**CONFIDENTIAL – NOT FOR DISCLOSURE OR CIRCULATION**

**Invitation to Tender for Asset Protection Services**

**Ref: STSC-DN 542162**

**Public Contract Regulations 2015 Open Process**

**Invitation to Tender**

**Part 3 – Proposed Contract**

# PART 1 – CONTRACT DATA:

**CONFIDENTIAL – NOT FOR DISCLOSURE OR CIRCULATION**

**Open Tender for Teesworks Asset Protection Services**

**Part 3 – Proposed Contract**

# PART 1 – MEMORANDUM OF AGREEMENT

THIS AGREEMENT is made on the day of 2021

BETWEEN:

1. SOUTH TEES SITE COMPANY LTD of Teesside Management Offices, Trunk Road, Redcar, TS10 5QW (the ‘Authority’); and

(2) [ ]of (CRN) [ ](the ‘**Provider**’)

Collectively known as ‘the Parties’.

**WHEREAS**

1. ‘the Authority’ wishes to appoint a Provider to supply a fleet of e-motorbikes and fully manage the Tees Valley Wheels 2 Work Scheme, as outlined in the Invitation to Tender, (the ‘**Services**’).
2. ‘the Authority’ has accepted an offer from the Provider for the execution and completion of the Services on the terms and conditions set out in this Contract.

**NOW IT IS AGREED** as follows:-

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Documents hereinafter referred to.
2. The following documents, (the ‘**Documents**’), shall be deemed to form and be read and construed as part of this Contract, namely:-
3. Part 1 - Memorandum of Agreement;
4. Part 2 - Contract Particulars;
5. Part 3 - Standard Terms and Conditions;
6. Part 4 - Specification; and
7. Part 5 – Provider’s Tender.
8. In the event of, and only to the extent of any conflict between the documents listed in (a) – (e) above, and other documents referred to or attached to the Contract, the conflict shall be resolved in accordance with the order of precedence set out in clause 2.
9. In consideration of the payments to be made by ‘the Authority’ to the Provider pursuant to this Contract, the Provider hereby covenants with ‘the Authority’ to execute and complete the Services in conformity in all respects with the provisions of this Contract.
10. ‘the Authority’ hereby covenants to pay to the Provider in consideration of the execution and completion of the Services the price at the times and in the manner as agreed between the Parties.

IN WITNESS whereof the Parties hereto have caused this Contract to be executed the day and year first above written:

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | Signed on behalf of )  **SOUTH TEES SITE COMPANY LTD** by ) |  | ……………………………………………………….  Authorised Signatory  ……………………………………………………….  Name of Authorised Signatory | |  |  |  |   *Where Provider is a company – use this execution clause*   |  |  |  | | --- | --- | --- | | Signed on behalf of )  **[name ]** )  by one director in the presence of:- ) |  | ……………………………………………………….  Director | | ……………………………………………………….  Witness Name  ……………………………………………………….  ……………………………………………………….  ……………………………………………………….  ……………………………………………………….  Witness Address |  |  | |  |  |
|  |  |  |

# PART 2 - CONTRACT PARTICULARS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Information Heading** |  | | | |
| ‘the Authority’ | South Tees Site Company Ltd | | | |
| ‘the Authorities’ Address for Notice | Teesside Management Offices, Trunk Road, Redcar, TS10 5QW | | | |
| Provider | [set out name of Provider and company registration number (if any)] | | | |
| Provider’s Address for Notice | [ ] | | | |
| Commencement Date | [ ] or the date that the Provider commences performance of the Services. | | | |
| Contract Period (including option to extend) | The period from the Commencement Date until xxxxx, unless otherwise agreed in writing by ‘the Authority’. | | | |
| Type of Services | Teesworks Asset Protection Services | | | |
| Specification or description of Services to be provided by the Provider | As fully described in the Specification at Part 4 of this Contract and in the Provider’s Tender in Part 5. | | | |
| Delivery Instructions | In accordance with the instructions in the Specification at Part 4 of this Contract and any specific obligations made in the Providers Tender in Part 5.  The Services will be delivered in accordance with [the ‘the Authority’s Permit to Work and contract approval processes] | | | |
| Time of the Essence | Yes | | | |
| Commercially Sensitive Information | Any information listed as being Commercially Sensitive Information in the Providers Tender. | | | |
| Contract Value | Not more than £ | | | |
| Payment | To be agreed following contract award | | | |
| Recoverable Expenses | None | | | |
| Limits on Authority of Provider | The Provider does not have authority, nor shall the Provider hold itself out as having authority, to enter into negotiations on ‘the Authorities’ behalf, nor to commit ‘the Authority’ in any respect whatsoever. | | | |
| Limit on Provider Liability | The Provider aggregate liability in respect of any breach of its obligations under the Contract, or any default, act, omission, negligence or negligent statement of the Provider or any Employee in connection with or in relation to the subject-matter of the Contract shall not exceed two million pounds (£2,000,000). | | | |
| Exclusivity of appointment | Provider is retained on an exclusive basis. | | | |
| Termination at Will | ‘the Authority’ shall give the Provider 3 Months’ notice of its intention to terminate at will. | | | |
| Frequency of Progress Reports to be provided by the Provider | In line with the requirements of the specification | | | |
| Intellectual Property Rights | See clause 28 | | | |
| **‘the Authority’ Authorised Officer** | | | | |
| **Name** | | **Position** | | **Email & Telephone Details** |
|  | |  | |  |
| **Contract Manager** | | | | |
| **Name** | | **Position** | **Email & Telephone Details** | |
| [ ] | | [ ] | [ ] | |
| **Provider Key Personnel** | | | | |
| **Name** | | **Position** | **Email & Telephone Details** | |
| [ ] | | [ ] | [ ] | |
| [ ] | | [ ] | [ ] | |

|  |  |
| --- | --- |
| **Insurance** | |
| **Insurance type** | **Minimum level** |
| Employer’s liability insurance | £10,000,000 (ten million) per claim or series of claims |
| Public liability insurance | £5,000,000 (five million) per claim or series of claims |
| Professional indemnity insurance | £1,000,000 (two million) in aggregate |

