that higher standard.
- 6.16 In addition to the above the Contractor shall comply with any other specific requirement regarding standards that may be specified in these Terms and Conditions of Contract or the Specification.
- 6.17 Compliance by the Contractor with the provisions of this Clause 6 shall be at the sole expense of the Contractor.

7 Provision of the Services

- 7.1 The Contractor will welcome and support the involvement of the Trust in the provision of Services under this Agreement.
- 7.2 Save as otherwise provided the Contractor shall commence the provision of the Services on the Commencement Date and during the Contract Period shall provide the Services within the Contract Period whether during the Usual Working Hours or outside the same if the Services are provided during those hours on each working day during each working week, fully in strict accordance with these Terms and Conditions of Contract and with the Specification and in a proper, efficient, effective and safe manner and within the time specified as determined by the Trust complying with all relevant policies of the European Union, United Kingdom Government, the Trust and all other relevant bodies to the entire satisfaction of the Trust and in all other respects comply with the provisions of this Agreement. The Contractor and its Employees shall comply with all reasonable requirements of the Trust.
- 7.3 The Contractor and its Employees shall conform in all respects with the provisions of all Enactments, Orders, Statutory Instruments, Regulations, Codes of Practice, Codes of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaws and, insofar as may be appropriate, all European Union Directives or other European Union legislation relating to the provision of the Services including compliance with any obligations which may be imposed by the same upon the Trust and is solely responsible for obtaining and retaining without interruption any necessary consents or licences whatsoever as may be necessary to perform the Services and failure to so comply or obtain the same shall be a fundamental breach of contract and of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause

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30 hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

- 7.4 Time shall be of the essence in relation to the provision of the Services.
- 7.5 Unless otherwise expressly provided in this Agreement, all resources required for the provision of the Services will be provided by the Contractor and the total cost thereof shall be deemed to be included in the Annual Sum.
- 7.6 Agreed Performance Indicators for Value for Money targets will be agreed by the Trust and will be implemented as required to minimum Nationally agreed standards and requirements.
- 7.7 If the Authorised Officer has, at his sole discretion, grounds to believe that there is sufficient evidence of failure in the Contractor's performance, he will agree with the Contractor, in writing, remedies for this failure.
- 7.8 The Authorised Officer may, if he considers it appropriate, at his sole discretion, suspend the provision of the Services in whole or in part if he considers that the Services or that part thereof are not being provided fully in accordance with the provisions of this Agreement by order under Clause 11.2.1 hereof. If the Authorised Officer shall exercise this power then the Contractor shall not resume the provision of the Services or that part thereof which has been suspended until the Authorised Officer is satisfied that the non-compliance has been rectified. In respect of any such period of suspension the default provisions set out in Clause **29** hereof shall apply.
- 7.9 The Contractor shall not act or permit or require or allow any other person or body to act whether in performance of the Services or otherwise in any way that may or does jeopardise:-
- 7.9.1 the performance of any contract other than this Agreement let by the Trust or of any work carried out by the Trust, its servants or agents in respect of any Contract Area or any of the Trust's premises or any part or parts thereof or the provision of services other than the Services by the Contractor under this Agreement, or
- 7.9.2 any licences or leases made between the Trust and any third parties.
- 7.10 The Contractor shall provide the Services within the times detailed in the Agreement save as is herein provided. Where operating arrangements require any interface with any of the Trust's employees or other contractors of the Trust, the Contractor shall ensure that it and its Employees co-operate fully with those Trust employees and any other employees of its contractors so that the Trust's services are maintained. Such arrangements or re-

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arrangements which are undertaken by the Contractor shall be at no cost to the Trust. The Contractor and its Employees shall also at the Contractor's own expense co-operate and liaise with the Authorised Officer in such a manner and at such times as the Authorised Officer shall determine.

- 7.11 The Contractor shall ensure that its Employees comply with all the provisions of this Agreement as appropriate in addition to complying with the same itself and any breach of this Agreement by any of the Contractor's Employees or by any other person engaged in carrying out works under this Agreement or by any of its employees shall be deemed a breach by the Contractor.
- 7.12 It is hereby expressly provided and the Contractor expressly agrees that if it has in any way undertaken any work whatsoever under this Agreement that the same shall be treated as belonging only to the Trust and that the Trust shall be entitled to use the same or not as it, at its sole discretion, considers appropriate without further cost or payment to the Contractor and without further assurance.
- 7.13 Failure to comply with this Clause **7** will constitute a serious breach of this Agreement and, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.
- 7.14 This Agreement shall not limit either the Contractor or the Trust from pursuing any other lawful activity within their powers, provided it does not prejudice their respective obligations under this Agreement.

8 Human Rights

- 8.1 The Contractor shall at all times abide by and comply with the provisions of the Human Rights Act 1998 and any subordinate legislation made thereunder.
- 8.2 Without prejudice to the generality of Clause **21** hereof, and for the avoidance of doubt, it is hereby specifically provided that the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising resulting from the Contractor's breach of this Clause **8**.
- 8.3 If a third party threatens or commences proceedings or complaint against the Trust on the grounds that there has been a breach of any person's rights under the Human Rights Act 1998 and any subordinate legislation made thereunder in connection with the provision of the Services, the Trust and the Contractor shall use all reasonable endeavours to co-operate so as to enable

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the Trust to achieve the aim of successfully averting or defending the proceedings or complaint and/or to complying with any order, judgement or direction made pursuant to the same by any duly authorised authority provided that neither Party can be required to incur additional expense pursuant to this obligation. The Trust may additionally in its discretion determine such modifications to this Agreement as may be required to enable the Trust to achieve the abovementioned end and the Contractor shall forthwith comply with such modifications provided that the Trust shall bear the additional costs directly incurred by the Contractor in consequence. The Contractor shall use all reasonable endeavours to mitigate any such costs and shall supply such documentation of the costs as the Trust may reasonably require.

- 8.4 Failure to comply with this Clause **8** will constitute a serious breach of this Agreement and, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

9 Health and Safety

- 9.1 The Contractor will comply at all times with all relevant health and safety legislation including the Health and Safety at Work etc. Act 1974 (in this Clause **9** hereinafter called the “Act”) and any subordinate legislation made thereunder insofar as they relate to the provision of the Services and also:-
- 9.1.1 consult with its Employees to provide a safe working environment,
 - 9.1.2 ensure that any vehicles used for the provision of the Services satisfy legal safety standards,
 - 9.1.3 provide appropriate training to all its Employees concerned with the provision of the Services,
 - 9.1.4 ensure that safe work procedures, including the provision of adequate and safe equipment, are followed at all times, and
 - 9.1.5 ensure that its Employees are aware of and fully comply with the obligations that the Act places upon them.
- 9.2 The Contractor and its Employees shall promptly comply with any instructions given by the Trust's Health and Safety Manager (or such other Officer of the Trust who shall discharge or perform the same or similar functions) with regard to health and safety at work and in any event shall at all times observe any rules applicable to any Contract Area or any of the Trust's premises or any other premises owned or occupied by the Trust.

- 9.3 The Contractor and its Employees shall not in the provision of the Services in any manner endanger the safety or unlawfully interfere with the convenience of any person.
- 9.4 The Contractor shall give the Trust such prior written notice as the Trust shall require of the delivery under this Agreement of any goods having a toxic hazard or other hazard to the safety or health of persons or property, identifying those hazards and giving full details of any precautions to be taken by the Contractor on the delivery of such goods and their subsequent storage or handling. The Contractor shall ensure that all such goods are suitably packed and identified at the time of delivery with reference to the hazards attaching to them.
- 9.5 Failure to comply with this Clause **9** will constitute a serious breach of this Agreement and, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

10 Personnel Matters

- 10.1 The Contractor, prior to the provision of the Services, will have in place appropriate arrangements, Policies and Procedures for the recruitment of Employees, together with checks on their suitability, and in respect of appropriate qualifications and experience and in respect of their training and development, supervision, disciplinary and grievance procedures. These arrangements, Policies and Procedures must be open to inspection by the Trust and shall be amended if reasonably required by it. The Contractor shall comply with any requirements of the Trust notified to it in relation to the recruitment of ex-offenders and disclosures under the Police Act 1997 and any subordinate legislation made thereunder. The Contractor shall ensure that all its Employees engaged in the provision of the Services who may be required to work within any Contract Area or within any premises or sites occupied or used or potentially occupied or used by children and/or relevant adults or within any Contract Area or within any premises or sites adjoining (or in the opinion of the Authorised Officer at his sole discretion within close proximity to) any Contract Area or premises or sites occupied or used or potentially occupied or used by children and/or relevant adults or is in any other respect engaged in the provision of the Services involving in any way whatsoever children or relevant adults whether or not on a sustained and/or unsupervised basis shall be appropriately checked in respect of Criminal Records and in respect of regulated activities under the Safeguarding Vulnerable Groups Act 2006 and any subordinate legislation made thereunder by the Disclosure and Barring Service (or any other person or Body upon which such duties have devolved) and shall only employ in the provision of the Services those persons who have received clearance at the

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Enhanced Level and have otherwise been satisfactorily checked to the full satisfaction of the Authorised Officer, acting at his sole discretion, and shall, at its own expense, prior to the employ of such persons in the provision of the Services, produce to the Trust such evidence as the Trust shall require of such satisfactory checks. These checks shall be carried out every two (2) years. In all other cases the Contractor shall ensure that all its Employees are of suitable standing, good character and suitably and properly trained and fully competent in the use of any Equipment associated with or necessary for the provision of the Services. In addition to the requirements imposed by this Clause **10** the Contractor shall fully comply in all respects with the provisions of Clause **34** hereof as appropriate. The Contractor shall also comply at all times with the provisions of the Care Standards Act 2001 and any subordinate legislation made thereunder and any current national or local Protocols and Procedures relating to the Protection of Adults. The Contractor shall inform the Trust immediately if it (if an individual) or any of its Employees or if any sub-contractor or any of any sub-contractor's Employees or if any other person involved in the provision of the Services has been or is arrested and is the subject of a criminal investigation.

- 10.2 The Contractor shall employ and provide for the purpose of carrying out this Agreement and the provision of the Services only properly and suitably qualified personnel experienced in such work who shall be sufficient in number to ensure that the requirements of this Agreement and the Services are provided at all times including during periods of staff absence due to sickness, compassionate leave, parental leave, staff holidays, training attendances or otherwise. In addition the Contractor will employ or cause to be employed in and about the performance of this Agreement, and in the supervision thereof, only such persons as are careful, skilled and experienced and suitable for the work.
- 10.3 The Trust may at any time and at the expense of the Contractor request details of the names and Curriculum Vitae of the Employees which the Contractor will employ (whether permanently or casually) in the provision of the Services. Where requested to do so, the Contractor shall provide such information within seven (7) working days of the request.
- 10.4 The Contractor will be solely responsible for the employment and conditions of those persons employed in the provision of the Services and will ensure that all such persons shall be familiar and comply with all relevant procedures of the Trust.
- 10.5 Immediately prior to the Commencement Date and thereafter as appropriate the Contractor will provide the Trust with details of all its current Employees whom it intends to use in respect of the provision of the Services within any Contract Area or within any premises or sites where there are or are likely to be children and/or relevant adults or within any Contract Area or within any premises or sites adjoining (or in the opinion of the Authorised Officer at his sole discretion within close proximity to) any Contract Area or premises or sites occupied or used or potentially occupied or used by children and/or

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relevant adults or involving in any way whatsoever children or relevant adults whether or not on a sustained and/or unsupervised basis. The Trust will advise against the employment of individuals who it considers unsuitable and if the Trust gives any such advice it must be followed by the Contractor. In addition the Contractor, prior to the employment of all future persons who will be so engaged, will also supply to the Trust details of any such individual and if the Trust advises against their employment in such circumstances any such advice must be followed by the Contractor.

- 10.6 The Trust requires that during the Contract Period a minimum of one (1) person in a managerial and supervisory capacity will be available to the Authorised Officer at all reasonable times to act as the Contractor's Representative.
- 10.7 The Contractor's Representative will be the main contact point for all communications between the Trust and the Contractor. Any change in this arrangement must be agreed between the Authorised Officer and the Contractor.
- 10.8 The Contractor's Representative may delegate another of the Contractor's Employees to deal with day-to-day supervision and communications between the Trust and the Contractor.
- 10.9 The Trust requires that during the Contract Period the Contractor's Representative shall be available for meetings and discussions with the Authorised Officer or such other persons as he shall require subject to his giving to the Contractor reasonable prior notice.
- 10.10 If the Trust requires the Contractor to provide a substitute acceptable to the Trust for any person whom the Trust considers to be unsuitable then the Contractor shall comply with such request at no cost to the Trust howsoever arising.
- 10.11 The Contractor shall be entirely responsible for all employment costs and other costs associated with its Employees. In this respect the Contractor's attention is specifically drawn to its compliance with the provisions of Clause **36** hereof.
- 10.12 Without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising which relate to any claim which is or may be brought by any person, a Trades Union or other employee representative (including, without limitation, claims for redundancy payments or under TUPE at the end of the Contract Period) arising from any act or omission, breach or default or obligation or liability of the Trust prior to the Commencement Date or of the Contractor or any sub-contractor thereafter.

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10.13 The Contractor shall ensure at its own expense that, during the Contract Period, any Employee recruited by the Contractor in that period, whether or not employed in any Contract Area or on any of the Trust's premises or on any other premises owned or occupied by the Trust and whether or not assigned to the provision of the Services will be offered terms and conditions of employment no less favourable than those of current Employees. The Contractor will in all respects comply with all and any Code of Guidance howsoever issued relating to the employment of its Employees following the Commencement Date including expressly, but not by way of limitation, the Best Value Authority Staff Transfers (Pensions) Direction 2007.

10.14 The Contractor shall ensure that it and its Employees shall:-

10.14.1 at all times maintain a clean and tidy appearance and use Personal Protective Equipment which complies, inter alia, with the provisions of the Personal Protective Equipment at Work Regulations 1992 to be agreed between the Contractor and the Authorised Officer that complies with any specific requirements in the Specification and is reasonably suitable bearing in mind the work to be or being undertaken and location and other matters the Authorised Officer reasonably considers relevant to be provided by the Contractor at its own expense and in particular the Contractor shall ensure that high visibility Personal Protective Equipment is worn at all times where and when required by the Authorised Officer whilst providing the Services,

10.14.2 not bear any advertising material advertising the name and service provided by the Contractor or any other matter or thing without the prior written consent of the Authorised Officer, and

10.14.3 at all times during the provision of the Services wear displayed so as to be reasonably visible unless otherwise previously authorised in writing by the Authorised Officer when he shall carry and produce on request an identity card incorporating a photograph such card to be in a standard form approved by the Authorised Officer and make such cards available for inspection on request by any Officer of the Trust and provide the Authorised Officer with a copy of each photograph including its own and the relevant Contractor's Employee's name such photograph and information to be provided to the Authorised Officer either:-

10.14.3.1 at the Commencement Date, or

10.14.3.2 in the event of an Employee being appointed subsequent to the Commencement Date before the Employee concerned provides any Services or enters any Contract Area or any of the Trust's Premises or any of the Trust's premises or any other premises owned or occupied by the Trust

pursuant to this Agreement,

and compliance with this Clause 10.14 shall be at the expense of the Contractor.

10.15 The Contractor shall ensure that when requested to do so it and any of its Employees shall disclose its or their identity and status as an employee of the Contractor and shall not attempt to avoid so doing.

10.16 Failure to comply with this Clause **10** will constitute a serious breach of this Agreement and, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

11 Variation of the Services

11.1 Nothing in these Terms and Conditions of Contract shall entitle the Contractor to be instructed to provide any additional services and the Trust shall be free to arrange for the provision thereof as it shall determine.

11.2 Notwithstanding that this Agreement, including the Specification, may be amended by agreement in writing signed by the Contractor and the Authorised Officer the Trust shall be entitled to issue the Contractor instruction in writing without notice thereof requiring the Contractor to do all or any of the following:-

11.2.1 to omit or cease to provide the Services for such periods as the Trust may determine, which periods may be of either a temporary duration or permanent,

11.2.2 to provide the Services in such a manner as the Trust may reasonably require,

11.2.3 to provide such additional services as the Trust may reasonably require provided that such additional services shall be the same or similar to the Services to be provided under this Agreement in which case the appropriate Rate/ shall apply to such additional services or if there is no appropriate Rate the Parties shall determine the ascertainment of the value of the additional services, or

11.2.4 to vary the Services to be provided at any location in order to meet the changing needs in the performance of this Agreement.

11.3 The value of modifications pursuant to this Clause **11** shall be ascertained by

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the Trust in accordance with the provisions of this Agreement. These provisions shall however not apply regarding any requirement to provide the Services to the standard specified in this Agreement.

- 11.4 Where the provision of any part of the Services is omitted from the Specification the appropriate Rate shall determine the ascertainment of the value of the work omitted or if there is no appropriate Rate the Parties shall determine the ascertainment of the value of the Services omitted.
- 11.5 Where work is of a similar nature to and is executed under similar conditions to the Services provided under this Agreement the appropriate Rate shall determine the ascertainment of the value of the additional work or if there is no appropriate Rate the Parties shall determine the ascertainment of the value of the additional work.
- 11.6 Where work is not of a similar nature to or is not executed under similar conditions to the Services provided under this Agreement the ascertainment of the value of the work shall be made by the Parties having due regard where applicable to the appropriate or any relevant Rate.
- 11.7 Any variation to any of the Additional Terms and Conditions of Contract may be made at any time by the Trust at its sole discretion and shall thereafter be notified to the Contractor in writing by the Authorised Officer within two (2) working days thereof and implemented by the Contractor in accordance with the provisions contained therein.
- 11.10 All variations must be in writing and signed by the Authorised Officer.
- 11.11 Variations may inter alia reduce or increase the Services required to be provided by the Contractor.
- 11.12 Save for variation pursuant to this Clause 11 any provision which is inconsistent with the Terms and Conditions of Contract or the Specification or any document attached to or forming part of the same or is contained in any other document or in any oral agreement is agreed to be void and of no effect.
- 11.13 Where the Rates contains Daywork Rates and these are used the Contractor must organise the provision of the Services concerned in the most economical way. Should this not be done the Contractor nevertheless shall only be entitled to payments in respect thereof by application of the Daywork Rates as if it had in fact so arranged for the provision of the Services.
- 11.14 If the monthly sum payable after a variation in any one (1) year of the Contract Period is not determined until after such variation has taken effect the Trust shall continue to pay the Contractor at the rate current prior to the variation but shall pay to the Contractor or be entitled to recover from the Contractor (as the case may be) on the next date on which a payment falls due from the Trust to the Contractor after the adjustment is determined such

sum if any as is equal to the difference between the amount which should have been paid and the amount in fact paid between the date such variation took effect and such next date.

