**General Conditions of Contract – Services £25,000 - £181,302**

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**OPERATIVE PROVISIONS:**

**Part 1 - Preliminary**

**1.** **Definitions and Interpretations**

1.1 In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

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| --- | --- |
| **“1999 Act”** | means the Local Government Act 1999 |
|  |  |
| **“Agreement”** | means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, [the Tender] [and any other documents (or parts thereof) specified by the Authority]. |
|  |  |
| **“Annual Service Plan”** | means a written statement containing the Contractor’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice |
|  |  |
| **“Annual Service Report”** | means a written report provided to the Authority to the reasonable satisfaction of the Authority |
|  |  |
| **“Approval” and “Approved”** | means the written consent of the Contract Manager. |
|  |  |
| **“Authority”** | means Swindon Borough Council, its successors and assigns. |
|  |  |
| **“Authority Property”** | means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement |
|  |  |
| **“Best Value Duty”** | means the duty imposed on the Authority by Part 1 of the 1999 Act and under which the Authority is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the guidance issued from time to time by the Secretary of State, the Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act. |
|  |  |
| **“Code”** | means Code of Practice for Employment published by the Commission for Racial Equality as published from time to time or any code which may replace it. |
|  |  |
| **“Commencement Date”** | means the       day of       20 |
|  |  |
| **“Commercially Sensitive Information”** | means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: |
|  | (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or |
|  | (b) that constitutes a trade secret. |
|  |  |
| **“Commercially Sensitive Information Schedule”** | means the Schedule containing a list of the Commercially Sensitive Information. |
|  |  |
| **“Confidential Information”** | means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the DPA and the Commercially Sensitive Information. |
|  |  |
| **“Contract Manager”** | means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf. |
|  |  |
| **“Contracting Authority”** | means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Authority. |
|  |  |
| **“Contractor”** | means the person, firm, organisation or company with whom the Agreement is made. |
|  |  |
| **“Contractor’s Representative”** | means the individual from time-to-time authorised to act on behalf of the Contractor for the purposes of the Agreement. |
|  |  |
| **“Controller**, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach** **Data Protection Officer”** | take the meaning given in the GDPR. |
|  |  |
| **“Data Protection Officer”** | means the officer of the Authority holding the post of “Data Protection Officer”, or such other person as the Authority may elect |
|  |  |
| **“Data Loss Event”** | means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach**.** |
|  |  |
| **“Data Protection Legislation”** | means: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy; |
|  |  |
| **Data Processing Schedule** | means that document, scheduled to this Agreement, that sets out (among other things) the types of processing to be carried out by the Contractor; |
|  |  |
| **“Data Protection Impact Assessment”** | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
|  |  |
| **“Data Subject Access Request”** | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
|  |  |
| **“Default”** | means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other. |
| **“Disclosure and**  **Barring Service”** | means the service established under the Protection of Freedoms Act 2012 for carrying out checks of a person`s suitability of working with children or vulnerable adults |
| **DPA 2018** | Data Protection Act 2018 |
|  |  |
| **“Equipment”** | means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement. |
|  |  |
| **“Environmental Information Regulations”** | means the Environmental Information Regulations 2004. |
|  |  |
| **“Expiry Date”** | means the       day of       20      or such other date where the Agreement is terminated or there is an Extension |
|  |  |
| **“Extension”** | means the extension of the duration of the Agreement agreed in accordance with clause 2.2. |
|  |  |
| **“FOIA”** | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation. |
|  |  |
| **“Force Majeure”** | means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster but does not include any industrial action occurring within the Contractor’s organisation or any sub-contractor’s organisation |
|  |  |
| **“GDPR”** | means the General Data Protection Regulation (*Regulation (EU) 2016/679*) |
|  |  |
| **“General Change in Law”** | means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services. |
|  |  |
| **“Information”** | has the meaning given under section 84 of the FOIA. |
|  |  |
| **“Initial Term”** | means the period from the Commencement Date to the Expiry Date or such earlier date of termination or partial termination of the Agreement in accordance with clause 2.1 of the Agreement. |
|  |  |
| **“Intellectual Property Rights”** | means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
|  |  |
| **“Invitation to Tender”** | means an invitation for Contractors to bid for the Services required by the Authority. |
|  |  |
| **“Key Personnel”** | means those persons named in the Specification as being key personnel. |
|  |  |
| **“Law”** | means any applicable Act of Parliament, sub-ordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply. |
|  |  |
| **“LED”** | Law Enforcement Directive (*Directive (EU) 2016/680*) |
|  |  |
| **“Local Commissioner”** | means the Local Commissioner/Ombudsman as appointed by the Commissioner for Local Administration in England or any successor body |
|  |  |
| **“Monitoring Schedule”** | means the Schedule containing details of the monitoring arrangements. |
|  |  |
| **“Month”** | means calendar month. |
|  |  |
| **“Party”** | means a party to the Agreement and “Parties” shall be construed accordingly. |
|  |  |
| **“Premises”** | means the location where the Services are to be performed, as specified in the Specification. |
|  |  |
| **“Price”** | means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 24. |
|  |  |
| **“Pricing Schedule”** | means the Schedule containing details of the Price. |
|  |  |
| **“Protective Measures”** | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it. |
|  |  |
| **“Public Contracts Directive”** | means Public Contracts Directive 2014/24/EU |
|  |  |
| **“Quality Standards”** | means the quality standards relating to the Services published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, with which a skilled and experienced operator engaged in the same type of industry or business as the Contractor’s would reasonably and ordinarily be expected to comply as supplemented by the Specification. |
|  |  |
| **“Replacement Contractor”** | means any third party appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third party. |
|  |  |
| **“Request for Information”** | shall have the meaning set out in FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations. |
|  |  |
| **“Schedule”** | means a schedule attached to the Agreement. |
|  |  |
| **“Services”** | means the services to be provided as specified in the Specification. |
|  |  |
| **“Services Improvement Notice”**  **“Single Use Plastics”** | means a written notice stating the nature and timing of changes to the provision, performance or delivery of the Services (or the relevant part) which the Authority desires  means disposable plastic items which are designed to be used only once |
|  |  |
| **“Specification”** | means the description of the Services to be provided under the Agreement and attached as the Specification Schedule. |
|  |  |
| **“Specification Schedule”** | means the Schedule containing details of the Specification. |
|  |  |
| **“Specific Change in Law”** | means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services. |
|  |  |
| **“Staff”** | means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents, volunteers and sub-contractors used in the performance of the Agreement. |
|  |  |
| **“Sub-processor”** | any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement |
|  |  |
| **“Tax”** | means Value Added Tax or any tax of a similar nature which replaces it |
|  |  |
| **“Tender”** | means the Contractor’s response to the Invitation to Tender (and any subsequent clarifications). |
|  |  |
| **“Term”** | means the period beginning on the Commencement Date and finishing on the Expiry Date |
|  |  |
| **“TUPE”** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended |
|  |  |
| **“Variation”** | means any addition to, or modification of, any provision of the Agreement |
|  |  |
| **“Working Day”** | means a day (other than a Saturday or Sunday) on which banks are open for domestic business in the City of London |