# PART 3 – STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS AND INTERPRETATION**
   1. The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out in the Appendix.
2. **CONTRACT PERIOD**
   1. The Contract shall commence on the Commencement Date and subject to clause 2.2 shall continue for the Contract Period.
   2. If the Contract Period includes an option to extend and ‘the Authority’ intends to take up the option, the Provider shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued, the Contract shall automatically expire after the Initial Contract Period.
   3. Where the Contract is extended pursuant to clause 2.2, there shall be no amendment to the terms of this Contract (including the terms set out in Part C Price and Payment) during the period of extension.
3. **THE SERVICES**
   1. During the continuance of this Contract, and in consideration of the Price, the Provider is to be retained by ‘the Authority’ (on the exclusivity basis set out in the Contract Particulars) to provide the Services to ‘the Authority’ on the terms set out in these Standard Terms and Conditions.
   2. The Provider shall provide the Services:-
      1. in a timely, efficient, skilful and professional manner and in accordance with the Law and Good Industry Practice;
      2. in accordance with:
         1. any working practices or permitting requirements set out in Specification
         2. the Contract
         3. reasonable instructions of the Authorised Officer (and to the extent that the standard of the Services has not been specified in the Contract, the Provider shall agree the relevant standard of the Services prior to the supply of the Services);
      3. at all times in compliance with the Quality Standards, and where applicable, the Provider shall maintain accreditation with the relevant Quality Standards authorisation body at all times; and
      4. in a way that the Provider takes every reasonable precaution to safeguard ‘the Authorities’ property entrusted to the care of the Provider, ‘the Authorities’ interests and ‘the Authorities’ reputation.
4. **DELIVERY OF THE SERVICES**
   1. NOT USED.
   2. The Provider shall complete the Services in accordance with any programme, timetable or key task response time set out in the Specification or the Contract (for the purposes of this clause, in the event of any ambiguity, conflict or contradictions between these documents, the Contract shall take priority).
   3. Where so specified in the Contract Particulars, time of delivery shall be of the essence and if the Provider fails to deliver the Services within the timeframe agreed in the Contract as varied by mutual written agreement and subject to ‘the Authority’ meeting any agreed obligations to facilitate performance, ‘the Authority’ 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 Authority’.
   4. Unless otherwise stated in the Specification or otherwise agreed, the Services shall be delivered during the hours of 9am and 5pm on Business Days and at such other times as may be necessary for the performance of the Services.
   5. If the Provider at any time becomes aware of any act or omission, or proposed act or omission by ‘the Authority’ which prevents or hinders or may prevent or hinder the Provider from performing the Services, or becomes aware of any other matter that could affect the performance of the Services in accordance with the Contract, the Provider shall inform ‘the Authority’ immediately.
5. **EMPLOYEES TO PROVIDE THE SERVICES** 
   1. The Provider shall provide to the satisfaction of ‘the Authority’ such appropriately qualified and experienced professional and clerical staff as shall be necessary for the proper performance of the Services including without limitation any Key Personnel specified in the Contract Particulars.
   2. Key Personnel (if any) shall not be released from providing the Services without the written agreement of ‘the Authority’, except by reason of:-
      1. sickness;
      2. maternity leave;
      3. paternity leave;
      4. termination of employment;
      5. request by ‘the Authority’; or
      6. the element of the Services in respect of which the individual was engaged having been completed to ‘the Authorities’ satisfaction.
   3. Any replacement for the Key Personnel shall be subject to the agreement of ‘the Authority’ and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Provider.
   4. The Provider shall ensure that the Employees providing the Services are properly and sufficiently qualified and supervised with regard to the provision of the Services and in particular:-
      1. the task or tasks such person has to perform;
      2. all relevant policies, rules, procedures and standards of ‘the Authority’ which have been notified by ‘the Authority’ to the Provider; and
      3. all relevant rules, procedures and statutory requirements concerning health and safety.
   5. The Provider shall replace (at its own cost) any Employee who ‘the Authority’ reasonably considers to have failed to carry out their duties with reasonable skill and care. Following the removal of any such Employees for any reason, the Provider shall make sure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
6. **CONTRACT MANAGER**
   1. The Provider shall employ a competent and authorised Contract Manager empowered to act on behalf of the Provider for all purposes connected with the Contract. The Provider shall give notice in writing to ‘the Authority’ at once of any change in the identity, address and telephone numbers of the person appointed as Contract Manager.
7. **CONFLICT OF INTEREST**
   1. The Provider shall not at any time during its appointment under this Contract act in any capacity for any person or persons firm or company in circumstances where a conflict of interest between such person or persons firm or company and ‘the Authority’ shall thereby exist.
8. **WARRANTIES AND REPRESENTATIONS**
   1. The Provider represents and warrants to ‘the Authority’ that it has read and fully understood the Invitation to Tender and that the Provider is capable of performing the Services in all respects in accordance with the Invitation to Tender and the Contract, and has all necessary staff, equipment, and experience for the purposes.
   2. The Provider warrants to ‘the Authority’ that in the performance of the Services, and in regard to all documents and information prepared by the Provider, and all ancillary Services provided by the Provider in connection with the Services, it has exercised and will continue to exercise Good Industry Practice.
   3. No enquiry, inspection, approval, sanction, comment, consent, decision, or instruction (other than specific instructions given to the Provider) at any time made or given by or on behalf of ‘the Authority’ or any other Party in relation to any such document or information, and no failure of ‘the Authority’ or any other Party to discern any defects in or omission from any such document or information, shall operate to exclude or limit the obligations of the Provider under this clause 8.
9. **REPLACEMENT SERVICES**
   1. Without prejudice to ‘the Authorities’ rights to terminate under clause 22 (Termination), if any of the Services supplied are not in accordance with the Contract, ‘the Authority’ shall be entitled to require the Provider to:-
      1. provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
      2. repay the proportion of the Price which has been paid in respect of such Services, together with payment of any additional expenditure over and above the Price reasonably incurred by ‘the Authority’ in obtaining replacement Services.
10. **ADDITIONAL SERVICES**
    1. ‘the Authority’ may at any time within twelve (12) months of the completion of the Services request the performance by the Provider of any additional services relating to the Services already provided.
    2. Subject to the Provider’s prior express agreement, the Provider shall duly perform the additional services in accordance with the terms of this Contract, save that ‘the Authority’ and the Provider shall agree a programme and a completion date for such additional services in writing in advance.
    3. The Provider shall be entitled to be paid for the additional services based on the rates set out in the Tender. In the event that the rates are not applicable, the Provider shall be entitled to be reimbursed at such rates as shall be fair and reasonable in all the circumstances.
11. **STATUS OF PROVIDER**
    1. The Provider is an independent contractor and nothing in the Contract shall be construed as creating an employment or agency relationship as between ‘the Authority’ and the Provider.
    2. Where the Provider is an individual, the Parties declare that it is their intention that the Provider shall have the status of a self-employed person and shall be responsible for all and any tax liabilities, including national insurance contributions, in respect of any fees and other payments due to him under the Contract.
    3. For the avoidance of doubt, the Provider and any Employees (not being employees of ‘the Authority’) shall not be entitled to any pension, holiday pay, sick pay or other fringe benefits from ‘the Authority’.
12. **ABSENCE**
    1. NOT USED.
13. **PROVIDER’S AUTHORITY**
    1. The limits that ‘the Authority’ have placed on the Provider’s authority to enter into negotiations on behalf of ‘the Authority’ and to commit ‘the Authority’ are as set out in the Contract Particulars.
    2. The Provider shall not act in any way which is inconsistent with the authority granted to the Provider by ‘the Authority’.
14. **INFORMATION AND ASSISTANCE** 
    1. Both Parties agree that the performance of the Services by the Provider may be dependent upon ‘the Authority’ providing the Provider with such information and assistance as may reasonably be required from time to time and which may include access to ‘the Authorities’ premises.
    2. Oral information and advice or information provided by the Provider to ‘the Authority’ that is provided in draft or as working documents (including spreadsheets) shall not be relied upon by ‘the Authority’, who recognises and agrees that such information may be subject to change and that reliance should only be placed on final form deliverables.
    3. Subject to any written confirmation from ‘the Authority’ to the contrary, ‘the Authority’ agrees that the Provider shall be entitled to rely on all information provided to it and on ‘the Authorities’ decisions and approvals in connection with the Services and to assume that all such information provided to the Provider from whatever sources is true, complete and not misleading and that its provision is authorised. The Provider will not be responsible for the consequences of any information provided to them in the course of the Services being misleading or not being authorised, complete, accurate or current. The Provider will not audit or otherwise test or verify the information provided to it in the course of the Services.
15. **PRICE AND PAYMENT**
    1. In consideration of the provision of the Services, and subject to the other provisions of this Contract, ‘the Authority’ shall pay the Price to the Provider. The Price shall be reviewable as specified in the Contract Particulars.
    2. ‘the Authority’ shall, in addition to the Price and following receipt of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
    3. The Provider shall submit a single VAT invoice to ‘the Authority’ no later than seven (7) days after the end of each calendar month detailing:-
       1. the Services provided during that calendar month;
       2. subject to clause 16, any allowable expenses incurred during that calendar month; and
       3. the total amount payable.
    4. The Provider shall ensure that each invoice is supported by any other information or documentation reasonably required by ‘the Authority’ to substantiate the invoice*.*
    5. Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by ‘the Authority’.
    6. Further details of payment, if any, are set out in the Pricing Schedule.
    7. To ensure that all Suppliers are paid on time, an Official Purchase Order number must be quoted on all invoices.
    8. Invoices should be sent to the following address as appropriate:-
       * 1. Email to: ‘the Authorities’ procurement department invoices@teesworks.co.uk or
         2. Post to: South Tees Site Company Ltd