11.15 The adjusted Annual Sum and/or appropriate Rate agreed by the Parties in accordance with this Clause **11** shall be substituted for the Annual Sum and/or appropriate Rate of the previous Contract Year used for the purposes of calculating the Annual Sum or the Rate for the next or following Contract Year.

11.16 Any dispute between the Parties with respect to the renegotiation of the Annual Sum or appropriate Rate shall be referred to Arbitration in accordance with the provisions of Clause **33** hereof.

12 Rejection of the Services

12.1 If the Contractor fails to provide the Services when and as required or if, in the opinion of the Trust, the Contractor fails to provide the Services to the standard required, then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may reject the Services.

12.2 In every such case the Trust may, and again without prejudice to any other rights or remedies which the Trust may possess under this Agreement or for breach of contract, make whatever arrangements the Trust shall think fit for the Services to be provided by a person or persons other than the Contractor for the remainder of the Contract Period in accordance with the provisions of Clause **56** hereof; in such case the Contractor shall pay to the Trust or the Trust may deduct from any sum due or that may become due to the Contractor under this Agreement or otherwise, all additional costs, charges or expenses (including legal and administrative expenses) incurred by the Trust arising from the Contractor's default.

12.3 The Trust shall be entitled to deduct all damages, costs, charges and expenses (including legal and administrative expenses) from the Contractor arising out of negligence by the Contractor or its Employees in or about the provision of the Services or the performance or non-performance of this Agreement from any sum due to the Contractor or to recover the same from the Contractor as liquidated damages or by action at law or otherwise as the Trust may determine.

13 Failure by the Contractor to provide the Services

13.1 If the Contractor repeatedly fails, after a reasonable period of notice has been given to effect a remedy, to complete the provision of the Services by the Completion Date or otherwise fails to provide the Services fully in accordance with the provisions of this Agreement, then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may:-

- 13.1.1 terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination; in every such case the Trust may, and again without prejudice to any other rights or remedies which the Trust may possess under this Agreement or for breach of contract, make whatever arrangements the Trust shall think fit for the Services to be provided by a person or persons other than the Contractor for the remainder of the Contract Period in accordance with the provisions of Clause 56 hereof and in such case the Contractor shall pay to the Trust or the Trust may deduct from any sum due or that may become due to the Contractor under this Agreement or otherwise, all additional costs, charges or expenses (including legal and administrative expenses) incurred by the Trust arising from the Contractor's default, or
- 13.1.2 elect to continue this Agreement and then deduct from the Annual Sum/Contract Price any costs incurred by the Trust as a result thereof howsoever arising as shall represent the part or parts of the Services as cannot in consequence of such failure be put to the use intended for each week or part thereof between the due date or revised date when the Services should have been provided and the actual date when they were provided.

14 Complaints Procedure

- 14.1 The Contractor will operate a Complaints Procedure ("the Contractor's Complaints Procedure") which is acceptable to the Trust and will promote the Contractor's Complaints Procedure to all persons. The Contractor shall deal with any complaints about the provision of the Services, received from whatever source, in a prompt, courteous and efficient manner and take such steps as it reasonably considers necessary to remedy the subject matter of the complaint and prevent its recurrence.
- 14.2 The Contractor's Complaints Procedure should allow all persons access to the Trust's Complaints Procedure and must state that use of the Contractor's Complaints Procedure will not prevent use of the Trust's Complaints Procedure.
- 14.3 The Contractor's Complaints Procedure must include an independent person in any appeals stage thereof.
- 14.4 The Contractor will allow all persons to be represented if they so request or require.
- 14.5 The Contractor will keep a written record of the details of all complaints received and the outcomes of all resulting investigations including the action

taken in respect thereof. All such records shall be made available to the Trust upon demand or if not so demanded shall be made available to the Trust at the next joint review meeting between the Contractor and the Authorised Officer. The Contractor shall notify the Trust immediately in writing of all complaints received and of all steps taken in response thereto. As a minimum standard the Contractor shall comply with the provision of the Trust's corporate approach to complaints.

15 Review Procedure

- 15.1 The Trust undertakes to respond swiftly and positively to resolve any complaints made by the Contractor concerning the operation of this Agreement and the Authorised Officer will be available to meet with the representatives of the Contractor at any time on reasonable notice to discuss and resolve such complaints.
- 15.2 Joint review meetings of both Parties will take place weekly for the first six (6) months of the Contract Period and thereafter monthly, or at such other intervals as shall be required by the Trust, to review the Contractor's delivery of the Services as specified in the Specification as a whole, together with any other elements of this Agreement that either Party may request in advance of the meeting.
- 15.3 If any Party requires a review of any part of this Agreement at any other time and if alternative arrangements have not otherwise been made, then such review will take place at the earliest practicable opportunity following written notice setting out the scope of the review. Such a review shall be without prejudice to the operation of the Default, Termination, Arbitration, Severance and Waiver Clauses, when applicable.
- 15.4 In the final year of the Contract Period, a separate joint review may be conducted if required by the Trust at its sole discretion to cover all aspects of this Agreement. The review if required by the Trust will be completed three (3) months prior to the scheduled Completion Date to allow the Trust to give the Contractor notice if it wishes to extend the Contract Period under Clause 5.3 hereof. Any further joint reviews as necessary under this Clause 15.4 will be carried out at such times as the Trust shall require in order to allow the Trust to give the Contractor further notice if it wishes to extend the Contract Period. The holding of any of the joint reviews referred to in this Clause 15.4 shall under no circumstances be construed as a Condition Precedent to the extension of the Contract Period under Clause 5.3.hereof which may be extended in accordance with the provisions thereof at the Trust's sole discretion.
- 15.5 Any expenses incurred by the Contractor in complying with the provisions of Clauses 15.1 to 15.4 hereof shall be borne by the Contractor.
- 15.6 The Contractor shall at the Trust's expense attend and give advice at any meeting of the Trust or of any Committee thereof or at any meeting of the

Executive or of any other body or association or others as required by the Authorised Officer for whatever reason (other than any meeting held pursuant to Clauses 15.1 to 15.4 hereof) and shall provide anything of whatever nature required by the Authorised Officer which pertains to the attendance of the Contractor thereat and shall at the Trust's expense give such other support to these as instructed by the Authorised Officer. The Contractor shall at the Trust's expense ensure that any appropriate Employee attends these meetings as reasonably required by the Authorised Officer in relation to the performance of the Services.

16 Inflation

- 16.1 The Annual Sum and the Rates shall be reviewed at each anniversary of the Commencement Date during the Contract Period and may be varied by the Trust at its sole discretion by a percentage equivalent of up to any percentage increase or decrease in the Index for the preceding year. For the avoidance of doubt the Trust may at its absolute discretion determine that no adjustment to the Annual Sum and/or the Rates either by way of increase or decrease shall be made following a review notwithstanding that there has been an increase or decrease in the Index for the preceding year.
- 16.2 If the basis of computation of the Index shall change any official reconciliation between the two (2) bases of computation published by the Office of National Statistics (or any other Body upon which duties in connection with the compilation and maintenance of the Index have devolved) shall be binding upon the Parties and shall be applied in adjusting the application of the Index hereto.
- 16.3 In the absence of such official reconciliation such adjustments shall be made to the figures of the Index as to make it correspond as nearly as possible to the previous method of computation and such adjustment figures shall be used to the exclusion of the actual published figures (until officially recognised figures are published) and in the event of a dispute regarding such adjustments the decision of the Trust shall be final.
- 16.4 Any Insurance sums shall be reviewed at each anniversary of the Commencement Date during the Contract Period and may be varied by the Trust at its sole discretion. Any increase or decrease required therein shall be immediately implemented by the Contractor at its sole expense.
- 16.5 If the cost to the Contractor of the performance of this Agreement shall be increased or reduced by reason of the making after the date hereof of any subordinate legislation or any Enactment, Order, Statutory Instrument, Regulation, Code of Practice, Code of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaw or European Union Directive or other European Union legislation having the force of law that shall be applicable to this Agreement (other than any tax upon profits or revenue) the amount of such increase or reduction shall be added to or deducted from the Annual Sum or appropriate Rate.

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16.6 For the avoidance of doubt the Trust will continually monitor the competitiveness of the price of the Services provided under this Agreement (such monitoring to take into account current market costs and available technologies) and should such monitoring conclude that the Services provided under this Agreement have become outdated by changes in technology or marketing or are no longer competitive the Trust may:-

16.6.1 require the Contractor to re-negotiate this Agreement with the Trust to re-establish competitive terms within such time as the Authorised Officer at his sole discretion shall specify and if at the expiration of such time the Contractor has not re-negotiated this Agreement to re-establish competitive terms acceptable to the Trust then the Trust may at its sole discretion terminate this Agreement under Clause 16.6.2 hereof, or

16.6.2 the Trust may terminate this Agreement by giving to the Contractor one (1) month's notice in writing under Clause 30 hereof such notice to expire at any time without any compensation and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination

should it become un-competitive when viewed against comparable market products and the Contractor is unable to satisfactorily re-negotiate terms with the Trust.

17 Payment

17.1 The Trust reserves the right to withhold payment against any Invoice which is not submitted in accordance with the provisions of this Agreement or which covers or purports to relate to the provision of the Services which have not been provided in accordance with this Agreement and shall forthwith notify the Contractor accordingly in writing. If at that time there shall be any defect due to the fault of the Contractor in providing or affecting the Services in respect of which such payment is claimed, the Trust shall have the right to retain the whole of such payment, provided that in the event of such defect being of a minor character and not such as to affect the use of the Services or the said part thereof for the purpose intended without serious risk, the Trust shall not retain a greater sum than represents the cost of making good the said defect. Any sum retained by the Trust under this Clause 17.1 shall be paid to the Contractor upon the said defect being made good without interest.

17.2 The Contractor shall submit to the Trust at the end of each month an Invoice in arrear in a form previously approved in writing by the Authorised Officer incorporating the information detailed in Clause 17.7 hereof [based on the Annual Sum and/or the Rates] showing the full cost to the Trust of the Services provided up to the end of that month/quarter and the Contractor's estimate of the value of the work completed. No Invoice shall be submitted at

any other time during the Contract Period.

- 17.3 Where the Contractor submits an Invoice to the Trust in accordance with Clause 17.2 the Trust will consider and verify that Invoice in a timely fashion.
- 17.4 Where the Trust fails to comply with Clause 17.3 and there is an undue delay in considering and verifying the Invoice, the Invoice shall be regarded as valid and undisputed for the purposes of Clause 17.5 after a reasonable time has passed.
- 17.5 Within thirty (30) days of delivery of the Contractor's Invoice the Trust shall unless the same shall be in dispute pay the amount the Trust considers to be due to the Contractor. If the claim shall be in dispute, the Trust will notify the Contractor of the amount of such disputed sum. Payment by the Trust shall be without prejudice to any claims or rights which the Trust may have against the Contractor and shall not constitute any admission by the Trust or the Authorised Officer as to the performance by the Contractor of its obligations hereunder.
- 17.3 Where the Contractor submits an Invoice to the Trust in accordance with Clause 17.2 the Trust will consider and verify that Invoice in a timely fashion.
- 17.4 Where the Trust fails to comply with Clause 17.3 and there is an undue delay in considering and verifying the Invoice, the Invoice shall be regarded as valid and undisputed for the purposes of Clause 17.5 after a reasonable time has passed.
- 17.5 Within thirty (30) days of delivery of the Contractor's Invoice the Trust shall pay the amount due to the Contractor, unless the same shall be in dispute when the Trust shall only pay the amount the Trust considers to be due to the Contractor. If the claim shall be in dispute, the Trust will notify the Contractor of the amount of such disputed sum. Payment by the Trust shall be without prejudice to any claims or rights which the Trust may have against the Contractor and shall not constitute any admission by the Trust or the Authorised Officer as to the performance by the Contractor of its obligations hereunder.
- 17.6 The Trust shall be entitled to retain from any amount due to the Contractor under this Agreement a sum equal to the amount or percentage of any Retention allowed under the provisions of this Agreement and shall only pay this sum to the Contractor (less any proper deductions therefrom) in accordance with the provisions of this Agreement and without interest.
- 17 The Invoice for payment in arrears certified by an authorised signatory of the Contractor shall be supported by the Trust's normal or otherwise approved form of time sheets duly submitted and authorised by the Authorised Officer specifying:-

17.7.1 the name of the Contractor's Employees,

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- 17.7.2 the break down of total hours into elements and sub-codes which shall be supplied to the Contractor by the Trust, and
- 17.7.3 such other information as the Trust may reasonably require.
- 17.8 The Contractor shall make available to the Trust on request the necessary accounts to indicate the action, fees and expenses for which payment is required or if the Trust so requires shall afford such facilities as may reasonably be required by the Trust for the Contractor's books of accounts, vouchers and records to be inspected by the Trust or a person representing the Trust's Auditors for the purpose of verifying any of the Contractor's claims for payment under this Agreement.
- 17.9 The Contractor's Invoice shall only be paid if the Authorised Officer is in possession of all relevant time sheets (which shall be retained by the Trust).
- 17.10 The Contractor's Invoice shall set out and correspond in all respects to the number and allocation of hours and personnel recorded on the time sheets referred to in Clause 17.7 hereof.
- 17.11 VAT, where applicable, shall be shown separately on all Invoices as a strictly net extra charge.
- 17.12 Subject as specified herein in consideration of the performance of the Services by the Contractor under this Agreement the Trust shall pay the Contract Price to the Contractor.
- 17.13 Payment shall be in Pounds sterling. In the event that the United Kingdom joins the European Monetary Union, the Trust shall at any time thereafter, upon giving three (3) months written notice to the Contractor, be entitled to require the Contractor, at its own expense, to convert any such charges from sterling into Euros (in accordance with EC Regulation 1103/97). The Contractor shall thereafter submit all invoices for payment to the Trust denominated in Euros and payment shall be made accordingly.
- 17.14 The Contract Price is inclusive of, inter alia, all costs and expenses directly or indirectly related to performance of this Agreement.
- 17.15 Unless otherwise agreed payment for travelling, subsistence and other expenses as may be incurred by the Contractor in the performance of its duties under this Agreement is included in the Annual Sum. If any payment in respect of travelling, subsistence or other expenses is agreed by the Authorised Officer these shall be submitted in arrears and authorised by the Authorised Officer. The amount of the authorised expenses shall be shown separately on the Contractor's Invoice. The Contractor shall supply valid receipts to support any payment.
- 17.16 All payments are subject to performance of this Agreement to the satisfaction of the Trust.

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- 17.17 Upon payment being made by the Trust the Contractor shall forthwith issue and send a written receipt to the Trust.
- 17.18 If the Contractor shall be obliged to repay to the Trust any sum in accordance with these Terms and Conditions of Contract or the Specification such sum shall be repaid within twenty eight (28) days of an Invoice being raised by the Trust in respect thereof save where this Agreement shall otherwise provide.
- 17.19 In the event of any failure by the Contractor to pay to the Trust any such sum due under this Agreement the Contractor shall pay to the Trust the Trust's administrative costs and overheads in connection therewith together with interest thereon at the rate of four (4) per centum per annum above the Bank of England's Monetary Policy Committee's bank base lending rate.
- 17.20 The Contractor hereby expressly agrees that it will maintain a policy of open book accounting during the Contract Period in relation to this Agreement and that the Trust may carry out such inspections thereunder and take such copies of documentation as it shall deem necessary at such times as shall be required by the Trust.
- 17.21 Where the Contractor enters into any sub-contract in accordance with Clause **26** the Contractor shall include in the sub-contract:-
- 17.21.1 provisions having the same effect as Clauses 17.2 to 17.4 (inclusive) hereof, and
 - 17.21.2 provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as Clauses 17.2 to 17.4 (inclusive) hereof.
 - 17.21.3 For the avoidance of doubt "sub-contract" in this Clause 17.21 means a contract between two (2) or more suppliers, at any stage of remoteness from the Trust in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

18 Charging Policies

- 18.1 No charge shall be made to any other person in respect of the provision of the Services.

19 Recovery of Sums Due

- 19.1 Whenever under this Agreement any sum of money shall be recoverable from or payable by the Contractor the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Contractor.

- 19.2 Exercise by the Trust of its rights under this Clause **19** shall be without prejudice to any other rights or remedies available to the Trust whether under this Agreement or otherwise or for breach of contract.

20 Value Added Tax

- 20.1 All amounts due under this Agreement are exclusive of VAT.
- 20.2 The Contractor may claim from the Trust such VAT as may properly be chargeable by the Contractor in connection with the provision of the Services. The Contractor shall issue to the Trust such tax invoices and receipts as are required by law.
- 20.3 The Contractor shall as part of its claim for payment issue and return to the Trust a valid tax invoice for the exact amount payable in such form as may be required by the Value Added Tax Act 1994 and any subordinate legislation made thereunder (in this Clause **20** hereinafter called the "Act") or by any Regulations made thereunder.
- 20.4 The Contractor shall pay to the Trust any VAT that may be or may become due in respect of any of the Trust's premises and/or the Trust's equipment and/or the Trust's materials used in connection with the provision of the Services by the Contractor whether or not provided free of charge. The Trust will issue the Contractor with a valid VAT invoice for the use of those Trust's premises and/or that Trust's equipment and/or those Trust's materials twenty eight (28) days after the end of each monthly Payment Period.
- 20.5 If the Trust objects to any part of such invoice and such objection cannot be resolved by agreement between the Parties the Trust may require the Contractor to refer to the Commissioners of Customs and Excise (hereinafter referred to as "the Commissioners") any dispute difference or question in relation to any of the matters specified in Section 82 of the Act.
- 20.6 If the Contractor refers any matter to the Commissioners (whether or not under Clause 20.5 hereof) and the Trust is dissatisfied with their decision on the matter the Contractor shall at the Trust's request and cost refer the matter to a VAT Tribunal by way of appeal under Section 83 of the Act whether or not the Contractor is so dissatisfied. Should the Contractor be required to deposit a sum of money equal to all or part of the tax claimed under Section 84(3) of the Act the Trust shall pay an equivalent sum to the Commissioners or on receipt of proof in a form reasonably satisfactory to the Trust that the Contractor has deposited such sum with the Commissioners the Trust shall pay an equivalent sum to the Contractor. The Trust shall also reimburse the Contractor any costs or expenses reasonably and properly incurred in making the reference (less any costs awarded to the Contractor by the Tribunal) and if the Tribunal subsequently awards any costs to the Contractor which the Trust has already reimbursed the Contractor under this Clause 20.6 the Contractor shall repay to the Trust any such costs.