1.2 **Interpretation**

In the Agreement except where the context otherwise requires:

1. the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein;
2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
3. words importing the masculine include the feminine and the neuter;
4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
5. references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
6. references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
8. headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**2** **Term**

2.1 The Agreement shall take effect on the Commencement Date and shall expire automatically on the Expiry Date unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

2.2 The Authority may seek to extend the duration of the Agreement in accordance with clause 55. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) until the expiry of the period specified in accordance with clause 55.

**3** **Authority’s Obligations**

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

**4** **Entire Agreement**

4.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. The Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

4.2 In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, [Tender] [and other documents referred to or attached to the Agreement], the conflict shall be resolved in accordance with the following order of precedence:

(a) the body of the Agreement shall prevail over;

(b) the Schedules;

(c) the Invitation to Tender;

(d) the Tender

(e) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause 50 shall not take higher precedence than specified here.

4.3 The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

4.4 Without prejudice to any other term of this Agreement no omission from, addition to, or Variation of these terms and conditions shall be valid or of any effect unless it is agreed in writing and signed by the Authority’s Representative.

**5** **Scope of Agreement**

5.1 Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor as defined by the Partnership Act 1890.

5.2 In carrying out its obligations under the Agreement, the Contractor shall be acting as principal and not as the agent of the Authority and the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority.

**6** **Notices**

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

6.2 Any notice or other communication, which is to be given by either Party to the other shall be given by letter (sent by hand or post), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given:

(a) in the case of a letter 2 Working Days after the day on which the letter was posted; or

(b) in the case of a letter delivered by hand, electronic mail or facsimile transmission:

(i) where it is delivered or transmitted on a Working Day before 16:00 hours, on that day

(ii) in any other case, on the first Working Day after the day on which it is delivered or transmitted; or

(c) such sooner time where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

6.3 For the purposes of clause 6.2, the address of each Party shall be:

(a) For the Authority:

|  |  |
| --- | --- |
| For the attention of |  |
| Address |  |
|  |  |
|  |  |
| Postcode |  |
| Tel |  |
| Fax |  |
| Email |  |
|  |  |

1. For the Contractor:

|  |  |
| --- | --- |
| For the attention of |  |
| Address |  |
|  |  |
|  |  |
| Postcode |  |
| Tel |  |
| Fax |  |
| Email |  |

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

**7** **Authorised Representatives**

7.1 The Contract Manager shall be as defined in clause 6.3(a). The Contractor will be notified in writing if there is a change to the person who is its Contract Manager.

7.2 The Contractor's Representative shall be as defined in the clause 6.3(b) and who shall have the power on behalf of the Contractor in connection with any matter relating to the performance of the Agreement. The Contractor shall notify the Authority’s Representative in writing if there is a change in the person who is the Contractors Representative.

7.3 The Contract Manager and the Contractor's Representative will hold       (duration) review meetings to monitor the Contractor's performance under the Agreement.

7.4 The Authority reserves the right to change the Contractors Representative at any time by giving notice as per clause 6.

**8** **Mistakes in Information**

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

**9** **Conflicts of Interest**

9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employee, servant, agent, supplier or sub-contractor is placed in a position where in the reasonable opinion of the Authority there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor or such persons and the duties owed to the Authority under the provisions of the Agreement. The Contractor will disclose to the Authority full particulars of any such conflict of interest, which may arise.

* 1. The provisions of this clause shall apply during the continuance of the Agreement and for a period of [*two*] years after its termination or expiry.

**10** **Fraud**

* 1. The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor’s suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

**Part 2 – The Provision of the Services**

**11** **The Services**

11.1 The Contractor shall provide the Services during the Term in accordance with the Authority’s requirements as set out in the Specification and the terms of the Agreement. The Authority shall have the power to inspect and examine the performance of the Services at the Premises at any reasonable time.

