



**DORSET & WILTSHIRE**  
**FIRE AND RESCUE**

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Standard Terms and Conditions for  
Goods and Services

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Revised Jan 2021

## 1. Definitions and Interpretation

The following words and expressions have the following meaning unless inconsistent with the context:

**“Authority”** means Dorset and Wiltshire Fire and Rescue Authority.

**“Authority’s Premises”** means any premises owned by the Authority or for which the Authority has legal responsibility and to which the Goods and/or Services are supplied.

**“Bribery Act 2010”** means 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.

**“Commencement Date”** means the date agreed by the Parties from when the Goods and/or Services will be supplied under this Contract.

**“Commercially Sensitive Information”** means, if relevant, the information listed in a schedule or order comprised of trade secrets and information provided by the Contractor to the Authority in confidence.

**“Confidential Information”** means any information which has been designated as confidential by either Party or that ought to be considered as confidential (however it is conveyed) which either Party may receive or obtain in connection with this Contract.

**“Contract”** means the written agreement between the Authority and the Contractor consisting of these Contract Conditions together with any Special Conditions agreed in writing by the Parties, the Specification, the Contract Documentation, any attached schedules and appendices and, if relevant, the Invitation to Tender and the Contractor’s Tender.

**“Contractor”** means the person, partnership, company or other organisation with which the Authority enters into the Contract, including its Personnel, agents, successors and permitted assigns.

**“Contract Period”** means the period from the Commencement Date to:

- a) the date of expiry set out in clause 3.1 (Initial Contract Period), or
- b) following an extension pursuant to clause 3.2 (Extension of Initial Contract Period), 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 Conditions”** means the contract conditions set out in this document.

**“Contract Documentation”** includes, but is not limited to, the Specification, the Special Conditions, the Purchase Order and, if relevant the Invitation to Tender and the Contractor’s Tender, all of which are incorporated in and together form the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Contract Price Schedule, for the full and proper performance by the Contractor of its obligations under the Contract.

**“Contract Price Schedule”** means any Schedule to this Contract containing details of the Contract Price.

**“Default”** means any breach of the obligations of the Contractor or any other default, act, omission, negligence or negligent statement of the Contractor or its Personnel in connection with or in relation to the subject matter of the Contract and in respect of which the Contractor is liable to the Authority.

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

**“Goods and/or Services”** means the Goods and/or Services to be supplied by the Contractor under this Contract as specified in the Specification.

**“Initial Contract Period”** means the period from the Commencement Date to the date of expiry agreed by the Parties (or as set out in the Invitation to Tender), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Invitation to Tender”** means, if relevant, the invitation and instructions to tenderers issued by the Authority to submit a Tender or quotation for the provision of the Goods and/or Services during the Contract Period.

**“Law”** means any applicable Act of Parliament, subordinate legislation, exercise of the royal prerogative, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any regulatory body with which the Contractor is bound to comply whether in relation to the delivery of the Goods and/or Services or otherwise.

**“Party”** means a party to the Contract and ‘Parties’ will be construed accordingly.

**“Personnel”** means all persons employed by the Contractor together with the Contractor’s volunteers, agents and Sub-Contractors used in the supply of the Goods and/or Services.

**“Purchase Order”** means an order issued by the Authority for the Goods and/or Services during the period of the Contract.

**“Specification”** means the detailed specification for the Goods and/or Services prepared by the Authority.

**“Special Conditions”** means any additional conditions which the Authority may apply to the Contract and which will form part of the Contract Documentation.

**“Supporting Documentation”** means such evidence and other information as the Authority may reasonably require from time to time to be submitted in support of an invoice.

**“Supervising Officer”** means the Authority’s officer responsible for ensuring that the Contractor performs the Contract in accordance with these Contract Conditions.

**“Sub-Contractor”** means any third party appointed by the Contractor which through its employees or agents delivers the Goods and/or Services.

**“Tender”** means, if relevant, the document(s) submitted by the Contractor to the Authority in response to the Invitation to Tender.

**“TUPE Regulations”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended from time to time.

**“VAT”** means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

**“Working Day”** means any day other than a Saturday, Sunday, or public holiday when banks in the United Kingdom are open for business.

## **Interpretation**

In this Contract:

- Headings do not affect its interpretation or construction;
- Words importing the singular include the plural and vice versa;
- References to numbered clauses are references to the relevant clause in these Contract Conditions;
- Words importing any gender include every gender;
- Any reference to an enactment includes a reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- In the event of any conflict between the Contract Conditions and the Contract Documentation, the Contract Conditions will prevail, save that the Special Conditions will prevail over the Contract Conditions.

## **2. Parties to the Contract**

**2.1** The Contract is between the Contractor and the Authority.

**2.2.** A person who is not a Party to the Contract will have no right to enforce any term of the Contract which expressly or by implication confers a benefit on them without the prior agreement in writing of both Parties. For avoidance of doubt, the provisions of the Contracts (Rights of Third Parties) Act 1999 will not apply to this Contract.

## **3. Contract Period**

**3.1.** The Contract will take effect on the Commencement Date and will continue for the Initial Contract Period unless terminated earlier in accordance with the Law or these Contract Conditions.

**3.2.** Subject to the Contractor’s satisfactory performance during the Initial Contract Period, the Authority may elect to extend the duration of the Contract with the agreement of the Contractor for a further period, such period to be agreed with the Contractor, or as provided for on Tender, by giving the Contractor no less than three (3) months’ written notice.

## **4. Entire Agreement**

**4.1.** The Contract sets out the entire agreement and understanding between the Parties in respect of the subject matter of the Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, with the exception that this clause will not exclude liability in respect of any fraud or fraudulent misrepresentation.

**4.2** Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract.

## **5. Variation**

**5.1.** No variation of the Contract will be effective unless it is agreed in writing and signed by the authorised officers for each Party.

