

(1) adam HTT Limited t/a adam

AND

(2) London Borough of Sutton

Call-Off Contract for Dynamic Category Solutions

Passenger Transport Services

CALL-OFF CONTRACT

ORDER FORM**Framework Agreement Ref: 000723****FROM**

Customer	London Borough of Sutton
Delivery Address:	Civic Offices, St Nicholas Way, Sutton, SM1 1EA
Invoice Address:	Civic Offices, St Nicholas Way, Sutton, SM1 1EA
Contact Ref:	DN410226
Order Number:	4889260 <i>To be quoted on all correspondence relating to this Order.</i>
Order Date:	18 th March 2019

TO

Technology Provider:	adam HTT Limited t/a adam
For the attention of:	Lee Dutton, Commercial Director
E-mail:	Lee.d@useadam.co.uk
Telephone number:	07718965949
Address:	5 th Floor, The Pinnacle, 170 Midsummer Boulevard Milton Keynes MK9 1BP

1. ORDER REQUIREMENTS

(1.1) Goods and or Services Required:

Quantity, Unit of Measure (UOM), Description, Price per UOM

1.1.1. SProc.Net Solution

Delivery to the Customer of a web-based end-to-end procurement, transaction and management tool which enables the Customer to directly procure Adult's and Children's transport services, utilising the dynamic purchasing system method of procurement set out in the Public Contract Regulations 2015.

London Borough of Sutton shall operate a joint DPS with Achieving for Children (purchasing for and on behalf of Kingston and Richmond).

This procurement shall be delivered by the Technology Provider through its proprietary web-based platform (SProc.Net – the "Technology") and supporting services which follow the following step end-to-end transactional process of procurement:

Procurement Steps

1. Advertisement
2. Accreditation
3. Enrolment
4. Requirement creation
5. Requirement distribution
6. Offer
7. Client Review
8. Service agreement

Transactional Steps

9. Service receipting
10. Invoicing
11. Supplier self-billing
12. Payment
13. Management information

The Parties have agreed the following desired outcomes of this Contract, which will be more accurately detailed within the 'Measures of Success', agreed during the Project implementation:

1. A broad and competitive supply chain will deliver a choice of services, goods and/or works available for purchase by the Customer through the relevant dynamic purchasing systems;
2. Services chosen and delivered through the relevant dynamic purchasing systems shall meet the needs, preferences and outcomes of the Customer as defined by the Customer in the relevant Requirement;
3. Services procured by the Customer through the relevant dynamic purchasing systems are bought in a consistent and transparent manner in line with the Public Contracts Regulations 2015;
4. Services purchased by the Customer through the relevant dynamic purchasing systems are bought from an open market and deliver genuine value for money;

1.1.2. Professional services

The Technology Provider shall provide the Customer with the following professional services:

- **Supplier Engagement**

During the implementation period, the Technology Provider will provide the Customer with ongoing access to a Supplier Onboarding Manager ("SOM"), who will be responsible for supporting with the establishment of the programme. The SOM shall assist with managing the supply chain development. Such activity shall be reasonable and proportionate to ensure the ongoing development of the market and supply chain. This shall include but not limited to:

- Developing a supplier communication strategy and associated action plan in order to engage both i) the Customer's existing and ii) new suppliers;
- Arranging and undertaking Supplier briefing sessions
- Supporting with the delivery of Supplier training
- Working with the Customer to define the Supplier Accreditation, Enrolment and Requirement criteria to be implemented;

For the avoidance of doubt, where the Customer requests specific supplier engagement events/activities to be undertaken by the Technology Provider that are not reasonable and proportionate to the Contract in respect of what would be considered in the ongoing delivery of these services, these will be considered as Additional Services and subject to any associated fees.

- **Training**

During the implementation period, the Technology Provider will be responsible for providing SProc.Net training to nominated Customer users and Suppliers which fall within the scope of the implementation and will be defined in the implementation Statement of Work. Additional training is available and shall be charged as per the Additional Services rates outlined below.

- **Supplier Accreditation**

The Technology Provider shall be responsible for the initial review all supplier accreditations into the programme using the Technology. The accreditation criteria will be created, evaluated and assessed as agreed during the implementation process. (For the avoidance of doubt, this shall be a review of objective criteria only and shall not involve any qualitative or subjective assessment). The Customer will remain wholly responsible for the acceptance of Suppliers against the accreditation criteria.

- **Supplier Enrolment**

The Customer will also be responsible for creating, evaluating and assessing the Suppliers' enrolment. The Technology Provider will also perform the initial review of the Supplier's enrolment on behalf of the Customer and provide recommendations to the Customer to enrol Suppliers on to the programme using the Technology. For the avoidance of doubt, at all stages during the procurement the assessment of the enrolment will lie wholly in the responsibility of the Customer.

- **Payment Service Provider**

The Technology Provider will act as a payment service provider to the Customer whereby it will process the Customer's supplier payments for all Service Agreements processed via the Technology. The Technology Provider shall act on the instructions of the Customer. All liability for payments and deductions remains with the Customer.

- **Support Team**

The Technology Provider shall provide the Customer with assistance from its team of support consultants. The support consultants shall have the following roles and responsibilities:

- Managing all inbound communication channels between 8:30am and 5pm Monday to Friday. Specifically, responding to Customer and supplier inbound queries, telephone calls and live chat conversations;
- Monitoring the end to end process of the solution and providing administrative assistance to the Customer and suppliers where necessary;
- Assisting the Customer with reporting and managing their Measures of Success targets;
- Providing support to the Customer and suppliers with the use of the management reporting suite within SProc.Net;
- Improving the user experience where possible by identifying possible issues before they occur;
- Managing and reporting exceptions, where the standard process has not been followed, to ensure effective use of the solution for the Customer;
- Creation and delivery of management information for the Customer, to be presented at face to face reviews when required;
- On site visits where required to support system users to use the Sproc.Net technology effectively and efficiently;

- **Change management**

As part of this Service, the Technology Provider will with instruction from the Customer arrange briefing and training sessions during implementation of Contract, the exact number of training sessions/resource shall be agreed at the start of the implementation process. Additional training and professional services may be arranged in line with Additional Services detailed below in 1.1.4 of this Order Form.

- **Demand site**

The Technology Provider shall provide an online demand site to perpetually advertise the procurement documents, service categories and requirements available throughout the Contract. All procurement documents are uploaded to the Demand site and amended documents with version control are retained for audit purposes.

1.1.3. Contract Price payable by Customer

Core Software Service Fees

SProc.Net Implementation (Including Supplier Relationship Management module)

In consideration of the implementation of the Technology provider's solution under this Contract, the Technology Provider shall charge the London Borough of Sutton and Achieving for Children a combined implementation fee of twenty five thousand pounds sterling (£25,000.00). The Technology Provider shall charge the London Borough of Sutton their portion, which is a one-off, fixed price implementation fee of **eight thousand three hundred and thirty three pounds and thirty three pence (£8,333.33)**. The implementation fee shall be invoiced in full upon the Project Commencement date.

Note – The total implementation fee above is based on the implementation project being completed within the standard project plan of 16 weeks. The Technology Provider reserves the right to charge additional fees in the event that there are delays as a result of the Customer's acts or omissions during the implementation project. Any delay to the go-live caused by the Technology Provider's sole acts or omissions beyond the initial 16 week plan shall not result in any additional fees being charged by the Technology Provider, rather it shall continue to operate the implementation until the go-live is reached at its own cost.

