

CALL OFF CONTRACT IN RESPECT OF CLERK OF WORKS SERVICES.

**NORTAMPTONSHIRE COUNTY COUNCIL
AND**



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PARTIES

- (1) NORTHAMPTONSHIRE COUNTY COUNCIL whose principal place of business is at One Angel Square Angel Street, Northampton NN1 1ED (**Customer**)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Supplier**)

BACKGROUND

- (A) The Authority issued a Request for Quotation (RFQ) on 2nd December 2019 seeking quotes from potential suppliers for the provision of Clerk of Works Services.
- (B) The Supplier responded to the RFQ with a Quote on xxxxxxxxxxxxxx. The Authority accepted the Supplier's Quote and the Supplier has been awarded a place on the Framework.
- (C) On the basis of the Supplier's Quote, the Authority selected the Suppliers to enter a Framework Agreement to provide services the Authority in accordance with the Framework Agreement and under these Call Off Terms and Conditions.
- (D) The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Supplier under the Framework Agreement.
- (E) The Customer is a Contracting Body. It has selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this Contract.

GENERAL PROVISIONS

1. DEFINITIONS

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

Approval: the prior written approval of the Customer.

Auditor: the National Audit Office or an auditor appointed by the Customer as the context requires.

Authorised Representative: the persons respectively designated as such by the Customer and the Supplier in the Order Form.

Authority: NORTHAMPTONSHIRE COUNTY COUNCIL, being the contracting authority that established the Framework Agreement.

Confidential Information: means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Contract: the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses (except that, for the purposes of clause 47.3 only, reference to "Contract" shall not include the Order Form).

Contract Period: the period from the Service Commencement Date to:

- (a) the date of expiry set out in clause 3;
- (b) following an extension pursuant to clause **Error! Reference source not found.**, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.

Contract Price: the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract.

Contract Year: a period of 12 months, commencing on the Service Commencement Date.

Contracting Authority: any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (SI 2015/102) other than the Customer.

Contracting Body: a Contracting Authority identified in the RFQ as a potential purchaser of Services under the Framework Agreement.

Crown: the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the Welsh Government), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf.

Data Protection Legislation: means the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) [and the guidance and codes of

practice issued by the relevant data protection or supervisory authority and applicable to a party].

Data Subject: shall have the same meaning as set out in the Data Protection Legislation.

Default: any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.

Deliverables: those deliverables listed in the Order Form.

Dispute Resolution Procedure: the dispute resolution procedure in clause 45.

Environmental Information Regulations: the Environmental Information Regulations 2004 (*SI 2004/3391*), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment: the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract.

Fees Regulations: the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (*SI 2004/3244*).

FOIA: the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure: any event or occurrence that is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including: fire; flood; 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:

- (a) any industrial action occurring within the Supplier's or any Sub-Contractor's organisation; or
- (b) the failure by any Sub-Contractor to perform its obligations under any Sub-Contract.

Framework Agreement: the framework agreement for the provision of Clerk of Works Services between the Authority and the Supplier dated [DATE].

GDPR: means the General Data Protection Regulation ((EU) 2016/679).

Good Industry Practice: standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence

and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

Information: has the meaning given under section 84 of the FOIA.

Initial Contract Period: the period set out in clause 3.

Intellectual Property Rights: any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the look and feel of any websites, and **Intellectual Property** shall refer to such materials.

Key Personnel: any individual identified in the Order Form as being key personnel.

Law: any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, [enforceable community right within the meaning of section 2 of the European Communities Act 1972], regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Supplier is bound to comply.

Management Information: the management information specified in the Order Form.

Month: calendar month.

Order: the order placed by the Customer to the Supplier in accordance with the Framework Agreement, which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards.

Order Form: the document used to place an Order.

Parent Company: any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. The term **Holding Company:** shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.

Party: the Supplier or the Customer and Parties shall mean both the Supplier and the Customer.

Personal Data: shall have the same meaning as set out in the Data Protection Legislation.

Premises: the location where the Services are to be supplied, as set out in the Order Form.

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer 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 2010;
 - (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 Customer; or
- (d) defrauding, attempting to defraud or conspiring to defraud the Customer.

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

Quality Standards: the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form.