11.2 The Contractor shall at all times deliver the Services in accordance with the Law.

11.3 If the Authority informs the Contractor that the Authority considers that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.

11.4 Subject to the Authority providing Approval in accordance with clause 12.2, timely provision of the Services shall be of the essence of the Agreement,including in relation to commencing the provision of the Services within the time agreed or on a specified date.

11.5 Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor’s delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor’s obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 12.2.

**12** **Manner of Carrying Out the Services**

12.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.

12.2 The Contractor shall make no delivery of Equipment nor commence any work on the Authority’s Premises without obtaining the Authority’s prior Approval.

12.3 All Equipment brought onto the Authority’s Premises shall be at the Contractor’s own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority’s Premises will remain the property of the Contractor.

12.4 The Contractor shall maintain all items of Equipment within the Authority’s Premises in a safe, serviceable and clean condition.

12.5 All Equipment shall be at the risk of the Contractor. The Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.

12.6 The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor remove from the Authority’s Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement and if the Authority has ordered the Contractor to remove any item of Equipment, to replace such item with a suitable substitute item of Equipment.

12.7 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services in order to leave the Authority’s Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor’s employees, servants, agents, suppliers or sub-contractors.

12.8 Access to the Authority’s Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor’s suppliers as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority’s Premises as the Authority may reasonably require and shall not impede in any way the Authority or its officers, contractors or agents in the exercise of the Authority’s rights of possession and control over the Premises (if any).

**13** **Sufficiency of Information**

13.1 The Contractor shall be deemed to have satisfied itself before submitting the Tender as to the accuracy and sufficiency of the rates, prices and discount structures stated by it in the Tender which shall (except insofar as it is otherwise provided in the Agreement) cover all its obligations under the Agreement and shall be deemed to have obtained for itself all necessary information as to risks, contingencies and any other circumstances which might reasonably influence or affect the Tender.

**14** **Free Issue of Materials**

14.1 Where the Authority, for the purposes of the Agreement, issues materials free of charge to the Contractor such materials shall be and remain the property of the Authority. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Contractor shall use such materials solely in connection with the Agreement. Any surplus materials shall be disposed of at the Authority discretion.

14.2 The Contractor shall be afforded a reasonable opportunity to inspect the issued materials on delivery and carry out such tests as are reasonably practicable, or are specified in the Specification to satisfy himself as to the suitability of the issued materials. The Authority shall have no liability in respect of any defect in the issued materials which such inspection or testing would have revealed.

**15** **Quality and Standards**

15.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute the Agreement with reasonable care and skill and in accordance with best industry practice.

15.2 The introduction of new methods or systems, which impinge on the provision of the Services shall be subject to prior Approval in writing by the Contract Manager.

15.3 The signing by the Contract Manager (or their representative) of time sheets or other similar documents shall not be construed as implying the Contractor’s compliance with the Agreement.

15.4 Where an appropriate European or British Standard or Code of Practice issued by the European Commission or British Standards Institution is current at the Commencement Date of this Agreement or of any tender relating to this Agreement, all goods, services and materials supplied shall be at least in accordance with that Standard in the absence of any direction to the contrary.

**16** **Non Exclusivity**

16.1 This Agreement shall be awarded on a non-exclusive basis and the Authority reserves the right to seek to purchase any or all items from other sources.

16.2 Where the Authority has provided information regarding data, volumes or forecast quantities, then the Authority does not guarantee any specific quantity unless otherwise stated within the Specification.

**17** **Key Personnel**

17.1 Any changes to Key Personnel shall be notified to the Authority in writing as soon as is reasonably practicable.

17.2 Any replacements to the Key Personnel shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

**18** **Contractor’s Staff**

18.1 The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:

(a) any member of the Staff; or

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

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

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

18.3 The Contractor’s Staff, engaged within the boundaries of any of the Authority’s Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.

18.4 The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.

18.5 The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this clause.

**19** **Inspection of Premises**

19.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

19.2 The Authority shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 19.1.

**20** **Agreement to Occupy Authority’s Premises**

20.1 Where any land or Premises (including temporary buildings) are made available by the Authority for occupation by the Contractor in connection with the Agreement, those Premises shall be made available to the Contractor on the terms contained in an agreement regulating the occupation of those Premises.

**21** **Authority Property**

21.1 Where the Authority for the purpose of the Agreement issues Authority Property free of charge to the Contractor such property shall be and remain the property of the Authority. The Contractor shall not in any circumstances have a lien on the Authority Property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.

21.2 Any Authority Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

21.3 The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Agreement and for no other purpose without prior Approval.

21.4 The Contractor shall notify the Contract Manager of any surplus Authority Property remaining after the expiry, termination and/or partial termination (as appropriate) the Agreement and shall dispose of it as the Authority may direct. Waste of such Authority Property arising from bad workmanship or negligence of the Contractor or any of the Contractor’s employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor’s expense. Without prejudice to any other rights of the Authority, the Contractor shall deliver up Authority Property whether processed or not to the Authority on demand.

21.5 The Contractor shall ensure the security of all Authority Property, whilst in the Contractor’s possession, either on its Premises or elsewhere during the performance of the Agreement, in accordance with the Authority’s reasonable security requirements as required from time to time.