SProc.Net Annual Licence Fee (Including Supplier Relationship Management module)

The Technology Provider shall charge the London Borough of Sutton and Achieving for Children a combined fixed annual fee of thirty-five thousand pounds sterling (£35,000.00). The Technology Provider shall charge the London Borough of Sutton their portion, which is a fixed annual license fee of **eleven thousand six hundred and sixty six pounds and sixty seven pence sterling (£11,666.67)** for the use of the SProc.Net system, to be invoiced annually in advance with the first invoice being raised upon the DPS Establishment date and subsequently on each anniversary.

Should any Council exit the agreement, the Annual Licence Fee shall be divided equally amongst the remaining Councils.

All payments must be cleared and received by the Technology Provider on or before the payment date specified in the invoice.

The above pricing will cover:

- all future system development costs to the Technology. This is inclusive of a guarantee that the Technology will be compliant with Regulation 34 of the Public Contract Regulations 2015 for the lifetime of the Contract (subject to the Customer's correct usage of the Technology).
- all hosting, maintenance, data storage, data security compliance and disaster recovery requirements

The Technology Provider shall provide its Account Management, Support Team and Service Delivery Manager services to the Customer as part of the proposal to ensure the smooth running of the contract and its performance against the aims of the Customer. For the avoidance of doubt, the fee for such services is included within the licence fee.

1.1.4. Additional Software & Professional Services

The Technology Provider is able to provide the Customer with a number of optional "bolt on" software and professional services (the "**Additional Services**"). Should the Customer wish the Technology Provider to supply any Additional Services, they will be required to pay the additional fees described below.

The Customer shall not purchase the following Additional Services from the Technology Provider at the commencement of the Contract, except where expressly specified below, but may, at any time within the lifetime of the Contract, purchase the following options:

Additional Categories

This Agreement covers only the implementation of the Passenger Transport Services DPS establishment. Each DPS can be further divided in to service categories and service templates.

For the avoidance of doubt, implementation of additional supply categories (e.g. Home Support, Care Homes) will be subject to additional fees proportionate to the spend associated with each new supply category, including, but not limited to, implementation fees, an increased overall licence fee, and professional support fees. Each additional supply category and any corresponding fees shall be detailed via a Statement of Work and proposal, agreed in writing between the parties before commencement of any such additional implementation.

SProc.Net Bespoke Development Fee

The Technology Provider will charge the Customer for any bespoke SProc.Net development work ("**Bespoke Development Work**"). Bespoke Development Work shall comprise any development work above and beyond the core DPS functionality offered by the Technology Provider within SProc.Net, as summarised with 1.1 of this Order Form ("Procurement steps and transactional steps"), which is bespoke and unique to the Customer's operation of SProc.Net. For the avoidance of doubt, the Parties will enter into negotiations to determine the exact functionality and Contract Price payable for any Bespoke Development Work on an as-and-when basis. The Contract Price payable for any Bespoke Development Work shall be based on a rate of £750 per day. The Parties agree a scope of work for any development and Technology Provider shall invoice the Customer upon completion of UAT.

The Technology Provider will not undertake any Bespoke Development Work until written approval has been obtained by the Customer. During implementation of any Bespoke Development Work the Customer will notify the Technology Provider of the formal UAT sign-off process.

Professional Services – Finance monitoring

Experian Credit Checks – The Technology has the ability to interface with Experian to commission credit reports for limited and non-limited companies, as part of the supplier enrolment process. This ensures that the Customer is aware of the financial position of prospective suppliers before they are approved to the supply chain.

Experian Credit Alerts – The Technology also has the ability to provide the Customer with an update service, whereby the Customer can be alerted to negative or significant changes to a supplier's profile (such as applications to dissolve the company). This ensures that the Customer is always aware of changes to an approved suppliers' financial position.

The Customer should request in writing if they wish to take advantage of the Experian Credit services via SProc.Net. A fixed annual fee for usage will be provided in return, based on the number of suppliers within the supply base and payable annually in advance.

Professional Services - Supplier Engagement

The Technology Provider will charge the Customer for any additional activities above and beyond the Supplier Onboarding Management role as outlined in 1.1.1. above, which may include but not be limited to:

- Arranging and undertaking additional Supplier forums in order to attract new Suppliers into the Dynamic Purchasing System
- Undertaking Supplier feedback surveys
- Holding Supplier focus groups and/or feedback sessions
- Project based support with agreed milestones

Supplier engagement will be chargeable at **£750** per day, plus reasonable expenses.

For the avoidance of doubt this excludes continued on-boarding of Suppliers and Supplier support as is reasonably expected in the day to day provision of the Services contained within this Contract.

Professional Services - Training

Should the Customer wish the Technology Provider to undertake any additional client user and Supplier training over and above the training delivered during the Implementation Period or that stated in 1.1.1., then the Technology Provider will charge the Customer the following fees:

- **£375** plus expenses for each training course delivered (subject to a minimum of 2 courses per day)
- **£100** for each webinar training session delivered

All additional training must be agreed by the Customer in advance of any training delivery.

For the avoidance of doubt, Supplier training as part on any on-boarding process as defined within the agreed project plan does not fall within this paragraph.

(1.2) Delivery Date:

Project Commencement Date: 22/03/2019

DPS Establishment Date: 20/05/2019

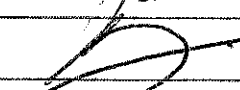
Go-Live Date: 01/07/2019

The above DPS Establishment and Go-Live dates are currently estimates based on discussions with the Customer. Exact dates will be agreed with the Customer following the project scoping sessions, which will take place during the initial weeks of the project.

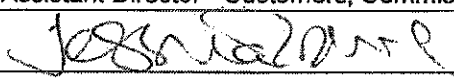
Contract Period: From Project Commencement Date until four (4) years from Go-Live Date, with the option to extend up to a further two (2) years.

BY SIGNING AND RETURNING THIS ORDER FORM THE PROVIDER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Goods and or Services specified in this Order Form (together with where completed and applicable, the mini-competition Order (additional requirements) set out in section 2 of this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Technology Provider and YPO on 18th July 2016.

For and on behalf of the Technology Provider:

Name and Title	Julian Young, CEO
Signature	
Date	20/05/19

For and on behalf of the Customer:

Name and Title	Jessica Crowe Assistant Director - Customers, Commissioning and Governance
Signature	
Date	17/5/19

CALL-OFF TERMS AND CONDITIONS

1. GENERAL PROVISIONS

1.1 Definitions

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

"Approval" and "Approved"	means the written consent of the Customer
"Auditor"	means the National Audit Office or an Auditor appointed by the Audit Commission as the context requires
"Customer"	means the customer(s) identified in the Order Form
"Commencement Date"	means the date set out in the Order Form
"Commercially Sensitive Information"	<p>means any Confidential Information comprised of Information:-</p> <ul style="list-style-type: none">(a) which is provided by the Technology Provider and designated as Commercially Sensitive Information by the Customer for the period set out in that Order Form and/or(b) that constitutes a trade secret
"Confidential Information"	<p>means:-</p> <ul style="list-style-type: none">(a) 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 the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and(b) the Commercially Sensitive Information <p>and does not include any Information:-</p> <ul style="list-style-type: none">(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 6.3 (Confidential Information));(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;(iii) which is received from a third Party (who Lawfully acquired it) without restriction as to its disclosure; or(iv) is independently developed without access to the Confidential Information
"Contract"	means the written agreement between the Customer and the Technology Provider consisting of the Order Form and these clauses save that, for the purposes of Clause 1.5.4 only, reference to 'Contract' shall not include the Order Form

"Contract Period"	means the duration of the Contract as set out in the Order Form
"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Technology Provider by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Technology Provider of its obligations under the Contract
"Contracting Authority"	means any Contracting Authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer
"Technology Provider"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data breach.
"Data Processor"	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Data Protection Legislation" or "DPA"	means the Data Protection Act 1998 as long as it remains in force, and when they come into force, the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
"Data Subject Access Request"	means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other Default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
"Delivery Agent"	Means an Organisation appointed by the Technology Provider for delivery of the Services that will be required to sign the Schedule at the end of this Agreement agreeing to be bound by the terms and conditions of the Framework Agreement, Order

Form and Call Off Terms and Conditions PRIOR to the commencement of any Services.