## **6. General Contract Standards**

**6.1** The Contractor will provide the Goods and/or Services during the Contract period strictly in accordance with the Specification, the Contract Documentation and these Contract Conditions.

**6.2.** The Contractor will provide the Goods and/or Services with all reasonable care and skill, taking care so as to avoid injury to persons and damage to property, and so as to conform with all Law and all relevant standards and specifications, whether specified in the Specification or not.

**6.3** Where there is a current appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institute or equivalent European standard, all Goods and/or Services and materials used or supplied and all workmanship will meet that standard unless the Authority agrees otherwise. The Goods and/or Services will comply with all applicable statutory and regulatory requirements relating to the purpose for which the Goods and/or Services are to be used, including (but not limited to) the manufacture, liability, packaging, storage, handling and delivery of the Goods.

**6.4** The Goods will be supplied in a substantial and workmanlike manner and will be of satisfactory quality. If the Authority has indicated (either expressly or implication) that it requires something for a specific purpose, it will be provided fit for that purpose. Anything described in the Contract Documentation or any other representation made to the Authority will comply with that description and anything sold by reference to a sample will be as good as or better than the sample.

**6.5** The Goods and/or Services will be delivered in accordance with any timetable that was stipulated by the Authority or formed part of the Contract Documentation. If there was no such timetable agreed, the Goods and/or Services will be delivered in a reasonable time unless it is implicit from the Contract Documentation that time is of the essence for the delivery of the Goods and/or Services.

**6.6** If the Contractor fails to deliver the Goods and/or Services within the time specified by the Authority, the Authority may release itself from any obligation to accept and pay for the Goods and/or Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Authority.

**6.7** Where the Contractor is unable to provide the Goods and/or Services on any particular date (for whatever reason) then the Contractor will propose an alternative date to be agreed with the Authority, and time will be of the essence for delivery.

**6.8** The Authority reserves the right to reject the alternative date proposed by the Contractor and to terminate the Contract immediately. The Authority is entitled to engage an alternative Contractor to provide the Goods and/or Services in any event and in particular in the event of the Contractor being unable to offer an acceptable date.

**6.9** In the event the Authority terminates the Contract or engages an alternative Contractor under clause 6.8 above, the Authority will not be liable to pay the Contractor for the Goods and/or Services that the Contractor did not deliver on the specified date and will not be liable for any losses incurred by the Contractor.

**6.10** The Contractor will attend contract review meetings as reasonably required to review performance under this Contract.

## **7. Supply of Goods**

### **General**

**7.1** The Contractor will supply the Goods as stated in the Contract Documentation. The property and risk in such Goods will not pass to the Authority until they have been delivered to the Authority's Premises and, following a reasonable time for inspection, have been accepted by the Supervising Officer or his authorised representative and deemed to meet quality requirements and to be fit for purpose.

**7.2** The Contractor will transfer good title to the Authority for any Goods supplied, being unencumbered and without any reservation to anyone else.

**7.3** The Authority will be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it will give notice in writing to the Contractor to remove them within five Working Days and to refund to the Authority any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods will remain with the Contractor unless they are accepted by the Authority. The Authority will be under no obligation to accept or pay for any Goods supplied earlier than the agreed date for delivery.

**7.4.** The risk in any over-delivered Goods will remain with the Contractor unless they are accepted by the Authority in accordance with this clause.

**7.5** Acceptance of delivery will take place when the Supervising Officer or his authorised representative provides a receipt to the Contractor.

**7.6** No charge will be made for delivery unless agreed by the Authority. If a third party is used to transport or deliver the Goods, they are agent to the Contractor and the Contractor is responsible for their actions or failures.

**7.7** The Contractor will use all reasonable efforts to minimise the use of packaging, which will be recoverable by the Contractor or where this is not practicable will be reusable or recyclable by the Authority.

**7.8** In the event that the Contractor is required to dispose of the Authority's existing assets, the Contractor will dispose of these in accordance with the Law and must provide the Authority with copies of documentary evidence of legal compliance.

## **8. Supply of Services**

**8.1** The Contractor will ensure that the Services are performed to the highest professional standards and conform to any and all codes of practice, performance ratings, and quality standards as are laid down in the Contract Documentation or relate to the nature of the Services supplied.

**8.2** The Contractor will be responsible for any costs incurred in rectifying faults relating to the Services.

**8.3** The Contractor will adequately supervise the supply of the Services.

**8.4** The Contractor will properly manage and monitor the performance of the Services at all times, and immediately notify the Authority of any actual or potential problems that might affect the delivery of the Services.

**8.5** The Contractor will provide all Personnel, equipment, resources and other things as may be required for the provision of the Services and will maintain such equipment and other resources in a safe, serviceable and clean condition.

## **9. Rejection of Goods or Services**

**9.1** Without prejudice to any other right or remedy available to the Authority, the Authority will be entitled to reject any Goods and/or Services that fail to comply with the requirements of the Contract and the Contractor will reimburse to the Authority the price paid for such Goods and/or Services in full with payment of any additional expenditure reasonably incurred by the Authority in obtaining other Goods and/or Services in replacement, provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

**9.2** Without prejudice to any other right or remedy available to the Authority, if so requested by the Authority, the Contractor will at its own cost promptly repair, replace or rectify the Goods and/or Services to the Authority's reasonable satisfaction.

**9.3** The Contractor will immediately, at its own expense, remove such rejected Goods and/or Services. If the Contractor will fail to remove rejected Goods and/or Services within three (3) Working Days of notice requiring such removal the Authority may cause the same to be removed. The Authority will be at liberty to deduct all expenses incurred in such removal from any monies due or that may become due to the Contractor or otherwise to recover that amount from the Contractor.