- 20.7 Upon the final adjudication by the Commissioners to the effect that VAT is chargeable or in the event of a reference to a Tribunal where the Tribunal rules that VAT is chargeable the Trust shall pay the amount of the VAT adjudged due to the Contractor. Should the amounts already paid by the Trust either by way of payment of VAT or by way of reimbursement of any money required to be deposited by the Contractor with the Commissioners under Clause 20.6 hereof exceed the VAT adjudged to be due the Contractor shall forthwith repay such excess to the Trust (together with any interest awarded to the Contractor in respect of such excess).
- 20.8 Notwithstanding any provision to the contrary in this Agreement the Trust shall not be obliged to make any further payment of VAT to the Contractor if the Contractor is in breach in respect of the tax invoice referred to in Clause 20.3 hereof provided that this Clause 20.8 shall only apply where the Trust can show that it requires such tax invoice to validate any claim for credit for VAT paid or payable which the Trust is entitled to make to the Commissioners.

21 Indemnity and Insurance

- 21.1 The Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever arising from or incurred by reason of any infringement or alleged infringement of any letters patent, registered design, Copyright, Intellectual Property Rights, Patents or Patents pending arising out of the performance of this Agreement or from or incurred by reason of any infringement of any copyright, intellectual property rights, patents or patents pending arising out of the performance of this Agreement or which the Trust may sustain incur or be put to by reason or in consequence directly or indirectly of any breach of the provision of this Agreement (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Trust may have to make to any person or body entitled to such Rights in respect of any process matter or thing used manufactured supplied or delivered by the Contractor in connection with this Agreement.
- 21.2 The Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever arising from the provision of any information relating to this Agreement where the release of such information is either without lawful authority or otherwise expressly contrary to the provisions of this Agreement.
- 21.3 The Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents against personal injury (including death) to any person or the loss of or damage to any property whether real or personal including monetary loss or loss in income or in any

other way whatsoever howsoever arising which may arise out of the act, default or negligence of the Contractor, or its Employees, and from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising in respect thereof or in relation thereto, provided that the Contractor shall not be liable for nor be required to indemnify the Trust against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Trust or its employees or contractors (not being the Contractor or its Employees). Without prejudice to its liability to indemnify the Trust the Contractor shall take out and maintain insurance which in respect of liability to its Employees shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and such other insurances as it considers necessary. For the avoidance of doubt this indemnity shall also be in respect of any consequential losses or other loss including loss of profits.

- 21.4 Notwithstanding the Indemnities provided by Clauses 21.1 to 21.3 inclusive or elsewhere in this Agreement the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents against any claim whatsoever howsoever arising which may arise out of the act, default or negligence of the Contractor, or its Employees, and from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising in respect thereof or in relation thereto, provided that the Contractor shall not be liable for nor be required to indemnify the Trust against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result wholly from any act, default or negligence on the part of the Trust or its employees or contractors (not being the Contractor or its Employees).
- 21.5 The Contractor shall comply with all relevant legal provisions and shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents against all penalties and liability of every kind for breach of any Enactment, Order, Statutory Instrument, Regulation, Code of Practice, Code of Guidance, Statutory Guidance (whether contained in any Government Circular or otherwise), Byelaw and, insofar as may be appropriate, any European Union Directive or other European Union legislation relating to the provision of the Services including compliance with any obligations which may be imposed by the same upon the Trust and any statutory modification or re-enactment thereof for the time being in force provided that the Contractor shall not be required to indemnify the Trust against the consequences of any breach caused by compliance with this Agreement or any instruction of the Authorised Officer pursuant to the terms hereof.
- 21.6 In its performance of the Services the Contractor shall accept full responsibility for and shall fully, promptly and effectively indemnify and keep

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so indemnified the Trust, its servants and agents and its and their employees from and against the following claims:-

- 21.6.1 all claims arising during the Contract Period or within the appropriate Limitation Period thereafter in respect of the Contractor's and its Employees' non-compliance with applicable laws and regulations including but not limited to the appropriate Health and Safety at Work legislation, the Income and Corporation Taxes Act 1970, the Finance (No. 2) Act 1975 the Employment Rights Act 1996, the Trade Union Reform Employment Rights Act 1993 or any application of TUPE,
- 21.6.2 all claims whatsoever and howsoever arising which may at any time be made which arise out of accidents to the Contractor or its Employees and/or loss or damage to the Contractor's property or the property of its Employees,
- 21.6.3 all claims whatsoever and howsoever arising as a result of the Contractor's negligence which may at any time be made which arise out of accidents to the Contractor or its Employees and/or loss or damage to the Contractor's property or the property of its Employees,
- 21.6.4 all third party claims arising from the performance of the Services and all liabilities of whatsoever nature caused by the negligence of the Contractor or its Employees; where the Contractor or its Employees have merely contributed by their negligence to such a claim the Trust will rely on this indemnity to the extent of the Contractor's or of any of its Employees' contributory negligence,
- 21.6.5 all loss or damage caused to any land, building or chattel in the ownership, occupation or possession of or partial occupation or possession of the Trust by the Contractor or by its Employees (whether such damage be caused by negligence or in any other way whatsoever),
- 21.6.6 any consequential or indirect loss suffered by the Trust as a result of the acts or omissions of the Contractor or by its Employees,
- 21.6.7 all claims whatsoever and howsoever arising which may be made in relation to any matter or thing used manufactured supplied or delivered by the Contractor or its Employees in connection with the provision of the Services, and
- 21.6.8 all claims whatsoever and howsoever arising which may at any time be made which arise out of the failure of the Contractor to provide occupational pension benefits not less favourable in aggregate than those currently provided by the Trust to its employees.

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- 21.7 The Contractor shall be liable for and shall fully, promptly and effectively indemnify the Trust in respect of any items taken from any Contract Area or from any of the Trust's premises or from any other premises owned or occupied by the Trust by the Contractor or by any of its Employees and consequential expense or loss whether taken by mistake or in any other way whatsoever.
- 21.8 Without prejudice to its liability to indemnify the Trust the Contractor shall take out and maintain insurance which in respect of liability to its Employees shall comply with the Employers' Liability (Compulsory Insurance) Act 1969 and such other insurances as it considers necessary. For the avoidance of doubt this indemnity shall also be in respect of any consequential losses and any other loss including loss of profits.
- 21.9 The Contractor (if an individual) represents that he is regarded by both the Inland Revenue and the Department of Social Security as self-employed and accordingly shall fully and effectively indemnify and keep so indemnified the Trust, its servants and agents against any tax, national insurance contributions or similar impost for which the Trust may be liable in respect of the Contractor by reason of this Agreement.
- 21.10 Without prejudice to its liability to fully and effectively indemnify and keep so indemnified the Trust, its servants and agents as provided for in this Agreement, the Contractor shall take out and maintain, and shall cause any sub-contractor appointed pursuant to Clause **26** hereof or agent to take out and maintain, such insurances with a reputable insurance company as are necessary and adequate to cover the liability of the Contractor or, as the case may be, of such sub-contractor or agent under this Agreement in respect of personal injury or death arising out of performance of this Agreement by the Contractor and in respect of injury or damage to property, real or personal, which may arise out of any act default, omission of the Contractor or its Employees, in performing this Agreement or to fulfill any requirements of any appropriate Body or Bodies. The Contractor shall also obtain from its Underwriters, or from its sub-contractor's or agent's Underwriters as appropriate, a waiver of all rights of subrogation against the Trust endorsed upon all such Policies.
- 21.11 The Contractor shall at its own cost take out and maintain the following minimum insurance arrangements:-
- 21.11.1 Public Liability Insurance of not less than a minimum of Five million Pounds sterling (£5,000,000.00),
 - 21.11.2 Employers Liability Insurance of not less than a minimum of Ten million Pounds sterling (£10,000,000.00),
 - 21.11.3 Fully Comprehensive vehicular insurance in respect of any vehicle used in the provision of the Services and owned by or let under a Hire or other Agreement to the Contractor, and

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21.11.4 where any specific task or any specific part of the Service amounts to a Professional Advice Professional Indemnity Insurance of not less than a minimum of Five million Pounds sterling (£5,000,000.00),

in each case for any one (1) claim, without limit to the number of claims, all Policies to include an indemnity of principals provision, to cover the liability of the Contractor in respect of any act or default for which it may become liable to indemnify the Trust under the terms of this Agreement and shall if so required by the Trust before the provision of the Services produce to the Trust any such Insurance Policy or Policies of insurance required to be effected together with the receipt for the payment of the last premium in respect of each Policy. The Contractor shall ensure that any such Insurance Policy or Policies of insurance required to be effected shall be maintained for a minimum period of twelve (12) years following the expiration or earlier termination of this Agreement.

21.12 The Trust reserves the right at its sole discretion to require that the minimum insurance amounts be revised, on review, should this be deemed necessary or advisable to the Trust.

21.13 If, in the opinion of the Authorised Officer, any insurance which is required under the provisions of this Agreement does not cover or provide sufficient cover to comply with the provisions hereof then the Authorised Officer may upon written notice to the Contractor at any time during the Contract Period require the Contractor to obtain such additional or amended insurance coverage as is reasonably necessary for the performance of this Agreement.

21.14 The Contractor shall not be entitled to seek any variation in the Annual Sum or any Rate as compensation for an increase in premiums paid by the Contractor which results from the Authorised Officer's instructions.

21.15 The Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all loss damage or liability (whether criminal or civil) suffered and legal fees and costs resulting from a breach of this Agreement by the Contractor including but not by way of limitation:-

21.15.1 any act of neglect or default of the Contractor or anyone for whom the Contractor is vicariously liable, and

21.15.2 breaches in respect of any matter arising from the provision of the Services resulting in any successful claim.

21.16 The Contractor shall supply to the Trust forthwith and thereafter upon each renewal date written confirmation from its Insurers or Insurance Brokers that the cover afforded by the insurance policy or policies taken out pursuant to this Clause **21** is not less than the cover required by this Agreement and if requested by the Authorised Officer the Contractor shall produce such other additional evidence as he may reasonably require that any such insurances

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as are required by any of the provisions of this Agreement have been taken out and are in force at all material times.

- 21.17 In the event that any Insurance Policy becomes renewable during the Contract Period, then the Contractor shall submit to the Authorised Officer written confirmation from its Insurers or Insurance Brokers that the cover afforded by the Insurance Policy or Policies renewed is not less than the cover required by this Agreement.
- 21.18 If the Contractor fails to obtain the necessary insurances required by the Trust or by the Authorised Officer at any time during the Contract Period the Trust may itself provide such insurances and may recover from the Contractor the cost of obtaining such insurances together with the Trust's administrative costs and overheads as certified by the Authorised Officer at his sole discretion together with interest thereon at the rate of four (4) per centum per annum above the Bank of England's Monetary Policy Committee's bank base lending rate.
- 21.19 It is expressly provided that self insurance shall not be affected under any circumstances unless previously authorised in writing by the Authorised Officer at his sole discretion.
- 21.20 The Contractor will inform all its Employees, as appropriate, of their responsibility to arrange personal insurance cover in respect of their own belongings, for example, personal items and cars when used for business use. If any person's personal effects are not covered within the Contractor's own insurance policies the Contractor will take all necessary steps to encourage and advise that other person to take out such insurance and will, if requested by that other person (at such other person's cost) effect such insurance with the Insurance Company requested by that other person or in default of such a specific request with an Insurance Company approved by the Trust.
- 21.21 The Contractor's liability and indemnity to the Trust arising under this Clause **21** shall be without prejudice to any other right or remedy available to the Trust.
- 21.22 The Contractor warrants, undertakes and represents to the Trust that:-
- 21.22.1 it has, and will continue to have, full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement,
 - 21.22.2 in entering into this Agreement it has not committed (and will not be committing) any Prohibited Act,
 - 21.22.3 as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and

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not misleading, save as may have been specifically disclosed in writing to the Trust before the execution of this Agreement, and it will promptly advise the Trust of any fact, matter or circumstance of which it may become aware during the Contract Period that would render any such information, statement or representation to be false or misleading,

- 21.22.4 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 any of its assets that will or might affect its ability to perform its obligations under this Agreement which may be entered into with the Trust,
- 21.22.5 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document required by Law which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform the Services or its obligations under this Agreement,
- 21.22.6 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement or any Call-Off Contract,
- 21.22.7 this Agreement is executed by duly authorised representatives of the Contractor, and
- 21.22.7 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 Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

21.23 The provisions of this Clause **21** shall apply during the continuance of this Agreement and after its termination howsoever arising.

22. Liability of the Trust

22.1 The Trust shall not under any circumstances be liable to the Contractor for any loss, damage or injury whether or not caused by the negligence of the Trust, its servants or agents or in any way whatsoever save as provided by law and the Trust shall in no circumstances be liable to the Contractor for any loss of profit business or production or any similar loss or damage whether direct indirect or consequential however caused.

22.2 It is expressly provided that the Trust shall not in any event be liable to the Contractor or to any of its Employees whether in contract tort or otherwise for

any economic development indirect or consequential loss whatsoever and howsoever caused.

- 22.3 The Trust in no way warrants the truth or accuracy of any representation which may have been made to the Contractor prior to its entering into this Agreement and the Contractor acknowledges that it did not rely upon any representation made by or on behalf of the Trust when entering into this Agreement and no claim against the Trust shall be allowed whether in contract in tort under the Misrepresentation Act 1967 and any subordinate legislation made thereunder or otherwise on the ground of any inaccuracy.

23 Confidentiality Data Protection and Freedom of Information

- 23.1 The Contractor and its Employees and any other person acting on its behalf whether or not engaged in the provision of the Services, shall keep confidential any and all information obtained from the Trust whether under this Agreement or otherwise (whether directly or indirectly) and shall not divulge to any third party any information which comes into its or their possession and neither dispose of nor part with possession of any confidential material provided to the Contractor by the Trust pursuant to this Agreement or otherwise (whether directly or indirectly) without the express permission of the Trust. This Clause **23** shall apply notwithstanding termination of this Agreement under Clause **30** hereof but shall not apply to:-

- 23.1.1 any information in the public domain otherwise than by breach of this Agreement, or
- 23.1.2 any information in the possession of the receiving party thereof before divulgence as aforesaid, or
- 23.1.3 any information obtained from a third party who is free to divulge the same, or
- 23.1.4 any information required to be disclosed by law.

- 23.2 The Contractor shall only divulge confidential information relating to the provision of the Services under this Agreement to those Employees who are directly involved in the same and shall ensure that such persons are aware of and comply with these obligations as to confidentiality.

- 23.3 The Contractor shall not, other than with the prior written consent of the Trust, during or after the termination, determination or expiry of this Agreement, disclose, directly or indirectly, to any person, Firm, Company or third party and shall only use for the purposes of this Agreement any information relating to the provision of the Services, the Trust, its business, trade secrets, customers, suppliers or any other information of whatever nature which the Trust may deem to be confidential and which the Contractor has or shall hereafter become possessed of. The foregoing provisions shall not prevent the disclosure or use by the Contractor of any information which is or hereafter

through no fault of the Contractor become public knowledge or to the extent permitted by law.

- 23.4 If so instructed by the Trust, the Contractor shall require every Employee providing the Services under this Agreement to sign a separate undertaking as to confidentiality in such form as the Trust may reasonably require.
- 23.5 This Clause 23.5 shall apply in relation to any requests for information in relation to this Agreement that are made under the Data Protection Act 1998 and any subordinate legislation made thereunder (in this Clause 23.5 hereinafter called "the 1998 Act") or, save under the Freedom of Information Act 2000 and any subordinate legislation made thereunder, otherwise as appropriate including expressly the GDPR. The Parties shall comply with their obligations under Data Protection Legislation at all times and in particular as set out below.

Information Governance – General Responsibilities

- 23.5.1 The Contractor acknowledges that the Data Protection Legislation will include the GDPR from its entry in to force on 25 May 2018 and will ensure that it complies with the requirements of the GDPR.
- 23.5.2 For the purposes of this Clause 23.5, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the 1998 Act and the GDPR.
- 23.5.3 The Parties also acknowledge their respective obligations arising under the 1998 Act and the GDPR and must assist each other as necessary to enable each other to comply with these obligations.
- 23.5.4 The Contractor undertakes to:-
- 23.5.4.1 treat as confidential all Personal Data which may be derived from or be obtained in the course of the Services or which may come into the possession of the Contractor or an Employee, servant or agent or sub-contractor of the Contractor as a result or in connection with the Services,
 - 23.5.4.2 provide all necessary precautions to ensure that all such information is treated as confidential by the Contractor, its Employees, servants, agents or sub-contractors,
 - 23.5.4.3 ensure that it, its Employees, servants, agents and sub-contractors are aware of the provisions of the 1998 Act and the GDPR and that any personal information

obtained in the course of the performance of this Agreement shall not be disclosed or used in any unlawful manner,

- 23.5.4.4 indemnify the Trust against any loss arising under the 1998 Act and the GDPR caused by any action, authorised or unauthorised, taken by the Contractor, its Employees, servants, agents or sub-contractors, and
- 23.5.4.5 have in place adequate mechanisms to ensure that sub-contractors, agents and subsidiaries to whom personal information is disclosed comply with their obligations under this Agreement to keep Personal Data and information secure and confidential in accordance with Data Protection Legislation.