21.6 The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Contractor’s liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Contractor shall inform the Contract Manager within [2] two Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

**22** **Sub-Contracting for the Delivery of the Services**

22.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

**23** **Offers of Employment**

23.1 For the duration of the Agreement and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Authority’s staff who have been associated with the procurement and/or the contract management of the Services without the Authority’s prior Approval.

**Part 3 – Payment and Price**

**24 Price**

24.1In consideration of the performance of the Contractor’s obligations under the Agreement by the Contractor, the Authority shall pay the Price in accordance with clause 25.

24.2 In the event that the cost to the Contractor of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause 29 shall apply.

24.3 The Authority shall pay the Contractor, on the production of a valid Tax invoice, in addition to the Price, a sum equal to the Tax chargeable on the value of the Services provided in accordance with the Agreement.

24.4 Prices shall be fixed for the duration of the Contract.

**25** **Payment and Tax**

25.1 The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.

25.2 Each invoice shall contain all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice. Any copy invoices requested by the Authority are to be provided by the Contractor free of charge.

25.3 Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.

25.4 The Authority may reduce payment in respect of any Services, which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.

25.5 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under clause 61.3 for failure to pay undisputed charges.

25.6 The Contractor shall pay all the invoices of its sub-contractors within 30 days of receipt and shall ensure that the same timescale for payment is passed down its supply chain

**26** **Recovery of Sums Due**

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

26.2 Any overpayment by the Authority to the Contractor, whether of the Price or Tax, shall be a sum of money recoverable by the Authority from the Contractor pursuant to clause 26.1 above.

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

**27** **Price Adjustment on Extension**

27.1 In the event of an Extension being considered by the Authority pursuant to clause 55, the Authority will (as part of such consideration) review the Price with the Contractor in accordance with 24.4.

27.2 If a Price variation is agreed with the Authority as part of its consideration relating to an Extension, the revised Price will take effect from the first day of any Extension of the Term pursuant to clause 55.

**28 Currency**

28.1 Any requirement of Law to account for the Services in any currency (or to prepare for such accounting), instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

28.2 The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 28.1.

**29 Change of Law**

29.1 The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:

1. a General Change in Law; or
2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date whether by publication of a Bill, as part of a Government Departmental Consultation paper, a draft Statutory Instrument, a proposal in the Official Journal of the European Union or otherwise.

29.2 If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 29.1) or during any Extension agreed pursuant to clause 27, the Contractor shall notify the Authority of the likely effects of that change, including:

1. whether any change is required to the Services, the Price or the Agreement; and
2. whether any relief from compliance with the Contractor’s obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

29.3 As soon as practicable after any notification in accordance with clause 29.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

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

(b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;

(c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

(d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

29.4 Any increase in the Price or relief from the Contractor’s obligations agreed by the Parties pursuant to this clause 29 shall be implemented in accordance with clause 50.

**Part 4 - Statutory Obligations, Codes of Practice and Regulations**

**30** **Prevention of Corruption**

30.1 The Authority may terminate this Agreement and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

(a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Authority contract (even if the Contractor does not know what has been done); or

(b) commit an offence under the Bribery Act 2010 or Section 117(2) of the Local Government Act 1972; or

(c) commit any fraud in connection with this or any other Authority contract whether alone or in conjunction with Authority Members, contractors or employees.

30.2 Any clause limiting the Contractor's liability shall not apply to this clause.

**31** **Discrimination**

31.1 The Contractor must:

(a) operate an equal opportunities policy for as long as this Agreement is in force; and

(b) provide the Authority with a copy of any such policy at the Authority’s request

* 1. The Contractor must use all reasonable endeavours to make sure that

its equal opportunities policy complies with all statutory obligations as

regards discrimination on the groundss of colour, race, nationality, cultural or ethnic origin, marital status, gender, age, disability, religion or sexual orientation in relation to:

* 1. decisions made by it in the recruitment, training or

promotion of Staff employed or to be employed in the

provision of the Services;

(b) the provision of the Services; and

(c) the carrying out of its obligations under this Agreement.

* 1. In providing the Services, the Contractor must observe as far as

possible the Code and the Human Rights Act 1998

* 1. The Contractor must provide the Authority with such information as it

may reasonably require in order for the Authority to assess the Contractor’s compliance with the Code.

31.5 If any Court or Tribunal, or the Commission for Racial Equality (or any body which may replace the Commission) makes a finding that the Contractor has unlawfully discriminated against any person in the provision of the Services then the Contractor must:

(a) take all necessary steps to make sure that the unlawful discrimination does not happen again; and

(b) notify the Authority in writing of the finding and the steps taken to prevent its re-occurrence.

**32** **The Contracts (Rights of Third Parties) Act 1999**

32.1 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement and for the avoidance of doubt the provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from this Agreement.

**33** **Environmental,Social and Labour Requirements**

33.1 The Contractor shall, when working on the Authority’s Premises, perform the Agreement in accordance with the Authority’s environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

33.2 In performance of the Agreement, the Contractor shall minimise the use of Single Use Plastics and shall ensure that a similar obligation is included in its contracts with its sub-contractors and encourage the elimination of single use plastic within its supply chain by 2021.

33.3 In performance of their obligations under the Agreement the Contractor shall comply with applicable obligations in the field of environmental, social and labour law, collective agreements and the international environmental social and labour law provisions listed in Annex X of the Public Contracts Directive

**34 Health and Safety**

34.1 The Contractor shall promptly notify the Authority of any health and safety hazards, which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority’s Premises and which may affect the Contractor in the performance of the Agreement.