"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations
"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 or relevant government department in relation to such legislation
"Force Majeure"	<p>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 that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-</p> <ul style="list-style-type: none">(a) any industrial action occurring within the Technology Provider's or any sub-Technology Provider's organisation; or(b) the failure by any sub-Technology Provider to perform its obligations under any sub-contract
"Framework Agreement"	means the Framework Agreement for the supply of Dynamic Category Solutions between Yorkshire Purchasing Organisation and the Technology Provider dated 27 th July 2016.
"Fraud"	means any offence under Laws creating offences in respect of Fraudulent acts or at common Law in respect of Fraudulent acts in relation to the Contract or deFrauding or attempting to deFraud or conspiring to deFraud a Contracting Authority or the Customer
"Goods and or Services "	means the Goods and or Services to be supplied as specified in the Order Form
"Information"	has the meaning given under Section 84 of the FOIA
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of Law, or directives or

	requirements of any Regulatory Body of which the Technology Provider is bound to comply
"Month"	means calendar Month
"Order"	means the Order submitted by the Customer to the Technology Provider in accordance with the Framework Agreement
"Order Form"	means the Order submitted to the Technology Provider by the Customer in accordance with the Framework Agreement which sets out the description of the Goods and or Services to be supplied
"Parent Company"	means any company which is the ultimate Holding Company of the Technology Provider or any other company of which the ultimate Holding Company of the Technology Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Technology Provider or which is engaged by the same or similar business to the Technology Provider. The term "Holding Company" shall have the meaning ascribed in Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Technology Provider or the Customer
"Personal Data"	has the meaning given to it in the Data Protection Legislation as amended from time to time;
"Pre-Existing IPRs"	means the IPR owned or licensed to either Party prior to the commencement of this Contract
"Premises"	means the delivery address where the Goods and or Services are to be supplied, as set out in the Order Form
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Project-Specific IPRs"	means the IPRs in any materials or deliverables generated as a result of the Parties entering into this Contract
"Quality Standards"	means the Quality Standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Technology Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other Quality Standards set out in the Order Form
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer

"Replacement Technology Provider"	means any third Party provider of Goods and or Services appointed by the Customer to supply any Goods and or Services which are substantially similar to any of the Goods and or Services , and which the Customer receives in substitution for any of the Goods and or Services following the expiry, termination or partial termination of the Contract
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)
"Staff"	means all persons employed by the Technology Provider to perform its obligations under the Contract together with the Technology Provider's servants, agents, suppliers and sub-Technology Providers used in the performance of its obligations under the Contract
"Sub-Processor"	means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Call Off Contract;
"Tender"	means the document(s) submitted by the Technology Provider to the Customer in response to the Customer's invitation to providers for offers to supply it with Goods and or Services pursuant to the Framework Agreement
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales

1.2 Interpretation

The interpretation and construction of the Contract including any schedules and appendices shall be subject to the following provisions:-

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 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;
- 1.2.6 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.2.7 reference to a clause is a reference to the whole of that clause unless stated otherwise,

1.3 Technology Provider's Status

- 1.3.1 At all times during the Contract Period the Technology Provider shall be an independent Technology Provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.
- 1.3.2 This Contract is entered into by the Customer and the Technology Provider on the understanding and agreement that the Technology Provider shall be authorised by the Customer to:
- (a) assess the accreditation of the Customer's Suppliers onto the Technology; and
 - (b) to process invoices and payments in respect of any Supplier's services as it sees fit and how to assist and facilitate such transactions, in accordance with the terms of this Contract.
- 1.3.3 In addition to clause 1.3.2 the Technology Provider shall provide the Services to the Customer.
- 1.3.4 The Customer shall enter into a contract directly with their Suppliers through the Technology, as the principal contracting party and shall be responsible for the performance and observance of such agreed terms at all times.
- 1.3.5 The Technology Provider shall have no liability to any of the Suppliers for any claim for breach of contract, negligence, misrepresentation or any other legal cause of action save as specified in this Contract.
- 1.3.6 The Technology Provider shall solely determine the process and manner of exercising its authorisations under clause 1.3.2 above, the Technology Provider shall have no liability to the Customer for any breach of contract, negligence, misrepresentation or any other legal cause of action save as expressly specified in this Contract.
- 1.3.7 The Customer acknowledges that, throughout the provision of the Services, the Technology Provider will act as the payment agent of the Customer and will be responsible for processing invoices and payments in respect of the Supplier's services in accordance with this Contract

1.4 Customer's Obligations

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

1.5 Entire Agreement

- 1.5.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 1.5.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.

APPENDIX 2

EXIT PROCESS

1. Provision of notice

- 1.1. The Customer shall provide the Technology Provider with three (3) months written notice of its intention for the Agreement to expire or terminate, or to discontinue its use of the Technology and/or Services.
- 1.2. Where the Customer is unable to provide such written notice as outlined in clause or to formally extend its provision of the Technology and Services with the Technology Provider, then the Technology Provider shall continue to provide its Technology and Services to the Customer at a pro rata cost until such time as the Customer has provided the Technology Provider with the requisite three (3) months' notice as per clause 1.1. The Customer shall pay the Technology Provider

2. Transition Period

- 2.1. The three (3) months prior to the expiry or termination of the Agreement shall be a "Transition Period", whereby the Parties shall collaborate to extract the Technology Provider and its Services and Technology from the Customer's operations.
- 2.2. Where the Customer requires the Transition Period to be extended to enable the Customer to access the Technology Provider's Services and/or Technology beyond the date of expiry or termination of the Agreement, the Customer shall provide written notice to the Technology Provider and the Parties shall execute an appropriate extension to the Agreement. The applicable terms of the Agreement shall remain in effect during any such additional period (the "Extension Period").
- 2.3. Where the Customer requests an Extension Period as per clause 2.2. above, the Customer shall be charged a fee by the Technology Provider for the applicable Extension Period which shall be calculated as a pro rata sum of the licence fee which would otherwise be chargeable where licence fee is fixed, or a proportionate fee based on the reasonable fee proportionate to the average spend through the Technology for the preceding six (6) months period. The Technology Provider reserves the right to increase the fee proportionate to any additional costs the Technology Provider may incur for providing the Extension Period. The fee shall be received by the Technology Provider in cleared funds prior to the commencement of the applicable Extension Period.

3. Data Deletion

- 3.1. The parties agree that on the termination or expiry of the Agreement, the Technology Provider shall at the choice of the Customer, return the Customer's data to the Customer in line with clause 4.1, or shall destroy all data and certify to the Customer that it has done so, unless required to retain such data for maintaining financial records, statutory or regulatory compliance within six (6) months.