The Contractor as Data Processor

- 23.5.5 The Contractor shall (and shall ensure that all of its Employees) comply with any notification requirements under the 1998 Act and the GDPR and each of the Parties will duly observe all their obligations under the 1998 Act and the GDPR which arise in connection with this Agreement.
- 23.5.6 Notwithstanding the general obligations in Clauses 23.5.1 to 23.5.4, where the Contractor is processing Personal Data as a Data Processor for the Trust the Contractor shall:-
 - 23.5.6.1 process the Personal Data only in accordance with instructions from the Trust (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Trust,
 - 23.5.6.2 comply with all applicable Laws,
 - 23.5.6.3 process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Law or any regulatory body,
 - 23.5.6.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or

damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected,

- 23.5.6.5 ensure that it is able to demonstrate that its Employees, servants, agents or sub-contractors associated with the performance of this Agreement are aware of their personal responsibilities under the 1998 Act and the GDPR to maintain the security of the Personal Data controlled by the Trust,
 - 23.5.6.6 take reasonable steps to ensure the reliability of its Employees, servants, agents and sub-contractors who may have access to the Personal Data,
 - 23.5.6.7 ensure that Personal Data is not be copied for any purpose other than that agreed with the Trust, and
 - 23.5.6.8 ensure that Personal Data shall be returned to the Trust or, under the Trust's written instruction, be safely and securely transferred to another Service Provider in accordance with Data Protection Legislation at the end of this Agreement or when requested by the Trust.
- 23.5.7 The Contractor shall permit the Trust (subject to reasonable and appropriate confidentiality requirements), to inspect and audit the Contractor's data processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Trust to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement and shall:-
- 23.5.7.1 not Process, cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior written consent of the Trust,
 - 23.5.7.2 ensure that all its Employees, servants, agents and sub-contractors required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 23.5,
 - 23.5.7.3 ensure that none of its Employees, servants, agents and sub-contractors publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Trust,
 - 23.5.7.4 not disclose Personal Data to any third parties in any circumstances other than with the written consent of

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the Trust or in compliance with a legal obligation imposed upon the Trust, and

23.5.7.5 notify the Trust within twenty four (24) hours:-

23.5.7.5.1 if it receives a request from a Data Subject to have access to that person's Personal Data,

23.5.7.5.2 if it receives a complaint or request relating to the Trust's obligations under the 1998 Act or the GDPR, or

23.5.7.5.3 of any breach or potential breach of this Clause 23.5.

23.5.8 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Trust to breach any of its applicable obligations under the Data Protection Legislation.

23.5.9 The Contractor agrees to indemnify and keep indemnified and defend at its own expense the Trust against all costs, claims, damages or expenses incurred by the Trust or for which the Trust may become liable due to any failure by the Contractor or its Employees, servants, agents or sub-contractors to comply with any of its obligations under this Agreement.

Responsibilities when engaging sub-contractors

23.5.10 Subject always to the Trust's prior written consent, if the Contractor is to require any sub-contractor to process Personal Data on its behalf, the Contractor must ensure that the sub-contractor contracts on terms which are substantially the same as those set out in this Clause 23.5.

Information Sharing

23.5.11 The Trust and the Contractor shall only share the Personal Data identified as part of the Data to be shared by the Trust and Data to be provided to the Trust for the purposes identified therein and will comply with its obligations in respect of any information shared under this Agreement.

23.5.12 Requests for one off sharing of Personal Data must be made with reference to the Data to be shared, the purpose for this and the lawful basis for it. Such requests and authorisations must be recorded in writing and a record kept.

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- 23.5.13 Data shall be treated as confidential information by the Contractor who shall take such appropriate operational, technical and organisational security measures and not disclose it or allow access to such Data other than to persons engaged in the performance of the Agreement or as otherwise permitted by the Trust.
- 23.5.14 Each Party warrants to the other that it holds and has complied with the notification provisions of the 1998 Act (or that it is deemed to have so complied by virtue of paragraph 2 of Schedule 14 to the 1998 Act) in respect of its obligations under this Agreement and that performance of its obligations hereunder shall not breach or contravene such notification.
- 23.5.15 It is hereby expressly agreed that during the Contract Period the Contractor will remain cognisant of current interpretations of the 1998 Act and will at all times operate in accordance therewith and with any additional data protection requirements specified within this Agreement.
- 23.5.16 Protective marking
- 23.5.16.1 The Trust adheres to the United Kingdom Government Public Services Network in respect of Security Classifications. Where data is not labelled or is marked 'Unclassified' it is not considered sensitive and need not be encrypted in storage or transit unless it is 'Sensitive Personal Data'.
- 23.5.16.2 Data will be classified by both the Trust and the Contractor in line with the Trust's information classification and handling policy.
- 23.5.16.3 Where data is marked "OFFICIAL" it is must be encrypted in transit or where stored on any portable electronic device.
- 23.5.16.4 Where any other labelling is offered e.g. 'private and confidential' it will be treated as "OFFICIAL".
- 23.5.16.5. Where data is marked "OFFICIAL-SENSITIVE", it is considered so sensitive that it may not be processed and receipt must be reported to the Trust.
- 23.5.17 Aggregated Personal Data
- 23.5.17.1 Aggregated data personal data consisting of one

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thousand (1,000) or more records relating to adults or thirty (30) or more records relating to children will be classified as 'Sensitive Personal Data' and handled accordingly.

23.5.18 ICT infrastructure and information security management

- 23.5.18.1 Sensitive Personal Data or protectively marked data in any format (paper or electronic) will be stored securely i.e. accessible on a need to know basis, protected from unauthorised access or amendment by appropriate logical and physical security controls.
- 23.5.18.2 The loss, destruction or unauthorised access to any Personal Data, Sensitive Personal Data or protectively marked data will be reported to the Trust at the earliest practicable moment.

23.5.19 Electronic data in storage and transit

- 23.5.19.1 Data may not be stored temporarily or otherwise on a personally owned computer of any description. Data may only reside on computers that are owned and maintained by the Contractor or any person acting on its behalf in accordance with the provisions of this Agreement.
- 23.5.19.2 Data may only reside on portable electronic devices ("PEDs") including laptops, memory sticks, CDs and smartphones etc, where the PED is encrypted and password protected.
- 23.5.19.3 Sensitive Personal Data or protectively marked data traversing the internet must be encrypted in transit.

23.5.20 Paper data in storage and transit

- 23.5.20.1 All such Information will be subject to appropriate physical security; will not be subject to unnecessary transit and may not be viewed, reviewed or amended in a publicly accessible area.

23.5.21 Right of audit

- 23.5.21.1 The Trust reserves a right of audit versus all provisions of this Agreement. Access to the Premises and to audit evidence will be provided

subject to reasonable notice from the Trust.

23.5.22 Confidentiality Agreements

23.5.22.1 The Contractor will impose a duty of confidentiality on its Employees and sub-contractors with regards to any Trust, Sensitive Personal Data or protectively marked data.

23.5.22.2 The Contractor and its Employees and sub-contractors will (if required by the Trust), in addition, complete a Trust Agreement of Confidentiality upon registration or appointment.

23.5.23 The provisions of this Clause 23.5 shall apply for the duration of the Agreement and indefinitely after its expiry.

23.6 This Clause 23.6 shall apply in relation to any requests for information in relation to this Agreement that are made under the Freedom of information Act 2000 and any subordinate legislation made thereunder and/or the Environmental Information Regulations 2004 (in this Clause 23.6 hereinafter together called "the 2000 Act") and/or the Transparency Requirements or, save under the Data Protection Legislation, otherwise as appropriate.

23.6.1 Subject to the other provisions of this Clause 23.6, the Contractor at its own expense shall assist the Trust in meeting any requests for information in relation to this Agreement that are made to the Trust under the 2000 Act or the Transparency Requirements. The Trust may, from time to time, serve on the Contractor an information notice requiring the Contractor within such reasonable time (having regard to the total time which the Trust has to respond to the information notice) and in such form as is reasonably specified in the information notice, to furnish to the Trust such information as the Trust may reasonably require relating to such requests for information made to the Trust.

23.6.2 The Contractor acknowledges that in responding to requests for information described in this Clause 23.6 the Trust shall be entitled to provide information to third parties relating to this Agreement. The Contractor hereby further expressly agrees that the Trust may disclose any information relating to this Agreement without consent if required to do so by law or any authority of competent jurisdiction

23.6.3 For the avoidance of doubt the Contractor accepts that the Trust will determine any request for the release of information as being time and circumstance dependent. The Trust will presume that the information should be released unless the Trust is satisfied, either of itself or by the Contractor, that there is sufficient

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evidence to the contrary. The Trust will consider any evidence provided by the Contractor to this effect. Information shall not be treated as Confidential Information simply because it was once so defined.

- 23.7 The Contractor shall and shall procure that any sub-contractors shall:-
- 23.7.1 transfer any request for information from a third party to the Trust as soon as practicable after receipt and in any event within two (2) Working Days of receiving a request for information, and
 - 23.7.2 provide the Trust with a copy of all relevant information in its possession or power, in the form that the Trust requires within five (5) Working Days (or such other period as the Trust may specify) of the Trust requesting that information, and
 - 23.7.3 provide all necessary assistance as reasonably requested by the Trust to enable the Trust to respond to any request for information within the time for compliance set out in the legislation.
- 23.8. The Trust shall be responsible for determining at its absolute discretion whether any information:-
- 23.8.1 is exempt from disclosure, or
 - 23.8.2 is to be disclosed in response to a request for information,
- and in no event shall the Contractor respond directly to any request for information unless expressly authorised to do so by the Trust.
- 23.9. The Contractor acknowledges that the Trust may be obliged under the legislation to disclose information:-
- 23.9.1 without consulting with the Contractor, or
 - 23.9.2 following consultation with the Contractor and having taken its views into account.
- 23.10. The Contractor shall ensure that all information produced in the course of this Agreement or relating to this Agreement is retained for disclosure for a period of twelve (12) years after the end of this Agreement and shall permit the Trust, its representatives or the Audit Commission to inspect such records as requested from time to time, both during and after the Contract Period.
- 23.11 The Contractor shall obtain from all third parties who provide any information to the Contractor whilst the Contractor is providing the Services consent that such information so provided can be passed to the Trust and that the Trust may then pass such information to other third parties for use pursuant to instructions from the Trust.

- 23.12 Without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever arising from the provision of this Clause **23**.
- 23.13 For the avoidance of doubt the Contract Documents or any data contained therein or any material provided by the Trust pursuant to this Agreement or prepared by the Contractor pursuant to this Agreement shall all be deemed to be confidential.
- 23.14 The Contractor agrees to treat as confidential and not at any time for any reason to disclose or permit to be disclosed to any person or persons or otherwise make use of or permit to be made use of any information relating to the Trust's technology, technical processes, business affairs or finances or any such information relating to any suppliers or similar of the Trust.
- 23.15 The Contractor undertakes to ensure that its Employees have received details of and comply with the obligations of this Clause **23**.
- 23.16 Neither the Trust nor the Contractor nor any person connected with them shall divulge maliciously or without consent to any person or persons information of a confidential nature including any information pertaining to or arising from this Agreement.
- 23.17 Both the Trust and the Contractor must use their best endeavours to ensure that information given can only be used for the purpose for which it was given without expressed consent or save where statute or public interest otherwise allows.
- 23.18 If the Contractor considers it necessary to approach any outside official or quasi-official body for information of a kind which might be regarded as confidential or sensitive, the Contractor shall first consult the Authorised Officer.
- 23.20 Without prejudice to the above the Contractor shall at all times comply with the requirements of:-
- 23.20.1 the Data Handling Review – Mandatory application of security provisions in contracts (Information note 08/08 – 1st July 2008), and
- 23.20.2 the Data Handling Review (Information note 13/08 – 26 November 2008),
- and shall also ensure that its Employees and any sub-contractor and its employees and any agent under this Agreement meet the Baseline Personnel

Security Standards ("BPSS").

- 23.21 Should the Authorised Officer at any time require the return of any Information of whatever nature supplied to it by the Trust (whether relating to the Trust or not) held by the Contractor, the Contractor shall, when requested by the Authorised Officer, return the same to him within such time and in such format as he shall specify.
- 23.22 For the avoidance of doubt the Contractor hereby specifically agrees and confirms that upon the termination of this Agreement for whatever reason it will within such time as the Authorised Officer shall specify delete all and any Confidential Information or Intellectual Property or any other material of whatever nature supplied to it by the Trust (whether relating to the Trust or not) which it holds on any Computer or other similar system from all such equipment and shall provide independent certification thereof from a person or body previously approved in writing by the Authorised Officer that this has been effected. Any such information which is in hard copy or any other format shall be returned to the Trust within the specified period together with all copies thereof. In either case the Contractor shall not utilize or exploit the same in any way whatsoever after termination.
- 23.23 The Trust and the Contractor agree that only such information relating to the Contractor's Employees as is necessary for the operation of this Agreement, shall be exchanged between them and that such information shall not infringe or prejudice the right of confidentiality enjoyed by the Contractor's Employees.
- 23.24 The Contractor will at all times safeguard the confidentiality of all information held or known which the Trust may from time to time determine.
- 23.25 Without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever arising as a result of the Contractor's breach of this Clause **23**.
- 23.26 The provisions of this Clause **23** shall continue in perpetuity insofar as they do not relate to information in any physical format of whatever form all copies of which must be returned to the Trust immediately upon the termination of this Agreement howsoever arising.

24 Force Majeure

- 24.1 In the event of an act of God or of an event of Force Majeure (which shall include all uncontrollable natural forces and natural disasters (including fire, tempest, flood, avalanche and storms), unforeseen accidents, acts of government, acts of war and related matters which are both beyond the

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control of the Contractor and are such that the Contractor with the application of all due diligence and foresight could not prevent) which causes the cessation of or substantial interference with the provision of the Services the duty of the Contractor to provide the Services (or the relevant part thereof as appropriate) shall be suspended until such circumstances have ceased. The Trust shall not be liable to make any payment to the Contractor in respect of such suspension and any such sum already paid in respect of the Services not yet performed shall be held to the credit of the Trust or returned to the Trust.

24.2 For the avoidance of doubt it is hereby expressly agreed that industrial relations difficulties and failure to provide adequate Premises, Equipment, Materials and/or Employees or similar matters which a prudent and diligent contractor could have avoided with the application of foresight are not to be considered as an act of God or an event of Force Majeure.

24.3 If the period of suspension lasts for longer than one (1) month either Party may serve upon the other one (1) month's notice in writing to terminate this Agreement. Unless the provision of the Services has been resumed before the expiration of such notice this Agreement shall terminate in accordance with such notice.

24.4 In the event of the occurrence of any one (1) or more or all of the following affecting the performance of the Services:-

24.4.1 industrial action, shortage of Materials or breakdown of the Equipment whatsoever the reason, or

24.4.2 electricity failure and/or failure of gas or water supply other than due to the negligence of the Trust,

performance of the Services will remain the responsibility of the Contractor.

25 Assignment

25.1 The Trust may at its sole discretion assign, novate, transfer, charge or pledge this Agreement or any of its rights or obligations therein and shall give written notice of any assignment to the Contractor which shall use its best endeavours to assist in the smooth transfer of arrangements.

25.2 The Contractor shall not assign, novate, transfer, charge or pledge, this Agreement or any of its rights or obligations therein under any circumstances.

25.3 The Contractor (if a Company) shall not assign shares of that Company so as to give rise to a change in control of the Contractor.

25.4 Should control of the Contractor (if a Company) change from what it is at the Commencement Date without the consent of the Trust, the Trust may, without prejudice to any other rights or remedies which the Trust may possess under

this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

- 25.5 If the Contractor purports to assign or otherwise acts in breach of the provisions of this Clause **25** then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

26 Sub-contracting or sub-letting

- 26.1 The Contractor shall not, without the prior written consent of the Trust, which shall not be unreasonably withheld, enter into any sub-contract with any other company, person or persons for the provision of the Services or in any other way sub-let the same.
- 26.2 Any such consent which is given by the Authorised Officer under Clause 26.1 hereof shall not relieve the Contractor from any of its liabilities or obligations under this Agreement and the Contractor shall be responsible for the acts, defaults or neglect of any sub-contractor, its employees or agents in all respects as if they were the acts, defaults or neglect of the Contractor.
- 26.3 It shall be a condition that in any sub-contract or sub-letting for which consent which is given by the Authorised Officer under Clause 26.1 hereof the employment of the sub-contractor under the sub-contract or sub-letting may be determined immediately upon the expiry of or cancellation (for any reason) of the Contractor's employment under this Agreement.
- 26.4 Where the Trust has consented to the placing of any sub-contract or sub-letting, copies of any document in respect thereof shall be sent by the Contractor to the Trust immediately.
- 26.5 Any consent which the Trust has given pursuant to this Clause **26** to any sub-contracting or sub-letting by the Contractor may subsequently be withdrawn by the Trust at any time provided that the Trust has acted reasonably in so doing and has given reasonable notice thereof. At the end of such notice the Contractor will terminate the sub-contract or sub-letting referred to therein immediately and save where the Trust has not acted in accordance with the provisions of this Clause 26.5 without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions,

charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever arising as a result thereof.

- 26.6 If the Contractor purports to sub-contract or sub-let in breach of the provisions of this Clause **26** then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

27 Misconduct, Bribery and Human Trafficking/Modern Slavery

- 27.1 Neither the Contractor nor any of its Employees or any other person acting on its behalf whether or not involved in the provision of the Services shall solicit, demand or accept any gratuity, tip or any other form of consideration or reward or bequest from any person in connection with provision of the Services. Any such gratuity, tip, consideration or reward received contrary to this Clause 27.1 must be returned to the donor or if this is not possible for whatever reason then it must be declared to the Authorised Officer and disposed of as he directs in accordance with Trust Policy appertaining at the time. In any proven case where any gratuity, tip, consideration or reward is known to have been solicited, demanded or accepted the Authorised Officer shall be entitled to issue to the Contractor appropriate instructions in respect of the future use of the relevant Employee in the provision of the Services. For the avoidance of doubt this shall not include any unsolicited donations received by the Contractor or any donations received by it as a result of fund-raising carried out on behalf of the Contractor.
- 27.2 Neither the Contractor nor any of its Employees or any other person acting on its behalf whether or not involved in the provision of the Services shall make any payment (in cash or in kind) to Members or employees of the Trust or any other person whether or not involved in the provision of the Services.
- 27.3 The Contractor as part of or in connection with the tendering process in respect of the Services shall not in any way have:-
- 27.3.1 fixed or adjusted any of the amounts shown or otherwise included within, or submitted as part of, its Tender by or in accordance with any agreement or arrangement with any other person, or
 - 27.3.2 communicated to any person other than the Trust the amounts or approximate amounts shown in its Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender), or
 - 27.3.3 entered into any agreement or arrangement with any other person

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that such other person should refrain from submitting a Tender or should limit or restrict the amount or amounts to be shown by any other person in its Tender, or

27.3.4 offered or agreed to pay or gave or did pay or give any such of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Quotation or Tender or proposed Quotation or Tender any act or omission.

27.4 In the event that the Contractor shall fail to comply with the above provisions of this Clause **27**, then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination and the Contractor may be disqualified from tendering for any contract with the Trust.

27.5 Bribery

27.5.1 The Contractor:-

27.5.1.1 shall not, and shall procure that any sub-contractor or any other person acting on its behalf and all employees of any such sub-contractor or any other person acting on the Contractor's behalf shall not, in connection with this Agreement commit a Prohibited Act, and

27.5.1.2 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 Trust, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Trust before execution of this Agreement.