Regulatory Bodies: those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer.

Replacement Supplier: any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in substitution for any

of the Services following the expiry, termination or partial termination of the Contract.

Request for Information: shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply).

Service Commencement Date: the service commencement date set out in the Order Form.

Services: the Clerk of Works services to be supplied as specified in the Order Form.

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

Staff Vetting Procedures: the Customer's procedures and departmental policies for the vetting of personnel for:

- (a) eligibility to work in the UK;
- (b) the carrying out of regulated activity within the meaning of the Safeguarding Vulnerable Groups Act 2006.

Sub-Contract: any contract between the Supplier and a third party under which the Supplier agrees to source the provision of any of the Services from that third party.

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

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

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Variation: has the meaning given to it in clause 33.

VAT: value added tax in accordance with the provisions of the Value Added Tax Act 1994.

Working Day: any day other than a Saturday or Sunday or public holiday in England and Wales.

2. INTERPRETATION

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) 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;
- (e) 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;
- (f) the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (h) the Schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the Schedules;
- (i) references in the Contract to any clause or sub-clause or Schedule without further designation shall be construed as a reference to the clause or sub-clause or Schedule to the Contract so numbered; and
- (j) references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to the Contract so numbered.

3. INITIAL CONTRACT PERIOD

The Contract shall take effect on the Service Commencement Date and shall expire automatically on the completion of the project unless it is otherwise terminated sooner in accordance with the provisions of the Contract.

4. SUPPLIER'S STATUS

At all times during the Contract Period the Supplier shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act

in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

5. CUSTOMER'S OBLIGATIONS

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

6. MISTAKES IN INFORMATION

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

SUPPLY OF SERVICES

7. SERVICES

- 7.1 The Supplier shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Customer may inspect and examine the manner in which the Supplier supplies the Services at the Premises during normal business hours on reasonable notice.
- 7.2 The Supplier acknowledges that it has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer before submitting its Quote so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.
- 7.3 The Supplier shall:
 - (a) at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body;
 - (b) at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

- 7.4 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 7.5 Subject to the Customer providing Approval in accordance with clause 8, timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

8. PROVISION AND REMOVAL OF EQUIPMENT

- 8.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Services.

STAFFING

9. KEY PERSONNEL

- 9.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall, and shall procure that any Sub-Contractor shall, obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least ONE Months' written notice must be provided by the Supplier of its intention to replace Key Personnel.
- 9.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-Contractor, but the Customer may interview the candidates for Key Personnel positions before they are appointed.
- 9.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten Working Days and that any replacement shall have suitable qualifications and experience and be fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 9.4 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.]

10. SUPPLIER'S STAFF

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

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff,

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

10.2 At the Customer's written request, the Supplier shall provide a list of the names of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

10.3 If the Supplier fails to comply with clause 10.2 within two Months of the date of the request then the Customer may exclude Supplier Staff from entry to the Premises. Exercise of the Customer's rights under this clause shall not excuse the Supplier from any attributable failure to perform the Services.

10.4 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force and notified to the Supplier from time to time for the conduct of personnel when at or within the boundaries of those Premises.

10.5 The Supplier warrants that it has complied with the Staff Vetting Procedures in respect of all Staff employed or engaged by the Supplier at the Service Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

11. NON-SOLICITATION

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

12. ENVIRONMENTAL REQUIREMENTS

The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment (see also [CCS Guidance on Social and Environmental Aspects, Annex B \(Suggested Contract Clauses For Social And Environmental Issues\)](#)).

13. HEALTH AND SAFETY

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

PAYMENT AND CONTRACT PRICE

14. CONTRACT PRICE

- 14.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with clause 15.
- 14.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

15. PAYMENT AND VAT

- 15.1 The Supplier shall ensure that each invoice is submitted in accordance with the payment profile set out in the Order Form and contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documents reasonably required by the Customer to substantiate the invoice. This must be an electronic invoice, it must also comply with the standard on electronic invoicing. For these purposes "electronic invoice" means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- 15.2 Where the Supplier submits an invoice to the Customer in accordance with *clause 15.1*, the Customer will consider and verify that invoice within 7 days.
- 15.3 The Customer shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.
- 15.4 Where the Customer fails to comply with *clause 15.3*, the invoice shall be regarded as valid and undisputed 7 days after the date on which it is received by the Customer.
- 15.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

- (a) provisions having the same effect as *clause 15.2* to *clause 15.4* of this agreement; and
- (b) a provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as *clause 15.2* to *clause 15.4* of this agreement.

