

FRAMEWORK SCHEDULE 5

ORDER FORM AND CALL-OFF TERMS AND CONDITIONS

Part 2 – Call-Off Terms and Conditions

These Call-Off Terms and Conditions together with the relevant Order Form shall comprise the contractual provisions which apply to the Call-Off Contract that is entered into by the Contracting Authority and the Contractor and which govern the provision of Goods and Services to the Contracting Authority.

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PART A - GENERAL PROVISIONS

1. Definitions and Interpretation

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

"Affected Party" means the party seeking to claim relief in respect of a Force Majeure Event;

"Approval" means the written consent of the Contracting Authority;

"Call-Off Contract" and **"Contract"** means the written agreement made for the provision of the Goods and Services between the Contracting Authority and the Contractor comprising the Order Form, these terms and conditions, the Tender and any other document referred to in the clauses of this Contract save that, for the purposes of Clause 1.3 only, reference to the Contract shall not include the Order Form the Tender and any other document referred to in the clauses of this Contract;

"Change" a change to the Contract including but not limited to a change in the Contracting Authority's requirements in respect of the Goods and/or Services;

"Change Form" the form at Appendix 1 documenting the Contracting Authority's request for a Change;

"Commencement Date" means the commencement date set out in the Order Form;

"Commercially Sensitive Information" means the information listed in the Order Form comprised of information:

- (a) which is provided by the Contractor to the Contracting Authority in confidence for the period set out in the Order Form; and/or
- (b) that constitutes a trade secret.

"Confidential Information" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either party and all personal data and sensitive personal data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 40 (Confidential Information));
- (b) was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

“Contracting Authority” means the contracting authority identified in the Order Form;

“Contracting Authority Property” means the property, other than real property, issued or made available to the Contractor by the Contracting Authority in connection with this Contract and includes any equipment or chassis free issued to the Contractor for the purposes of the Contract;

“Contracting Authority Premises” means the premises of the Contracting Authority specified in the Order Form;

“Contracting Authority Requirements” the Contracting Authority’s requirements for the Goods and Services as contained in (i) the Order Form, the Specification and any other document forming the Contract; and (ii) the Framework Agreement.

“Contractor Premises” means the premises of the Contractor where the Services are to be supplied, as set out in the Order Form;

“Contract Period” means the period from the Commencement Date to the Expiry Date as may be varied by:

- (a) any extensions to this Contract which are agreed pursuant to Clause 3.2; or
- (b) the earlier termination of this Agreement in accordance with its terms;

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

“Contractor’s Representative” means the Officer from time to time appointed by the Contractor to supervise this Contract and to act on its behalf as notified to the Contracting Authority;

“Customer Support Services” means the customer support services to be provided by the Contractor to the Contracting Authority under the Contract including but not limited to training, technical support, repairs (warranty and non-warranty) and the provision of spare parts and components as set out in the Tender;

“Data Protection Impact Assessment” means an assessment by the Contracting Authority of the impact of the envisaged processing on the protection of Personal Data;

“Data Protection Legislation” means (i) the UK-General Data Protection Regulation ((EU 2016/679) until it is no longer directly applicable in the UK), the Law Enforcement Directive and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy, as amended or updated from time to time, in the UK;

“Data Loss Event” means 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 breach of this Contract, including any Personal Data Breach.

“Data Subject , Personal Data , Personal Data Breach” take the meaning given in the General Data Protection Regulation.

“Data Subject Request” means 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

“Default” means any breach of the obligations of the Contractor (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Contractor or the Contractor's Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Contractor is liable to the Contracting Authority;

“Due Diligence Information” any information supplied to the Contractor by or on behalf of the Contracting Authority prior to the Commencement Date;

“Employee Liabilities” all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under this Contract.

“Expiry Date” means the expiry date set out in the Order Form;

“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;

“Force Majeure Event” means any event, occurrence or cause affecting the performance by either Party of its obligations arising from:

- (a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
- (b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
- (c) fire, flood or any disaster;
- (d) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - (i) any industrial dispute relating to the Contractor, the Staff or any other failure in the Contractor or its supply chain; and
 - (ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

“Framework Agreement” means the Framework Agreement for the provision of UK Fire and Rescue Emergency Response Vehicles together with associated services between Devon and Somerset Fire and Rescue Authority and the Contractor dated [DATE]

“Framework Agreement Invitation to Tender” means the invitation to tender issued by Devon and Somerset Fire and Rescue Authority in respect of the Framework Agreement;

“Framework Contractor” means a Contractor who has been awarded a place on the Framework Agreement by the Devon and Somerset Fire and Rescue Authority;

“Framework Ordering Procedure” means the ordering and award procedure specified in Schedule 4 of the Framework Agreement;

“Fraud” means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Contract or defrauding or attempting to defraud or conspiring to defraud the Contracting Authority;

“Goods” means the UK Fire and Rescue Emergency Response Vehicles specified in the Order Form;

“Good Industry Practice” means at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Contracting Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;

“Guarantee” means the guarantee in Clause 16 (Guarantee);

“Information” has the meaning given under section 84 of the FOIA;

“Intellectual Property Rights” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral

rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Key Personnel” means those persons named in the Order Form as being key personnel;

“Key Performance Indicators” means the key performance indicators set out in Appendix 2 to this Call-Off Contract;

“KPI Failure” a failure to meet the Target Performance Level in respect of a Key Performance Indicator;

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

“Material Breach” means a material breach of this Call-Off Contract and/or, breach by the Contractor of any of the following Clauses: Clause 32 (Continuous Improvement), Clause 39 (Data Protection), Clause 57 (Warranties and Representations), Clause 45 (Audit), Clause 33 (Prevention of Fraud and Corruption), Clause 46 (Transfer and Sub-Contracting).