**9.4** The Authority will have power to purchase elsewhere other Goods and/or Services as near as practicable to the Specification as circumstances permit in the place of Goods and/or Services rejected and/or considered to be of an unsatisfactory standard. The Authority will also have such power in circumstances where the Contractor has supplied a quantity less than that ordered and required unless the Contractor will immediately provide Goods and/or Services that will be sufficient and satisfactory.

**9.5** Any excess cost incurred by the Authority over the agreed Contract Price together with all charges and expenses arising from the purchase of such other Goods or performance of such other Services will be recoverable by the Authority from the Contractor.

**9.6** The Authority will have the option of paying a reduced price for any Goods and/or Services not of the specified quality or standard, or deficient in measure, according to the Authority's evaluation.

## **10. Personnel**

**10.1** The Contractor will ensure that its Personnel:

**10.1.1** have the relevant experience, training and qualifications to enable them to supply and deliver the Goods and/or Services to meet the requirements of this Contract:

**10.1.2** maintain strict discipline and good order and will not engage in behaviour or activities which could be contrary to or detrimental to the Authority's interests or reputation;

**10.1.3** where provided with details of keys, security codes or other security details, keep the same secure at all times and not release or disclose the same (as the case may be) other than to another person engaged by the Contractor in the provision of the Contract who reasonably requires the release or disclosure in order to perform the Contract;

**10.1.4** be available to the Authority, in the case of managers, either by telephone or in person, to discuss and manage issues concerning the provision of the Goods and/or Services during normal office hours on Working Days;

**10.1.5** are employed in sufficient numbers to ensure that the Goods and/or Services are provided at all times and in all respects in accordance with this Contract.

**10.2** The Authority reserves the right to require the removal from the Contract of any individual or Sub-Contractor used by the Contractor whose continued involvement in the delivery of the Services would in the reasonable opinion of the Supervising Officer be undesirable.

**10.3** Should the Authority require the involvement in the Services of any Personnel to be suspended or terminated in accordance with clause 10.2 above, the Contractor will provide a replacement that is acceptable to the Authority. The Authority will in no circumstances be liable either to the Contractor or to the Personnel in respect of any award, cost, expenses, liability, loss or damage occasioned by such removal and the Contractor will fully indemnify the Authority against any such claims made.

## **11. Contractor's Status**

**11.1** In performing the Contract the Contractor will be acting as principal and not as the agent of the Authority.

**11.2** The Contractor will not in any circumstances hold itself out as being the servant or agent of the Authority or hold itself out as being authorised to enter into any agreement on behalf of the Authority.

**11.3** Nothing in this Contract will create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties, and accordingly neither Party will be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

## **12. Publicity**

**12.1** The Contractor will not advertise the fact that it is providing Goods and/or Services to the Authority under the Contract other than with the prior written permission of the Supervising Officer.

## **13. Use of Authority Premises**

**13.1** The Authority may, during the period of the Contract, permit the Contractor to use, free of charge, such storage space, office facilities and equipment of the Authority as may from time to time be designated by the Authority for use by the Contractor. In such an event, the Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or their staff. The Authority can revoke this permission at any time.

**13.2** The Contractor will comply with all reasonable security requirements of the Authority while on the Authority's Premises and will ensure that its Personnel, agents and Sub-Contractors will likewise comply with such requirements.

**13.3** The Contractor will use its best endeavours to ensure that access to the Authority's Premises is restricted to its Personnel and essential visitors engaged upon or in connection with the delivery of the Goods and/or Services.

#### **14. Supervising Officer**

**14.1** The Authority will appoint a Supervising Officer and will notify the Contractor of the identity and contact details of such person and will also notify the Contractor of all others authorised to act on behalf of or in place of the Supervising Officer.

#### **15. Quality Monitoring**

**15.1** The Authority may monitor the performance of the Contractor by any means which are practical and reasonable.

**15.2** The Contractor will have effective management information systems in place to provide such information at the request of the Authority.

**15.3** The Contractor will ensure that a suitable member of the Contractor's Personnel attends periodic contract review meetings, together with such other meetings as are reasonably required by the Authority in relation to the Contract. The Contractor will be responsible for its own costs in attending any such meeting.

**15.4** The Authority may inspect the supply of the Goods and/or Services at any time.

#### **16. Purchase Orders and Payments**

**16.1** The Authority will provide the Contractor with an official Purchase Order, in advance, for the supply of the Goods and/or Services. The official order number must be quoted on all invoices. No Goods and/or Services will be supplied unless the Authority has issued the Contractor with an official Purchase Order. No payment will be made or liability accepted by the Authority in respect of Goods and/or Services supplied other than in accordance with this clause.

**16.2** Where estimated quantities required are listed in the Invitation to Tender or other documents, such estimated quantities are provided as a guide only. The Contractor acknowledges that the Authority does not guarantee the quantities ordered.

**16.3** An invoice accompanied by Supporting Documentation will be submitted by the Contractor to the Supervising Officer, in arrear, either on completion of the order or, if expressly agreed by the Authority, at the end of each month of the Contract period and thereafter until all Goods and/or Services have been supplied. The invoice will identify clearly identify:

**16.3.1** the value identified in the Tender, quote or Contract Price Schedule, as relevant, of the Goods and/or Services, provided in accordance with the Contract Documentation;

**16.3.2** the calculation of the matters in 16.3.1;

**16.3.3** the official order number.

**16.4** The Authority will pay to the Contractor the amount properly due to the Contractor under the terms of this Contract within thirty (30) days of receipt of a valid undisputed invoice and Supporting Documentation. The Contractor is required to ensure that any contract it has with a sub-contractor to provide the Goods and/or Services states that payment will be made by the Contractor to its sub-contractor within thirty (30) days of receipt of a valid undisputed invoice and this condition is required to be continued down the supply chain.

**16.5** Payment will be made through the Bank Automated Clearing System (BACS) and the Contractor will provide the Authority with bona fide bank details prior to commencement of the Contract to enable the Authority to make such payments.