4. Data Portability and Return of Data

- 4.1. Where written notice has been received from the Customer as per clause 1.1., the Technology Provider shall provide the Customer with a complete extract of all appropriate data from the Technology no later than three (3) months after the expiry or termination of the Agreement. The data shall be delivered via an encrypted file, based on extracting the data into a SQL server database format. The Parties acknowledge and accept that all data provided into the Technology constitutes data that has been loaded into SProc.Net by the Customer or their suppliers, and so the Technology Provider is unable to provide any warranty regarding the quality or accuracy of the data returned to the Customer. All data must be processed by the Parties in accordance with the applicable data protection laws of England and Wales during the time of transfer. For the avoidance of doubt, the Technology Provider shall retain a copy of all transactional data relating to the Agreement for the purposes of maintaining financial records and for applicable statutory and regulatory compliance audits.

APPENDIX 1

VARIATION FORM
CALL-OFF TERMS AND CONDITIONS FOR GOODS AND OR SERVICES

[Name of Lot]¹.....

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[]² ("the Customer")

and

[]³ ("the Technology Provider")

1. The Order is varied as follows; [list details of the Variation].
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

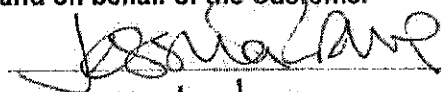
Authorised to sign for and on behalf of the Customer

Signature:

Date:

Name in Capitals:

Address:


17/5/19
JESSICA CLOWE
Sultan Civic Office, St Nicholas
Way, Sultan SMS LEA

Authorised to sign for and on behalf of the Technology Provider

Signature:

Date:

Name in Capitals:

Address:

¹ To be inserted

²

Insert name of Contracting Authority

³ Insert name of Contracting Authority

- (a) the Customer considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Technology Provider does not agree to mediation.
- 10.8.6 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Technology Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 10.8.7 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 upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in Order to agree a programme for the exchange of all relevant Information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - (f) if the Parties fail to reach agreement in the structured negotiations within sixty (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.

purpose of allowing the Customer or the Replacement Technology Provider to conduct due diligence.

- 9.7.2 If the Technology Provider fails to comply with clause 9.7.1 (a) and (b), the Client may recover possession thereof and the Technology Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any Premises of the Technology Provider or its permitted suppliers or sub-Technology Providers where any such items may be held.
- 9.7.3 Where the end of the Contract Period arises due to the Technology Provider's Default, the Technology Provider shall provide all assistance under clause 9.7.1 (c) and (d) free of charge. Otherwise, the Customer shall pay the Technology Provider's reasonable costs of providing the assistance and the Technology Provider shall take all reasonable steps to mitigate such costs.

9.8 Force Majeure

- 9.8.3 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 9.8.4 Any failure or delay by the Technology Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-Technology Provider or supplier shall be regarded as due to Force Majeure only if that agent, sub-Technology Provider or supplier is itself impeded by Force Majeure from complying with an obligation to the Technology Provider.
- 9.8.5 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or which is likely to give rise to any such failure or delay on its part as described in Clause 9.8.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

10. DISPUTES AND LAW

10.7 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English Law.

10.8 Dispute Resolution

- 10.8.3 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 10.8.4 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim Order restraining the other Party from doing any act or compelling the other Party to do any act.
- 10.8.5 If the dispute cannot be resolved by the Parties pursuant to Clause 10.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 10.2.5 unless:-

nominated by Customer, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

- (c) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Technology Provider under Clauses 4.2 (Payment and VAT), 4.3 (Recovery of Sums Due), 5.1 (Prevention of Corruption), 6.1 (Data Protection), 6.2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 6.3 (Confidential Information), 6.4 (Freedom of Information), 6.7 (Records and Audit Access), 7.6 Cumulative Remedies), 8.1 (Liability, Indemnity and Insurance), 9.5 (Consequences of Expiry or Termination), and 10.1 (Governing Law and Jurisdiction).

9.6 Disruption

- 9.6.1 The Technology Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Technology Provider employed by the Customer.
- 9.6.2 The Technology Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 9.6.3 In the event of industrial action by the Staff, the Technology Provider shall seek the Customer's Approval to its proposals for the continuance of the supply of the Goods and or Services in accordance with its obligations under the Contract.
- 9.6.4 If the Technology Provider's proposals referred to in Clause 9.6.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 9.6.5 If the Technology Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Technology Provider as a direct result of such disruption.

9.7 Recovery upon Termination

9.7.1 On the termination of the Contract for any reason, the Technology Provider shall:

- (a) immediately return to the Customer all Confidential Information and any IPRs belonging to the Customer, in its possession or in the possession or under the control of any permitted suppliers or sub-Technology Providers, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Customer all property (including materials, documents, Information and access keys) that may have been provided to the Technology Provider by the Customer. Such property shall be handed back in good working Order (allowance shall be made for reasonable wear and tear);
- (c) assist and cooperate with the Customer to ensure an Orderly transition of the provision of the Services to the Replacement Technology Provider and/or the completion of any work in progress.
- (d) promptly provide all Information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the

Customer fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Technology Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 4.3.1 (Recovery of Sums Due).

9.3 Break

The Customer shall have the right to terminate the Contract at any time by giving ninety (90) days or such other period that may be agreed between the Parties written notice to the Technology Provider.

9.4 Framework Agreement

The Customer may terminate the Contract by giving written notice to the Technology Provider with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

9.5 Consequences of Expiry or Termination

9.5.1 Where the Customer terminates the Contract under Clause 9.2 (Termination on Default) and then makes other arrangements for the supply of Goods and or Services, the Customer may recover from the Technology Provider the cost reasonably incurred of making those other arrangements and any additional expenditure directly incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 9.2 (Termination on Default), no further payments shall be payable by the Customer to the Technology Provider until the Customer has established the final cost of making those other arrangements.

9.5.2 Subject to Clause 8 where the Customer terminates the Contract under Clause 9.3 (Break), the Customer shall indemnify the Technology Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Technology Provider by reason of the termination of the Contract, provided that the Technology Provider takes all reasonable steps to mitigate such loss. Where the Technology Provider holds insurance, the Technology Provider shall reduce its unavoidable costs by any insurance sums available. The Technology Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Technology Provider as a result of termination under Clause 9.3 (Break).

9.5.3 The Customer shall not be liable under Clause 9.5.2 to pay any sum which:-

- (a) was claimable under insurance held by the Technology Provider, and the Technology Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Technology Provider under the Contract, exceeds the total sum that would have been payable to the Technology Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

9.5.4 Save as otherwise expressly provided in the Contract:-

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) Within thirty (30) Working Days of the date of termination or expiry of the Contract, the Technology Provider shall return to the Customer any data and Confidential Information belonging to the Customer that is in the Technology Provider's possession, power or control, either in its then current format or in a format

9.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Technology Provider is an individual and:-

- (a) an application for an interim Order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Technology Provider's creditors; or
- (b) a petition is presented and not dismissed within 14 days or Order made for the Technology Provider's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Technology Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Technology Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Technology Provider's assets and such attachment or process is not discharged within 14 days; or
- (f) being an individual, dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Technology Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

9.1.3 The Technology Provider shall notify the Customer immediately if the Technology Provider undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six Months of:-

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

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

9.2 Termination on Default

9.2.1 The Customer may terminate the Contract by giving written notice to the Technology Provider with immediate effect if the Technology Provider commits a Default and if:-

- (a) the Technology Provider has not remedied the Default to the satisfaction of the Customer within three (3) Working Days, or such other period as may be specified by the Customer, 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 Customer, capable of remedy; or
- (c) the Default is a material breach of the Contract.