Teesside Management Offices

Trunk Road, Redcar TS10 5QW

1. **ALLOWABLE EXPENSES**
   1. The Provider shall be responsible for all expenses including inter alia travel, accommodation, subsistence, photocopying, facsimile, telephone, secretarial and administration costs associated with the provision of the Services.
2. **DEDUCTIONS FOR EMPLOYMENT INCOME**
   1. If it is determined that any payment due to the Provider under the Contract fall to be taxable as employment income, ‘the Authority’ reserves the right to deduct from such payment, any amounts of income tax and national insurance contributions payable on, or in relation to, such fees or sums.
3. **WITHHOLDING OF PAYMENT FOR NON-PERFORMANCE**
   1. ‘the Authority’ reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider has either failed to provide the Services at all or has (in ‘the Authorities’ reasonable opinion) provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to ‘the Authorities’’ reasonable satisfaction.
4. **OVERDUE SUMS**
   1. Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England base rate from time to time.
   2. The Provider is not entitled to suspend provision of the Services as a result of any overdue sums unless the Provider is entitled to terminate the contract under clause 22.3 (Termination by the Provider).
5. **SET-OFF**
   1. ‘the Authority’ will be entitled but not obliged at any time or times without notice to the Provider to set off any liability of ‘the Authority’ to the Provider against any liability of the Provider to ‘the Authority’ (in either case however arising and whether any such liability is present or future, liquidated or un-liquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of ‘the Authority’ are payable under this Contract. ‘the Authorities’ rights under this clause will be without prejudice to any other rights or remedies available to ‘the Authority’ under this Contract or otherwise.
6. **PAYMENT OF SUBCONTRACTORS**
   1. Subject to clause 41 (Assignment, Subcontracting and Responsibility), where the Provider enters into a subcontract with a supplier or Provider for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Provider to the Subcontractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
7. **TERMINATION**

Termination by ‘the Authority’

* + 1. Subject to the provisions of clause 42 (Force Majeure) ‘the Authority’ may terminate the Contract with immediate effect by notice in writing to the Provider on or at any time if:-