**16.6** The Contract Price will be inclusive of all costs, expenses and overheads but exclusive of VAT which will be charged at the prevailing rate.

**16.7** If the Authority intends to withhold all or any part of a payment it will give reasonable notice to the Contractor to that effect, which notice will specify the amount proposed to be withheld and the grounds for doing so.

## **17. Force Majeure**

**17.1** Neither Party will be liable for any delay in, or non-performance of, any obligation under this Contract (other than the payment of money) caused by an event beyond the reasonable control of that Party including but not limited to acts of God, war, explosion, fire, strike, flood, riot, pandemic, epidemic or civil commotion or any act or omission of the other Party, or a force majeure event affecting a supplier, Sub-Contractor or a third party.

**17.2** In the event such circumstances persist beyond a reasonable period given the nature of the event and its effect on the obligations under this Contract, then the other Party will have the right, for so long as the circumstances which prevent performance continue, to terminate this Contract by giving not less than thirty Working Days' written notice to the other Party.

## **18. Assignment and Sub-Contracting**

**18.1** This Contract and all rights under it may be assigned or transferred by the Authority.

**18.2** The Contractor may not assign or sub-contract any of its rights or duties under this Contract without the prior written approval of the Supervising Officer.

**18.3** Any such permitted transfer, assignment or sub-contracting will be on the same terms as this Contract, unless otherwise agreed by the Parties.

**18.4** Sub-contracting any part of this Contract will not relieve the Contractor of any obligation or duty attributable to the Contractor under this Contract.

**18.5** The Contractor will be responsible for the acts and omissions of its Sub-Contractors as though they are its own.

## **19. Health and Safety**

**19.1** The Contractor will, at all times, in the provision of the Goods and/or Services, comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other legal provisions pertaining to the health and safety of its Personnel, the Authority's employees and others who may be affected by its performance of this Contract.

**19.2** The Contractor will promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

**19.3** Whilst on the Authority's Premises, the Contractor's Personnel, agents and Sub -Contractors will comply with the Authority's health and safety policy from time to time in force and all rules and regulations notified to the Contractor by the Authority from time to time relating to such Premises.

**19.4** The Contractor will notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

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

**19.6** The Authority is empowered to suspend the provision of the Goods and/or Services or part thereof in the event of non-compliance by the Contractor with its legal duties in health and safety matters. The Contractor will not resume provision of the Goods and/or Services or such part until the Authority is satisfied that the non-compliance has been rectified.

## **20. Equal Opportunities**

**20.1** The Contractor will at all times operate a policy of equal opportunity in staffing, recruitment and service delivery. The Contractor will be required to forward a copy of this policy to the Authority when required and demonstrate its operation in the performance of the Services.

**20.2** The Contractor will not unlawfully discriminate in the provision of the Services either directly or indirectly on such grounds as race, colour, ethnic or national origin, culture and linguistic background, disability, gender or sexual orientation, pregnancy and maternity, gender reassignment, marriage and civil partnership, religion or belief or age and, without prejudice to the generality of the foregoing, will not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other Law.

**20.3** The Contractor will take all reasonable steps to secure the observance of this clause by all Personnel engaged in the Services.

## **21. Environment**

**21.1** The Contractor will operate in an environmentally conscious manner and in accordance with the Law, taking into consideration the impact of its activities and operations on the environment and actively seek to minimise or eliminate those impacts.

**21.2** The Contractor and its Personnel will cooperate with the Authority's officers over the implementation of the Authority's Environmental Policy and Action Plan, including the provision of data and information to enable the Authority to monitor, track and report on its activities.

## **22. Intellectual Property**

**22.1** All and any intellectual property rights developed under the Contract or arising from the provision of Goods and/or Services by the Contractor will belong to the Authority and the Contractor agrees that it will execute or cause to be executed all deeds, documents and acts required to vest such intellectual property rights in the Authority.

**22.2** The Contractor will not, in connection with the performance of the Contract, use, manufacture, supply or deliver any process, article, matter or thing, the use, supply or delivery of which would constitute an infringement of any third party intellectual property rights. The Contractor will indemnify the Authority in respect of any loss arising from the infringement of any third party intellectual property rights.

**22.3** The Contractor will not use the Authority's logo or any of the Authority's intellectual property rights without the Authority's prior written consent.

## **23. Data Protection**

**23.1** The Contractor agrees to comply with the provisions of the Special Condition relating to Data Protection should the Contractor be required to process personal data on behalf of the Authority in the course of providing the Goods and/or Services.

## **24. Fraud and Corruption and the Bribery Act 2010**

**24.1** The Contractor will operate a policy which complies with statutory obligations under the Bribery Act 2010.

**24.2** The Contractor will have in place and operate proportionate procedures to risk assess and mitigate the bribery risks that it may face and will conduct due diligence when engaging Personnel, consultants, representatives, agents and Sub-Contractors, in local and overseas markets, communicate and train its staff on their obligations and regularly monitor and review the effectiveness of the practices in place.

**24.3** The Authority will be entitled to terminate the Contract with immediate effect and to recover from the Contractor the amount of any loss resulting from such termination if:

**24.3.1** The Contractor has offered, given or agreed to give any person any gift or consideration of any kind to act as an inducement or reward for doing or not doing or for having done or not done any action in relation to the obtaining or execution of the Contract or any other contract with the Authority; or

**24.3.2** The Contractor shows favour or disfavour to any person in relation to the Contract or any other contract with the Authority; and.

**24.3.3** If the like acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Contractor), or if in relation to any contract with the Authority the Contractor or any person employed by it or acting on its behalf has committed any offence under the Bribery Act 2010 or has given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act 1972.

**24.4** The Contractor will provide the Authority, on request, with evidence of compliance with statutory obligations under the Bribery Act 2010.