9.2.2 If the Customer fails to pay the Technology Provider undisputed sums of money when due, the Technology Provider shall notify the Customer in writing of such failure to pay. If the

- (h) it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the obligations undertaken by the Technology Provider shall be discharged and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (j) in the three (3) years prior to the date of the Contract:-
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - (ii) it has been in full compliance with all applicable securities and tax Laws and regulations in the jurisdiction in which it is established; and
- (k) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

9. DEFAULT, DISRUPTION AND TERMINATION

9.1 Termination on insolvency and change of control

9.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Technology Provider is a company and in respect of the Technology Provider:-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application Order is made either for the appointment of an administrator or for an administration Order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause 9.1.1(a) - (g) occurs under the Law of any other jurisdiction.

the period over which the contract is performed and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

- 8.1.8 The Technology Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 8.1.9 The Technology Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 8.1.10 If, for whatever reason, the Technology Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Technology Provider.
- 8.1.11 The provisions of any insurance or the amount of cover shall not relieve the Technology Provider of any liabilities under the Contract. It shall be the responsibility of the Technology Provider to determine the amount of insurance cover that will be adequate to enable the Technology Provider to satisfy any liability referred to in Clause 8.1.2.
- 8.1.12 The Parties acknowledge that the Technology Provider shall not be responsible for the performance of a supplier's services procured by the Customer once the supplier has been procured via the Technology Provider's Services.

8.2 Warranties and Representations

8.2.1 The Technology Provider warrants and represents that:-

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Technology Provider;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all Information, statements and representations contained in the Tender and the PQQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such Information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Technology Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Technology Provider's assets or revenue;

extent that it is caused by the negligence or willful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

8.1.3 The liability of either Party for Defaults under this clause 8 shall be subject to the following financial limits:-

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed the total of the Technology Provider's Charge payable under the Contract; and
- (b) except as set out in sub-clause (a) above, the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the Technology Provider's Charge payable by the Customer to the Technology Provider in the year in which the liability arises.

8.1.4 Subject to Clause 8.1.1, in no event shall either Party be liable to the other for any:-

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

8.1.5 The Customer may, amongst other things, recover as a direct loss:-

- (a) any additional operational and/or administrative expenses arising from the Technology Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Technology Provider's Default; and
- (c) the additional direct costs of procuring replacement Goods and or Services following termination of the Contract as a result of a Default by the Technology Provider.

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

8.1.7 The Technology Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Technology Provider, arising out of the Technology Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss, namely:

- (a) Professional indemnity insurance: ten million pounds sterling (£10,000,000)
- (b) Public liability insurance: ten million pounds sterling (£10,000,000)
- (c) Employer's liability insurance: ten million pounds sterling (£10,000,000)

Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Technology Provider. Such insurance shall be maintained during

7.5.5 Without prejudice to any other right or remedy which the Customer may have, if any Goods and or Services are not supplied in accordance with, or the Technology Provider fails to comply with any of the terms of the Contract the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion whether or not any part of the Goods and or Services have been accepted by the Customer:-

- (a) to rescind the Order;
- (b) to reject the Goods and or Services (in whole or in part) and return them to the Technology Provider at the risk and cost of the Technology Provider on the basis that a full refund for the Goods and or Services so returned shall be paid forthwith by the Technology Provider;
- (c) at the Customer's option to give the Technology Provider the opportunity at the Technology Provider's expense to either remedy any defect in the Goods and or Services or to supply replacement Goods and or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods and or Services but without any liability to the Customer;
- (e) to carry out at the Technology Provider's expense any work necessary to make the Goods and or Services comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Technology Provider's breach or breaches of the Contract.

7.6 Cumulative Remedies

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract 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.

7.7 Monitoring of Contract Performance

The Technology Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Technology Provider may be required to produce under the Contract (Schedule 6).

8. LIABILITIES

8.1 Liability, Indemnity and Insurance

8.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:-

- (a) death or personal injury caused by its negligence or that of its Staff;
- (b) Fraud or Fraudulent misrepresentation by it or its Staff; or
- (c) any breach of any obligations implied by Section 12 of the Sale of Goods and or Services Act 1979 or Section 2 of the Supply of Goods and or Services and Services Act 1982;

8.1.2 Subject to Clause 8.1.3 the Technology Provider shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods and or Services or the performance or non-performance by the Technology Provider of its obligations under the Contract or the presence of the Technology Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, or any other loss which is caused directly by any act or omission of the Technology Provider. The Technology Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the

force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- 7.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Technology Provider shall immediately commence good faith negotiations to remedy such invalidity.

7.5 Remedies in the event of inadequate performance

- 7.5.1 Where a Complaint is received about the standard of Goods and or Services or about the manner in which any Goods and or Services have been supplied or about the materials or procedures used or about any other matter connected with the performance of the Technology Provider's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the Complaint. The Customer may, in its sole discretion, uphold the Complaint, or take further action in accordance with Clause 9.2 (Termination on Default) of the Contract.

- 7.5.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Technology Provider, then the Customer may, without prejudice to its rights under Clause 9.2 (Termination on Default), do any of the following:-

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Goods and or Services until such time as the Technology Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Technology Provider will once more be able to supply all or such part of the Goods and or Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and or Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third Party to supply such part of the Goods and or Services ;
- (c) terminate, in accordance with Clause 9.2 (Termination on Default), the whole of the Contract; and/or
- (d) charge the Technology Provider for and the Technology Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and or Services by the Customer or a third Party to the extent that such costs exceed the payment which would otherwise have been payable to the Technology Provider for such part of the Goods and or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and or Services .

- 7.5.3 If the Technology Provider fails to supply any of the Goods and or Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Technology Provider to remedy the failure and the Technology Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within three (3) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

- 7.5.4 In the event that the Technology Provider:-

- (a) fails to comply with Clause 7.5.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with Clause 7.5.3 above;

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

obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Technology Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.

- 7.1.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

7.2 Waiver

- 7.2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, 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 Contract.
- 7.2.2 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 Clause 1.6 (Notices).
- 7.2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

7.3 Variation

- 7.3.1 Subject to the provisions of this Clause 7.3, the Customer may request a variation to Goods and or Services Ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 7.3.2 The Customer may request a Variation by completing and sending the Variation form attached at Appendix 1 ("the **Variation Form**") to the Technology Provider giving sufficient Information for the Technology Provider to assess the extent of the Variation and any additional cost that may be incurred. The Technology Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 7.3.3 In the event that the Technology Provider is unable to provide the Variation to the Goods and or Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:-
- (a) agree to continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Technology Provider has already delivered part or all of the Order in accordance with the Order Form or where the Technology Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 10.2.
- 7.3.4 If the Parties agree the Variation and any variation in the Contract Price, the Technology Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

7.4 Severability

- 7.4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full

- 6.8.14 This Clause 6.8 sets out the entire financial liability of the Technology Provider with regard to the infringement of any Intellectual Property Right as a result of the availability of the Services or the provision of the Deliverables hereunder. This shall not affect the Technology Provider's financial liability for other Defaults or causes of action that may arise hereunder.

