





**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:** [INSERT DATE].

**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 5.2.

**Dispute Resolution Procedure:** the procedure set out in clause 17.

**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 [NUMBER] 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 10.

**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 14 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 [including without limitation all [INSERT DETAILS OF SPECIFIC CONSENTS REQUIRED (IF ANY)]]].

**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 27.1(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 3; 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;
  - (c) the remaining schedules to this agreement other than Schedule 2; and
  - (d) Schedule 2 to this agreement.







- 5.2 In the event that the Supplier does not comply with the provisions of clause 5.1 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**).

## **6. 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.

## **7. COMPLIANCE**

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 Without limiting the general obligation set out in Clause 6, the Supplier shall (and shall procure that the Supplier's Personnel shall):

- (a) perform its obligations under this agreement (including those in relation to the Services) in accordance with:
  - (i) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
  - (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
  - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation); and
- (c) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this agreement. The Supplier shall also undertake, or refrain from undertaking, such acts as the Authority requests so as to enable the Authority to comply with its obligations under the Human Rights Act 1998.

## **8. AUTHORITY'S PREMISES AND ASSETS**

- 8.1 The Authority shall, subject to clauses 7 and 11 provide the Supplier (and its Sub-Contractors) with access to such parts of the Authority's Premises as the Supplier reasonably requires for the purposes only of properly providing the Services.
- 8.2 The Supplier shall ensure that only those of the Supplier's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services do so.
- 8.3 Where any maintenance or repair to the Authority's Premises arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
- 8.4 The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.



- 9.7 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
- 9.8 The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for six years from the end of the Contract Year to which the records relate.
- 9.9 Where the Supplier enters into a Sub-Contract with a supplier or contractor for the purpose of performing the agreement, it shall cause a term to be included in such a Sub-Contract that requires payment to be made of undisputed sums by the Supplier to the Sub-Contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the Sub-Contract requirements.
- 9.10 The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any Associated Company of the Supplier provides goods or services to the Authority.
- 9.11 The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

## **10. INTEREST**

- 10.1 Each party shall pay interest on any sum due under this agreement, calculated as follows:
- (a) At the rate of 4% a year above the Bank of England's base rate from time to time; and
  - (b) For the period from when the overdue sum became due, until it is paid.

## **11. KEY PERSONNEL**

- 11.1 Each party shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified by each party as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of their respective party on the matters for which they are expressed to be responsible.
- 11.2 The Supplier shall not remove or replace any of the Key Personnel unless:
- (a) requested to do so by the Authority;
  - (b) the person is on long-term sick leave;
  - (c) the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
  - (d) the person resigns from their employment with the Supplier; or
  - (e) the Supplier notifies the Authority within 5 working days of any change.
- 11.3 The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified.
- 11.4 Each party shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 15 consecutive Working Days. Any replacement shall be as, or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.
- 11.5 The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.

11.6 If the Supplier replaces the Key Personnel as a consequence of this clause 11, the cost of effecting such replacement shall be borne by the Supplier.

## **12. OTHER PERSONNEL USED TO PROVIDE THE SERVICES**

12.1 At all times, the Supplier shall ensure that:

- (a) each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
- (b) there is an adequate number of Supplier's Personnel to provide the Services properly;
- (c) only those people who are authorised by the Supplier (under the authorisation procedure to be agreed between the parties) are involved in providing the Services; and
- (d) all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.

12.2 The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.

12.3 The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

12.4 The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

12.5 The Supplier shall use its best endeavours to ensure continuity of personnel and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good at the prevailing industry norm for similar services, locations and environments.





## **15. MONITORING**

- 15.1 The Authority may monitor the performance of the Services by the Supplier.
- 15.2 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 14 at no additional charge to the Authority.

## **16. CHANGE CONTROL, BENCHMARKING AND CONTINUOUS IMPROVEMENT**

- 16.1 Any requirement for a Change shall be subject to the Change Control Procedure.
- 16.2 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services. As part of this obligation the Supplier shall identify and report to the Authority's Authorised Representative, annually throughout the Initial Term, on the following list, or as requested by the Authority:
- (a) the emergence of new and evolving relevant technologies which could improve the Services;
  - (b) new or potential improvements to the Services including but not limited to the quality, responsiveness, procedures, benchmarking methods, performance mechanisms and customer support services in relation to the Services;
  - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or in reduction of operational risk; and
  - (d) changes in ways of working that would enable the Services to be delivered at lower costs and/or bring greater benefits to the Authority.
- 16.3 Any potential Changes highlighted as a result of the Supplier's reporting in accordance with clause 16.2 shall be addressed by the parties using the Change Control Procedure.

## **17. DISPUTE RESOLUTION**

- 17.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as

expressly provided in this agreement, the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- (b) if the Authorised Representatives are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the Authority's Corporate Director (**RELEVANT DIRECTOR**) and the Supplier's **[SENIOR OFFICER TITLE]** who shall attempt in good faith to resolve it; and
- (c) if the Authority's Corporate Director (**RELEVANT DIRECTOR**) and the Supplier's **[SENIOR OFFICER TITLE]** are for any reason unable to resolve the Dispute within 60 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than 60 days after the date of the ADR notice.

17.2 The commencement of mediation shall not prevent the parties commencing or continuing proceedings in relation to the Dispute under **clause 37** which clause shall apply at all times.

## **18. SUB-CONTRACTING AND ASSIGNMENT**

18.1 Subject to clause 18.3, neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under this agreement without the prior written consent of the other party, neither may the Supplier sub-contract the whole or any part of its obligations under this agreement except with the express prior written consent of the Authority, such consent not to be unreasonably withheld.