In this *clause 15.5*, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

- 15.6 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 15.7 The Supplier shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this *clause 15.7* shall be paid by the Supplier to the Customer not less than five Working Days before the date on which the tax or other liability is payable by the Customer.
- 15.8 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Contract under *clause 41* for failure to pay undisputed sums of money.

16. RECOVERY OF SUMS DUE

- 16.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract [or under any other agreement or contract with the Customer].
- 16.2 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.
- 16.3 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an

amount equal to such deduction to be paid by the Customer to the Supplier.

- 16.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

STATUTORY OBLIGATIONS AND REGULATIONS

17. CONFLICTS OF INTEREST

- 17.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.
- 17.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 17.1 above arises or is reasonably foreseeable.
- 17.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

18. PREVENTION OF BRIBERY

- 18.1 The Supplier:
- (a) shall not, and shall procure that the Staff and all Sub-Contractor personnel shall not, in connection with this Contract commit a Prohibited Act; and
 - (b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Contract,

excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Contract.

18.2 The Supplier shall:

- (a) if requested, provide the Customer with any reasonable assistance, at the Customer's reasonable cost, to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
- (b) within SEVEN Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 18 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.

18.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) prior to the award of any contract to prevent any Staff or Sub-Contractors from committing a Prohibited Act and shall enforce it where appropriate.

18.4 If any breach of clause 18.1 is suspected or known, the Supplier must notify the Customer immediately.

18.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of clause 18.1, the Supplier must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documents. This obligation shall continue for FIVE years following the expiry or termination of this Contract.

18.6 The Customer may terminate this Contract by written notice with immediate effect if the Supplier, its Staff or Sub-Contractors (in all cases whether or not acting with the Supplier's knowledge) breaches clause 18.1. In determining whether to exercise the right of termination under this clause 18.6, the Customer shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, Sub-Contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a Sub-Contractor) means and shall be construed as acting:

- (a) with the authority or with the actual knowledge of any one or more of the directors of the Supplier or the Sub-contractor (as the case may be); or
- (b) in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.

18.7 Any notice of termination under clause 18.6 must specify:

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

18.8 Despite clause 45, any dispute relating to:

- (a) the interpretation of clause 18; or
- (b) the amount or value of any gift, consideration or commission,

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

18.9 Any termination under clause 18 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

19. DISCRIMINATION

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

19.2 The Supplier shall take all reasonable steps to secure the observance of clause 19 by all servants, employees or agents of the Supplier and all suppliers and Sub-contractors employed in the execution of the Contract.

INFORMATION

20. CONFIDENTIALITY

20.1 Subject to clause 20.2, the parties shall keep confidential all matters relating to this Contract and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

20.2 Clause 20.1 shall not apply to any disclosure of information:

- (a) required by any applicable law, provided that clause 22 shall apply to any disclosures required under the FOIA or the Environmental Information Regulations;
- (b) that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under this Contract;
- (c) that is reasonably required by the Customer;
- (d) where a party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 20.1;
- (e) by the Customer of any document to which it is a party and which the parties to this Contract have agreed contains no Confidential Information;
- (f) to enable a determination to be made under clause 45;
- (g) which is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;
- (h) by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the Confidential Information; and
- (i) by the Customer relating to this Contract and in respect of which the Supplier has given its prior written consent to disclosure.

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

21. DATA PROTECTION

21.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 21 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. In this clause 21, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) 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.

- 21.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor. Annex C sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 21.3 Without prejudice to the generality of clause 21.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 21.4 Without prejudice to the generality of clause 21.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer (as set out in ANNEX C), unless the Supplier is required by the Applicable Laws to otherwise process the Personal Data. Where the Supplier is so required, it shall promptly notify the Customer before processing the Personal Data, unless prohibited by the Applicable Laws;
 - (b) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Customer, 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);
 - (c) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;

- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (d) notify the Customer immediately if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Customer in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer immediately and in any event within 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;
- (g) at the written direction of the Customer, 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;
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 21 and allow for audits by the Customer or it's designated auditor pursuant to clause 30 and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation;
- (i) indemnify the Customer against any losses, damages, cost or expenses suffered by the Customer arising from or in connection with any breach by the Supplier of its obligations under this clause 26.