## **25. Conflicts of Interest**

**25.1** The Contractor will operate a system for dealing with potential conflicts of interest. The Contractor will take appropriate steps to ensure that neither the Contractor nor any of its Personnel is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will disclose to the Authority full particulars of any such conflict of interest which may arise.

## **26. Freedom of Information**

**26.1** The Contractor acknowledges that the Authority is subject to the requirements of the Freedom of Information Act 2000 and will assist and co-operate with the Authority (at the Contractor's expense) to enable it to comply with its information disclosure requirements.

**26.2** The Contractor will (and will procure that its Sub-Contractors will):

**26.2.1** Transfer all requests for information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a request for information,

**26.2.2** Provide the Authority with a copy of any information in its possession or power in the form that the Authority requires within five Working Days of the Authority requesting it; and

**26.2.3** Provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a request for information within the time for compliance set out in Section 10 of the Act.

**26.3** The Authority will be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information:

**26.3.1** is exempt from disclosure in accordance with the provisions of the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the Act; or

**26.3.2** is to be disclosed in response to a request for information; and

**26.3.3** in no event will the Contractor respond directly to a request for information unless expressly authorised to do so by the Authority.

**26.4** The Contractor acknowledges that the Authority may, acting in accordance with the Code of Practice on the Discharge of Public Authorities' Functions under Part 1 of the FOIA, be obliged to disclose information:

**26.4.1** without consulting the Contractor; or

**26.4.2** following consultation with the Contractor and having taken its views into account.

**26.5** The Contractor will ensure that all information produced in the course of the Contract is retained for disclosure and will permit the Authority to inspect such records as requested from time to time.

**26.6** The Contractor acknowledges that any lists or schedules provided by it outlining Commercially Sensitive Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 26.4.

## **27. Confidentiality**

**27.1** The Contractor, its Personnel and any other person associated with the Contractor will keep confidential all Confidential Information that it may acquire in relation to the other Party.

**27.2** The Contractor will not use or disclose the Authority's Confidential Information, without prior written consent, except to persons and for the purpose of performing this Contract or where disclosure is expressly permitted under this Contract.

**27.3.** The Contractor will only use the Authority's Confidential Information for the purposes of this Contract.

**27.4** The Contractor will take reasonable steps to ensure the Authority's Confidential Information is only given to its Personnel, professional advisors or consultants as strictly necessary for the performance of this Contract. The Contractor will ensure its Personnel, professional advisors or consultants are aware of the Contractor's confidentiality obligations under this Contract.

**27.5** The obligations on the Contractor set out in clauses 27.1 to 27.4 will not apply to any Confidential Information which:

**27.5.1** the Contractor can demonstrate is or becomes public knowledge otherwise than by Default under this Contract;

**27.5.2** is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt;

**27.5.3** is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

**27.5.4** is independently developed without access to the Confidential Information;

**27.5.5** is required to be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Contractor, including any requirements for disclosure under the Freedom of Information Act 2000.

**27.6** The Contractor will ensure that its Personnel are aware of the Authority's confidentiality obligations under this Contract.

**27.7** This clause will survive termination or expiry of this Contract for six years.

## **28. Transparency Requirements**

**28.1** The Contractor hereby confirms that it:

**28.1.1** understands that the Authority routinely publishes local spending data in relation to invoices, grant payments, expenses payments and other transactions over £500, including details of contracts and tenders over £500, in accordance with the Local Government Transparency Code 2015; and.

**28.1.2** agrees that the Authority may therefore publish details of the Contract and will comply with any reasonable request from the Authority in order to assist the Authority in complying with its transparency obligations.

## **29. TUPE, Information on Re-Tendering and Migration of Services**

**29.1** If requested to do so by the Supervising Officer, the Contractor will, at its own expense, provide to the Authority any and all relevant information to permit the Authority to prepare the necessary documentation in respect of any subsequent tendering or re-tendering of the Goods and/or Services. The information required will be sufficient to enable the Authority to meet its legal obligations and to obtain the best value for money reasonably obtainable in a tendering exercise.

**29.2** The Contractor will promptly provide to the Authority or any subsequent provider of the Goods and/or Services (as appropriate) such information and records as it will reasonably require to ensure a smooth transition and continued efficient provision of the Goods and/or Services to the Authority by a subsequent provider. At the end of the Contract period all records and documents relating to the provision of the Goods and/or Services will vest in the Authority.

**29.3** The Contractor will at no cost to the Authority co-operate fully with the Authority to ensure an orderly migration of the services or replacement services to the Authority, or, at the Authority's request, to a new service provider.

**29.4** Where it has been identified that Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply on the migration to a new contractor of the Services under the Contract, the Contractor will, at its own expense, promptly provide to the Authority on written request any and all relevant and accurate information as the Authority may reasonably require at any time during the tendering exercise in relation to employees of the Contractor engaged in performing the Contract.

**29.5** If TUPE applies on termination or expiry of this Contract, the Contractor agrees to indemnify the Authority fully against all losses arising from or relating to the provision of the information provided under clause 29.4 and/or any claim by any Contractor Personnel or other personnel claiming to be an employee of the Contractor on the date upon which the Contract is terminated or expires arising out of their employment whether such claim arises before or after the TUPE transfer date.

**29.6** The provisions of this clause will survive the termination or expiry of the Contract for a period of six years.

## **30. Assistance in Legal Proceedings**

**30.1** If requested to do so by the Supervising Officer, the Contractor will co-operate fully with the Authority (including, but not limited to the provision of documentation and statements from Personnel) in connection with any legal proceedings, ombudsman enquiries, inquiry, arbitration tribunal or court proceedings in which the Authority may become involved, or any relevant disciplinary hearing internal to the Authority, arising out of the provision of the Goods and/or Services, and the Contractor will if requested by the Supervising Officer give evidence in such inquiries, arbitration, proceeding or hearings.