1. the Provider becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983;
2. the Provider dies or becomes unable to perform his duties under this Contract due to his incapacity for any consecutive or aggregate period of two weeks in any period of twelve (12) calendar months;
3. the Provider is convicted of a criminal offence;
4. the Provider ceases or threatens to cease to carry on its business;
5. the Provider has a change in Control or a change in its composition of staffing which ‘the Authority’ reasonably believes will have a substantial impact on the performance of the Contract;
6. the Provider is guilty of any conduct bringing itself or ‘the Authority’ into serious public disrepute, including but not limited to, a breach of clause 43 (Prevention of Bribery);
7. the Provider commits any act of dishonesty or serious or persistent misconduct whether or not in connection with or referable to the Services;
8. it becomes unlawful for the Provider to perform the Services or any authorisation, consent, licence or registration necessary to enable the Provider to perform the Services is not obtained or, having been obtained, is revoked, withdrawn, suspended, modified or made subject to conditions;
9. the Provider experiences (in the reasonable opinion of the Authorised Officer whose opinion shall be final and binding) an irreconcilable conflict of interest;
10. the Provider is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of ‘the Authority’ within fourteen (14) days, or such other reasonable period as may be specified by ‘the Authority’ after issue of a written notice specifying the breach and requesting it to be remedied;
11. there is a material or substantial breach by the Provider of any of its obligations under this Contract which is incapable of remedy;
12. the Provider commits persistent minor breaches of this Contract whether remedied or not; or
13. the Provider has made warranties and representations as set out in clause 8 (Warranties and Representations) which prove to be untrue or incorrect.
    * 1. ‘the Authority’ reserves the right to terminate the Contract in part in the case of termination under clauses (j), (k), (l) and (m).

Termination at Will

* + 1. ‘the Authority’ reserves the right to terminate the Contract at will, in whole or in part, at any time with the provision of notice in writing in accordance with the requirements set out in the Contract Particulars.

Termination by the Provider

* + 1. If ‘the Authority’ fails to pay the Provider any sums of money which are lawfully due under this Contract, the Provider shall notify ‘the Authority’ in writing of such failure to pay, setting out the Provider’s intention to terminate the Contract if payment is not received. If ‘the Authority’ fails to pay such undisputed sums within thirty (30) calendar days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that (for the avoidance of doubt) such right of termination shall not apply where the failure to pay is due to ‘the Authority’ exercising its rights under clause 20 (Set-Off). The Provider may also terminate the Contract if ‘the Authority’ creates a situation which amounts to a professional conflict of interest which cannot be resolved.