34.2 While on the Authority’s Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

34.3 The Contractor shall notify the Authority's Representative immediately in the event of any incident occurring in the performance of the Agreement on the Authority’s Premises where that incident causes any personal injury, damage to property which could give rise to personal injury or any incident falling into scope of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995.

34.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

34.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Authority on request.

34.6 The Contractor shall at all times during the Term, provide and maintain all such vehicles, plant, machinery and equipment (hereinafter together referred to as “plant”) as are necessary for the proper performance of this Agreement. Vehicles used on this Agreement shall comply with the Supply of Machinery Regulations 1992 and be of a design, which is entirely suitable for the performance of this Agreement.

**35 Disclosure and Barring Service**

### 35.1 The Contractor shall procure that in respect of all potential Staff who will be undertaking a regulated activity as defined by the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 and in any regulations or guidance made thereunder, before the member of Staff begins to perform any of the Services:

(a)      each member of Staff is questioned as to whether he or she has any convictions or cautions; and

(b)      the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each member of Staff and the results of such checks are notified to the Authority.  The check for each member of Staff shall include:

(i)      a search of the list held pursuant to the Protection of Children Act 1999 where the performance of the Services may involve contact with children including any new list replacing the same in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012); and/or

(ii) a search of the list held pursuant to Part VII of the Care Standards Act 2000where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act) including any new list replacing the same in accordance with the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.

35.2    The Contractor shall procure that no person who discloses any convictions or cautions, or who is found to have any convictions or cautions or other disclosed information following the results of a Disclosure and Barring Service check, is employed or engaged by the Contractor or on the Contractor’s behalf without Approval where that conviction or other disclosed information is incompatible with the type of work being undertaken by the member of Staff in providing the Services.

35.3 The Contractor must provide the Authority with written confirmation that a Disclosure and Barring Service check has been completed and that this has not revealed any matter affecting the suitability of the person to work with children or vulnerable adults as referred to in clause 35.2.

35.4     The Contractor shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or caution or whose previous convictions become known to the Contractor or in respect of which information relating to other disclosed information that may affect their suitability to work with children or vulnerable adults becomes known to the Contractor. It is the responsibility of the Contractor to obtain any necessary consent to disclose such evidence to the Authority.

35.5 For the avoidance of doubt the provisions of this clause also apply to the Contractor`s use of any volunteers in the performance of the Services

**36 TUPE [only use this particular clause below if there are potential TUPE implications between external providers. For SBC staff transfers seek further legal advice].**

36.1 The Contractor recognises that TUPE may apply in respect of this Agreement, and should they so apply that for the purposes of TUPE, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of full operations.

36.2 During the period of six months preceding the expiry of the Agreement or after the Authority has given notice to terminate the Agreement or the Contractor stops trading, and within 20 working days of being so requested by the Authority, the Contractor shall fully and accurately disclose to the Authority for the purposes of TUPE all information relating to its employees engaged in providing Services under the Agreement, in particular, but not necessarily restricted to, the following:

(a) the total number of Staff whose employment with the Contractor is liable to be terminated at the expiry of this Agreement but for any operation of law; and

(b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given); and

(c) full information about the other terms and conditions on which the affected Staff are employed (including but not limited to their working arrangements), or about where that information can be found; and

(d) details of pensions entitlements, if any; and

(e) job titles of the members of Staff affected and the qualifications required for each position.

36.3 The Contractor shall permit the Authority to use the information for the purposes of TUPE and of re-tendering. The Contractor will co-operate with the re-tendering of the Agreement by allowing the Transferee to communicate with and meet the affected employees and/or their representatives.

36.4 The Contractor agrees to indemnify the Authority fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 36.2.

36.4 The Contractor agrees to indemnify the Authority from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or other employee or person claiming to be an employee on any date upon which the Agreement is terminated and/or transferred to any third party (“Relevant Transfer Date”) arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.

36.5 In the event that the information provided by the Contractor in accordance with Clause 36.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify the Authority of the inaccuracies and provide the amended information.

36.6 The provisions of this Clause shall apply during the continuance of this Agreement and indefinitely after its termination.

**Part 5 - Protection of Information**

**37** **Data Protection Act**

37.1 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Data Processing Schedule by the Authority and may not be determined by the Contractor.

37.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

37.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

1. a systematic description of the envisaged processing operations and the purpose of the processing;
2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
3. an assessment of the risks to the rights and freedoms of Data Subjects; and
4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

37.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

1. process that Personal Data only in accordance with the Data Processing Schedule, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
2. ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:
   * 1. nature of the data to be protected;
     2. harm that might result from a Data Loss Event;
     3. state of technological development; and
     4. cost of implementing any measures;
3. ensure that :
   * 1. the Contractor Staff do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
     2. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Staff who have access to the Personal Data and ensure that they:
        1. are aware of and comply with the Contractor’s duties under this clause;
        2. are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
        3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
        4. have undergone adequate training in the use, care, protection and handling of Personal Data; and
4. not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:
   * 1. the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;
     2. the Data Subject has enforceable rights and effective legal remedies;
     3. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
     4. the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;
5. at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Agreement unless the Contractor is required by Law to retain the Personal Data.