## **31. Insurance, Liability and Indemnities**

**31.1** Neither Party excludes or limits liability to the other party for death or personal injury caused by its negligence, fraud, fraudulent misrepresentation or any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982.

**31.1.1** A valid policy or policies of employer's liability insurance at an adequate level of indemnity to cover all risks which may be incurred by the Contractor in the delivery of the Contract, but with a minimum level of indemnity of £5 million, for any one claim in respect of all sums the Contractor is found legally liable to pay for injury, illness or disease suffered by any Personnel of the Contractor acting in the course of his duties;

**31.2** The Contractor shall indemnify and keep indemnified the Authority from and against any liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person howsoever arising out of, or in the course of, or caused by the performance (or non-performance) of the Contract, and from and against any action, claims, demands, damages, loss, costs or expenses whatsoever or howsoever which may be brought against the Authority or which the Authority may be called upon to pay arising out of or in connection with the Contractor's breach, negligent performance, or failure or delay in performance, or failure or delay in performance of the contract by the Contractor, its employees, agents or subcontractors unless caused by the negligence of the Authority or its employees.

**31.3** The Contractor shall effect and maintain with a reputable insurance company professional indemnity insurance, product liability insurance and public liability insurance to provide an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract.

**31.4** The Contractor 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.

**31.5** The requirements imposed by this clause 31 shall continue in full force and effect and be enforceable by the Authority for a minimum period of twelve (12) months (or as agreed by the Parties) after the Contract Period has expired or after termination of the Contract for whatever reason.

## **32. Notices**

**32.1** Any notice to be given under this Contract will be in writing and will be hand delivered or sent by first class mail to the usual business/registered address of the Contractor and the Authority at the date this Contract is entered into or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

**32.2** Provided the notice sent as above is not returned as undelivered it will be deemed to have been received:

**32.2.1** if delivered by hand before 4pm on a Working Day, at the time of delivery, otherwise receipt will be deemed to occur at 9am on the next following Working Day; or

**32.2.2** if delivered by first class inland mail, two Working Days after the day of posting.

**32.3** In proving the giving of a notice, it will be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted.

**32.4** For the purposes of this clause “writing” will not include email.

### **33. Business Continuity Plan and Disaster Recovery**

**33.1** The Contractor will ensure that a disaster recovery plan, acceptable to the Authority, is in place for its own organisation, premises and operations for the duration of the Contract.

**33.2** The Contractor will ensure, and demonstrate on request by the Authority, that business continuity plans, acceptable to the Authority, are in place to ensure the continued supply of Goods and/or Services to the Authority, for the duration of the Contract at no extra cost to the Authority, according to the quality and timelines specified within the Contract

**33.3** The Contractor will provide the Authority, on request, with a copy of its disaster recovery and business continuity plans.

**33.4** The Authority reserves the right to request evidence of testing of the plans and to require review and/or amendment of the plans and any other contingency arrangements to meet the Authority’s requirements and in any event the Contractor will review the plans as a minimum every six months.

### **34. Audit**

**34.1** The Contractor will keep and maintain until six years after the Contract has been completed full and accurate records of the Contract including the Goods and/or Services provided under it, any expenditure reimbursed by the Authority and any payments made by the Authority.

**34.2** The Contractor will on reasonable notice afford the Authority such access to those records as may be required by the Authority in connection with the Contract.

### **35. Dispute resolution**

**35.1** In the event that any disagreement or difference of opinion arises out of this Contract, the matter will be dealt with in accordance with this clause.

**35.2** The Contractor and the Supervising Officer will meet to seek resolution. In the event that they do not meet within ten Working Days of the date on which either Party convenes a meeting to resolve the matter, or should they not be able to resolve the matter within ten Working Days of the first meeting, the matter will be promptly referred by either Party to the next level of management within the respective organisations.

**35.3** If within fourteen Working Days of the matter having been referred to the next level of management no agreement has been reached as to the matter in dispute, the Parties will thereafter seek to determine the matter by adopting the procedure below.

**35.4** If the dispute remains unresolved after the above process has been followed, the dispute will then be referred to mediation. Mediation will take place through a recognised mediation provider, such as ACAS, as agreed by both Parties. Neither Party will seek to refer the dispute to the courts unless the mediation process fails to resolve the dispute.

**35.5** The provisions contained in this clause 35 will survive the expiry or termination of this Contract for an indefinite period.

## **36. Termination**

**36.1** This Contract will terminate at the end of the Contract period unless terminated earlier by either Party giving not less than three (3) months' notice in writing, or such other period as may be agreed in writing by the Parties.

**36.2** Without prejudice to any other rights and remedies it may possess the Authority will be entitled immediately upon the happening of any of the following events to terminate this Contract by notice in writing, such events being:

**36.2.1** discovery of a material misrepresentation by the Contractor during the tendering process:

**36.2.2** persistent (i.e. at least three) minor breaches of the Contract by the Contractor which shall constitute a Default;

**36.2.3** the Contractor having failed to deliver a substantial part of the Goods and/or Services or having committed any other Default which in the reasonable opinion of the Supervising Officer justifies termination of the Contract;

**36.2.4** the Contractor suffering any distress or process of execution to be levied on its Goods and/or Services;

**36.2.5** the Contractor consists of one or more individuals, any one of them committing any act of bankruptcy or having a bankruptcy order made against him/her;

**36.2.6** the Contractor entering into (whether an individual or a body corporate) any arrangement, agreement or composition with and for the benefit of its creditors (including a voluntary arrangement under the provisions of the Insolvency Act 1986);

**36.2.7** the Contractor consists of a body corporate, the Contractor or its parent company having a winding-up order made or (except for the purpose of amalgamation or reconstruction) a resolution passed for voluntary winding-up;

**36.2.8** the Contractor having an application made for the appointment of an administrator, administrative receiver or receiver having been appointed over the whole or any part of its business and/or assets; or having a provisional liquidator, receiver or manager of the whole or any part of its business appointed;

**36.2.9** the Contractor having possession taken of any of its property comprised in a floating charge by or on behalf of the holders of any debentures secured by the floating charge.