1. **CONSEQUENCES OF TERMINATION**
   1. If this Contract is terminated in whole or in part ‘the Authority’ shall:-
      1. be liable to pay to the Provider only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
      2. except for termination under clause 22.2, be entitled to deduct from any sum or sums which would have been due from ‘the Authority’ to the Provider under this Contract or any other Contract and to recover the same from the Provider as a debt any sum in respect of any loss or damage to ‘the Authority’ resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to ‘the Authority’ of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
      3. in the event that any sum of money owed by the Provider to ‘the Authority’ (the Provider’s debt) exceeds any sum of money owed by ‘the Authority’ to the Provider (‘the Authorities’ debt) under this Contract then ‘the Authority’ shall, at its sole discretion, be entitled to deduct the Provider’s debt from any future ‘the Authorities’ debt or to recover the Provider’s debt as a civil debt.
   2. Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under the Contract. For the avoidance of doubt upon any termination of this Contract, ‘the Authority’ shall not be liable to the Provider for any loss of profit or opportunity, loss of contracts or other costs, losses and/or expenses arising out of or in connection with such termination.
   3. Upon any termination of the Contract for any reason, the Provider shall deliver to ‘the Authority’ all physical and electronic documents relating to the Services or prepared by the Provider in performing the Services (whether in the course of preparation or completed) provided that the Provider shall be entitled to retain one copy of such documents so that it is in compliance with its statutory, regulatory or professional conduct obligations and for record keeping purposes, subject to a continuing obligation of confidentiality.
2. **DISPUTE RESOLUTION PROCEDURE**
   1. Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this clause 24.
   2. The Provider and ‘the Authority’ shall endeavour to notify each other of any anticipated disputes so that any potential dispute can be avoided by negotiation between them.
   3. Both Parties shall endeavour to resolve any failure to agree matters or any disputes by direct negotiations between senior representatives of both Parties.
   4. If the matter is not resolved through negotiation then, prior to the commencement of legal proceedings, both Parties will each attempt in good faith to resolve the dispute or claim by participating in an Alternative Dispute Resolution (‘**ADR**’) procedure which, if not otherwise agreed, will be as recommended to us by the Centre for Effective Dispute Resolution. If the matter has not been resolved by an ADR procedure within forty five (45) days of such procedure being commenced, then the matter may be dealt with through legal proceedings.
3. **SURVIVAL**
   1. The following clauses will survive termination or expiry of the Contract:-
      1. clause 23 (Consequences of Termination);
      2. clause 26 and 27 (Insurance, Indemnity and Liability);
      3. clause 28 (Intellectual Property);
      4. clause 29 (Data Processing);
      5. clause 29 (Freedom of Information);
      6. clause 31 (Confidentiality);
      7. clause 32 (Record Keeping and Monitoring);
      8. clause 36 (TUPE and Re-tendering);
      9. clause 40 (Severance);
      10. clause 46 (Non Solicitation and Offers of Employment); and
      11. clause 49 (Law and Jurisdiction).
4. **INSURANCE**
   1. The Provider shall affect and maintain with a reputable insurance company throughout the Contract Period and for a period of six (6) years from the expiration or earlier termination of the Contract, a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider arising out of the performance of its obligations under the Contract, including death, personal injury, loss of or damage to property, and other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.
   2. The insurance to be affected and maintained by the Provider in accordance with clause 26.1 shall, as a minimum, include the specified insurances at the levels set out in the Contract Particulars.
   3. The Provider shall prior to the Commencement Date and on each anniversary of the Commencement Date upon request provide evidence that all premiums relating to such insurances have been paid.
   4. If the Provider fails to give effect to or to maintain the necessary insurances required by the provisions of the Contract, ‘the Authority’ may insure against any risk in respect of the default and may charge the Provider the cost of such insurance together with a reasonable administration charge.
5. **INDEMNITY AND LIABILITY**
   1. Neither Party seeks to exclude or limit its liability for:-
      1. death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other Party’s negligence);
      2. fraud or fraudulent misrepresentation; or
      3. any breach of any obligations implied Section 2 of the Supply of Goods and Services Act 1982; or;
      4. any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
   2. Subject to clauses 27.3 and 27.5, the Provider shall indemnify ‘the Authority’ against all Liabilities which may arise out of, or in consequence of, the Provider’s negligence or breach of its obligations under the Contract.
   3. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of ‘the Authority’ or by breach by ‘the Authority’ of its obligations under the Contract.
   4. Except as specifically provided, neither Party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
   5. Subject to clauses 27.1, 27.4 and 28.3, the Provider’s aggregate liability to ‘the Authority’ under the Contract whether in contract, tort (including negligence) or otherwise shall be subject to the financial limits set out in the Contract Particulars.
   6. Subject to clauses 27.1 and 27.4, ‘the Authorities’ liability to the Provider under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.
6. **INTELLECTUAL PROPERTY**
   1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:-
      1. provided to the Provider by ‘the Authority’ shall remain the property of ‘the Authority’; and
      2. prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Contract shall belong solely to ‘the Authority’, subject to any exceptions set out in the Contract Particulars and subject to the Provider retaining any existing Intellectual Property Rights prior to the inception of the Contract.
   2. The Provider shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third-party Intellectual Property Rights. The Provider shall procure that the owner of the Intellectual Property Rights grant to ‘the Authority’ a non-exclusive licence, or if the Provider is itself a licensee of those rights, the Provider shall grant to ‘the Authority’ an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other companies in ‘the Authority Group’, the Replacement Provider or to any other third-party providing Services to ‘the Authority’, and shall be granted at no cost to ‘the Authority’.
   3. It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after the Contract Period on written demand indemnify ‘the Authority’ against all Liabilities which ‘the Authority’ may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of ‘the Authority’.
   4. Subject to clause 30.3, at the termination of the Contract, the Provider shall at the request of ‘the Authority’ immediately return to ‘the Authority’ all materials, work or records held in relation to the Services, including any back-up media.
7. Data ProCESSING
   1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This clause 29 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation. In this clause 29, Applicable Laws means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
   2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the ‘the Authority’ is the data controller and the Provider is the data processor. The Annex to the Standard Terms sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of Personal Data and categories of Data Subject.
   3. Without prejudice to the generality of clause 29.1, the ‘the Authority’ will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this Agreement.
   4. Without prejudice to the generality of clause 29.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this Agreement:-
      1. process that Personal Data only on the written instructions of the ‘the Authority’ (as set out in the Annex to the Standard Terms), unless the Provider is required by Applicable Laws to otherwise process that Personal Data. Where the Provider is so required, it shall promptly notify the ‘the Authority’ before processing the Personal Data, unless prohibited by the Applicable Laws;
      2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the ‘the Authority’, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
      3. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the ‘the Authority’ has been obtained and the following conditions are fulfilled:-
         1. the ‘the Authority’ or the Provider has provided appropriate safeguards in relation to the transfer;
         2. the Data Subject has enforceable rights and effective remedies;
         3. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
         4. the Provider complies with the reasonable instructions notified to it in advance by the ‘the Authority’ with respect to the processing of the Personal Data;
      4. notify the ‘the Authority’ immediately if it receives:-
         1. a request from a Data Subject to have access to that person's Personal Data;
         2. a request to rectify, block or erase any Personal Data;
         3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
      5. assist the ‘the Authority’ in responding to any request from a Data Subject and in ensuring compliance with the ‘the Authorities’ obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
      6. notify the ‘the Authority’ immediately and in any event within twenty four (24) hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Agreement;
      7. at the written direction of the ‘the Authority’, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the Agreement unless required by the Applicable Laws to store the Personal Data;
      8. maintain complete and accurate records and information to demonstrate its compliance with this clause 29 and allow for audits by the ‘the Authority’;
   5. The Provider shall indemnify the ‘the Authority’ against any losses, damages, cost or expenses incurred by the ‘the Authority’ arising from, or in connection with, any breach of the Provider 's obligations under this clause 29.
   6. Where the Provider intends to engage a Subcontractor and intends for that Subcontractor to process any Personal Data relating to this Agreement, it shall:-
      1. notify the ‘the Authority’ in writing of the intended processing by the Subcontractor;
      2. obtain prior written consent to the processing;
      3. ensure that any subcontract imposes obligations on the Subcontractor to give effect to the terms set out in this clause 29.
   7. Either Party may, at any time on not less than thirty (30) Working Days' written notice to the other Party, revise this clause 29 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
   8. The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.
8. **FREEDOM OF INFORMATION**
   1. The Provider acknowledges that ‘the Authority’ is subject to the requirement of the Code of Practice on Government information, FOIA and the EIR and shall assist and cooperate with ‘the Authority’ to enable ‘the Authority’ to comply with its information disclosure obligations.
   2. The Provider shall and shall procure that its Subcontractors shall do all of the following where relevant:-
      1. transfer to ‘the Authority’ all requests for information that it receives as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information.
      2. provide ‘the Authority’ with a copy of all information in its possession, or power in the form that ‘the Authority’ requires within five (5) Business Days (or such other period as ‘the Authority’ may specify) of ‘the Authorities’ request.
      3. provide all necessary assistance as reasonably requested by ‘the Authority’ to enable ‘the Authority’ 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 EIR.
   3. ‘the Authority’ shall be responsible for determining in its absolute discretion despite any other provision in this Contract 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 Code of Practice on Government Information, FOIA or the EIR.