27.5.2 The Contractor shall:-

27.5.2.1 if requested, provide the Trust with any reasonable assistance, at the Trust's reasonable cost, to enable the Trust 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 any subordinate legislation made thereunder, and

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- 27.5.2.2 within five (5) working days of the Commencement Date, and annually thereafter, certify to the Trust in writing (such certification to be signed by an officer of the Contractor) compliance with the provisions of this Clause 27.5 by the Contractor and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Contractor shall provide such supporting evidence of compliance as the Trust may reasonably request.
- 27.5.3 The Contractor shall have an anti-bribery policy (which shall be disclosed to the Trust) to prevent any sub-contractor or any other person acting on its behalf and all employees of any such sub-contractor or any other person acting on the Contractor's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 27.5.4 If any breach of this Clause 27.5 is suspected or known, the Contractor must notify the Authorised Officer immediately.
- 27.5.5 If the Contractor notifies the Authorised Officer that it suspects or knows that there may be a breach of this Clause 27.5, the Contractor must respond promptly to the Trust's enquiries, co-operate with any investigation, and allow the Trust to audit books, records and any other relevant documentation. This obligation shall continue for five (5) years following the expiry or termination of this Agreement.
- 27.5.6 The Trust may without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, terminate this Agreement with immediate effect without notice under Clause 30 hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination if the Contractor, any sub-contractor or any other person acting on its behalf and all employees of any such sub-contractor or any other person acting on the Contractor's behalf (in all cases whether or not acting with the Contractor's knowledge) breaches this Clause 27.5. In determining whether to exercise the right of termination under this Clause 27.5.6, the Trust shall give all due consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, sub-contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a sub-contractor) means and shall be construed

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as acting:-

27.5.6.1 with the authority, or

27.5.6.2 with the actual knowledge,

of any one or more of the Directors of the Contractor or the sub-contractor (as the case may be), or

27.5.6.3 in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

27.5.7 Any notice of termination under Clause 27.5.6 hereof must specify:-

27.5.7.1 the nature of the Prohibited Act,

27.5.7.2 the identity of the party whom the Trust believes has committed the Prohibited Act, and

27.5.7.3 the date on which this Agreement will terminate.

27.5.8 Despite Clause **33** hereof, any dispute relating to:-

27.5.8.1 the interpretation of this Clause 27.5, or

27.5.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Trust at its sole decision shall be final and conclusive.

27.5.9 Any termination under Clause 27.5.6 hereof will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Trust.

27.6 The Trust may also without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination if the Contractor shall have offered or given or agreed to give any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to have done any action in relation to the execution of this Agreement or any other contract with the Trust or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other contract

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with the Trust or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor) or, where this Contract is one to which regulation 73(1) of the Public Contract Regulations 2015 applies, the circumstances set out in regulation 73(1)(b) of the Public Contract Regulations 2015 apply.

27.7 The Contractor warrants, undertakes and represents to the Trust that:-

27.7.1 neither the Contractor nor its Employees (nor other persons associated with the Contractor):-

27.7.1.1 has been convicted of any offence involving slavery and human trafficking, and

27.7.1.2 (having made reasonable enquiries, to the best of the Contractor's knowledge) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

27.7.2 in performing its obligations under this Agreement, the Contractor will:-

27.7.2.1 comply with all applicable anti-slavery and human trafficking Laws, including the Modern Slavery Act 2015 and any subordinate legislation made thereunder,

27.7.2.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom,

27.7.2.3 ensure that all sub-contracts include anti-slavery and human trafficking provisions that are at least as onerous as those set out in this Clause 27.7 and ensure that all Subcontractors comply with all applicable anti-slavery and human trafficking Laws, including the Modern Slavery Act 2015 and any subordinate legislation made thereunder, and

27.7.2.4 implement due diligence procedures for Sub-contractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

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27.8 The Trust may also without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination if the Contractor or any of its Employees shall

27.8.1 breach any of the provisions of Clause 27.7, or

27.8.2 be convicted of any offence involving slavery and human trafficking.

28 Effect of Bankruptcy etc.

28.1 The Trust has a fiduciary responsibility to Trust Tax payers. Where the Trust can demonstrate grounds for concern as to the financial viability of the Contractor then the Contractor shall provide to the Trust in confidence a certificate issued by a qualified Accountant as to the solvency of the business, which shall establish the solvency of the Contractor. The Trust shall inform the Contractor of any concerns that may arise from the information provided. Similarly if the Contractor has any adverse indication, or qualified audited accounts relating to its financial inability, or continued ability to trade as a going concern, and for any other financial irregularity causing the Contractor's Auditor concern, then the Contractor shall inform the Trust immediately of those financial concerns.

28.2 In the event of the Contractor:-

28.2.1 becoming bankrupt or insolvent or having a receiving order made against it or making a composition or arrangement with its creditors or being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of amalgamation or reconstruction) or has an administration order made against it or carries on its business under an administrator, a receiver, a manager or liquidator for the benefit of its creditors or any of them or has a Proposal in respect of its company for a voluntary arrangement for a composition of debts, or scheme of arrangement approved in accordance with the Insolvency Act 1986 and any subordinate legislation made thereunder, or

28.2.2 having an application granted by the Court under the Insolvency Act 1986 and any subordinate legislation made thereunder to the Court for the appointment of an administrative receiver, or

28.2.3 having a winding up order made or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding up passed, or

- 28.2.4 having a provisional liquidator, receiver or manager of its business or undertaking duly appointed, or
- 28.2.5 having possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the Court to make a winding-up order,

then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

29 Default

- 29.1 If the Contractor shall be guilty of any serious misconduct or any serious breach or non-observance of any of these Terms and Conditions of Contract or of the Specification or of any other provision of this Agreement or shall neglect or fail or refuse to carry out the duties assigned to the Contractor hereunder or should the Contractor fail to provide the Services within the time specified in this Agreement then, without prejudice to any other rights or remedies which the Trust may possess under this Agreement or otherwise or for breach of contract, the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.
- 29.2 Notwithstanding the provisions of Clause 29.1 hereof if the Contractor shall fail to perform the Services fully in accordance with the provisions of this Agreement then the Trust shall be entitled:-
 - 29.2.1 without prejudice to any other rights or claims which the Trust may possess whether under this Agreement or otherwise, to serve a Default Notice upon the Contractor specifying the default and if it shall be capable of remedy then the Contractor shall take such action as is specified by the Authorised Officer within such time as he shall specify and failure to comply shall constitute a serious breach of this Agreement, and
 - 29.2.2 to claim by way of liquidated damages and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise a sum equal to the cost of that part of the Services which has not been so provided together with the Trust's

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administrative and inspection costs associated therewith and any other consequential losses or other direct or indirect losses incurred by the Trust as a result thereof.

- 29.3 Where the Trust incurs any exceptional cost as a consequence of a failure on the part of the Contractor to provide the Services where the provision of such Services has been specifically previously agreed and commenced in any particular case, the Trust will be entitled to claim a sum equivalent thereto until such time as the omission is redressed or the Services provided.
- 29.4 These charges are to allow for any costs associated with a failure to meet the requirements of this Agreement and any subsequent effect or disturbance.

30 Termination

- 30.1 The Trust may terminate this Agreement with immediate effect without notice under this Clause **30** and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination if the Contractor (either by itself or through any of its Employees):-

- 30.1.1 commits a serious or fundamental breach of its obligations under this Agreement and (if, in the opinion of the Authorised Officer at his sole discretion, such breach is capable of remedy) shall have failed to remedy such breach within seven (7) days of being required by the Trust in writing to do so, or
- 30.1.2 has any Registration Certificate or Professional Competency cancelled or suspended or has its name removed from any relevant Register for any reason, or
- 30.1.3 ceases trading for any reason or upon dissolution in any other circumstances, or
- 30.1.4 offers any improper inducements or exerts unreasonable pressure upon any person, or
- 30.1.5 takes any financial advantage of its relationship with any person, or
- 30.1.6 has been convicted of any offence that makes continuance of the provision of the Services by the Contractor inappropriate, or
- 30.1.7 if continuance of this Agreement or the continued use of the Contractor is determined by the Trust at its sole discretion to be detrimental to the reputation of the Trust or the well-being of any other person, or

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- 30.1.8 is in breach of Clause **2** hereof, or
 - 30.1.9 is in breach of Clause **4** hereof, or
 - 30.1.10 is in breach of Clause **7** hereof, or
 - 30.1.11 is in breach of Clause **8** hereof, or
 - 30.1.12 is in breach of Clause **9** hereof, or
 - 30.1.13 is in breach of Clause **10** hereof, or
 - 30.1.14 repeatedly fails, after a reasonable period of notice has been given to effect a remedy, to provide the Services in accordance with the provisions of this Agreement pursuant to Clause **13** hereof, or
 - 30.1.15 assigns its interest herein or otherwise acts contrary to Clause **25** hereof, or
 - 30.1.16 sub-contracts or sub-lets the provision of the Services or otherwise acts contrary to Clause **26** hereof, or
 - 30.1.17 is in breach of Clause **27** hereof, or
 - 30.1.18 is in breach of Clause **28** hereof, or
 - 30.1.19 is in breach of Clause **29** hereof, or
 - 30.1.20 is in breach of Clause **36** hereof, or
 - 30.1.21 is in breach of Clause **44** hereof, or
 - 30.1.22 is in breach of Clause **45** hereof, or
 - 30.1.23 is in breach of Clause **49** hereof, or
 - 30.1 24 reports financial irregularities, receives an Auditor's Qualified Report or Accounts or is unable to obtain or retain a Certificate of Solvency from its Auditors, or
 - 30.1.25 where the Contractor (if an individual) shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 or any subordinate legislation made thereunder.
- 30.2 The Trust may also terminate this Agreement with immediate effect without notice under this Clause **30** and without prejudice to any other rights or claims the Trust may have against the Contractor:-

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- 30.2.1 where this Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contract Regulations 2015, or
- 30.2.2 where the Contractor has, at the time of the Contract award, been in one (1) of the situations referred to in regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of regulation 57(2) thereof, and should therefore have been excluded from the procurement procedure, or
- 30.2.3 where this Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaty on European Union and the Treaty on the Functioning of the European Union and the Public Contracts Directive (Directive 2014/24/EU) that have been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union, and

for the avoidance of doubt if the Trust terminates this Agreement under Clause 30.2.1, 30.2.2 or 30.2.3 the Trust shall not be liable to pay to the Contractor any compensation or other sum howsoever arising as a result thereof.

- 30.3 Further and in addition to and notwithstanding any other rights of termination and without prejudice to any accrued rights or remedies contained in this Agreement it is hereby expressly agreed between the Parties that if the Contractor:-

- 30.3.1 being a distinct legal identity shall for whatever reason cease to exist in the same form as it existed at the date of the Invitation to Tender or
- 30.3.2 notwithstanding that the Contractor shall not have ceased to exist in the same form as it existed at the date of the Invitation to Tender as provided in Clause 30.3.1 hereof but shall for whatever reason become incapable or unable to provide the Services

then this Agreement shall be deemed to have terminated without further notice or assurance with effect from the day immediately preceding the day on which the Contractor ceased to exist in the same form as it existed at the date of the Invitation to Tender as provided in Clause 30.3.1 hereof or as the case may be become incapable or unable to provide the Services as provided in Clause 30.3.2 hereof.

- 30.4 The Trust may also terminate this Agreement at any time in accordance with the provisions of Clause 16.6.2 hereof.

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- 30.4 The Contractor may terminate this Agreement with immediate effect without notice if the Trust or any of the Trust's employees, agents or persons acting on behalf of the Trust bring this Agreement into disrepute by:-
- 30.4.1 committing a serious or fundamental breach of its obligations under this Agreement and (if, in the opinion of the Contractor such breach is capable of remedy) shall have failed to remedy such breach within seven (7) days of being required by the Contractor in writing to do so, or
 - 30.4.2 knowingly causes any person to be at serious risk to themselves or others, or
 - 30.4.3 any other serious misconduct related to its obligations under this Agreement.
- 30.5 In addition to and notwithstanding any other rights of termination contained in this Agreement either Party, whether or not the other Party shall be in default, may (without being obliged to give any reason) terminate this Agreement at any time by giving at least three (3) months written notice to the other Party, although a shorter period of notice may be agreed by arrangement between the Parties. During such period of notice, the Parties will use their best endeavours to ensure that the interests of any other person and the provision of the Services are not compromised.
- 30.6 Either Party may also terminate this Agreement at any time in accordance with the provisions of Clause **24** hereof.
- 30.7 In the event of the Trust determining this Agreement:-
- 30.7.1 the Trust may procure other services of the same or similar description to remedy the default or in the case of this Agreement being wholly determined the Services remaining to be provided,
 - 30.7.2 the Contractor will ensure that it and all its Employees and any other person whether authorised by the Contractor or otherwise immediately leave any and all of the Contract Areas and any and all of the Trust's premises and any other premises owned or occupied by the Trust in accordance with the instructions of the Authorised Officer and making good any damage caused to any and all of the Contract Areas or to any and all of the Trust's premises or to any other premises owned or occupied by the Trust as a result of its occupation thereof howsoever caused, and
 - 30.7.3 the Contractor will pay to the Trust the amount by which the cost of purchasing other services exceeds the amount which would have been payable to the Contractor in respect of the Services replaced by such procurement if they had been provided in accordance with this Agreement shall be recoverable from the

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Contractor together with any direct loss or damage suffered by the Trust as a result.

- 30.8 In the event that this Agreement is terminated by the Contractor, the Trust will ensure that the Contractor is paid any monies that it is entitled to in order to continue carrying out the duties required of it during and until the end of the notice period.
- 30.9 Upon the termination of this Agreement for whatever reason the Contractor and all its Employees and any other person whether authorised by the Contractor or otherwise shall immediately leave any and all of the Contract Areas and any and all of the Trust's premises and any other premises owned or occupied by the Trust and deliver up to the Trust all the Trust's equipment and all the Trust's materials and all other equipment, materials, Documentation and property belonging to the Trust (or at the election of the Trust reasonable reimbursement in respect thereof less depreciation) which may be in its possession or under its control together with all Confidential Information or Intellectual Property specified in Clauses **23** and **37** hereof and shall not thereafter utilise or exploit the same in any way whatsoever.
- 30.10 Both Parties agree to maintain their obligations under this Agreement prior to the date when the termination takes effect. During any period of notice the Contractor shall continue to provide the Services in accordance with the provisions of this Agreement.
- 30.11 Termination of this Agreement for whatever reason shall be without prejudice to any obligation by one (1) Party hereof to the other which shall have accrued prior to termination and shall not affect the continued enforceability of any Clause expressed to continue after any termination of this Agreement.
- 30.12 The rights of the Trust under this Clause **30** are in addition to and without prejudice to any other rights the Trust may have whether against the Contractor directly or pursuant to any Indemnity.
- 30.13 Subject to the provisions of this Agreement, the same shall continue in force for the Contract Period.

31 Notice to the Contractor

- 31.1 No Notice or other Document to be served upon the Contractor shall be valid or effective unless it is addressed to and sent by pre-paid Recorded Delivery Post or delivered by hand or sent by Electronic Mail or Facsimile Transmission to the Contractor at its registered office or principal place of business or last known such address. It shall be the responsibility of the Contractor to notify the Trust in writing of any change of address. Any such Notice or Document shall only be effective if it clearly and properly identifies this Agreement.

- 31.2 Provided that the Notice or Document complies with the provisions of Clause

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31.1 hereof will be deemed to be duly served provided that a full copy thereof is certified as to service by the person effecting service if in respect of a hand delivered Notice or Document at the time of delivery a valid receipt is not obtained or in respect of a Notice or Document delivered by Recorded Delivery Post a signature acknowledging its receipt has not been obtained.

31.3 Provided that the Notice or Document complies with the provisions of Clause 31.1 hereof any Notice or Document sent by Electronic Mail or Facsimile Transmission will be deemed to have been received on the same day as the successful transmission.

31.4 Any Notice whether written or oral or any other Document between the Contractor and the Trust shall be conducted in the English language.

32 Notice to the Trust

32.1 No Notice or other Document to be served upon the Trust shall be valid or effective unless it is addressed to and sent by pre-paid Recorded Delivery Post or delivered by hand or sent by Electronic Mail or Facsimile Transmission to the Trust marked for the attention of the Authorised Officer at Luton Central Library St. George's Square Luton LU1 2NG or such other address as the Trust shall specify in writing. Any such Notice or Document shall only be effective if it clearly and properly identifies this Agreement.

32.2 Provided that the Notice or Document complies with the provisions of Clause 32.1 hereof it will be deemed to have been duly served provided that in respect of a hand delivered Notice or Document at the time of delivery a valid receipt is obtained or in respect of Recorded Delivery Post a signature acknowledging its receipt has been obtained.

32.3 Provided that the Notice or Document complies with the provisions of Clause 32.1 hereof any Notice or Document sent by Electronic Mail or Facsimile Transmission will be deemed to have been received on the same day as the successful transmission.

32.4 Any Notice whether written or oral or any other Document between the Contractor and the Trust shall be conducted in the English language.

33 Arbitration

33.1 Both Parties will aim to resolve any issues relating to this Agreement through routine liaison and review. However, except in those circumstances where the Trust has the right to terminate this Agreement, if one (1) Party considers the other to be in default of its obligations under this Agreement, which cannot be resolved through routine dialogue, then it shall notify the other Party in writing setting out the details of the default and any action required to resolve it, to be responded to within fourteen (14) days.

33.2 If the default is not remedied within that time or the response is considered to

be unsatisfactory, then:-

- 33.2.1 the matter will be discussed at a meeting between the Contractor and the Authorised Officer within five (5) working days, and
- 33.2.2 if still not resolved a meeting will be arranged between the Trust's relevant Manager or any other member of the Trust's senior management and the Contractor's senior management representatives; such a meeting may be called at the request of either Party and shall take place within a further fourteen (14) working days.
- 33.3 If still not resolved, the matter may be referred by either Party to a single independent arbitrator agreed by both Parties and if such agreement cannot be reached within fourteen (14) days then either Party may apply to the President of the Chartered Institute of Arbitrators or by a person appointed by him or in the case of the said President's incapacity by the Vice President of the Chartered Institute of Arbitrators for an Arbitrator to be appointed and any such reference will be deemed to be a submission for arbitration within the meaning of the Arbitration Act 1996 and any subordinate legislation made thereunder (unless otherwise specified).
- 33.4 Any Arbitrator appointed pursuant to Clause 33.3 hereof shall act as an Expert and not as an Arbitrator.
- 33.5 The Expert shall before making any determination allow the Parties to make written or oral representations within fourteen (14) days of his appointment and shall be entitled to make such decision or award as he thinks just and equitable having regard to the circumstances then existing the cost of such arbitration to follow the event or if neither Party succeeds to be apportioned between the Parties by the Expert in such proportions as he, in his absolute discretion, thinks fit.
- 33.6 Any award or decision shall be final and binding on the Parties save in the event of fraud or a mistake of law or material fact.
- 33.7 Nothing in this Clause **33**, or elsewhere within these Terms and Conditions of Contract, shall be interpreted to limit the Trust's or the Contractor's statutory rights.