21.5 Where the Supplier intends to engage a Sub-Contractor pursuant to clause 36 and intends for that Sub-Contractor to process any Personal Data relating to this agreement, it shall:

- (a) notify the Customer in writing of the intended processing by the Sub-Contractor;
 - (b) obtain prior written consent from the Customer to the processing;
 - (c) ensure that any Sub-Contract imposes obligations on the Sub-Contractor to give effect to the terms set out in this clause 26.
- 21.6 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this clause 26 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).
- 21.7 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

22. FREEDOM OF INFORMATION

- 22.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 22.2 The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this

Agreement) the Customer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

23. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 23.1 The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior written Approval.
- 23.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer, including any examination of the Contract by the Auditor.
- 23.3 The Supplier shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

24. INTELLECTUAL PROPERTY RIGHTS

- 24.1 The Supplier shall retain ownership of all Intellectual Property created by the Supplier or any Staff or Sub-Contractor of the Supplier:
 - (a) in the course of performing the Services; or
 - (b) exclusively for the purpose of performing the Services.
- 24.2 The Supplier hereby grants, or shall procure the direct grant, to the Customer of a perpetual, royalty free, irrevocable and non-exclusive licence of the Intellectual Property, and shall allow the Customer to use the Intellectual Property for any purpose relating to the exercise of the business or function of the Customer provided in each case that such rights shall not extend to the commercial exploitation of the Intellectual Property. This licence shall, during its term, include the right to sub-licence to a third party (including, for the avoidance of doubt, any replacement supplier or other third party invited by the Customer to participate in a Quoting process for the award of a contract to deliver replacement services).
- 24.3 The Supplier shall indemnify the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the

availability of the Services, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

25. RECORDS AND AUDIT ACCESS

- 25.1 The Supplier shall keep and maintain until seven years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Customer and the amounts paid by the Customer.
- 25.2 The Supplier shall keep the records and accounts referred to in clause 25.1 above in accordance with good accountancy practice.
- 25.3 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 25.4 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of SEVEN years after the expiry of the Contract Period to the Customer and the Auditor.
- 25.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services, except insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 25.6 Subject to the Customer's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
 - (a) all information requested by the Customer within the scope of the audit;
 - (b) reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 25.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 25, unless the audit reveals a material Default by the Supplier

in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

26. REPLACEMENT OF CORRUPTED DATA

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

CONTROL OF THE CONTRACT

27. PROVISION OF INFORMATION AND MEETINGS

- 27.1 The Supplier shall submit Management Information to the Customer throughout the Contract Period [as set out in the RFQ documents].
- 27.2 The Authorised Representatives shall meet in accordance with the details set out in the Order Form and the Supplier shall, at each meeting, present its previously circulated Management Information.

28. MONITORING OF CONTRACT PERFORMANCE

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

29. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

- 29.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, and may, acting reasonably:
 - (a) Subject to clause 29.4, withhold a sum; or
 - (b) deduct a sum,in each case equal to a maximum of FIVE% of the Contract Price payable in respect of the Month in which the complaint arose.

- 29.2 The parties agree that a deduction made pursuant to clause 29.1(b) represents a genuine pre-estimate of the loss likely to be suffered by the Customer.
- 29.3 Where the Customer withholds a sum pursuant to clause 29.1(a) then that sum shall be paid to the Supplier when, in the reasonable opinion of the Customer, the matters complained of have been rectified and there has been no repeat of those matters for THREE Month(s).
- 29.4 If the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under clause 41, do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the 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 Services; and/or
 - (c) charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 29.5 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within [ten] Working Days of the Customer's instructions or such other period of time as the Customer may direct.
- 29.6 If the Supplier:
- (a) fails to comply with clause 29.5 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 29.5 above,