“Monitoring Schedule” means the performance monitoring provisions detailed in the Appendix 2 to this Call-Off Contract;

“Order Form” means the order submitted to the Contractor by the Contracting Authority in accordance with the Framework Agreement which sets out the description of the Goods and Services which the Contracting Authority requires the Contractor to provide, the Key Personnel, the timeframe, the Quality Standards, and the Contract Price;

“Party” means the Contracting Authority or the Contractor;

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

“Regulations” means the Public Contracts Regulations 2015, as amended from time to time;

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contractor any other affairs of the Contracting Authority and “Regulatory Body” shall be construed accordingly;

“Replacement Contractor” means any third party service provider appointed by the Contracting Authority to supply any goods and/or provide any services which are substantially similar to any of the Goods and Services and which the Contracting Authority receives in substitution for any of the Goods and Services following the expiry, termination or partial termination of this Contract ;

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

“Service Credits” means the service credits payable by the Contractor due to the occurrence of one or more KPI Failures, calculated in accordance with Appendix 2 to this Call-Off Contract;

“Services” means the services to be supplied to the Contracting Authority by the Contractor as set out in the Order Form including the Customer Support Services;

“Specification” means the requirements for the Goods and Services set out or referred to in the Order Form;

“Staff” means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor’s obligations under the Contract

“Staff Vetting Procedure” means vetting procedures that accord with Good Industry Practice or, where requested by the Contracting Authority, the Contracting Authority’s procedures for the vetting of personnel as provided to the Contracting Authority from time to time;

“Staged Payment” means the staged payment set out in the Order Form for the Goods or part of the Goods;

“Standards” shall have the same meaning as Quality Standards;

“Supervising Officer” means the Officer from time to time appointed by the Contracting Authority to supervise this Contract on its behalf as notified to the Contractor;

“Target Performance Level” the minimum level of performance for a Key Performance Indicator which is required by the Contracting Authority, as set out against the relevant Key Performance Indicator in Appendix 2 to this Call-Off Contract;

“Technical Standards” means the quality standards detailed in Appendix 1 to the Framework Agreement Statement of Requirements and any additional technical or quality standards detailed in the Further Competition Invitation to Tender and/or Order Form or as published by [BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation] or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with;

“Tender” means the document(s) submitted by the Contractor to the Contracting Authority in response to the Contracting Authority’s invitation to relevant Framework Contractors for formal offers to supply it with the Goods and Services pursuant to the Framework Ordering Procedure. The Tender is annexed to the Order Form (Appendix 3) and shall be deemed to form part of the Call-Off Contract;

“**TUPE**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

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

“**Warranty Period**” means the period specified as such in (i) Schedule 6 (Invitation to Tender and Contractor’s Response) of the Framework Agreement; or (ii) the Order Form (whichever is the longer period);

“**Working day**” means any day other than a Saturday, Sunday or public holiday in England and Wales.

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

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the contract for ease of reference only and shall not affect the interpretation or construction of this Contract.

1.3 In the event of and only to the extent of any conflict between the Order Form, the clauses of this Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Order Form (except the Tender);
- (b) the clauses of the Contract;
- (c) the Tender;
- (d) any other document referred to in the clauses of this Contract.

1.4 Where the Tender contains provisions which are more favourable to the Contracting Authority in relation to the Goods and Services than the other provisions in the Contract,

such provisions of the Tender shall prevail. The Contracting Authority shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.

2. Due Diligence

2.1 The Contractor acknowledges and warrants that as at the Commencement Date:

2.1.1 the Contracting Authority has delivered or made available to the Contractor all of the information and documents that the Contractor considers necessary or relevant for the performance of its obligations under the Contract;

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

2.1.3 It has entered into this Contract in reliance on its own due diligence alone;

2.1.4 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Contracting Authority before the Commencement Date) of all relevant details relating to:

(a) the Contracting Authority Requirements; and

(b) the ownership, functionality, capacity, condition and suitability for use in the Goods and/or Services of the Contracting Authority Property;

2.1.5 it has advised the Contracting Authority in writing of:

(a) each aspect, if any, of the Contracting Authority Property that is not suitable for the provision of the Goods and/or Services;

(b) the actions needed to remedy each such unsuitable aspect; and

(c) a timetable for and, to the extent that such costs are to be payable to the Contractor, the costs of those actions.