   4. In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by ‘the Authority’.
   5. The Provider acknowledges that (despite the provisions of clause 31 (Confidentiality)) ‘the Authority’ may, be obliged under the FOIA, or the EIR to disclose information concerning the Provider or the Services:-
      1. in certain circumstances without consulting the Provider; or
      2. following consultation with the Provider and having taken their views into account.
   6. Provided always that where 30.5.1 applies ‘the Authority’ shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the Provider advance notice, or failing that, to draw the disclosure to the Provider’s attention after any such disclosure.
   7. The Provider shall make sure that all information is retained for disclosure in accordance with any record keeping obligations of the Provider under this Contract and shall permit ‘the Authority’ to inspect such records as requested from time to time.
   8. The Provider acknowledges that the Commercially Sensitive Information is indicative only and that ‘the Authority’ may be obliged to disclose it in accordance with this clause 29.
9. **CONFIDENTIALITY**
   1. Information set out or referred to in this Contract or in the ITT and all further information and documents provided to, or prepared by, the Provider at any time in connection with the Services, are and shall be, strictly private and confidential. The Provider shall not (and shall ensure that its Employees do not) disclose or hand over any such information or documents to any third party without the prior written consent of ‘the Authority’. All such information and documents shall be kept secret by the Provider and shall be used only for the performance of the Services.
   2. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, ‘the Authority’ shall do the following:-
      1. treat the Provider’s Confidential Information and the Commercially Sensitive Information as confidential and safeguard it accordingly; and
      2. not disclose the Provider’s Confidential Information or the Commercially Sensitive Information to any other person without the Provider’s prior written consent.
   3. Clauses 31.1 and 31.2 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:-
      1. such disclosure is a requirement of Law, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause 29 (Freedom of Information);
      2. such information was in the Provider’s possession without obligation of confidentiality prior to its disclosure by ‘the Authority’;
      3. such information was obtained from a third party without obligation of confidentiality;
      4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and
      5. It is independently developed without access to ‘the Authorities’ Confidential Information.
   4. The Provider may only disclose ‘the Authorities’ Confidential Information to the Employees who are directly involved in the provision of the Services and who need to know the information, and shall make sure that such Employees are aware of and shall comply with these obligations as to confidentiality.
   5. The Provider shall not, and shall procure that the Employees do not, use any of ‘the Authorities’ Confidential Information received other than for the purposes of this Contract.
   6. Nothing in this Contract shall prevent ‘the Authority’ from disclosing the Provider’s Confidential Information or the Commercially Sensitive Information in any one or more of the following circumstances:-
      1. to any Crown body or any other contracting authority as defined in Regulation 3(1) of The Public Contracts Regulations other than ‘the Authority’. All Crown bodies or such contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such 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 other contracting authority;
      2. to any Provider, or other person engaged by ‘the Authority’ in connection with the purpose set out in the Specification or any person conducting an Office of Government Commerce gateway review and subject to equivalent confidentiality obligations to those set out in the Contract;
      3. for the purpose of the public inspection, examination and certification of ‘the Authorities’ accounts; and/or
      4. for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which ‘the Authority’ has used its resources.
10. **RECORD KEEPING, MONITORING AND AUDIT** 
    1. The Provider shall at its own cost:-
       1. keep the Authorised Officer informed of the Provider ’s activities in relation to the provision of the Services;
       2. provide to the Authorised Officer such regular reports on progress as are reasonably requested by ‘the Authority’; and
       3. provide to the Authorised Officer any other information that may be required by ‘the Authority’ to comply with ‘the Authorities’ procedures for monitoring of the Contract.
    2. In order to assist ‘the Authority’ in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by ‘the Authority’, and all payments made by ‘the Authority’. The Provider shall on request allow ‘the Authority’ or ‘the Authorities’ representatives such access to (and copies of) those records as may be required by ‘the Authority’ in connection with the Contract.
11. **HEALTH AND SAFETY**
    1. The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Employees, ‘the Authority’ staff, or other persons working on the premises where the Services are to be delivered.
12. **CORPORATE REQUIREMENTS**
    1. The Provider shall comply with all obligations under the HRA.
    2. The Provider shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment or otherwise and shall take all reasonable steps to secure the observance of this clause by all Employees.
    3. The Provider shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in Law of the ability of the Employees to work in the United Kingdom.
    4. If the Provider has a finding against it relating to its obligations under clause 34.3 it will provide ‘the Authority’ within ten (10) Working Days of the finding with:-
       1. details of the finding; and
       2. the steps the Provider has taken to remedy the situation.
13. **LAW**
    1. The Provider shall comply at all times with the Law in its performance of the Contract.
14. **TUPE AND RE-TENDERING**
    1. In the event of expiry or termination of this Contract, or whenever reasonably requested by ‘the Authority’ in preparation for tendering arrangements, the Provider will provide ‘the Authority’ with such assistance as ‘the Authority’ may require and, where TUPE applies, provide at no cost to ‘the Authority’ any information ‘the Authority’ (whether on its own account or on behalf of any potential or confirmed Replacement Provider) may request in relation to the Employees including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.
    2. The Provider authorises ‘the Authority’ to pass any information supplied to any Replacement Provider or potential Replacement Provider and the Provider will secure all necessary consents from relevant Employees in order to do this.
    3. The Provider will keep ‘the Authority’ and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.
15. **CONTRACT VARIATION**
    1. Subject to clause 37.2, no variation or modification to the Contract is valid unless it is in writing and signed by ‘the Authority’ and the Provider.
    2. ‘the Authority’ shall be entitled to issue to the Provider in writing or, in case of urgency orally (provided ‘the Authority’ confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised delivery instructions. The Provider shall charge for the impact of the variation order in accordance with the rates and prices as set out in the Pricing Schedule.
16. **THIRD PARTY RIGHTS**
    1. This Contract is enforceable by the original Parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.
17. **NO WAIVER**
    1. Failure by either Party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other Party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the Parties to enforce any provision in accordance with its terms.
    2. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 47 (Notices).
18. **SEVERANCE**
    1. If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.
19. **ASSIGNMENT, SUBCONTRACTING AND RESPONSIBILITY**
    1. Subject to any express provision of this Contract, the Provider shall not without the prior written consent of ‘the Authority’, assign all or any benefit, right or interest under this Contract or subcontract the provision of the Services.
    2. ‘the Authority’ shall be entitled to:-
       1. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations); or
       2. transfer, assign or novate its rights and obligations where required by Law.
    3. The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, Subcontractors, servants, agents and Employees as though they were its own.
20. **FORCE MAJEURE**
    1. Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
    2. If ‘the Authority’ or the delivery location is affected by circumstance of Force Majeure, ‘the Authority’ shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against ‘the Authority’ nor entitle the Provider to terminate the Contract.
    3. Industrial action by, or illness or shortage of the Provider’s Employees, agents or Subcontractors, failure or delay by any of the Provider’s suppliers to supply Services, components, Services or materials and breach of the Provider’s warranties under clause 8 shall not be regarded as an event of Force Majeure.
    4. If the event of Force Majeure continues for more than two (2) months, either Party may give written notice to the other to terminate the Contract immediately or on a set termination date.
    5. If the Contract is terminated in accordance with clause 42.4, neither Party will have any liability to the other except that any rights and Liabilities which accrued prior to termination will continue to exist.
21. **PREVENTION OF BRIBERY**
    1. The Provider:-
       1. shall not, and shall procure that any Employee shall not, in connection with this Contract commit a Prohibited Act;
       2. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by ‘the Authority’, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to ‘the Authority’ before execution of this Contract.
    2. The Provider shall:-
       1. if requested, provide ‘the Authority’ with any reasonable assistance to enable ‘the Authority’ to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
       2. within five (5) Working Days of the Commencement Date, and annually thereafter, certify to ‘the Authority’ in writing (such certification to be signed by an officer of the Provider) compliance with this clause 43 by the Provider and all persons associated with it or other persons who are supplying Services or Services in connection with this Contract. The Provider shall provide such supporting evidence of compliance as ‘the Authority’ may reasonably request.
    3. The Provider shall operate and maintain throughout the Contract Period an anti-bribery policy (which shall be disclosed to ‘the Authority’) to prevent any Employee from committing a Prohibited Act and shall enforce it where appropriate.
    4. If any breach of clause 43.1 is suspected or known, the Provider must notify ‘the Authority’ immediately.
    5. If the Provider notifies ‘the Authority’ that it suspects or knows that there may be a breach of clause 43.1, the Provider must respond promptly to ‘the Authorities’ enquiries, co-operate with any investigation, and allow ‘the Authority’ to audit books, records and any other relevant documentation.
    6. Without prejudice to any other rights and remedies available under this Contract, ‘the Authority’ may terminate this Contract by written notice with immediate effect if the Provider or Employee (in all cases whether or not acting with the Provider's knowledge) breaches clause 43.1 and recover from the Provider the amount of any loss suffered by ‘the Authority’ arising from the termination, including the cost reasonably incurred by ‘the Authority’ of making other arrangements for the provision of the Services and any additional expenditure incurred by ‘the Authority’ throughout the remainder of the Contract Period.
    7. Any notice of termination under clause 43.5 must specify:-
       1. the nature of the Prohibited Act;
       2. the identity of the Party whom ‘the Authority’ believes has committed the Prohibited Act; and
       3. the date on which this Contract will terminate.
    8. Notwithstanding clause 24 (Dispute Resolution), any dispute relating to:-
       1. the interpretation of clause 43; or
       2. the amount or value of any gift, consideration or commission,