37.5 Subject to clause 37.6, the Contractor shall notify the Authority immediately if it:

1. receives a Data Subject Access Request (or purported Data Subject Access Request);
2. receives a request to rectify, block or erase any Personal Data;
3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
6. becomes aware of a Data Loss Event.

37.6 The Contractor’s obligation to notify under clause 1.5 shall include the provision of further information to the Authority in phases, as details become available.

37.7 Taking into account the nature of the processing, the Contractor shall provide the Authority with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 37.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

1. the Authority with full details and copies of the complaint, communication or request;
2. such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
3. the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
4. assistance as requested by the Authority following any Data Loss Event;
5. assistance as requested by the Authority with respect to any request from the Information Commissioner’s Office, or any consultation by the Authority with the Information Commissioner's Office.

37.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:

1. the Authority determines that the processing is not occasional;
2. the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
3. the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

37.9 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor. The Authority is entitled, on giving at least three days' notice to the Contractor, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data under this Agreement by the Contractor. The requirement to give notification in advance will not apply if the Authority believes that the Contractor is in breach of any of its obligations under this Agreement. The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

37.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

1. notify the Authority in writing of the intended Sub-processor and processing;
2. obtain the written consent of the Authority;
3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 37 such that they apply to the Sub-processor; and
4. provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

37.11 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

37.12 The Contractor may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

37.13 The parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Authority may on not less than 30 Working Days’ notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Officer.

37.14 The Contractor shall undertake all of the above processing activities at its own expense and at no extra cost to the Authority.

37.15 The Authority retention and disposal schedule as provided will be followed by the Contractor where appropriate and relevant; no decisions on retention or disposal are to be made by the Contractor unless it is part of detailed Processing under this Agreement.

37.16 The Contractor shall without undue delay inform the Authority if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Contractor will make regular backups of the Personal Data and will restore such Personal Data at its own expense.

**38** **Confidentiality**

38.1 Each Party:-

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

38.2 The Contractor shall ensure that Staff or its professional advisors or consultants are aware of the Contractor’s confidentiality obligations under the Agreement. Additionally, where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Agreement.

38.3 The provisions of clauses 38.1 to 38.2 shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by breach of this clause);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 41.

38.4 Nothing in this clause shall prevent the Authority:

1. disclosing any Confidential Information for the purpose of:

(i) the examination and certification of the Authority’s accounts; or

(ii) any examination pursuant to Sections 44 and 46 of the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Authority has used its resources; or

(b) disclosing any Confidential Information obtained from the Contractor:

(i) to any government department or any other Contracting Authority. All government departments or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Authority; or

(ii) to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

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

38.5 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

38.6 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act

38.7 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the genera! public in whatever form the Authority decides.

**39** **Security of Confidential Information**

39.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems Approved by the Authority. Where necessary to prevent such access, the Authority may require the Contractor to alter any security systems at any time during the Term at the Contractor’s expense.

39.2 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under clause 38. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

**40** **Authority Policies**

40.1 The Authority has a whistle blowing policy to encourage its employees and the public to bring into the open issues concerning dishonesty involving the Authority. The Contractor shall ensure that its staff are made aware of this policy which is available on the Authority's website.

40.2 Where the Authority’s “Customer Services Charter” is applicable to the Services, the Contractor shall use its best endeavours to ensure that the standards set out in the Charter are met.

40.3 Where the Contractor has been appointed as agent for the Authority and under this Agreement is required to let contracts, the Contractor shall comply with the Authority’s Standing Orders relating to Contracts (contained in Part 4 of the Authority’s Constitution).

**41** **Freedom of Information**

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

41.2 The Contractor shall and shall procure that its sub-contractors shall:

(a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;

(b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

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

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

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

(b) is to be disclosed in response to a Request for Information, and in no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

41.4 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the Environmental Information Regulations to disclose Information:-

(a) without consulting with the Contractor, or

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

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

41.6 The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 41.4.

**42** **Publicity, Media and Official Enquiries**

42.1 The Contractor shall not make any press announcements or publicise the Agreement or any part thereof in any way, except with the Approval of the Contract Manager.

42.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 42.1 by their Staff.

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

**43** **Security**

43.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its Staff shall likewise comply with such requirements.

**44** **Intellectual Property Rights**

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

(a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

44.2 The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

44.3 It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

(a) designs furnished by the Authority;

(b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.

44.4 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Authority; and

(c) shall not settle or compromise any claim without the Authority’s prior written consent (not to be unreasonably withheld or delayed).

44.5 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

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

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

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

**45** **Copyright**

45.1 Copyright in the documents comprising the Agreement shall vest in the Authority but the Contractor may obtain or make at their own expense any further copies required for use by them for performing the Agreement.

**46** **Audit and the Audit Commission**

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

**47** **Local Commissioner**

47.1 Where the Local Commissioner conducts an investigation into a complaint out of or in connection with the provision of the Services or any part of them, the Contractor shall at its own cost:-

(a) provide any information requested by the Local Commissioner or by the Authority within the timescale allotted; and

(b) attend any meetings with the Local Commissioner and/or the Authority as required for the purposes of the investigation; and

(c) promptly allow access to and investigation of any relevant documents and data and if requested provide copies; and

(d) permit the Local Commissioner and/or the Authority to interview any members of its Staff in connection with the investigation; and

(e) arrange for relevant members of its Staff to appear as witnesses in any ensuing legal proceedings or internal proceedings of the Authority; and

(f) co-operate fully and promptly in every way required by the Local Commissioner during the course of the investigation; and

(g) at the request of the Authority, issue a suitable apology to the complainant.