34 Employee Checks

- 34.1 The Contractor will ensure that all its Employees who are engaged in the provision of the Services have received the following satisfactory clearances:-
 - 34.1.1 two (2) references, one (1) of which must be from the immediate past employer if possible,
 - 34.1.2 clearance at the Enhanced Level in respect of Criminal Records

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and in respect of regulated activities under the Safeguarding Vulnerable Groups Act 2006 and any subordinate legislation made thereunder by the Disclosure and Barring Service (where such clearance is required to be obtained in accordance with the provisions of Clause **10** hereof),

- 34.1.3 Occupational Health clearance or such other medical clearance as shall be specified by the Trust,
 - 34.1.4 a full employment history, passport check and confirmation of eligibility of United Kingdom residence and valid working permits if appropriate,
 - 34.1.5 appropriate Immigration status, and
 - 34.1.6 such other clearances as the Trust shall reasonably require from time to time.
- 34.2 All such Employees will be exempt from the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 and will be expected to declare all convictions (including spent convictions), all Cautions and all Bindovers.
- 34.3 The Contractor will make any person applying to become an Employee aware of the checks it will be undertaking and inform him that this information will be passed to the Trust. In every case this information will be passed to the Trust prior to the commencement of the provision of the Services by the person concerned and the Trust may require the removal of any person from the provision of the Services at any time. Compliance with this Clause **34** shall be at the expense of the Contractor.
- 34.4 Any successful applicant will be contracted to the Contractor and be its employee. Consequently the Policies and Procedures that person is subject to will be identified in the relevant contract of employment.
- 34.5 The Contractor shall provide such information as the Trust may reasonably request for the purpose of assessing the Contractor's compliance with the provisions of this Clause **34**.

35 Mistakes in Information

- 35.1 The Contractor shall be responsible for and shall pay any extra costs occasioned by any discrepancies, errors or omissions in documentation or other information supplied in writing by it, whether they have been approved by the Trust or not, provided that such discrepancies, errors or omissions are not due to inaccurate information and decisions supplied in writing to the Contractor by the Trust.
- 35.2 The Trust shall be responsible for and shall pay any extra costs directly occasioned by any discrepancies, errors or omissions in the information and

decisions supplied in writing to the Contractor by the Trust.

36 Equalities Equal Opportunities and Trust and other Bodies Policies and Codes of Practice

- 36.1 The Contractor shall at all times comply with the provisions of the Equalities Act 2010 and any subordinate legislation made thereunder.
- 36.2 The Contractor shall ensure that it operates an Equal Opportunities Policy in respect inter alia of the recruitment of Employees and in respect of the provision of the Services to the full satisfaction of the Trust.
- 36.3 The Contractor's Equal Opportunities Policy shall be set out in any instructions circulated to those of the Contractor's Employees who are concerned with recruitment training and promotion and in relevant documentation available to its Employees and others and in its recruitment advertisements and other relevant literature. The Contractor may be required to provide to the Trust copies of such instructions documents advertisements and other literature.
- 36.4 The Contractor shall also comply with all relevant Policies, Codes of Practice and Codes of Conduct of the Trust and any Guidance issued by it updated copies of which will be forwarded to the Contractor by the Trust from time to time during the Contract Period.
- 36.5 The Contractor shall at all times take full account of its responsibility to safeguard children and adults from the risk of harm, neglect or abuse and:-
- 36.5.1 in order to ensure this will have appropriate safeguarding children and adult procedures in place at all times which are consistent and compliant with Statute and all applicable guidance as well as any relevant Trust Policies; the Trust will expect the Contractor's policies and procedures to reflect these and also to reflect any essential standards relating to the safeguarding of children and adults,
- 36.5.2 acknowledges that the Trust is the lead agency responsible for co-ordinating responses to reports of child and adult abuse; the Contractor will demonstrate to the Authorised Officer in such manner as he shall determine that it is clear about its own role and responsibilities and will have in place appropriate reporting processes for making child and adult safeguarding referrals to the Trust and will also have processes in place to minimise risks and that aim at reducing identified risks of harm, neglect or abuse, when this is needed and proportionate to the risk and shall produce these to the Authorised Officer for his approval when required; the Contractor will take positive steps to safeguard dignity, independence and choice and will actively support individuals to realise their rights,

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- 36.5.3 will have a policy of Zero Tolerance to harm, neglect or abuse; the Contractor's Safeguarding policies must be accessible to all its Employees; there must be clear lines of accountability and responsibility of managers and an individual senior manager must be identified to hold overall responsibility for safeguarding and the Contractor's contribution to the Trust's safeguarding arrangements,
- 36.5.4 will have in place adequate support as determined by the Authorised Officer at his absolute discretion for all its Employees to manage complaints and safeguarding alerts; the Contractor's safeguarding policies must clearly state how the Contractor's Employees will report harm, neglect or abuse within and outside the Contractor's organisation and must include information about actions to be taken in emergencies,
- 36.5.5 will have in place an effective whistle blowing policy and any concerns reported under such a policy must be taken seriously and investigated in a thorough and timely manner; any concerns reported that meet the threshold for child or adult multi-agency processes must be reported to the Authorised Officer without delay,
- 36.5.6 will ensure that all the Contractor's Employees are effectively trained in safeguarding children and adults; the training must be role specific and meet any stated competencies, either local or national, reflecting their roles and responsibilities; Employee competence must be regularly assessed against up to date and recognised competencies by trained and competent assessors; where shortfalls are noted improvements must be made by the Contractor without delay and monitoring ensured until sustained improvement is evidenced to the satisfaction of the Authorised Officer at his absolute discretion,
- 36.5.7 acknowledges that safeguarding children and adults is everyone's business and will always support the safeguarding children and adults processes; information will be shared by the Contractor in a timely and accurate manner and the Contractor will co-operate with any safeguarding investigation,
- 36.5.8 will ensure that its senior Employees are committed to monitoring the practices and actions of all Employees in promoting the welfare of children, including young people and adults; there will be regular audits of compliance with policy and best practice relating to safeguarding,
- 36.5.9 will ensure that robust vetting processes are followed when recruiting staff in order to prevent unsuitable individuals from working with children or adults at risk of harm, neglect or abuse; the Contractor's managers in charge of recruitment as well as discipline must be trained to comply with vetting and barring

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processes, and

- 36.5.10 will ensure that all allegations of harm, neglect or abuse against children or adults at risk thereof are reported immediately; failure to report incidents or allegations of harm, abuse or neglect shall be a fundamental breach of contract and of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination,

and the Trust reserves the right to audit and monitor the above requirements at its absolute discretion.

- 36.6 Notwithstanding the above the Contractor shall at all times comply with the Safeguarding Vulnerable Groups Act 2006 and any subordinate legislation made thereunder.
- 36.7 The Contractor shall at all times comply with the requirements of the Employment Protection (Consolidation) Act 1978 and any subordinate legislation made thereunder and without prejudice to the generality of the foregoing shall observe the requirements of Sections 23, 27, and 28 of the Act.
- 36.8 Under the Trade Union and Labour Relations Act 1974 and any subordinate legislation made thereunder the Contractor shall permit Trades Union access to its employees for the purpose of recruitment and shall recognise the freedom of its Employees to be members of Trades Union.
- 36.9 If the Contractor shall be a company or a subsidiary of a company that has only been established during the six (6) months prior to the award of this Agreement, it shall be accepted that an Equal Opportunities Policy may not be in existence for the Contractor. However, the Contractor shall ensure that a full written Equal Opportunities Policy for the Contractor shall exist within six (6) months of the commencement of this Agreement.
- 36.10 The Contractor may be required to answer queries raised by the Trust on matters referred to in this Clause **36** and to co-operate with any investigation that the Trust may wish to carry out. This co-operation shall be deemed to include the completion and return of any questionnaires provided by the Trust on equality matters during the Contract Period or within twelve (12) months of the completion of this Agreement.
- 36.11 Where in connection with this Agreement the Contractor or any of its Employees are required to carry out work in any Contract Area Trustor on any of the Trust's premises or on any other premises owned or occupied by the Trust or on any other premises where the Trust's employees are required to

carry out work, the Contractor shall comply with the Trust's own employment policy and codes of practice relating to equal opportunities.

- 36.12 The Contractor shall comply with any and all relevant Policies and Codes of Practice issued by the Trust copies of which will be supplied to it by the Authorised Officer from time to time and shall also comply with any and all relevant Policies and Codes of Practice issued by any other Body whether statutory or not which relate to the Contractor's provision of the Services or to the Contractor's Employees whether current or future.
- 36.13 The Contractor shall provide such information as the Trust may reasonably request for the purpose of assessing the Contractor's compliance with the provisions of this Clause **36**, including, if requested, examples of any instructions, recruitment advertisements or other literature, and details of monitoring applicants and Employees.
- 36.14 In the event that the Contractor enters into any sub-contract in connection with this Agreement, it shall impose obligations on its sub-contractor in terms substantially similar to those impose on it pursuant to this Clause **36**.
- 36.15 Without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising resulting from the Contractor's breach of this Clause **36**.

37 Copyright Patent Rights Intellectual Property Rights and Confidential Information etc.

- 37.1 The Documentation and the copyright or any similar protection throughout the world therein ("the First Protected Rights") arising out of the performance by or on behalf of the Contractor of its duties hereunder are expressly hereby assigned by the Contractor to and shall vest in the Trust absolutely without further assurance.
- 37.2 The Contractor shall not in connection with this Agreement or the provision of the Services use manufacture supply or deliver any process article matter or thing the use manufacture supply or delivery of which would be an infringement of any Copyright, Patent Rights or any other Intellectual Property Rights and, without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising from or incurred by reason of any infringement of any copyright, intellectual property rights, patents or patents pending arising out of the performance of

this Agreement or which the Trust may sustain incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether wilful or inadvertent) and against the payment of any royalties or other monies which the Trust may have to make to any person or body entitled to Patent Rights or any other Intellectual Property Rights in respect of any process matter or thing used manufactured supplied or delivered by the Contractor in connection with this Agreement.

- 37.3 The Documentation and the Intellectual Property Rights or any similar protection throughout the world therein ("the Second Protected Rights") arising out of the performance by or on behalf of the Contractor of its duties hereunder are expressly hereby assigned by the Contractor to and shall vest in the Trust absolutely. The Contractor agrees that it shall execute or cause to be executed (either by itself or such other person or Body as appropriate) all deeds documents and acts required to vest such Intellectual Property Rights in the Trust.
- 37.4 The Contractor shall keep confidential and shall ensure that its Employees keep confidential any and all information which is learnt or obtained by them in the provision of the Services and shall enter into or cause to be entered into by its Employees a confidentiality agreement with the Trust should this be required by the Trust.
- 37.5 All Copyright, Designs, Patents, Trade Marks or other Intellectual Property Rights in any report documentation information software or invention or other work on whatever media prepared or created by or on behalf of the Contractor pursuant to this Agreement shall vest in and be the sole property of the Trust notwithstanding termination or expiry of this Agreement unless otherwise expressly agreed in writing by the Trust. The Contractor hereby assigns all right, title and interest in and to the same to the Trust. The Contractor shall take all necessary steps to ensure that it has the right to secure such vesting including, if so required by the Trust, that all Employees employed in the provision of the Services sign a separate undertaking to the effect that all such intellectual property rights in any work undertaken by them shall vest in and be the sole property of the Trust.
- 37.6 Upon the request of the Trust the Contractor shall (at the expense of the Trust) execute all documents and do all acts and things required to vest or perfect the vesting of such property rights legally and exclusively in the Trust.
- 37.7 The Contractor shall not cause or permit anything to be done which may damage or endanger the Intellectual Property created or developed pursuant to this Agreement.
- 37.8 The Contractor shall not use any work performed under this Agreement otherwise than for the purposes of this Agreement.
- 37.9 The terms upon which any person (who is not a direct employee of the Contractor) is appointed by or on behalf of the Contractor in relation to the

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performance of the Contractor 's duties hereunder shall include:-

- 37.9.1 a written assignment in favour of the Trust of all of the First Protected Rights and the Second Protected Rights in or arising from the whole or any part of the Materials of which such person is the author, and
- 37.9.2 a written waiver and abandonment of any and all moral rights in or arising from the Materials held or to be held by such person.

Copies of such written assignments and waivers shall be produced forthwith to the Trust.

37.10 The Contractor further warrants that the Services which it provides under this Agreement will not infringe the Intellectual Property Rights of anyone else.

37.11 The Contractor agrees to keep the Confidential Information, and all other matters arising or coming to its attention in connection with the provision of the Services confidential and not at any time for any reason whatsoever to disclose them or permit them to be disclosed to any third party except as permitted hereunder to enable the Contractor to carry out its duties and obligations.

37.12 The Contractor agrees to treat as confidential and not at any time for any reason to disclose or permit to be disclosed to any person or persons or otherwise make use of or permit to be made use of any information relating to the Trust's technology, technical processes, business affairs or finances or any such information relating to any suppliers or similar of the Trust.

37.13 The obligations of confidence referred to in this Clause **37** shall not apply to any Confidential Information or other information which:-

- 37.13.1 is in the possession of and is at the free disposal of the Contractor or is published or is otherwise in the public domain prior to the receipt of such Confidential Information or other information by the Contractor,
- 37.13.2 is or becomes publicly available on a non-confidential basis through no fault of the Contractor,
- 37.13.3 is received in good faith by the Contractor from a third party who, on reasonable enquiry by the Contractor claims to have no obligations of confidence to the Trust in respect of it and who imposes no obligations of confidence upon the Contractor, or
- 37.13.4 is required to be disclosed by law.

37.14 The Contractor agrees to assign to the Trust all right, title and interest in and to any inventions or Confidential Information made, originated or developed

by or for the Contractor during the course of or otherwise related to the Services together with any other intellectual property rights arising out of the provision of the Services.

37.15 The Contractor undertakes to ensure that all its Employees have received details of the obligations of this Clause **37**.

37.16 The provisions of this Clause **37** shall apply during the continuance of this Agreement and after its termination howsoever arising.

38 Efficiency and Continuous Improvement

38.1 The Trust expects its suppliers to work with it to constantly improve their service and create on-going efficiencies for the future.

38.2 The Trust will therefore conduct annual reviews to monitor progress on the improvements to the service, innovation, price and quality standards, communication, customer satisfaction, delivery, and any other relevant issues. These annual reviews will not only focus on achievements made in these areas from the previous year, but also ideas and proposals for the following year to deliver on-going savings and efficiencies. Both the Authorised Officer and the Contractor will sign off these annual reviews.

38.3 The Contractor, and any sub-contractor appointed pursuant to Clause **26** hereof, at the Contractor's own expense, shall throughout the Contract Period fully co-operate with the Trust and give such assistance as is necessary in any area relating to Continuous Improvement and any review initiated by the Trust whether relating to the provisions of this Agreement or otherwise and whether directly associated therewith or not and the Contractor shall ensure compliance with this Clause **38** by any such sub-contractor.

38.4 If the Contractor is at any time required to take any action pursuant to Clause 38.1 hereof it shall take such action fully in accordance with the instructions of the Authorised Officer and within such time as he shall specify.

38.5 Following any Best Value Review carried out by the Trust whether or not carried out in accordance with this Clause **38** the Contractor shall if requested by the Authorised Officer implement any findings or proposals fully in accordance with those instructions.

39 Concurrent Remedies and the Right of Set Off

39.1 No right or remedy herein conferred upon or reserved to either Party by this Agreement is exclusive of any other right or remedy provided herein or by law or Equity. Each right or remedy shall be cumulative of every other right or remedy and may be enforced concurrently therewith or from time to time and shall be without prejudice to any pre-existing liabilities or obligations of the other Party under this Agreement.

- 39.2 In the event that any monies are owed by the Contractor to the Trust, the Trust may, at its sole discretion, by virtue of this Clause **39**, be recovered by the Trust by way of deductions from amounts due to the Contractor from the Trust under this Agreement or by recovering the monies owing as a debt to the Trust from the Contractor which shall be payable upon demand.
- 39.3 The Trust reserves its right at Common Law and in Equity to set-off against its indebtedness to the Contractor any debt owed to it by the Contractor and any liability, damage, loss, costs, charges and expenses (including legal and administrative expenses) which it has incurred in consequence of any breach by the Contractor of this Agreement or any other contract with the Trust.

40 Agency

- 40.1 For the avoidance of doubt both Parties hereto confirm that the Contractor enters into this Agreement as an independent contractor and that the Contractor will act in its own capacity in carrying out its obligations under this Agreement and that it is not, nor shall for any purposes be regarded as, an agent or employee of the Trust nor act in any way nor in any circumstance hold itself out as being the servant or agent of the Trust.
- 40.2 The Contractor is not and shall not in any circumstances hold itself out as being authorised to enter into any contract on behalf of the Trust or in any other way bind the Trust to the performance variation release or discharge of any obligation.
- 40.3 The Contractor has not and shall not in any circumstances hold itself out as having the power to make vary discharge or waive any byelaw or regulation of any kind.
- 40.4 The Contractor's Employees are not and shall not hold themselves out to be and shall not be held out by the Contractor as being servants or agents of the Trust for any purpose whatsoever.

41 Severance

- 41.1 In the event that any of the provisions contained in this Agreement shall become or shall be determined or declared by any court of competent jurisdiction or any other competent authority to be invalid or unenforceable to any extent such provision shall to that extent be severed from the body of this Agreement and such unenforceability or inability to enforce shall in no way impair or affect any other provisions of this Agreement all of which shall remain in full force and effect and shall continue to be valid and enforceable to the fullest extent permissible by law.

42 Waiver

- 42.1 Failure by the Trust at any time to enforce any part of this Agreement, or to require performance by the Contractor of any provisions of this Agreement,

shall not be construed as a waiver of any such provision, and shall not affect the validity of this Agreement or the right of the Trust to enforce the provision in accordance with its terms.