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

* 1. Any termination under clause 43.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to ‘the Authority’.
  2. For the avoidance of doubt, the Provider shall be responsible for the acts and omissions of any Subcontractor and for the purpose of this clause 43, any act, default or omission of any Subcontractor shall be deemed to be an act, default or omission of the Provider.

1. **COSTS AND EXPENSES**
   1. Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.
2. **NO AGENCY OR PARTNERSHIP**
   1. Nothing contained in this Contract, and no action taken by the Parties pursuant to this Contract, will be deemed to constitute a relationship between the Parties of partnership, joint venture, principal and agent or employer and employee. Neither Party has, nor may it represent that it has, any authority to act or make any commitments on the other Party’s behalf.
3. **NON SOLICITATION AND OFFERS OF EMPLOYMENT**
   1. The Provider agrees that it will not, without the prior written consent of ‘the Authority’, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, Provider, partner or otherwise during the Contract Period or for a period of twelve (12) months following termination of this Contract:-
      1. solicit or entice, or endeavour to solicit or entice, away from ‘the Authority’, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a Provider to, ‘the Authority’ at the date of the termination of this Contract or at any time during the period of one (1) month immediately preceding the date of termination except where an individual responds directly to a general recruitment campaign; or
      2. attempt, or knowingly assist or procure any other person to do the above.
4. **NOTICES**
   1. Any notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally or by sending it by registered post or recorded delivery to the appropriate address, or email address notified to each other as set out in the Contract Particulars.
   2. Any notice serviced will be deemed to have been served as follows:-
      1. any notice served personally will be deemed to have been served on the day of delivery;
      2. any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted; or
      3. any notice sent by email before 5pm will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.
5. **ENTIRE AGREEMENT**
   1. The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 48 shall not exclude liability in respect of any fraudulent misrepresentation.
6. **LAW AND JURISDICTION**
   1. This Contract shall be governed by the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