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

30. RIGHTS AND REMEDIES

The rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

31. TRANSFER AND SUB-CONTRACTING

- 31.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any of its obligations or duties under the Contract.
- 31.2 Provided that the Customer has given prior written consent, the Supplier shall be entitled to novate the Contract following the novation of the Framework Agreement where:
 - (a) the specific change in contractor was provided for in the procurement process for the award of the Framework Agreement;
 - (b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement.
- 31.3 The Supplier shall be responsible for the acts and omissions of its Sub-Contractors as though they are its own.
- 31.4 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 31.5 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute to substantially perform any of the functions that had previously been performed by the Customer; or

- (c) any private sector body which substantially performs the functions of the Customer,

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

32. WAIVER

- 32.1 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 32.2 A failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

33. VARIATION

- 33.1 Subject to the provisions of this clause 33, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 33.2 The Customer may request a Variation by completing and sending the Variation form attached at Annex A (the **Variation Form**) to the Supplier, giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 33.3 If the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
 - (a) agree that the Parties continue to perform their obligations under the Contract without the Variation; or
 - (b) terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a

case the Parties shall attempt to agree on a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.

- 33.4 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

34. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 34.1 A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 34.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Contract are not subject to the consent of any other person. No term of this Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to this Contract.

35. SEVERANCE

- 35.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.
- 35.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

LIABILITIES

36. LIABILITY, INDEMNITY AND INSURANCE

- 36.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence;
 - (b) Fraud or fraudulent misrepresentation;
 - (c) any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - (d) any claim under clause 15.7;
 - (e) any claim under clause 38; or
 - (f) any claim under the indemnity in clause 24.3.
- 36.2 Subject to clause 36.1 and clause 36.3, the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 36.3 Subject to clause 36.1, in no event shall either Party be liable to the other for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); or
 - (f) any indirect or consequential loss or damage.
- 36.4 The Customer may, among other things, recover as a direct loss:
- (a) any additional operational and/or administrative expenses arising from the Supplier's Default;

- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default; and
 - (c) the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier.
- 36.5 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

37. INSURANCES

- 37.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:
 - (a) public liability insurance with a limit of indemnity of not less than £10m in relation to any one claim or series of claims;
 - (b) employer's liability insurance with a limit of indemnity of not less than £5m **OR** in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
 - (c) professional indemnity insurance with a limit of indemnity of not less than £2m in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Consultants involved in the provision of the Services hold and maintain appropriate cover; and/or

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

- 37.2 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 37.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Customer may make alternative

arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

37.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.

37.5 The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiry or earlier termination of the Contract

38. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

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

39. WARRANTIES AND REPRESENTATIONS

The Supplier 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 Supplier;
- (c) in entering the Contract it has not committed any Prohibited Act;
- (d) as at the Service Commencement Date, all information, statements and representations contained in the RFQ and the response to the RFQ for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware during the Contract Period 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 effect 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 Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (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 Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

DEFAULT, DISRUPTION AND TERMINATION

40. TERMINATION ON INSOLVENCY AND CHANGE OF CONTROL

- 40.1 Without affecting any other right or remedy available to it, the Customer may terminate this Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply];
 - (b) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of Supplier with one or more other companies or the solvent reconstruction of the Supplier];

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) [other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);
- (e) the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- (g) [the Supplier (being an individual) is the subject of a bankruptcy petition or order;]
- (h) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- (i) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 40.1(a) to clause 40.1(h) (inclusive); [or]
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

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

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

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

41. TERMINATION ON DEFAULT

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

- (a) the Supplier has not remedied the material breach to the satisfaction of the Customer within 20 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- (b) the material breach is not, in the opinion of the Customer, capable of remedy.

41.2 For the purposes of clause 41.1, **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of this Contract; or
- (b) any of the Supplier's obligations set out in this Contract over a 3 Month period during the term of this Contract.

In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

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

- (a) the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- (b) if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
- (c) any warranty given by the Supplier in clause 39 of this Contract is found to be untrue or misleading.

41.4 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, except that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 16.

42. CONSEQUENCES OF TERMINATION OR EXPIRY

- 42.1 Where the Customer terminates the Contract under clause 41 and then makes other arrangements for the supply of Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer 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 41, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.
- 42.2 Except as otherwise expressly provided in the Contract:
- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clause 14, clause 15, clause 16, clause 17, clause 20, , clause 21, clause 22, clause 24, clause 25, clause 30, clause 36, clause 37, clause 38, clause 42, clause 44, and clause 49.