**36.3** The Authority will be entitled to give notice to terminate the Contract with immediate effect if any of the following grounds apply:

**36.3.1** Where the Contract has been subject to a substantial modification that constitutes a new Contract award;

**36.3.2** Where it is discovered after Contract award that the Contractor should have been excluded on one of the mandatory exclusion grounds in regulation 57(1) of the Public Contracts Regulations 2015;

**36.3.3** Where any relevant court has declared a serious infringement by the Authority meaning that the Contract should not have been awarded by the Authority to the Contractor;

**36.4** Termination of the Contract for any reason will not affect any rights which have accrued to either Party at the date of termination.

**36.5** The provisions contained in this clause 36 will survive the expiry or termination of this Contract howsoever caused and will continue thereafter in full force and effect.

### **37. Severability**

**37.1** If any part of the Contract is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of the Contract which will continue to be valid and enforceable to the fullest extent permitted by Law.

### **38. Waiver**

**38.1** The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy will not constitute a waiver of that right or remedy and will not cause a diminution of the obligations established by the Contract.

**38.2** No waiver will be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 33.

### **39. Applicable Law**

**39.1** The Contract will be governed by and construed in accordance with English Law and each Party agrees to submit to the exclusive jurisdiction of the English courts.

### **40. Survival of Terms**

**40.1** With the exception of clauses 22, 23, 26, 27, 29, 30, 31 and 36 or where otherwise expressly provided, no term will survive expiry or termination of this Contract.

### **41. Variation Procedure**

**41.1** The Authority may, or where in its sole and absolute discretion it decides to, having been requested to do so by the Contractor, request a variation to this Contract provided always that such variation does not amount to a material change of this Contract within the meaning of the Law. Such a change once implemented is hereinafter called a "Variation".

**41.2** The Authority may request a Variation by completing, signing and sending a variation request to the Contractor giving sufficient information for the Contractor to assess the extent of the proposed Variation and any additional cost that may be incurred.

**41.3** The Contractor will respond to the Authority's variation request within the time limits specified. Such time limits will be reasonable and ultimately at the discretion of the Authority having regard to the nature of the proposed Variation.

**41.4** In the event that:

**41.4.1** the Contractor is unable to agree to or provide the Variation; and/or

**41.4.2** the Parties are unable to agree a change to the Contract that may be included in a request for a Variation or may be required in response to it, the Authority may agree to continue to perform its obligations under this Contract without the Variation; or terminate this Contract in accordance with clause 36.

## **42. Right of Set-Off**

**42.1** Without prejudice to any other rights and remedies available to it, the Authority will be entitled to set off all or any of its liabilities to the Contractor against all or any of the Contractor's liabilities to it and any liability, damage, loss, charge or expense which the Authority has incurred in consequence of any Default by the Contractor under the Contract.

## **43. Recovery of Sums Due**

**43.1** Wherever any sum of money is recoverable from or payable by the Contractor the Authority may unilaterally deduct that sum from any sum then due or which at any later time may become due to the Contractor under any other contract with the Authority.

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

## **44. Change in Law**

**44.1** The Contractor will neither be relieved of its obligations under the Contract nor be entitled to an increase in the Contract Price as a result of a change in Law if the change and its effect are known at the Commencement Date.

**44.2** If a change in Law occurs or is shortly to occur which will significantly affect the provision of the Goods and/or Services or the cost of doing so, the Contractor will notify the Authority to express an opinion of the likely effects of the change including:

**44.2.1** whether any change is required to the Goods and/or Services, the Contract Price or the Contract; and

**44.2.2** whether the Contractor requires any relief from compliance with its obligations.

**44.3** If the Parties agree upon the effects of the change in Law and any financial consequences such agreement will be implemented through the variation provisions of clause 41.

**44.4** In the case of any dispute arising under this clause, the matter will be resolved in accordance with clause 35.

## **45. Modern Slavery Act 2015**

**45.1** The Contractor warrants and undertakes that in performing its obligations under the terms of this Contract, it will:

**45.1.1** comply with the Modern Slavery Act 2015; and

**45.1.2** not engage in any activity, practice or conduct that would constitute an offence under the Modern Slavery Act 2015; and

**45.1.3** include in its subcontracting arrangements provisions that are at least as onerous as those set out in this clause 45,

**45.2** The Contractor warrants that neither it nor any of its officers, Personnel, agents or Sub-Contractors has:

**45.2.1.** committed an offence under the Modern Slavery Act 2015 ('a MSA Offence'); or

**45.2.2.** been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or

**45.2.3.** is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA offence or prosecution under the Modern Slavery Act 2015.

## **46. IR35 Rules and Employment Status**

**46.1** The Contractor agrees to notify the Authority as soon as reasonably practicable in the event of a change in the employment status of the Contractor during the period of the Contract within the meaning of Part 2 Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('the IR35 Rules') and to provide all such information regarding the same as may be reasonably requested by the Authority.

**46.2** The Contractor will indemnify the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and other liabilities arising from the Contractor's failure to comply with Clause 46.1.

## **47. Whistleblowing Policy**

**47.1** The Contractor is expected to act in the spirit of the Authority's Whistleblowing (Confidential Reporting) Procedure which is available on the Authority's website, to the extent that the provisions of such are not contrary to any equivalent policy of the Contractor, and to respect the principles contained therein. This policy will be an issue for discussion on monitoring visits.