# Appendix to Part 3 – Definitions and Interpretation

* 1. The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

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| --- | --- |
| “Authorised Officer” | the person duly appointed by ‘the Authority’ and notified in writing to the Provider to act as the representative of ‘the Authority’ for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification ‘the Authorities’ head of procurement or similar responsible officer; |
| “Bribery Act” | the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation; |
| “Business Day” | any day other than a Saturday or Sunday or a public or bank holiday in England; |
| “Change in Law” | the coming into effect or repeal (without re‑enactment or consolidation) in England of any law, or any amendment or variation to any law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the Commencement Date; |
| “Commencement Date” | the commencement date stated in the Contract Particulars; |
| “Commercially Sensitive Information” | information of a commercially sensitive nature relating to the Provider, its Intellectual Property Rights or its business or which the Provider has indicated to ‘the Authority’ in its Tender that, if disclosed by ‘the Authority’, would cause the Provider significant commercial disadvantage or material financial loss; |
| “Confidential Information” | any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored). This includes information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data (within the meaning of the DPA); |
| “Provider” | the Provider and where applicable this shall include the Provider's employees, Subcontractors, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members; |
| “Contract” | in respect of the provision of the Services consisting of the following listed documents which shall be read as one document:-   1. Part 1 - Memorandum of Agreement; 2. Part 2 - Contract Particulars; 3. Part 3 - Standard Terms and Conditions; 4. Part 4 –Specification; and 5. Part 5 – Provider’s Tender. |
| “Contract Manager” | the person named in the Contract Particulars as the Contract Manager and any replacement from time to time in accordance with clause 6; |
| “Contract Particulars” | the document detailing the specific core terms agreed between the Parties with regard to the Services; |
| “Contract Period” | the period of the Contract as stated in the Contract Particulars (and any extension in accordance with clause 2); |
| “Control” | control as defined by section 416 of the Income and Corporation Taxes Act 1988; |
| “DPA” | The Data Protection Act 2018; |
| “Data Controller” | shall have the same meaning as set out in the Data Protection Legislation; |
| “Data Processor” | shall have the same meaning as set out in the Data Protection Legislation; |
| “Data Protection Legislation” | means the UK Data Protection Legislation and (for so long as and to the extent that any relevant the law of the European Union has legal effect in the UK) the GDPR and any other directly applicable European Union regulation relating to privacy; |
| “Data Subject” | shall have the same meaning as set out in the Data Protection Legislation; |
| “Delivery Instructions” | the instructions provided in the Contract Particulars and any other information that ‘the Authority’ considers appropriate to the provision of the Services; |
| “Employee” | any person employed by the Provider to perform the Contract which will also include the Provider's servants, agents, voluntary and unpaid workers and Subcontractors and representatives or, in respect of clause 36 (TUPE and re-tendering) and any other TUPE obligation, an individual employed by the Provider in the performance of the Services; |
| “EIR” | The Environmental Information Regulations 2004; |
| “FOIA” | The Freedom of Information Act 2000; |
| “Force Majeure” | any cause materially affecting the performance by a Party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either Party. This includes without limitation: acts of God, war, industrial action (subject to clause 42.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies; |
| “GDPR” | means the General Data Protection Regulation ((EU) 2016/679); |
| “Good Industry Practice” | the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a professional skilled and experienced Provider engaged in the supply of Services similar to the Services under the same or similar circumstances as those applicable to the Contract; |
| “HRA” | The Human Rights Act 1998; |
| “Information” | has the meaning given under section 84 of the Freedom of Information Act 2000; |
| “Initial Contract Period” | the period of the Contract as stated in the Contract Particulars without any extension to the Contract in accordance with clause 2.2; |
| “Intellectual Property Rights” | 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; |
| “Invitation to Tender” | the document issued by ‘the Authorities’ inviting the submission of a tender or quote from the Provider in relation to the subject matter of the Contract; |
| “Key Personnel” | those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause 5.3; |
| “Law” | any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply; |
| “Liabilities” | legally enforceable and properly mitigated costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought; |
| “Personal Data” | shall have the same meaning as set out in the Data Protection Legislation; |
| “Price” | the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for; |
| “Pricing Schedule” | the part of the Tender detailing the Price; |
| “Prohibited Act” | the following constitute Prohibited Acts:-  (a) to directly or indirectly offer, promise or give any person working for or engaged by ‘the Authority’ (including without limitation any member or officer) a financial or other advantage to:-  (i) induce that person to perform improperly a relevant function or activity; or  (ii) reward that person for improper performance of a relevant function or activity;  (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;  (c) committing any offence:-  (i) under the Bribery Act;  (ii) under legislation creating offences concerning fraudulent acts;  (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with ‘the Authority’; or  (iv) defrauding, attempting to defraud or conspiring to defraud ‘the Authority’. |
| “Quality Standards” | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation, a relevant professional, accreditation or authorisation body, or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification; |
| “Request for Information” | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR; |
| “Services” | the Services described in the Specification and the Tender, together with:-   1. such other services as may be reasonably incidental to those set out in the Specification and Tender; and 2. all equipment required and any associated goods provided by the Provider in relation to those Services. |
| “Specification” | the specification forming part of the Invitation to Tender setting out ‘the Authorities’ detailed requirements in relation to the Services; |
| “Standard Terms and Conditions” | the terms and conditions set out in this document; |
| “Subcontract” | any contract or agreement, or proposed contract or agreement between the Provider and any third party whereby that third party agrees to provide to the Provider the Services or any part of the Services, or facilities or Services necessary for the provision of the Services or any part of the Services, or necessary for the management, direction or control of the Services or any part of the Services; |
| “Subcontractor” | the third parties that enter into a subcontract with the Provider; |
| “Tender” | the Provider’s tender or quotation for the Services in response to ‘the Authorities’ Invitation to Tender; |
| “TUPE” | The Transfer of Undertakings (Protection of Employment) Regulations; |
| “‘the Authority’” | the South Tees Site Company Ltd (‘the Authority’) and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of ‘the Authority’ (whether in part or totally) or which is controlled by or is under common control with ‘the Authority’ (and the expression ‘control’ shall mean the power to direct or cause the direction of the general management and polices of the person in question but only for so long as such control exists); and |
| “UK Data Protection Legislation” | means any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation. |

* 1. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, Government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
  2. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.
  3. In this Contract “including” means “including without limitation”.
  4. The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

# Part 4 – SPECIFICATION

*[To be inserted]*

# PART 5 – PROVIDER’S TENDER

*[To be inserted]*

**TRUST DEED**

# PART 3 – STANDARD TERMS AND CONDITIONS

# Part 4 – SPECIFICATION

*[To be inserted]*

# PART 5 – PROVIDER’S TENDER

*[To be inserted]*