18.2 In the event that the Supplier enters into any Sub-Contract in connection with this agreement it shall:

- (a) remain responsible to the Authority for the performance of its obligations under the agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;



- (a) sums paid by the Authority to the Supplier pursuant to this agreement, in respect of any services not provided in accordance with the agreement;
- (b) wasted expenditure;
- (c) additional costs of procuring and implementing replacements for, or alternatives to, the Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials;
- (d) losses incurred by the Authority arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any Subcontract, Supplier's Personnel, regulator or customer of the Authority) against the Authority caused by the act or omission of the Supplier; and
- (e) any anticipated savings.

20.3 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant party is entitled to bring a claim against the other party pursuant to the indemnities in this agreement.

## **21. INSURANCE**

21.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

**[REVIEW LEVELS OF INSURANCE CONSIDERING THE CONTRACT VALUE – INCREASE IF REQUIRED – THESE LEVELS ARE A MINIMUM – delete text before sending draft contract.]**

- (a) public liability insurance with a limit of indemnity of not less than £5,000,000 in relation to any one claim or series of claims;
- (b) employer's liability insurance with a limit of indemnity of not less than £5,000,000;
- (c) professional indemnity insurance with a limit of indemnity of not less than £5,000,000.

**[ONLY INCLUDE (c) WHERE CONSULTANCY SERVICES OR SPECIALIST PROFESSIONAL SERVICES ARE TO BE PROCURED – ensure consistency with Specification requirements]**

(the **Required Insurances**) in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of



Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

## **23. DATA PROTECTION**

**[REMEMBER THIS IS THE NON-DATA PROCESSING CONTRACT – IF THE SERVICE INVOLVES DATA PROCESSING THE ALTERNATIVE STANDARD CONTRACT MUST BE USED]**

- 23.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 23 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 23.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Data Controller. The only processing that the Supplier is authorised to do by the Authority is in accordance with written instructions and may not be determined by the Supplier.
- 23.3 Without prejudice to the generality of clause 23.1, the Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier, if required, for the duration and purposes of this agreement.
- 23.4 Without prejudice to the generality of clause 23.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process Personal Data only on the written instructions of the Authority;
  - (b) the Supplier's personnel do not process Personal Data except in accordance with this Agreement;
  - (c) if requested, provide the Authority with such information as the Authority may reasonably require to satisfy itself that the Supplier is able to comply with its obligations under the Data Protection Legislation;
  - (d) notify the Authority immediately if it receives:
    - (i) a request from a Data Subject to have access to that person's Personal Data;

- (ii) a request to rectify, block or erase any Personal Data;
  - (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (e) assist the Authority in responding to any request from a Data Subject and in ensuring compliance with the Authority's obligations under the Data Protection Legislation;
- (f) ensure it does not knowingly or negligently do or omit to do anything which places the Authority in breach of the Authority's obligations under the Data Protection Legislation; and
- (g) notify the Authority immediately and in any event within 24 hours on becoming aware of a Personal Data breach.
- 23.5 Any written instructions issued in accordance with this clause 23 will include detailed requirements in relation to Data Processing.

23.6 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

## **24. CONFIDENTIALITY**

24.1 Subject to clause 24.2, each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 24.

24.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

- (a) which the other party confirms in writing is not required to be treated as Confidential Information;
- (b) which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- (c) which a party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
- (d) which is in or enters the public domain other than through any



- disclosure prohibited by this agreement;
- (e) which a party can demonstrate was lawfully in its prior to receipt from the other party; or
- (f) which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

24.3 A party may disclose the other party's Confidential information to those of its Representatives who need to know such Confidential Information for the purposes of performing or advising on the party's obligations under this agreement, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a party to this agreement, and
- (c) at all times, it is liable for the failure of any Representatives to comply with the obligations set out in this clause 24.3.

24.4 The provisions of this clause 24 shall survive for a period of 6 years from the Termination Date.

## **25. AUDIT**

25.1 During the Term and for a period of 1 year after the Termination Date, the Authority may conduct or be subject to an audit for the following purposes:

- (a) to verify the accuracy of Charges (and proposed or actual variations to them in accordance with this agreement) and/or the costs of all suppliers (including Sub-Contractors) of the Services;
- (b) to review the integrity, confidentiality and security of any data relating to the Authority or any service users;
- (c) to review the Supplier's compliance with the DPA, the FOIA, in accordance with clause 20 (Data Protection) and clause 19 (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.
- 25.2 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.
- 25.3 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.
- 25.4 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.
- 25.5 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.
- 25.6 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 Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in the course of the audit.
- 25.7 If an audit identifies that:
  - (a) the Supplier has failed to perform its obligations under this agreement in any material manner, the parties shall agree and implement a remedial plan. If the Supplier's failure relates to a failure to provide any information to the Authority about the Charges, proposed Charges or the Supplier's costs, then the



- (c) if a Catastrophic Failure has occurred;
- (d) if there is an Insolvency Event;
- (e) if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010;
- (f) the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.

27.2 The Authority may terminate this agreement in accordance with the provisions of clause 28 and clause 29.

27.3 If this agreement is terminated by the Authority in accordance with this clause such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority against any such losses or costs which the Authority may suffer as a result of any such termination for cause.

27.4 The Supplier may terminate this agreement in the event that the Authority commits a Termination Payment Default by giving 30 days' written notice to the Authority. In the event that the Authority remedies the Termination Payment Default in the 30 day notice period, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

## **28. FORCE MAJEURE**

28.1 Provided it has complied with the remaining provisions of this clause 28, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

28.2 The corresponding obligations of the other party will be suspended to the same extent as those of the Affected Party.

28.3 The Affected Party shall:

- (a) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement;





