43. DISRUPTION

- 43.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Supplier employed by the Customer.
- 43.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 43.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 43.4 If the Supplier's proposals referred to in clause 43.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Customer may:

- (a) require the Supplier to provide alternative proposals; or
- (b) undertake the services itself and recover from the Supplier the additional costs incurred in the process.

Subject to clause 43.5, nothing in this clause shall release the Supplier from the proper performance of its obligations under the Contract.

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

44. RECOVERY ON TERMINATION

- 44.1 On the termination of the Contract for any reason, the Supplier shall:
- (a) immediately return to the Customer all Confidential Information, Personal Data and Customer's Intellectual Property in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Services;
 - (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 8. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
 - (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Supplier and/or the completion of any work in progress; and
 - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 44.2 If the Supplier fails to comply with clause 44.1(a) and clause 44.1(b), the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or Sub-Contractors where any such items may be held.

- 44.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 44.1(c) and clause 44.1(d) free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.

45. DISPUTE RESOLUTION

- 45.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (Dispute) then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:
- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the CAPITAL PROJECTS MANAGER of the Authority and OPERATIONS DIRECTOR of the Supplier shall attempt in good faith to resolve the Dispute;
 - (b) if the CAPITAL PROJECTS MANAGER of The Authority and OPERATIONS DIRECTOR of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the HEAD OF ESTATES & FACILITIES of the Authority and MANAGING DIRECTOR of the Supplier who shall attempt in good faith to resolve it; and
 - (c) if the HEAD OF ESTATES & FACILITIES of the Authority and MANAGING DIRECTOR of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.
- 45.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under clause 49 which clause shall apply at all times.

46. FORCE MAJEURE

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if

such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate this Contract by giving 14 days' written notice to the affected party.

47. ENTIRE AGREEMENT

- 47.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 47.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this Contract, provided that nothing in this clause 47 shall operate to exclude any liability for fraud.
- 47.3 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 clauses of the Contract;
 - (b) the Order Form except Appendices 2 (Supplier's Quote) to the Order Form;
 - (c) the terms of the Framework Agreement, the Schedules to the Framework Agreement and the appendices to the Order Form, except Schedule 1, part 2, Appendix 2 (the Supplier's Quote),;
 - (d) any other document referred to in the clauses of the Contract; and
 - (e) Schedule 1, part 2 of the Framework Agreement and Appendix 2 to the Order Form (the Supplier's Quote), .

48. NOTICES

- 48.1 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.

48.2 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) or by fax or e-mail. Such letters shall be addressed to the other Party in the manner referred to in clause 48.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours in the case of fax or e-mail, or sooner where the other Party acknowledges receipt of such letters, fax or e-mail.

48.3 For the purposes of clause 48.2 the address of each Party shall be:

- (a) for the Customer: the address set out in the Order Form.
- (b) for the Supplier: the address set out in the Order Form.

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

49. GOVERNING LAW AND JURISDICTION

49.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

49.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Authorised to sign for and on behalf of the Customer

Signature.....

Date.....

Name in capitals.....

Address.....
.....

Authorised to sign for and on behalf of the Supplier

Signature.....

Date.....

Name in capitals.....

Address.....
.....

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Annex A. Variation Form

Variation Form

Call-off terms and conditions for services

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

BETWEEN:

[NAME OF CONTRACTING AUTHORITY] (**the Customer**)

and

[NAME OF SERVICE PROVIDER] (**the Supplier**)

1. The Order is varied as follows: [LIST DETAILS OF THE VARIATION INCLUDING ANY IMPACT ON THE CONTRACT PRICE].
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.....
.....

Authorised to sign for and on behalf of the Supplier

Signature.....

Date.....

Name in capitals.....

Address.....
.....

Annex B. Data Processing

1. The Supplier shall comply with any further written instructions in respect of processing by the Customer.
2. Any such further instructions shall be incorporated into this Annex.
- 3. Processing by the Supplier**
 - 3.1 Scope
 - 3.2 Nature
 - 3.3 Purpose of processing
 - 3.4 Duration of processing
 - 3.5 Types of Personal Data
 - 3.6 Categories of Data Subject