47.2 The Authority and the Contractor agree that the Authority shall take action in response:-

(a) to reports of the Local Commissioner in respect of the Services which conclude that injustice has been caused to a person aggrieved in consequence of maladministration, such action to be commensurate with the findings of such reports; or

(b) if, following a report referred to in clause 47.2(a), recommendations are made by the Local Commissioner, to comply with such recommendations.

47.3 The Contractor shall be liable for and shall fully and promptly indemnify the Authority against all costs, expenses and losses properly incurred or suffered arising, be it directly or indirectly, out of or in connection with the compliance with, or the implementation of any actions in response to, a report of, or recommendations by, the Local Commissioner pursuant to clause 47.2 to the extent that the said costs, expenses and losses are due to the Contractor's failure (through act or omission) to exercise the level of skill, care and diligence which would be reasonably expected from an efficient and effective Contractor of the Services.

**Part 6 – Control of the Agreement**

**48** **Assignment and Sub-Contracting**

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

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

**49** **Waiver**

49.1 The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

49.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 6.

49.3 A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

**50** **Variation of the Services**

50.1 The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever.

50.2 Any such Variation shall be communicated in writing by the Contract Manager to the Contractor’s Representative in accordance with the notice provisions of clause 6. All Variations shall be in the form of an addendum to the Agreement.

50.3 In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Contractor and agreed in writing with Authority and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 72.

50.4 The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

**51** **Severability**

51.1 If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

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

**52** **Remedies in the Event of Inadequate Performance**

52.1 Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, they may uphold the complaint, and/or take further action in accordance with the provisions of clause 61 of the Agreement.

52.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor’s performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 61 of the Agreement, do any of the following:

(a) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;

(b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Agreement;

(c) without terminating the whole of the Agreement, terminate theAgreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or

(d) terminate, in accordance with clause 61, the whole of the Agreement.

52.3 The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.

* 1. If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

52.5 In the event that:

(a) the Contractor fails to comply with clause 52.4. above and the failure, is materially adverse to the commercial interests of the Authority or prevent the Authority from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause 52.4 above,

the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

52.6 The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

**53** **Remedies Cumulative**

53.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**54** **Monitoring of Performance**

54.1 The Contractor shall comply with the monitoring arrangements set out in Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Agreement.

**55** **Possible Extension of Term**

55.1 Subject to satisfactory performance by the Contractor during the Initial Term, the Authority shall be entitled by written notice to the Contractor given not less than       Months prior to the last day of the Term to extend the Agreement for a further period of up to       year(s). The provisions in this Agreement will apply throughout any such extended period.

**56****Novation**

56.1 The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute (“Transferee”) provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor’s obligations under this Agreement.

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

**Part 7 - Liabilities**

**57** **Indemnity and Insurance**

57.1 Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Section 12 of the Sale of Goods and Services Act 1982.

57.2 The Contractor shall take out and maintain with a reputable insurance company, and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain with a reputable insurance company, employers liability and public liability insurance in a minimum amount of five million pounds (£5,000,000) for each and every claim, act or occurrence or series of acts, claims or occurrences. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

57.3 The Contractor shall fully and promptly indemnify the Authority against all direct losses, injury, damages, costs, expenses, liabilities, claims or proceedings incurred by the Authority as a result of any act, default or negligence by the Contractor or any of its employees in carrying out its obligations under this Agreement except and to the extent that it is due to the act, default or negligence of the Authority or any of its employees in the course of their employment.

57.4 Where the Contractor is required to come onto premises owned by the Authority, the Contractor shall not do or omit to do anything that could cause any insurance policy on or in relation to the Authority’s premises to become wholly or partly void or voidable, or do or omit anything by which additional insurance premiums may become payable.

57.5 Subject always to clause 57.1, in no event shall either Party be liable to the other for:

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

(b) indirect or consequential loss or damage.

57.6 The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premia due under those policies.

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

57.8 The requirement to effect insurance by the Contractor under clause 57.2 shall not in any way be deemed to amend or restrict the liability of the Contractor arising under clause 57.1.

**58** **Professional Indemnity**

58.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 58.1, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the performance of Services has a limit of indemnity of not less than [     ] million pounds (£     ) for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

**59** **Warranties and Representations**

59.1 The Contractor warrants and represents that:

(a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;

(b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to best industry practice;

(c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

(d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

**Part 8 – Default, Disruption and Termination**

**60** **Termination on Change of Control and Insolvency**

60.1 The Authority may terminate the Agreement by notice in writing with immediate effect where:

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

(b) the Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor’s or firm’s affairs; or

(c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or

(d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(e) any similar event occurs under the law of any other jurisdiction.

60.2 The Authority may only exercise its right under clause 60.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

60.3 If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of Part VII of the Mental Health Act 1983, the Authority shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor’s Representative with immediate effect.

**61** **Termination on Default**

61.1 The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor’s Representative with immediate effect if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Authority within five Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or

(b) the Default is not, in the opinion of the Authority, capable of remedy; or

(c) the Default is a fundamental breach of the Agreement.

61.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.

61.3 The Contractor may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days notice specifying the breach and requiring its remedy. The Contractor’s right of termination under this clause 61.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 26.1 and 52.2(a).

**62** **Break**

62.1 The Authority shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving one Months’ written notice to the Contractor.