## **48. Warranties**

**48.1** The Contractor warrants and represents to the Authority that:

**48.1.1** it has the full capacity and authority to enter into and perform this Contract and that the Contract is executed by a duly authorised representative of the Contractor;

**48.1.2** it will deliver the Goods and/or Services using reasonable care and skill with suitably qualified Personnel, to a standard which conforms to generally accepted industry standards and practice;

**48.1.3** it will use all reasonable endeavours to deliver the Goods and/or Services in accordance with this Contract and that the Goods and/or Services will be in accordance in all material respects with the requirements of the Contract Conditions and the Contract Documentation;

**48.1.4** the Authority's Personnel will have the necessary skills, professional qualifications and experience to deliver the Goods and/or Services in accordance with the Contract Conditions, Contract Documentation and industry standards and practice, the Contractor being responsible for all costs, fees, expenses and charges required for the Contractor to deliver the Goods and/or Services;

**48.1.5** it has obtained all necessary and required licences, consents and permits to deliver the Goods and/or Services;

**48.1.6** it is not in default in the payment of any due and payable taxes or in the filing, registration or recording or any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Contract;

**48.1.7** as at the Commencement Date, all information, statements and representations contained in its tender (if relevant) are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to the execution of this Contract and it will promptly advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;

**48.1.8** no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Contract.

**48.2** Each of the Parties acknowledges that in entering into this Contract it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Contract and any Clauses, warranties or other terms implied by statute, common law or custom and practice are excluded from this Contract to the fullest extent permitted by Law.

## **49. Termination on Default**

**49.1** The Authority is entitled to terminate this Contract with immediate effect by notice in writing to the Contractor if the Contractor commits any serious or persistent Default and, in the case of a Default capable of being remedied, shall have failed within a reasonable time after the receipt of a written request to remedy the Default, such request to contain a warning of the intention to terminate.

## **Special Condition (to be used if Contractor is processing the Authority's personal data)**

### **1. Data Protection**

For the purposes of this clause, the following terms will have the following meaning:

**Data Protection Legislation:** the GDPR, the DPA 2018 and any other Law as amended from time to time to the extent that it relates to the processing of personal data and privacy;

**Data Protection Impact Assessment:** an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** have the meaning given in the GDPR;

**Data Loss Event:** any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in Default of this Contract, including any Personal Data Breach.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**DPA 2018:** Data Protection Act 2018

**GDPR:** the General Data Protection Regulation (Regulation (EU) 2016/679) and any UK GDPR that replaces it

**Protective Measures:** appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**Sub-processor:** any third party appointed to process Personal Data on behalf of the Authority related to this Contract;

### **1. Data Protection**

**1.1** The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule [X] by the Authority and may not be determined by the Contractor.

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

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

(a) a systematic description of the envisaged processing operations and the

purpose of the processing;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(c) an assessment of the risks to the rights and freedoms of Data Subjects; and

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

**1.4** The Contractor will, in relation to any Personal Data processed in connection with its obligations under this Contract:

(a) process that Personal Data only in accordance with Schedule [ X ], unless the Contractor is required to do otherwise by Law. If it is so required the Contractor will promptly notify the Authority before processing the Personal Data unless prohibited by Law;

(b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

(c) ensure that:

(i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule X);

(ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Contractor's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;

(C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and

(D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

(d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained and the following conditions are fulfilled:

(i) the Authority or the Contractor has provided appropriate safeguards in relation to the transfer (in accordance with GDPR Article 46) as determined by the Authority;

(ii) the Data Subject has enforceable rights and effective legal remedies;

(iii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and

(iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data;

(e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.

**1.5** Subject to Clause 1.6, the Contractor will notify the Authority immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

(e) receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

**1.6** The Contractor's obligation to notify under Clause 1.5 will include the provision of further information to the Authority in phases, as details become available.

**1.7** Taking into account the nature of the processing, the Contractor will provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 1.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

(a) the Authority with full details and copies of the complaint, communication or request;

(b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

(c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(d) assistance as requested by the Authority following any Data Loss Event;

(e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.

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

(a) the Authority determines that the processing is not occasional;

(b) the Authority determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

**1.9** The Contractor will allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.

**1.10** The Contractor will designate a data protection officer if required by the Data Protection Legislation.

**1.11** Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

(a) notify the Authority in writing of the intended Sub-processor and processing;

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause such that they apply to the Sub-processor; and

(d) provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

**1.12** The Contractor will remain fully liable for all acts or omissions of any Sub-processor.

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

**1.14** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Authority may on not less than 30 Working Days' notice instruct the Contractor to amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## Schedule to be appended to the Contract

### Schedule [X]

#### Schedule for Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are:
2. The contact details of the Processor's Data Protection Officer are:
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 4.
5. Any such further instructions shall be incorporated into this Schedule.

| Description   | Details   |
|---|---|
| <b>Identity of the Controller and Processor</b>   |   |
| <b>Subject matter of the processing</b>   |   |
| <b>Duration of the processing</b>   |   |
| <b>Nature and purposes of the processing</b>  |   |
| <b>Type of Personal Data</b>  |   |
| <b>Categories of Data Subject</b>   |   |
| <b>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</b> |   |
| <b>How to report a data breach</b>  | Please ensure that any data breaches that concern our personal data are reported to us within 24 hours of the breach being identified, by contacting the DWFRS Service Control on 0306 7990019. |

Please complete and sign, on behalf of **insert name of organisation**, to confirm your acceptance of the above, keeping a copy of the form for your own records.

|                             |  |
|-----------------------------|--|
| <b>Contact name</b>         |  |
| <b>Role in organisation</b> |  |

|   |  |
|---|--|
| <b>Phone number</b>                         |  |
| <b>Email address</b>                        |  |
| <b>Postal address</b>                       |  |
| <b>Contract number(s)</b>                   |  |
| <b>Signature (electronic is acceptable)</b> |  |
| <b>Date</b>                                 |  |