- 42.2 No forbearance, indulgence or relaxation on the part of the Trust or of any person acting on its behalf shown or granted to the Contractor in respect of its obligations under this Agreement shall in any way affect restrict or diminish the rights and powers of the Trust under this Agreement or operate as or be deemed a waiver of any breach of contract.

43 Legal Fees

- 43.1 Each Party shall bear their own legal and other fees in relation to the preparation and submission of the Tender and in respect of the preparation of this Agreement.

44 Fraud

- 44.1 The Contractor must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Trust. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Trust, the Contractor shall immediately inform the Trust.
- 44.2 On receiving notification under Clause 44.1 hereof the Authorised Officer may assume and if he so assumes shall be given sole responsibility for investigating or arranging for the investigation of such fraudulent action or malpractice.
- 44.3 The Contractor shall afford all possible access and facilities to the Authorised Officer when he carries out an investigation into any such fraudulent action or malpractice whether the investigation arises following a notification under Clause 44.1 hereof or as a result of the Authorised Officer's own information.
- 44.4 Notwithstanding any other provision hereof the Authorised Officer shall have the right to require that the Contractor suspend from any further work on this Agreement any person suspected of fraudulent action or malpractice.
- 44.5 Without prejudice to any other rights the Trust may have (including but not limited to the Trust's right to terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination) the Authorised Officer shall be entitled to require that the Contractor suspend all further work under this Agreement if the Authorised Officer has reasonable grounds for believing that fraudulent activity or malpractice has taken place.

45 Publicity

- 45.1 The Contractor shall not use the fact that it is providing the Services to the Trust under this Agreement other than with the written permission of the Trust.
- 45.2 Neither the Contractor nor or any of its Employees shall seek any publicity issue any media statement or respond to media enquiries relating to the Agreement or to the provision of the Services in general without the prior written consent of the Authorised Officer and any breach of this Clause **45** shall if so certified by the Authorised Officer constitute a fundamental breach of contract and if this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.
- 45.3 Except with the written consent of the other Party neither Party shall make any press announcements or publicise this Agreement in any way.
- 45.4 Notwithstanding the above, the Parties shall be entitled to publicise this Agreement and any aspect in accordance with any legal or quasi legal obligation, including, but without limitation, obligations under national and European legislation.
- 45.5 The Contractor shall use its best endeavours to ensure the observance of this Clause **45** by its Employees and the Trust will use its best endeavours to ensure the observance hereof by its employees, servants and agents as appropriate.

46 Access to and Security of the Contract Areas

- 46.1 Notwithstanding any other provision herein contained such access to the Contract Areas as may be necessary for the inspection thereof and for provision of the Services shall be afforded to the Contractor at all reasonable times and with prior agreement, and shall **ONLY** be permitted fully in accordance with the instructions of the Authorised Officer as given from time to time whether in writing or orally.
- 46.2 The Contractor shall ensure that it, its Employees and any other person who is within any of the Contract Areas in connection with the provision of the Services, maintain the security thereof at all times.
- 46.3 The Contractor shall ensure that during the provision of the Services any of the Contract Areas upon which the Contractor is providing the Services is kept in a safe, serviceable and clean condition and shall replace as necessary all equipment used by the Contractor or its Employees in the provision of the Services.

- 46.4 The Contractor shall be responsible for the security of any Contract Area upon which it is providing the Services as shall be required by the Authorised Officer fully in accordance with his instructions.
- 46.5 If the Authorised officer shall at his sole discretion issue access keys, security passes or other means of access to the Contractor it shall hold the same as required by the Trust. In such circumstances the Contractor shall be responsible for the security of any Contract Area in respect of which such access keys, security passes or other means of access have been issued to it and shall ensure that the same is properly secure, both while the Services are being provided and after the Services have been provided.
- 46.6 The Contractor shall issue to those of its Employees who shall at any time require access to that Contract Area, access keys security passes or other means of access in such form as the Trust may from time to time determine and issue to the Contractor.
- 46.7 The Contractor shall be responsible for the safekeeping of any access keys, security passes or other means of access provided to the Contractor by the Trust and shall only permit the use of such access keys, security passes or other means of access as shall have been supplied to the Contractor by the Trust fully in accordance with the Trust's instructions and then only to the extent require for the purposes of providing the Services. In addition, the Contractor shall ensure that the Trust is advised immediately of the loss of any access keys, security passes or other means of access and shall reimburse the Trust any cost of replacement and any reasonable security measures implemented as a result of such loss. For the avoidance of doubt it is hereby agreed that the Contractor shall return to the Trust at the end of the Contract Period, or at such time as the Authorised Officer shall require, any and all such access keys, security passes or other means of access provided to the Contractor by the Trust and in the event that the Contractor is unable to do so shall reimburse the Trust any cost of replacement and any reasonable security measures implemented as a result thereof.
- 46.8 Where the Contractor is required in order to allow any of its Employees to gain access to any Contract Area to place or otherwise register that name or other relevant details of that Employee on any Contract Area's Intruder Alarm System the Contractor shall do so at its own cost and shall be liable for be any cost incurred by the Trust directly or indirectly as a result thereof. For the avoidance of doubt the Contractor shall also be liable for the cost of any false alarm attributable to the Contractor's Employee.
- 46.9 The Trust shall at all times during the Contract Period have the right to refuse to admit to, or order the removal from, any of the Contract Areas of any of the Contractor's Employees, who, in the opinion of the Trust, is not a fit and proper person to be on the same. Action taken under this Clause 46.8 shall forthwith be confirmed in writing to the Contractor by the Trust and shall not relieve the Contractor of its obligations under this Agreement.

46.10 Compliance with this Clause **46** shall be solely at the expense of the Contractor who, without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided, shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising hereunder.

47 Premises - Access and Security

47.1 Unless otherwise expressly provided in this Agreement, the Contractor shall provide and maintain at its own expense such Premises as are necessary for the proper provision of the Services and previously approved in writing by the Authorised Officer including an office which shall be deemed to be the Contractor's principal place of business for the provision of the Services and which shall include a telephone together with an electronic mail facility all in good working order and be occupied to the satisfaction of the Authorised Officer during the hours of 9.00 a.m. to 5.00 p.m. on every working day (excluding weekends and Public Holidays) but the Contractor must provide an emergency contact number on such days and outside the hours referred to above, in this respect a system using a telephone answering machine will not be acceptable and the Contractor shall ensure that direct personal contact can be made with it at all such times in accordance with provisions of this Clause 47.1) unless otherwise agreed by the Authorised Officer to facilitate instructions and other communications from the Authorised Officer to the Contractor and any of its Employees as appropriate. The Contractor shall within one (1) working day notify the Authorised Officer of the Premises which it intends to use pursuant to this Clause **47** and shall similarly notify the Authorised Officer of any changes thereto.

47.2 The Contractor will allow such access by the Authorised Officer or any other nominated officers of the Trust to any and all of the Premises referred to at Clause 47.1 hereof and any of the locations from which the Services are provided at all reasonable times as may be necessary for the inspection thereof. The Trust will normally arrange such access by appointment giving at least five (5) working days notice unless investigating a possible breach of contract, when the Trust reserves the right at its sole discretion to visit at any reasonable time without appointment and without giving that notice.

47.3 Compliance with this Clause **47** shall be solely at the expense of the Contractor who, without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided, shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising hereunder.

48 Access to and Security of the Trust's premises and to any other premises owned or occupied by the Trust

- 48.1 Access to any of the Trust's premises shall be allowed only in full accordance with any instructions issued from time to time by the Authorised Officer which instructions shall be complied with by the Contractor absolutely. The Contractor shall ensure that during the provision of the Services all those Trust's premises are kept in a secure, safe, serviceable and clean condition and shall replace as necessary all equipment used by the Contractor or its Employees in the provision of the Services.
- 48.2 If the Authorised Officer issues any access keys, security passes or other means of access to the Contractor in respect of any of the Trust's premises the Contractor shall hold them as required by the Trust. In such circumstances the Contractor shall be responsible for the security of the Trust's premises and shall ensure that the location is properly secure, both while the Services are being provided and after the provision of the Services has been completed.
- 48.3 The Contractor shall be responsible for the safekeeping of any access keys, security passes or other means of access provided to the Contractor by the Trust and shall only permit the use of such access keys, security passes or other means of access as shall have been supplied to the Contractor by the Trust fully in accordance with the Trust's instructions and then only to the extent require for the purposes of providing the Services. In addition, the Contractor shall ensure that the Trust is advised immediately of the loss of any access keys, security passes or other means of access and shall reimburse the Trust any cost of replacement and any reasonable security measures implemented as a result of such loss. For the avoidance of doubt it is hereby agreed that the Contractor shall return to the Trust at the end of the Contract Period, or at such time as the Authorised Officer shall require, any and all such access keys, security passes or other means of access provided to the Contractor by the Trust and in the event that the Contractor is unable to do so shall reimburse the Trust any cost of replacement and any reasonable security measures implemented as a result thereof.
- 48.4 Where the Contractor is required in order to allow any of its Employees to gain access to any of the Trust's premises to place or otherwise register that name or other relevant details of that Employee on any of the Trust's Premises' Intruder Alarm System the Contractor shall do so at its own cost and shall be liable for be any cost incurred by the Trust directly or indirectly as a result thereof. For the avoidance of doubt the Contractor shall also be liable for the cost of any false alarm attributable to the Contractor's Employee.
- 48.5 The Contractor shall issue to all its Employees, who shall at any time have access to any of the Trust's premises, security passes in such form as the Trust may from time to time determine and issue to the Contractor.
- 48.6 Notwithstanding the provisions of Clause 48.1 hereof the Trust shall at all

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times during the Contract Period have the right to refuse to admit to, or order the removal from, any of the Trust's premises of any of the Contractor's Employees, who, in the opinion of the Trust, is not a fit and proper person to be on the same. Action taken under this Clause 48.6 shall forthwith be confirmed in writing to the Contractor by the Trust and shall not relieve the Contractor of its obligations under this Agreement.

- 48.7 Access to any other premises owned or occupied by the Trust shall be allowed only in full accordance with any instructions issued from time to time by the Authorised Officer which instructions shall be complied with by the Contractor absolutely. The Contractor shall ensure that during the provision of the Services any other premises owned or occupied by the Trust are kept in a secure, safe, serviceable and clean condition and shall replace as necessary all equipment used by the Contractor or its Employees in the provision of the Services.
- 48.8 If the Authorised Officer issues any access keys, security passes or other means of access to the Contractor in respect of any other premises owned or occupied by the Trust the Contractor shall hold them as required by the Trust. In such circumstances the Contractor shall be responsible for the security of any other premises owned or occupied by the Trust and shall ensure that the location is properly secure, both while the Services are being provided and after the provision of the Services has been completed.
- 48.9 The Contractor shall be responsible for the safekeeping of any access keys, security passes or other means of access provided to the Contractor by the Trust and shall only permit the use of such access keys, security passes or other means of access as shall have been supplied to the Contractor by the Trust fully in accordance with the Trust's instructions and then only to the extent require for the purposes of providing the Services. In addition, the Contractor shall ensure that the Trust is advised immediately of the loss of any access keys, security passes or other means of access and shall reimburse the Trust any cost of replacement and any reasonable security measures implemented as a result of such loss. For the avoidance of doubt it is hereby agreed that the Contractor shall return to the Trust at the end of the Contract Period, or at such time as the Authorised Officer shall require, any and all such access keys, security passes or other means of access provided to the Contractor by the Trust and in the event that the Contractor is unable to do so shall reimburse the Trust any cost of replacement and any reasonable security measures implemented as a result thereof.
- 48.10 Where the Contractor is required in order to allow any of its Employees to gain access to any other premises owned or occupied by the Trust to place or otherwise register that name or other relevant details of that Employee on the Intruder Alarm System of any other premises owned or occupied by the Trust the Contractor shall do so at its own cost and shall be liable for be any cost incurred by the Trust directly or indirectly as a result thereof. For the avoidance of doubt the Contractor shall also be liable for the cost of any false alarm attributable to the Contractor's Employee.

- 48.11 The Contractor shall issue to all its Employees, who shall at any time have access to any other premises owned or occupied by the Trust, security passes in such form as the Trust may from time to time determine and issue to the Contractor.
- 48.12 Notwithstanding the provisions of Clause 48.6 hereof the Trust shall at all times during the Contract Period have the right to refuse to admit to, or order the removal from, any other premises owned or occupied by the Trust of any of the Contractor's Employees, who, in the opinion of the Trust, is not a fit and proper person to be on the same. Action taken under this Clause 48.12 shall forthwith be confirmed in writing to the Contractor by the Trust and shall not relieve the Contractor of its obligations under this Agreement.
- 48.13 Compliance with this Clause **48** shall be solely at the expense of the Contractor who, without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided, shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising hereunder.

49 Equipment and Materials

- 49.1 Unless otherwise expressly provided in this Agreement, the Contractor shall provide and maintain at its own expense all the equipment, a sufficient and adequate supply of materials and all other resources necessary for the provision of the Services (which shall be compatible with any equipment or material used by the Trust and may only be used with the prior written approval of the Authorised Officer) and shall include the cost thereof in the Annual Sum.
- 49.2 Where the Contractor deems it necessary to amend the Contractor's Computer System in any way it shall not do so without first consulting and obtaining the written consent of the Authorised Officer.
- 49.3 The Contractor shall bear the full cost of any changes to the Trust's Computer System which become necessary as a result of any changes which he may make to the computer system operated in the provision of the Services.
- 49.4 The Authorised Officer shall be entitled to require that any item of Equipment or any of the Materials used or intended for use in the provision of the Services be subject to examination and/or testing. The Contractor shall provide such evidence of satisfactory compliance as the Authorised Officer shall require. The costs of such examinations and/or testing shall be borne by the Contractor.
- 49.5 Any item of Equipment or any of the Materials which is not of the appropriate quality where no quality is specified or is not suitable in the opinion of the

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Authorised Officer at his sole discretion for the provision of the particular part or parts of the Services for which it is being used shall not be used in the provision of the Services and shall be immediately removed and replaced by an item of Equipment which is, or by Materials which are, of the appropriate or specified standard or is suitable in the opinion of the Authorised Officer at his sole discretion for the provision of the particular part or parts of the Services for which it is being used unless otherwise approved in writing by the Authorised officer at the Contractor's expense.

- 49.6 The Contractor at its own expense shall ensure that all the Equipment and the Materials used in the provision of the Services comply with all statutory requirements and particularly with the requirements of the Substances Hazardous to Health (COSHH) Regulations 1994.
- 49.7 The Contractor at all times shall use all the items of Equipment and the Materials in a safe manner and to the satisfaction of the Authorised Officer and shall keep the same under proper control and in safe keeping at all times especially when the same are kept within any of the Contract Areas or on any of the Trust's premises or on any other premises owned or occupied by the Trust. The Contractor at its own expense shall ensure that all the Equipment and the Materials used in the provision of the Services comply with all statutory requirements.
- 49.8 The Contractor shall be responsible for the security of all the Equipment and the Materials used by it in connection with the provision of the Services and the Trust shall be under no liability whatsoever in respect thereof howsoever arising.
- 49.9 At the end of the Contract Period or upon earlier termination of the Contractor's employment under this Agreement the Contractor shall remove or ensure the removal from any and all of the Contract Areas and any and all of the Trust's premises and any other premises owned or occupied by the Trust of any and all Equipment and/or any and all Materials belonging to the Contractor or of any equipment or material belonging to the Contractor's Employees and shall leave each location and all the Trust's equipment and all the Trust's materials and any other equipment or materials belonging to the Trust thereat in a secure, safe, serviceable and clean condition.
- 49.10 Upon the expiration or earlier termination of this Agreement for whatever reason any Equipment or Materials belonging to the Contractor used in the provision of the Services whether or not purchased in connection therewith shall be offered to the Trust in good working order and may be purchased by the Trust at its sole discretion at a cost to be agreed reflecting the market value, age and the condition thereof. In default of agreement the matter may be referred to arbitration by either Party in accordance with Clause **33** hereof.
- 49.11 Where any equipment or materials to be used in relation to this Agreement is supplied by or purchased by the Contractor on behalf of the Trust the Contractor shall be responsible for and take all reasonable steps to protect

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any such equipment or materials. All such equipment or materials shall belong to the Trust and shall be returned to the Trust on demand or on completion or termination of this Agreement.

49.12 Any Equipment or any Materials belonging to the Contractor brought onto any of the Contract Areas or onto any of the Trust's premises or onto any other premises owned or occupied by the Trust for any reason shall at all times be at the sole responsibility of the Contractor.

49.13 The Contractor shall use its best endeavours to provide, for the purposes of this Agreement, materials whose manufacture, use and disposal have the least practicable harmful impact on the environment.

49.14 No Equipment or Materials shall be delivered to any of the Contract Areas or to any of the Trust's premises or to any other premises owned or occupied by the Trust without the prior permission of the Authorised Officer and the Contractor shall be responsible for the delivery of the same to the appropriate Contract Area or appropriate Trust's premises or premises owned or occupied by the Trust and shall receive them thereon and shall provide all labour, materials and plant required for their off-loading and placing in position and for all other purposes.

49.15 The Contractor shall continue to be responsible for the safe custody of the Materials until the same shall become the responsibility of the Trust.

49.16 If any item of Trust's equipment is provided the Contractor shall enter into such Agreement as shall be required by the Trust in respect thereof. The Contractor shall at all times observe and perform the provisions of any such Agreement and any breach by the Contractor of any provisions of the same shall be a breach of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination. If no such Agreement is entered into the Contractor shall comply with the provisions of this Agreement in respect of the use of the Trust's equipment and in addition the Contractor shall also comply with any requirements of the Authorised Officer whether in respect of that Agreement or in respect of the use of the Trust's equipment generally. In the event that the Contractor shall fail to comply with the same or with any requirements of the Authorised Officer whether in respect of that Agreement or in respect of the use of the Trust's equipment generally the same shall be a breach of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

49.17 If any Trust's materials are provided the Contractor shall enter into such

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Agreement as shall be required by the Trust in respect thereof. The Contractor shall at all times observe and perform the provisions of any such Agreement and any breach by the Contractor of any provisions of the same shall be a breach of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination. If no such Agreement is entered into the Contractor shall comply with the provisions of this Agreement in respect of the use of the Trust's materials and in addition the Contractor shall also comply with any requirements of the Authorised Officer whether in respect of that Agreement or in respect of the use of the Trust's materials generally. In the event that the Contractor shall fail to comply with the same or with any requirements of the Authorised Officer whether in respect of that Agreement or in respect of the use of the Trust's materials generally the same shall be a breach of this Agreement and the Trust may terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

- 49.18 Subject as herein provided and notwithstanding any other provision herein contained the Trust shall afford to the Contractor, at all reasonable times and with prior agreement, such access to the Trust's equipment and/or the Trust's materials as may be necessary for the inspection thereof and for the provision of the Services. Such access shall **ONLY** be permitted fully in accordance with the instructions of the Authorised Officer as given from time to time whether in writing or orally.
- 49.19 The Contractor shall ensure that it and any of its Employees who use the Trust's equipment and/or the Trust's materials in connection with the provision of the Services maintain the security of the Trust's equipment and/or the Trust's materials at all times.
- 49.20 The Contractor shall ensure that during the provision of the Services all the Trust's equipment and/or the Trust's materials are kept in a safe, serviceable and clean condition and shall replace as necessary all equipment used by the Contractor or its Employees in the provision of the Services.
- 49.21 The Trust shall at all times during the Contract Period have the right to refuse to allow any of the Contractor's Employees, who, in the opinion of the Trust, is not a fit and proper person to use any of the Trust's equipment and/or the Trust's materials. Action taken under this Clause 49.21 shall forthwith be confirmed in writing to the Contractor by the Trust and shall not relieve the Contractor of its obligations under this Agreement.
- 49.22 The Contractor shall not at any time charge or mortgage any of the Trust's equipment or the Trust's materials.