7. CONTROL OF THE CONTRACT

7.1 Transfer and Sub-Contracting

- 7.1.1 The Technology Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Technology Provider of any obligation or duty attributable to the Technology Provider under the Contract.
- 7.1.2 The Technology Provider shall be responsible for the acts and omissions of its sub-Technology Providers as though they are its own.
- 7.1.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Technology Provider to the Customer as soon as reasonably practicable.
- 7.1.4 Subject to Clause 7.1.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in Order substantially to perform any of the functions that had previously been performed by the Customer; or
 - (c) any private sector body which substantially performs the functions of the Customer; provided that any such assignment, novation or other disposal shall not increase the burden of the Technology Provider's obligations under the Contract.
- 7.1.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 7.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 7.1.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 7.1.4 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "**the Transferee**");-
- (a) the rights of termination of the Customer in Clauses 9.1 (Termination on insolvency and change of control) and 9.2 (Termination on Default) shall be available to the Technology Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Technology Provider.
- 7.1.7 The Customer may disclose to any Transferee any Confidential Information of the Technology Provider which relates to the performance of the Technology Provider's

of the rights grants to the Customer a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Customer an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Customer to sub-licence, transfer, novate or assign to any other third party supplying services to the Customer.

- 6.8.10 The Technology Provider shall, during and after the Contract Period, indemnify and keep indemnified in full and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses, including legal costs, and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Technology Provider of the Services and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:-
- (a) items or materials based upon designs supplied by the Customer; or
 - (b) the use of data supplied by the Customer which the Technology Provider is not required to verify under any provision of the Contract.
- 6.8.11 The Customer shall notify the Technology Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Technology Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Technology Provider:-
- (a) shall consult the Customer 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 Customer; and
 - (c) shall not settle or compromise the Claim or refuse to settle or compromise a claim without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 6.8.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Technology Provider is likely to be made, the Technology Provider shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-
- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative Services or Deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified Services or Deliverables or to the substitute Services or Deliverables; or
 - (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- and in the event that the Technology Provider is unable to comply with (a) and (b) above within 20 Working Days of receipt of the Technology Provider's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Technology Provider shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.
- 6.8.13 In the event that a modification or substitution in accordance with Clause 6.8.12(a) is not possible so as to avoid the infringement, or the Technology Provider has been unable to procure a licence in accordance with Clause 6.8.12(b) the Customer shall be entitled to delete the relevant Service from this Contract.

6.7.6 Subject to the Customer's rights of Confidential Information, the Technology Provider shall on demand provide the Auditor with all reasonable cooperation and assistance in relation to each Audit, including:-

- (a) all Information requested by the Customer within the scope of the Audit;
- (b) reasonable access to sites controlled by the Technology Provider and to equipment used in the provision of the Services; and
- (c) access to Staff.

6.7.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 6.7, unless the Audit reveals a material Default by the Technology Provider in which case the Technology Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the Audit.

6.8 Intellectual Property Rights

6.8.1 Save as granted elsewhere under this Contract, neither the Customer nor the Technology Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.

6.8.2 The Technology Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer Pre-Existing IPR or the Project Specific IPRs to any third party.

6.8.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Technology Provider hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs (with the exception of developments to the Technology) and/or shall procure that the first owner of the Project Specific IPRs also does so.

6.8.4 The assignment under Clause 6.8.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

6.8.5 The Technology Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under this Contract.

6.8.6 If requested to do so by the Customer, the Technology Provider shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 6.8.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.

6.8.7 The Customer hereby grants to the Technology Provider a non-exclusive, revocable, non-assignable licence to use the Customer's Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Technology Provider to provide the Services.

6.8.8 To the extent that this is necessary solely to enable the Customer to obtain the full benefits of ownership of the Project Specific IPRs, Technology Provider hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty-free and global licence to use, sub-license and/or commercially exploit any Technology Provider Pre-Existing IPR or IPRs owned by a third party that are embedded in or which are an integral part of the Project Specific IPRs.

6.8.9 The Technology Provider shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Technology Provider shall procure that the owner

- (c) provided always that where 6.4.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Technology Provider advanced notice, or failing that, to draw the disclosure to the Technology Provider's attention after any such disclosure.

- 6.4.6 The Technology Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 6.4.7 The Technology Provider acknowledges that the Commercially Sensitive Information listed in schedule 7 is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 6.4.5.

6.5 Publicity, Media and Official Enquiries

- 6.5.1 The Technology Provider shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-Technology Providers, suppliers, professional advisors and consultants comply with this Clause.
- 6.5.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 6.5.3 Neither party shall not do anything or cause anything to be done, which may damage the reputation of the other party or bring the other party into disrepute.

6.6 Security

- 6.6.1 The Technology Provider shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that all Staff complies with such requirements.
- 6.6.2 The Customer shall provide the Technology Provider upon request copies of its written security procedures and shall afford the Technology Provider upon request an opportunity to inspect its physical security arrangements.

6.7 Records and Audit Access

- 6.7.1 The Technology Provider shall keep and maintain until one (1) year after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and or Services provided under it, the Call-Off Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.
- 6.7.2 The Technology Provider shall keep the records and accounts referred to in Clause 6.7.1 above in accordance with good accountancy practice.
- 6.7.3 The Technology Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required from time to time.
- 6.7.4 The Technology Provider shall provide such records and accounts (together with copies of the Technology Provider's published accounts) during the Contract Period and for a period of one (1) year after the expiry of the Contract Period to the Customer and the Auditor.
- 6.7.5 The Customer shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Technology Provider or delay the supply of the Goods and or Services save insofar as the Technology Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Customer.

- (c) for the purpose of the examination and certification of the Customer's accounts;
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

6.3.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third Party or Sub-Technology Provider to whom the Technology Provider's Confidential Information is disclosed pursuant to clause 6.3.6 is made aware of the Customer's obligations of confidentiality.

6.3.8 Nothing in this clause 6.3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.

6.4 Freedom of Information

6.4.1 The Technology Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

6.4.2 The Technology Provider shall and shall procure that its Sub-Technology Providers shall:

- (a) transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;
- (b) provide the Customer with a copy of all Information in its possession, or power in the form that the Customer requires within [five] Working Days (or such other period as the Customer may specify) of the Customer's request; and
- (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

6.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

6.4.4 In no event shall the Technology Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.

6.4.5 The Technology Provider acknowledges that (notwithstanding the provisions of Clause 6.4.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose Information concerning the Technology Provider or the Services:

- (a) in certain circumstances without consulting the Technology Provider; or
- (b) following consultation with the Technology Provider and having taken their views into account;

- 6.2.2 In the event that the Technology Provider or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Technology Provider.

6.3 Confidential Information

- 6.3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

6.3.2 Clause 6.3.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 5.4 (Freedom of Information);
- (b) such Information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the Information owner;
- (c) such Information was obtained from a third Party without obligation of confidentiality;
- (d) such Information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

- 6.3.3 The Technology Provider may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the Information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

- 6.3.4 The Technology Provider shall not, and shall procure that its Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

- 6.3.5 At the written request of the Customer, the Technology Provider shall procure that those members of the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.

- 6.3.6 Nothing in this Agreement shall prevent the Customer from disclosing the Technology Provider's Confidential Information:

- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies 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 Crown Body or any Contracting Authority;
- (b) to any consultant, Technology Provider or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and

- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - i. incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
 - ii. procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - 1) a direct data processing agreement with the Customer on such terms as may be required by them; or
 - 2) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
 - iii. in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

6.1.4. The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of their obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

6.1.5. The Technology Provider shall designate a data protection officer if required by the Data Protection Legislation.

6.1.6. Before allowing any Sub-Processor to process any Personal Data related to this Contract, the Technology Provider shall:

- (a) notify the Customer in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 6.1 such that they apply to the Sub-Processor; and provide the Customer with such information regarding the Sub-Processor as they may reasonably require.