**63** **Termination under Public Contracts Directive**

63.1 The Authority shall be entitled by notice having immediate effect if any of the following grounds apply:-

(a) Where the Agreement has been subject to a substantial modification that constitutes a new contract award

(b) Where it is discovered after contract award that the Contractor should have been excluded on mandatory exclusion grounds

(c) Where the Court of Justice of the European Union has declared a serious infringement by the Authority meaning that the Agreement should not have been awarded by the Authority to the Contractor

**64** **Consequences of Termination**

64.1 Where the Authority terminates the Agreement under clause 61, or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Initial Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 61, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

64.2 Where the Authority terminates the Agreement under clause 62, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure, which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause 62.

64.3 The Authority shall not be liable under clause 64.2 to pay any sum which:

(a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

(b) when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Initial Term.

**65** **Business Continuity and Disruption**

65.1 The Contractor shall have business continuity plan to ensure the continuation of delivery of the Services in the event of serious disruption to either the Authority’s or the Contractor’s supplier’s premises and/or working arrangements. The plan should focus upon the continuation of delivery of the Services and communication with users of the Services and the Authority. The plan should detail the resources available to the branch from other sources in the company.

65.2 Any significant changes to the Business Continuity plan shall be notified to the Authority’s Representative as per clause 7.

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

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

65.5 In the event of industrial action by the Staff or the Contractor’s suppliers the Contractor shall seek Approval of its proposals for the continuance of the Contractor’s performance of the Services in accordance with its obligations under the Agreement.

65.6 If the Contractor’s proposals referred to in clause 65.5 are considered insufficient or unacceptable by the Authority, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

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

**66** **Recovery upon Termination**

66.1 Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

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

66.3 At the Expiry Date (howsoever arising) the Contractor shall forthwith provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. The Contractor shall provide such assistance free of charge.

66.4 The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

**67** **Force Majeure**

67.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 2 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

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

**Part 9 – Best Value Duty**

**68** **Authority’s Best Value Duty**

68.1 The Parties agree and acknowledge that the 1999 Act applies to the Services provided under the Agreement and the Contractor shall, at no cost to the Authority, provide all reasonably necessary assistance to allow the Authority to comply with its Best Value Duty.

**69** **Customer Satisfaction Survey**

69.1 The Contractor shall, on each Customer Satisfaction Survey Date, undertake (or procure the undertaking of) a Customer Satisfaction Survey

69.2 The Customer Satisfaction Survey shall be undertaken by means of distributing to users of the Services within 10 Working Days of each Customer Satisfaction Survey Date a questionnaire (or other survey method as agreed between the Parties) in a form Approved by the Authority (acting reasonably).

69.3 The Authority shall provide reasonable assistance and information to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.

69.4 Within [one month] of each Customer Satisfaction Survey Date, the Contractor shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the Authority shall reasonably require.

**70** **Annual Service Report** **& Annual Service Plan**

70.1 Without prejudice to any other provision in the Agreement the Contractor shall at its own cost, provide to the Authority the Annual Service Report.

70.2 The Contractor shall upon a written request from the Authority promptly provide such written evidence or other supporting information as the Authority may reasonably require to verify and audit the information and other material contained in the Annual Service Report.

70.3 If, in the Authority’s reasonable opinion, the provision, performance or delivery of the Services (or any part) may be more effective, efficient and economic having regard to the Annual Service Report and the Best Value Duty, then the Authority may serve upon the Contractor a Services Improvement Notice.

70.4 The Contractor shall, within 10 Working Days of the date of receipt of the Services Improvement Notice, provide the Authority at its own cost with an Annual Service Plan containing the Contractor’s proposals to achieve the change to the Services (or the relevant part) in accordance with the Services Improvement Notice.

70.5 As soon as practicable after the content of the Annual Service Plan has been agreed or otherwise determined pursuant to the clause 72 the Authority shall:

(a) confirm in writing the Annual Service Plan; or

(b) withdraw the Services Improvement Notice.

70.6 If the Authority confirms the Annual Service Plan the Authority shall propose a change in the Services in accordance with clause 50.

70.7 The Contractor shall take all reasonable steps to mitigate any costs arising as a consequence of a Services Improvement Notice and an Authority Notice of Change served pursuant to clause 70.6.

**Part 10 – Dispute and Law**

**71** **Governing Law and Language**

71.1 This Agreement shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the courts of England and Wales.

71.2 The language of the Agreement is English and all design data, documents, correspondence and any other information shall be provided in English unless otherwise specified by the Authority in writing.

**72** **Dispute Resolution**

72.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 30 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the relevant Group Director of the Authority and a senior manager or director of the Contractor (or equivalent) of each Party.

72.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

72.3 If the dispute cannot be resolved by the Parties pursuant to clause 72.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 72.5 unless both parties agree to the dispute being referred to mediation.

72.4 The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

72.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

(a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree within a reasonable period of time, then either Party may apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.

(b) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**DATA PROCESSING SCHEDULE**

**[Populate the detail section in this schedule in respect of any data processing to be undertaken during the term of the agreement – the details may be further refined and worked up at the Preferred Bidder stage]**

* + 1. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
    2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| **Description** | **Details** |
| Subject matter of the processing | **[insert]** |
| Duration of the processing | From commencement of contract to its termination. **[amend if necessary]** |
| Nature and purposes of the processing | **[insert]** |
| Type of Personal Data | **[insert]** |
| Categories of Data Subject | **[insert]** |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | **[insert]** |