- 49.23 The Trust reserves the right to amend or replace any part of the Trust's equipment and/or the Trust's materials at any time and will do so whenever necessary for the implementation by the Contractor of Trust initiated policy or procedural change.
- 49.24 The Contractor and its Employees shall permit the Authorised Officer at any time:-
- 49.24.1 to examine the Equipment (together with any of the Trust's equipment) for the purpose of ascertaining its suitability and safety for the task for which the Contractor intends using it, and
 - 49.24.2 to take samples of the Materials (together with any of the Trust's materials) for the purpose of testing the Materials and ascertaining their suitability and safety for the task for which the Contractor intends using them and/or compliance with the standard required and shall on request supply the Authorised Officer with copies of invoices delivery notes or test certificates as necessary to prove that Materials comply with this requirements.
- 49.25 Compliance with this Clause **49** shall be solely at the expense of the Contractor who, without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided, shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever howsoever arising hereunder.

50 Lien or Encumbrance

- 50.1 Neither the Contractor nor any of its Employees shall create or allow any other person to create any lien or encumbrance on any of the Trust's property.

51 Trust/Contractor Representation

- 51.1 The Trust will for the purposes of this Agreement nominate an Authorised Officer to act as a first point of contact between the Contractor and the Trust and will immediately notify the Contractor in writing of any change thereof.
- 51.2 The Authorised Officer shall have power to issue instructions to the Contractor on any matter relating to the provision of the Services and the Contractor shall comply therewith.
- 51.3 From time to time the Authorised Officer may appoint one (1) or more representatives to act for him generally or for specified purposes and periods of time. Immediately any such appointment is made or revoked the Authorised Officer shall give written notice thereof to the Contractor.

- 51.4 The Contractor will for the purposes of this Agreement nominate a Contractor's Representative to act as a first point of contact between the Contractor and the Trust and will immediately notify the Trust in writing of any change thereof.

52 Legal Proceedings and Trust Investigations

- 52.1 The Contractor immediately upon becoming aware of any accident, damage or breach of any statutory provision relating in any way to the provision of or in connection with the Services which may give rise to legal action shall notify the Authorised Officer in writing, providing such information on the matter as the Authorised Officer considers necessary.
- 52.2 If requested to do so by the Authorised Officer, the Contractor shall provide the Authorised Officer with any relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Trust may become involved or in any relevant disciplinary hearing internal to the Trust and shall give evidence orally or in writing as necessary in such inquiries or proceedings or hearings, arising out of the provision of the Services.
- 52.3 If any investigation is begun after the Commencement Date in respect of any matter touching or concerning the subject of this Agreement then the Contractor or any relevant Employee shall give to the Trust all assistance and information free of charge in order to facilitate that investigation in accordance with any requirements of the Authorised Officer whether as to time or otherwise.
- 52.4 The Contractor shall indemnify the Trust against any award made by the Trust (notwithstanding that such award may not be legally enforceable) after the Commencement Date in respect of any matter of complaint commenced thereafter and shall reimburse to the Trust any sum paid by it to a third party arising out the provision of the Services pursuant to this Agreement.
- 52.5 If any payment is to be made pursuant to Clause 52.3 hereof the Contractor shall in addition thereto also pay to the Trust the Trust's administrative costs and overheads as certified by the Authorised Officer at his sole discretion together with interest administrative costs and overheads as certified by the Authorised Officer at his sole discretion together with interest thereon at the rate of four (4) per centum per annum above the Bank of England's Monetary Policy Committee's bank base lending rate.
- 52.6 Such information provided or assistance rendered pursuant to the obligation in this Clause **52**, in whatever form, shall be at no cost to the Trust, unless otherwise agreed in writing by the Authorised Officer.

53 Information on Re-tendering

- 53.1 The Contractor shall comply with all the requirements laid down under TUPE relating to the provision of information relating to its Employees.

53.2 In addition to and notwithstanding the above the Trust shall also have the following rights and the Contractor the following obligations when the Trust is preparing to re-tender this Agreement.

53.2.1 The Trust may at any time request from the Contractor such details relating to the Contractor's method of service delivery and Employees as the Trust may reasonably require. The Contractor shall comply with such request as soon as reasonably practicable and, in any event, within twenty one (21) days of being so requested, and at no cost to the Trust. The Contractor covenants with the Trust that the information provided shall be complete and accurate and up to date and that it shall notify the Trust promptly of any changes occurring between the date of submission of the information and the end of the Contract Period.

53.2.2 The Contractor shall enable and assist the Trust and any such persons as the Trust may determine to communicate with and meet the Employees and relevant Trades Union and/or elected employee representatives.

53.3 Without prejudice to the generality of Clause **21** hereof and for the avoidance of doubt it is hereby specifically provided that the Contractor shall fully, promptly and effectively indemnify and keep so indemnified the Trust, its servants and agents from and against all and any actions, charges, claims, costs, damages, demands, expenses (including legal and administrative expenses), liabilities, losses and proceedings whatsoever arising from the provision of information or the failure to provide information under this Clause **53**.

53.4 Such information provided pursuant to this Clause **53** shall be at no cost to the Trust.

54 Conflicts of Interest

54.1 The Contractor warrants, represents and undertakes to the Trust that as at the date of this Agreement it is not aware of any conflict of interest or potential conflict of interest in relation to the provision of the Services by the Contractor by virtue of the Contractor having previously had or currently having any involvement on behalf of any third party with the same subject matter as the Services or that part thereof.

54.2 In the event that the Contractor becomes aware of any such conflict as it referred to in Clause 54.1 hereof at any time during the currency of this Agreement it shall forthwith advise the Trust of the same and thereafter act strictly in accordance with the Trust's instructions.

54.3 The requirements imposed by this Clause **54** shall continue in full force and effect and be enforceable by the Trust for the period of twelve (12) months after the Contract Period has expired or after termination of this Agreement

for whatever reason.

55 Audit

- 55.1 The Contractor shall keep and maintain until two (2) years after this Agreement has been completed records as required by and to the satisfaction of the Trust relating inter alia to all expenditures which are reimbursable by the Trust and of the hours worked and costs incurred by the Contractor or in connection with any Employees of the Contractor paid for by the Trust on a time charge basis. The Contractor shall on request afford the Trust or its representatives such access to those records as may be required by the Trust in connection with this Agreement.

56 Substituted Performance

- 56.1 If the Contractor for whatever reason regularly fails to provide the Services strictly in accordance with the provisions of this Agreement or in providing the Services there is an unacceptable level of deficient services as determined by the Authorised Officer at his sole discretion (and in this behalf the Authorised Officer shall give to the Contractor a minimum of five (5) working days notice of any likely use of this Clause 56) then without prejudice to any other remedy available to the Trust the Authorised Officer may make arrangements for the Trust (whether itself or by any other person) to provide the Services or the relevant part thereof which the Contractor fails to provide or provides deficiently. In this event the Trust shall be permitted to use all or any part of the Equipment which was allocated to the performance of the Services to assist in the provision of the Services or those parts which the Contractor has failed to provide or has provided deficiently. In such circumstances the full costs thereof together with the Trust's administrative costs and overheads as certified by the Authorised Officer at his sole discretion together with interest thereon at the rate of four (4) per centum per annum above the Bank of England's Monetary Policy Committee's bank base lending rate shall be payable by the Contractor to the Trust on demand as a debt.
- 56.2 Where the failure to provide the Services is in the sole opinion of the Authorised Officer due to the failure of the Contractor's management or supervisory employees to perform their work adequately or at all or is due to the absence of or insufficiency of such employees the Authorised Officer may cause the Services or that part thereof to be managed and supervised as he in his absolute discretion shall determine whether itself or by any other person. In such circumstances the full costs thereof together with the Trust's administrative costs and overheads as certified by the Authorised Officer at his sole discretion together with interest thereon at the rate of four (4) per centum per annum above the Bank of England's Monetary Policy Committee's bank base lending rate shall be charged to the Contractor. The Contractor shall ensure that all of its Employees utilised in the provision of the Services or that part thereof co-operate fully with those appointed to manage or supervise the provision of the Services or that part thereof under this Clause 56.

- 56.3 Where the failure to provide the Services is in the sole opinion of the Authorised Officer due to the failure of the Contractor to provide adequate Equipment and/or Materials (including but not limited to insufficiency of the Equipment or the Materials of an inferior quality) the Authorised Officer may provide adequate Trust's equipment and/or Trust's materials to be used by the Contractor and by the Contractor's Employees in the provision of the Services. In the event that the Trust supplies any Trust's equipment and/or any Trust's materials for the provision of the Services the Contractor shall be charged the full cost of that Trust's equipment (either the purchase price or hire charge as appropriate) and/or the full cost of those Trust's materials (including if necessary the whole of the bulk purchase if it is common to obtain such Trust's materials in this manner) together with the Trust's administrative costs and overheads as certified by the Authorised Officer at his sole discretion together with interest thereon at the rate of four (4) per centum per annum above the Bank of England's Monetary Policy Committee's bank base lending rate.
- 56.4 The operation of this Clause **56** shall not relieve the Contractor of any of its obligations under this Agreement in respect of the provision of the Services as a whole nor restrict the Trust's right to terminate this Agreement with immediate effect without notice under Clause **30** hereof and without any payment in lieu thereof and without prejudice to any other rights or claims the Trust may have against the Contractor otherwise and shall be entitled to recover from the Contractor all losses resulting from such termination.

57 Third Party Working

- 57.1 The Contractor shall use neither:-

- 57.1.1 any of the Contract Areas or the Premises or any of the Trust's premises or any other premises owned or occupied by the Trust or any of the Equipment or any of the Materials or any of the Trust's equipment or any of the Trust's materials, nor
- 57.1.2 the name of the Trust or the name of any of the Contract Areas or the name of any of the Trust's premises or of any other premises owned or occupied by the Trust,

to promote or support any work the Contractor carries out EXCEPT with the prior written consent of the Authorised Officer.

- 57.2 The Contractor shall not promote itself or any person or body other than the Trust within any of the Contract Areas or on any of the Trust's premises or on any other premises owned or occupied by the Trust unless the prior written approval of the Authorised Officer has been obtained.
- 57.3 No advertisement of any description whatsoever will be allowed within any Contract Area or on any of the Premises or on any of the Trust's premises or on any other premises owned or occupied by the Trust or on any of the

Equipment or on any of the Trust's equipment or on any of the Materials or on any of the Trust's materials utilised in the provision of the Services without the prior consent of the Authorised Officer. Any advertisement which is placed within any of the Contract Areas or on any of the Premises or on any of the Trust's Premises or on any other premises owned or occupied by the Trust or on any of the Equipment or on any of the Trust's equipment or on any of the Materials or on any of the Trust's materials with consent shall on demand be promptly removed at the end of the Contract Period.

- 57.4 The Contractor shall not advertise the fact that it is providing services to the Trust under this Agreement other than with the prior written permission of the Authorised Officer.

58 Business Continuity Planning

- 58.1 Business Continuity Planning is an ongoing process requiring the support of the Contractor's most senior officials. The primary objective of Business Continuity Planning is to maintain viable recovery strategies and plans to ensure all units can recover their critical activities following a major incident. A major incident is any accidental, natural or malicious event, which threatens or disrupts normal operations, or the provision of the Services, for sufficient time to significantly affect or cause failure of the provision of any essential part of the Services to the Trust.
- 58.2 All the Trust's Contractors must be in a position to demonstrate they have adequate Business Continuity Plans and associated contingency arrangements in place to ensure minimum disruption in the provision of the Services to the Trust in the event of a major incident affecting their buildings, systems, Employees or their own external suppliers and sub-contractors.
- 58.3 The Trust requires the demonstration of robust contingency plans by appropriate means. In order to meet this requirement the Contractor must provide to the satisfaction of the Authorised Officer its Business Continuity Planning policy which must be supported by its senior officials and with tested contingency arrangements in place. Depending upon the importance and scale of the Services to be provided, the Trust reserves the right to request detailed evidence of contingency plans such as sight of the Contractor's Business Continuity Plan, the Contractor's attendance at any contingency exercise or to conduct an audit of the Contractor's contingency arrangements.
- 58.4 The Trust requires Business Continuity Plans to include the following:-
- 58.4.1 provision for the regular review and updating of the Business Continuity Planning documentation at least every three (3) years,
 - 58.4.2 provision for the regular testing of the Business Continuity Planning Plan at least yearly,
 - 58.4.3 details of the locations at which copies of the Business Continuity

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Planning documentation are held and provision to ensure that at such locations may be added to as shall be specified by the Authorised Officer,

- 58.4.4 details of the locations at which copies of any other important procedures and documents which form part of or are ancillary to the Business Continuity Planning documentation are held and provision to ensure that at such locations may be added to as shall be specified by the Authorised Officer,
- 58.4.5 provision to ensure that IT/PC backups to be taken regularly and details of the locations at which these are held and provision to ensure that at such locations may be added to as shall be specified by the Authorised Officer,
- 58.4.6 that minimum contingency resources (such as, but not by way of limitation, Employees, IT, telephones, etc.) as shall be required by the Authorised Officer are identified,
- 58.4.7 details of the Contractor's Emergency Management and/or Recovery Team,
- 58.4.8 details of any contingency site or location and provision to ensure that at such site or location may be added to as shall be specified by the Authorised Officer,
- 58.4.9 details of the Contractor's IT systems recovery/backup arrangements,
- 58.4.10 contingency details relating to the loss of any of the Contractor's key suppliers,
- 58.4.11 contingency details relating to the loss of any of the Contractor's Employees,
- 58.4.12 details of the Contractor's Business Continuity Plan activation checklist,
- 58.4.13 details of the communication processes and associated contact information covering the Contractor's key Employees and suppliers/contractors and.
- 58.4.14 confirmation that the Trust is included in the Contractor's priority customer list.

59 No Partnership etc.

- 59.1 Whilst the Trust and the Contractor have a mutual desire to ensure the proper provision of the Services and will co-operate within the terms of this

Agreement being mindful of this nothing in this Agreement shall be construed as establishing or implying a joint venture between the Parties hereto notwithstanding there is an expectation of partnership between all Parties to this Agreement.

- 59.2 Nothing in this Agreement shall have the effect of making the Contractor the servant of the Trust.

60 Survival of this Agreement

- 60.1 Insofar as any of the rights and powers of the Trust provided for in this Agreement shall or may be exercised or exercisable after the termination or expiry of this Agreement the provisions of this Agreement conferring such rights and powers shall survive and remain in full force and effect notwithstanding such termination or expiry.
- 60.2 Insofar as any of the obligations of the Contractor provided for in this Agreement remain to be discharged after the termination or expiry of this Agreement the provisions of this Agreement imposing such obligations shall survive and remain in full force and effect notwithstanding such termination or expiry.

61 Amendments

- 61.1 No amendment to this Agreement other than technical changes to the level and nature of the Services or in respect of any Additional Term or Condition of Contract, which shall be dealt with in accordance with Clause **11** hereof, shall be binding unless in writing and signed by the Authorised Officer and by the Contractor and expressed to be for the purpose of such amendment.

62 Rights and Duties Reserved

- 62.1 All rights and duties which the Trust has are expressly reserved.

63 Bona Fide Tender

- 63.1 In recognition of the principle that the essence of selective tendering is that the Trust shall receive bona fide competitive tenders from all those tendering the Contractor hereby expressly certifies that:-

63.1.1. the Tender submitted by it is a bona fide Tender intended to be competitive,

63.1.2. it has not fixed or adjusted the amount of the Tender under or in accordance with any agreement or arrangement with any other person, and

63.1.3. it has not done any of the following acts:-

- 63.1.3.1 communicated to a person other than Trust the amount of the Tender (except where the disclosure in confidence of the approximate amount of the Tender was essential to obtain insurance premium quotations required for the preparation of the Tender),
- 63.1.3.2 entered into any agreement or arrangement with any other person that he shall refrain from tendering or as to the amount of any tender to be submitted, and
- 63.1.3.3 offered or paid or gave or agreed to give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender any act or thing of the sort described above.

63.2 For the avoidance of doubt in this Clause **63**:-

- 63.2.1. "person" includes any person and any body or association corporate or incorporate, and
- 63.2.2. "any agreement or arrangements" includes any transaction of the sort described above formal or informal and whether legally binding or not.

64 Law and Jurisdiction

64.1 The Parties hereto hereby agree that this Agreement shall be governed and construed:-

64.1.1 in accordance with the Laws of England, and

64.1.2 insofar as relevant in accordance with European Union Law,

and the Contractor irrevocably submits to the jurisdiction of the English Courts.

64.2 This Agreement is binding on the Parties hereto and their lawful assignees.

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THE SPECIFICATION

D R A F T

D R A F T

THE INVITATION TO TENDER

D R A F T

D R A F T

THE TENDER

D R A F T

D R A F T

DATA TO BE SHARED BY THE TRUST AND DATA TO BE PROVIDED TO THE TRUST

DATA TO BE SHARED BY THE TRUST

Data Type	Data Source	Purpose of sharing	Lawful basis	Special Category condition	How the data is provided by the Trust	Frequency	Who will access this Data

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DATA TO BE PROVIDED TO THE TRUST

Data Type	Data Source	Purpose of sharing	Lawful basis	Special Category condition	How the data is provided to the Trust	Frequency	Who will access this Data