The Technology Provider shall remain fully liable for all acts or omissions of any Sub-Processor.

6.2 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

6.2.1 The Technology Provider shall comply with and shall ensure that its Staff comply with, the provisions of:-

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

- (e) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) 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;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 6.1.2(e)) including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 6.1.2 and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

6.1.3. The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:

- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
- (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - i. the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - ii. the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - iii. any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - iv. how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
- (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any

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

5.2.2 The Technology Provider shall take all reasonable steps to secure the observance of Clause 5.2.1 by all servants, employees or agents of the Technology Provider and all suppliers and sub-Technology Providers employed in the execution of the Contract.

5.3 The Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

5.4 Environmental Requirements

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

6. PROTECTION OF INFORMATION

6.1 Data Protection

6.1.1. Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

6.1.2. The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under the Call Off Contract;
 - (ii) 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 Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);

shall be entitled to enforce the Customer's rights pursuant to the Contracts (Rights of Third Parties) Act 1999; and

- (d) nothing in the Supplier Contract shall operate to transfer any debt or amount owed by the Customer to the Supplier to the Technology Provider.

4.3 Recovery of Sums Due

- 4.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Technology Provider (including any sum which the Technology Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Technology Provider under the Contract or under any other agreement or contract with the Customer.
- 4.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 4.3.3 The Technology Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Technology Provider has a valid court Order requiring an amount equal to such deduction to be paid by the Customer to the Technology Provider.
- 4.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

4.4 Euro

- 4.4.1 Any requirement of Law to account for the Goods and or Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Technology Provider free of charge to the Customer.
- 4.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 4.4.1 by the Technology Provider.

5. STATUTORY OBLIGATIONS AND REGULATIONS

5.1 Prevention of Corruption

- 5.1.1 The Technology Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or any other public body or person employed by or on behalf of the Customer any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Contract or any other contract with the Customer or any other public body or person employed by or on behalf of the Customer, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.
- 5.1.2 If the Technology Provider, its Staff or any person acting on the Technology Provider's behalf, engages in conduct prohibited by Clauses 5.1.1, the Customer may:-
 - (a) terminate the Contract with immediate effect by giving notice in writing to the Technology Provider and recover from the Technology Provider the amount of any loss suffered by the Customer resulting from the termination; and/or
 - (b) recover in full from the Technology Provider any other loss sustained by the Customer in consequence of any breach of those clauses.

5.2 Discrimination

shall be issued in the name of the Technology Provider and not the Suppliers, consolidating each approved supplier's service receipts ("**Service Invoice**");

- (b) the Technology Provider shall issue a Service Invoice each week following delivery of the Supplier's Services, as approved by service receipt within the Technology;
- (c) it shall pay the Service Invoice directly to the Technology Provider within fourteen (14) days of the date of the Service Invoice;
- (d) the Technology Provider operates as a payment service provider only and shall not hold any payment received by the Customer for a Service Invoice on trust, escrow or separate account for any party (including the Customer) and shall be entitled to apply such monies to the payment of any supplier invoice, and shall therefore be entitled to receive and hold the monies payable to the Supplier in respect of the Supplier's fees with the Technology Provider's own monies or those received from other customers and apply them to any supplier invoice and accordingly, the Technology Provider shall not be a trustee in respect of such monies;
- (e) the Technology Provider shall ensure that the Supplier's fees are paid to the Supplier within thirty (30) days of the creation of the Supplier's electronic self-bill invoice, or upon the Technology Provider receiving and processing the Customer's cleared funds, whichever is the later and the Customer acknowledges and agrees that the Technology Provider shall solely determine the timing (within the above period), manner of and funds used to pay the Supplier's electronic self-bill invoice;
- (f) any payment made by it may be applied by the Technology Provider to any supplier electronic self-bill (whether for services supplied to the Customer or to a third party) but nothing in this Contract shall reduce or remove the Technology Provider's obligation to pay the Supplier's fee after having received cleared funds from the Customer;
- (g) nothing in this clause 4.2.8 shall be construed as transferring to the Technology Provider any debt that is owed by the Customer to the Supplier;
- (h) if a dispute arises regarding the whole or part of the Supplier's fees, the Technology Provider shall endeavour to resolve the dispute only to the extent that the dispute arises from the Technology Provider's own acts or omissions, and shall do so in accordance with clause 10 (Dispute Resolution);
- (i) the Technology Provider acting under this clause 4.2.8 has no obligation to facilitate the resolution of a dispute between the Customer and Supplier nor is the Technology Provider liable for any claim made against the Customer under such circumstances.

4.2.9 When utilising the payment service provision under clause 4.2.8 above, the Customer shall ensure that, in its contract with the Supplier ("Supplier Contract"), the Supplier acknowledges and agrees that:

- (a) the Customer or the Technology Provider may self-invoice the Supplier for the Supplier's Fees weekly in arrears;
- (b) the Customer shall procure that the Technology Provider shall pay those of the Supplier's Fees not subject to any dispute within thirty (30) days of self-invoice or cleared funds from the Customer for the same, whichever is the later;
- (c) nothing in the Supplier Contract shall create any contractual relationship between the Technology Provider and the Supplier, however the Technology Provider

- (e) Any Complaints received from the customer are investigated and responded to within 48 hours.

4. PAYMENT AND CONTRACT PRICE

4.1 Contract Price

- 4.1.1 In consideration of the Technology Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 4.2 (Payment and VAT).
- 4.1.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Technology Provider a sum equal to the VAT chargeable on the value of the Goods and or Services supplied in accordance with the Contract.
- 4.1.3 The Technology Provider shall, where applicable, pay the appropriate YPO member the retrospective payments as per the Framework Agreement.

4.2 Payment and VAT

- 4.2.1 In consideration of the Technology Provider performing its obligations under the Contract, the Customer shall pay all sums due to the Technology Provider in cleared funds within 14 days of receipt of an invoice, submitted in accordance with the payment profile set out in the Order Form.
- 4.2.2 The Technology Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and or Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 4.2.3 If the Customer agrees to delivery by instalments in accordance with clause 2.3.7 payments may also be made in corresponding instalments at the discretion of the Customer.
- 4.2.4 Where the Technology Provider enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Technology Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 4.2.5 The Technology Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 4.2.6 The Technology Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on the Customer at any time in respect of the Technology Provider's failure to account for or to pay any VAT relating to payments made to the Technology Provider under the Contract. Any amounts due under this Clause 4.2.5 shall be paid by the Technology Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.
- 4.2.7 The Technology Provider shall not suspend the supply of the Goods and or Services unless the Technology Provider is entitled to terminate the Contract under Clause 9.2 (Termination on Default) for failure to pay undisputed sums of money.
- 4.2.8 In the event that the Customer wishes to pay for its procured services via the Technology Provider, the Customer acknowledges and agrees with the Technology Provider that:
 - (a) the Technology Provider shall invoice the Customer for the services delivered by the procured suppliers ("**Supplier**" and "**Supplier's Services**"), and such invoice

- 2.3.2 Except where otherwise provided in the Framework Agreement or the Order Form, delivery shall include the Services by the Staff or the Technology Provider's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 2.3.3 Time of delivery shall be of the essence, unless such delay to the Services has been caused by the Customer and if the Technology Provider fails to deliver the Services within the time specified in the Order Form the Customer may release itself from any obligation to accept and pay for the Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
- 2.3.4 The Customer shall be under no obligation to accept or pay for any Services delivered in excess of the quantity Ordered. The Customer shall be under no obligation to accept or pay for any Services supplied earlier than the date for delivery stated in the Order Form.
- 2.3.5 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer.

