





**Charges:** the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 3.

**Commencement Date:** 1<sup>st</sup> December 2021

**Commercially Sensitive Information:** the information listed in Schedule 6 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.

**Contract:** shall have the same meaning as Agreement.

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

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

**Data Protection Legislation:** 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 Information Commissioner or relevant government department in relation to such legislation.

**Default Notice:** is defined in clause 1.23.

**Dispute Resolution Procedure:** the procedure set out in clause 0.

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

**Extension period:** shall have the meaning given to it in Clause 3.1.

**FOIA:** the Freedom of Information Act 2000, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**Force Majeure:** any circumstance not within a party's reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;

- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier).

**Health and Safety Policy:** the health and safety policy of the Authority as provided to the Supplier on or before the Commencement Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety.

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

**Initial Term:** the period commencing on the Commencement Date and ending on the third anniversary of the Commencement Date.

**Insolvency Event:** where:

- (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;
- (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;
- (c) 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 that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (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 other party'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 other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (f) (inclusive);
- (j) the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (k) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

**Intellectual Property:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Key Personnel:** those personnel identified Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 0.

**Law:** any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice,

judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

**Management Reports:** the reports to be prepared and presented by the Supplier in accordance with clause 0 and Schedule 4

**Necessary Consents:** all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.

**Payment Plan:** the plan for payment of the Charges as set out in Schedule 3.

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

**Prohibited Act:** the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority 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 agreement;
- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation or common law concerning fraudulent acts;
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority.
- (d) any activity, practice or conduct which would constitute one of the offences listed under **clause 1.1(c), if such activity, practice or conduct had been carried out in the UK.**

**Regulated Activity:** in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.

**Remediation Notice:** a notice served by the Authority in accordance with clause 1.87(a).

**Replacement Services:** any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier.

**Replacement Supplier:** any third party supplier of Replacement Services appointed by the Authority from time to time.

**Request for Information:** a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.

**Services:** the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1.

**Service Failure:** a failure by the Supplier to provide the Services.

**Supplier Party:** the Supplier's agents and contractors, including each Sub-Contractor.

**Supplier's Personnel:** all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

**Supplier's Tender:** the tender submitted by the Supplier and other associated documentation set out in Schedule 2.

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

**Sub-Contractor:** the contractors or suppliers that enter into a Sub-Contract with the Supplier.

**Term:** the period of the Initial Term as may be varied by:

(a) any extensions to this agreement which are agreed pursuant to clause 0; or

(b) the earlier termination of this agreement in accordance with its terms.

**Termination Date:** the date of expiry or termination of this agreement.

**Termination Payment Default:** is defined in Schedule 3.

**Working Day:** Monday to Friday, excluding any public holidays in England and Wales, unless varied to include Saturdays by agreement of the parties.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to **writing** or **written** includes emails but not faxes.
- 1.10 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of the provisions of this agreement) at any time.
- 1.12 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
- 1.13 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the clauses of the agreement;
  - (b) Schedule 1 to this agreement;







- 1.22 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement.
- 1.23 In the event that the Supplier does not comply with the provisions of clause 1.22 in any way, the Authority may serve the Supplier with a notice in writing setting out the details of the Supplier's default (a **Default Notice**).

### Service standards

The Supplier shall provide the Services, or procure that they are provided:

- (a) with reasonable skill and care;
- (b) in all respects in accordance with the Authority's policies set out in Schedule 1; and
- (c) in accordance with all Applicable Laws.

### Compliance

- 1.24 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Authority shall not (unless otherwise agreed) incur any additional costs associated with obtaining, maintaining or complying with the same.
- 1.25 Where there is any conflict or inconsistency between the provisions of the agreement and the requirements of a Necessary Consent, then the latter shall prevail, provided that the Supplier has made all reasonable attempts to obtain a Necessary Consent in line with the requirements of the Services.
- 1.26 The Supplier shall perform its obligations under this agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
  - (b) the Health and Safety Policy whilst at the Premises.
- 1.27 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement. The Supplier shall instruct the Supplier's Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.































(Freedom of Information) and any other legislation applicable to the Services;

- (d) to review any records created during the provision of the Services;
  - (e) to review any books of account kept by the Supplier in connection with the provision of the Services;
  - (f) to carry out the audit and certification of the Authority's accounts;
  - (g) to carry out an examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - (h) to verify the accuracy and completeness of the Management Reports delivered or required by this agreement.
- 1.79 Except where an audit is imposed on the Authority by a regulatory body, the Authority may not conduct an audit under this clause 25 more than once in any calendar year.
- 1.80 The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 1.81 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and any relevant regulatory body (and/or their agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information requested by the above persons within the permitted scope of the audit;
  - (b) reasonable access to any sites controlled by the Supplier and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; and
  - (c) access to the Supplier's Personnel.
- 1.82 The Authority shall endeavour to (but is not obliged to) provide at least 15 working days-notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 1.83 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material failure to perform its obligations under this agreement in any material manner by the







- 1.9 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier's Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 1.10 The Supplier shall not during the term of this agreement:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 1.11 The Supplier shall during the term of this agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
  - (b) keep appropriate records of its compliance with its obligations under clause 1.11(a) and make such records available to the Authority on request.
- 1.12 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of clause 1.9 and/or clause 1.10, or has reason to believe that it has or any of the Supplier's Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly













