2.4 Ownership and Risk

NOT USED

2.5 Non-Delivery

NOT USED

2.6 Inspection, Rejection and Guarantee

NOT USED

3. CONTRACT PERFORMANCE

3.1.1 The Technology Provider shall perform its obligations under the Contract:-

- (a) with appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (b) in a timely manner; and
- (c) in compliance with all applicable Laws, including but not limited to, any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.

3.1.2 The Technology Provider shall ensure that:-

- (a) the Goods and or Services conform in all respects with the Order Form and, where applicable, with any sample approved by the Customer;
- (b) the Goods and or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;
- (c) the Goods and or Services conform in all respects with all applicable Laws; and
- (d) the Goods and or Services are free from defects in design, materials and workmanship and fit and sufficient for all the purposes for which such Goods and or Services are ordinarily used and for any particular purpose made known to the Technology Provider by the Customer.

- 1.8.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Technology Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Technology Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

1.9 Prevention of Fraud

- 1.9.1 The Technology Provider shall take all reasonable steps to prevent any Fraud by Staff and the Technology Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 1.9.2 The Technology Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 1.9.3 If the Technology Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer the Customer may:-
- (a) terminate the Contract with immediate effect by giving the Technology Provider notice in writing and recover from the Technology Provider the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
 - (b) recover in full from the Technology Provider any other loss sustained by the Customer in consequence of any breach of this clause.
- 1.9.4 This Clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

2. SUPPLY OF GOODS AND OR SERVICES

2.1 The Goods and or Services

- 2.1.1 The Technology Provider shall supply and, where relevant, install the Goods and or Services in accordance with the Customer's requirements in the Framework Agreement, the Order Form and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.
- 2.1.2 If requested by the Customer the Technology Provider shall provide the Customer with samples of Goods and or Services for evaluation and Approval, at the Technology Provider's cost and expense and such requests shall be acted upon immediately.
- 2.1.3 The Technology Provider shall ensure that the Goods and or Services are fully compatible with any of the Customer's equipment, to the extent specified in the Order Form.

- 2.2 The Technology Provider acknowledges that the Customer relies on the skill and judgment of the Technology Provider in the supply of the Goods and or Services and the performance of its obligations under the Contract.

2.3 Delivery

- 2.3.1 The Technology Provider shall deliver the Services at the time(s) and date(s) specified in the Order Form.

1.5.3 Nothing in Clauses 1.5.1 and 1.5.2 shall operate to exclude Fraud or Fraudulent misrepresentation.

1.5.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following Order of precedence:-

- (a) the Order Form;
- (b) the clauses of the Contract; and
- (c) any other document referred to in the clauses of the Contract.

1.5.5 The Contract 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.

1.6 Notices

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

1.6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 1.6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

1.6.3 For the purposes of Clause 1.6.2 the address of each Party shall be:-

- (a) for the Customer: the address set out in the Order Form;
- (b) for the Technology Provider: the address set out in the Framework Agreement.

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

1.7 Mistakes in Information

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

1.8 Conflicts of Interest

1.8.1 The Technology Provider shall take appropriate steps to ensure that neither the Technology Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Technology Provider or Staff and the duties owed to the Customer under the provisions of the Contract.

1.8.2 The Technology Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 1.8.1 above arises or is reasonably foreseeable.

5. Exit Plan

- 5.1. Upon receipt of notice as per clause 1.1 above, the Parties shall each appoint an authorised representative to coordinate and communicate their respective Party's duties during the Transition Period and Extension Period, (if applicable).
- 5.2. The authorised representatives shall mutually agree in writing an "Exit Plan" no later than two (2) months prior to the expiry of termination of the Agreement which shall include but not be limited to: applicable timetable, roles, manner of communications; mechanism for transfer of data; transfer of responsibilities and any applicable fees. Fees may apply where the Customer requires services beyond the scope of clause 3.1 and 4.1 above.
- 5.3. The Parties shall ensure that the timetable included within the Exit Plan considers the cancellation and closure of:
 - a. Accreditation and Enrolment
 - b. Requirements
 - c. Offers
 - d. Service Agreements
 - e. Service Receipts
 - f. Invoicing and payment dates to providers
- 5.4. For the avoidance of doubt, the Technology Provider shall not disable or deactivate providers accounts or restrict providers access to the Technology as providers may utilise the Technology for their own business operations.

6. Continuity of Services

- 6.1. The Technology Provider shall not knowingly or purposely obstruct the ability of the Customer to ensure an orderly transfer of responsibility for service provision.
- 6.2. The Technology Provider acknowledges on termination or expiry of this Agreement for any reason, the continuity of the Service Agreements is of paramount importance. The Technology Provider shall make reasonable endeavours to minimise disruption caused by the expiry of the Agreement and assist in the implementation of the agreed Exit Plan proposed by the Customer to deal with the effects of such termination or expiry in so far as it is practicable to do so.
- 6.3. The Technology Provider agrees that if upon termination of this Framework Agreement, circumstances arise in which the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended are applicable, the Technology Provider shall in good faith cooperate with the Customer in the disclosure of information and the provision of other assistance so as to facilitate such outcome in relation to the relevant employees as may be acceptable to the Parties. The Technology Provider shall comply with the requirements of those Regulations in respect any personnel who will have been employed in the undertaking, or a relevant part of the undertaking, immediately before its transfer to the Technology Provider.

7. Transition Services

- 7.1. The Customer may request assistance relating to information necessary to enable the Customer to issue tender documents for the future provision of procurement technology services. The Technology Provider reserves the right to refuse to offer the additional assistance. Such assistance may include, (without limitation) delivery of documents and data in the possession or control of the Technology Provider which relate to performance, monitoring, management and reporting of the Services, including the documents and data, if any, which the Technology Provider may otherwise be obliged to disclose under this Agreement. The Technology Provider reserves the right to charge the Customer on a time and material basis for such assistance and the Customer shall reimburse the Technology Provider for any reasonable expenses incurred in providing such requested assistance. The Parties shall agree the extent of the requested assistance and if the activity shall be chargeable in writing prior to commencement.

- 7.2. The Customer shall take all necessary precautions to ensure that the information referred to in this Agreement and/or as provided in connection with assistance requested under clause 7.1., is given only to potential providers who have qualified to tender or have been successful in being selected as the new provider following a tender exercise for the future provision of procurement technology services. The Customer shall require that such potential providers shall treat that information in confidence; that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Customer; and that they shall not use it for any other purpose. For the avoidance, all confidentiality provisions relating to the Technology Provider (including, but not limited to, its business methodologies, Technology functionality, contacts, contracts and suppliers) shall continue after the expiry or termination of the Agreement, on the terms set out therein, and as applicable under this clause 7.2.

8. Data Migration and Transfer

- 8.1. The Customer may request assistance relating to transfer or migration of data in addition to the exit services provided by the Technology Provider under clause 4.1 above. The Technology Provider is under no obligation to provide such assistance. Assistance may include, (without limitation) extracting to another format; additional data extracts; accelerated timetable and assisting with migration to another service provider. The Technology Provider shall charge the Customer on a time and material basis for such assistance and the Customer shall reimburse the Technology Provider for any reasonable expenses incurred in providing such requested assistance. The Parties shall agree the scope of the requested assistance and applicable charges in writing prior to commencement.
- 8.2. For the avoidance of doubt, the Technology Provider shall not be under any obligation to provide the Customer with copies of its proprietary information, including but not limited to information pertaining to the structure of the Technology and the database schema.