2.2 The Contractor shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Contractor be entitled to recover any additional costs or charges arising as a result of:

2.2.1 any unsuitable aspects of the Contracting Authority Property;

2.2.2 any misinterpretation of the Contracting Authority Requirements; and/or

2.2.3 any failure by the Contractor to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

3. Contract Period

3.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the Expiry Date unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated, or extended under Clause 3.2 below.

- 3.2 The Contracting Authority may, by giving not less than three (3) months' written notice to the Contractor, extend the Contract Period by any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

4. Contractor's Status

- 4.1 At all times during the Contract Period the Contractor shall be an independent contractor and nothing in this Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

5. Contracting Authority's Obligations

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

6. Notices

- 6.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party concerned.
- 6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by electronic mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 6.3 For the purposes of Clause 6.2, the address of each Party shall be as detailed in the Order Form.
- 6.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

7. Mistakes in Information

- 7.1 The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Contracting Authority by the Contractor in connection with the supply of the Goods and Services and shall pay the Contracting Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

8. Conflicts of Interest

- 8.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any staff are placed in a position where, in the reasonable opinion of the Contracting 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 Contracting Authority under the provisions of this Contract. The Contractor will disclose the Contracting Authority full particulars of any such conflict of interest which may arise.
- 8.2 The Contracting Authority reserves the right to terminate this Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of this Contractor and the duties owed to the Contracting Authority under the provisions of this Contract. The actions of the Contracting Authority pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority.
- 8.3 This Clause 8 shall apply during the Contract Period and for a period of 5 years after expiry of the Contract Period.

PART B – THE GOODS

9. The Goods

- 9.1 In consideration of the payment of the Contract Price, the Contractor shall supply the Goods in accordance with the Contract.
- 9.2 The Contractor shall ensure that:
- 9.2.1 the Goods conform in all respects with the specifications and correspond with all requirements set out set out in the Order Form and/or where applicable the Framework Agreement;
 - 9.2.2 the Goods and Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
 - 9.2.3 the Goods are fully compatible with any equipment, to the extent specified in the Order Form;
 - 9.2.4 the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Contractor by the Contracting Authority;
 - 9.2.5 the Goods are supplied in accordance with the Tender;
 - 9.2.6 where applicable, the Contractor provides or procures the provision of any relevant software licence(s) on terms to be agreed between the Parties.
- 9.3 If requested by the Contracting Authority, the Contractor shall provide the Contracting Authority with samples of Goods for evaluation and approval, at the Contractor's cost and expense.

9.4 The Contractor acknowledges that the Contracting Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under this Contract.

10. Contracting Authority Property

10.1 The Contracting Authority may provide to the Contractor free of charge the Contracting Authority Property for the purposes of the Contract and the supply of the Goods to the Contracting Authority.

10.2 The Contracting Authority retains title to any Contracting Authority Property provided to the Contractor.

10.3 Risk in the Contracting Authority Property shall pass to the Contractor upon delivery to the Contractor (or upon collection from the Contracting Authority, whichever is soonest) and shall remain with the Contractor until delivery of the Contracting Authority Property to the Contracting Authority.

10.4 The Contractor shall keep the Contracting Authority Property insured against all risks for its full price from the date of delivery of the Contracting Authority Property to the Contractor, and shall notify its insurer of the Contracting Authority's interest and if required ensure that such interest is noted on the relevant policy.

10.5 The Contractor shall use the Contracting Authority Property solely for the purpose of the Contract and for no other purpose without prior Approval.

10.6 Until time of delivery of the completed Goods, the Contractor shall hold the Contracting Authority Property as the Contracting Authority's fiduciary agent and bailee and shall store the Contracting Authority Property separately from all other goods held by the Contractor so that it remains readily identifiable as the Contracting Authority's property.

10.7 The Contractor shall not remove, deface or obscure any identifying mark or packaging on or relating to the Contracting Authority Property.

10.8 The Contracting Authority Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Contracting Authority otherwise within five (5) Working Days of delivery.

10.9 The Contractor shall maintain the Contracting Authority Property in good order and condition (excluding fair wear and tear).

10.10 The Contractor shall ensure the security of all the Contracting Authority Property whilst in its possession, either on the Premises or elsewhere during the supply of the Goods in accordance with the Contracting Authority's reasonable security requirements as required from time to time.

10.11 The Contractor shall give the Contracting Authority such information relating to the Contracting Authority Property as the Contracting Authority may require from time to time.

10.12 The Contractor hereby grants to the Contracting Authority and its employees, sub-contractors and agents an irrevocable licence to enter on to any premises where the

Contracting Authority Property is stored in order to take possession of it or inspect at any time and shall procure the same from any sub-contractors or agents.

- 10.13 The Contracting Authority shall be entitled to take possession of the Contracting Authority Property at any time. The Contractor shall at its own expense make the Contracting Authority Property available to the Contracting Authority and allow the Contracting Authority to take possession of it. Within 10 Working Days of the date on which the Contracting Authority takes possession of the Contracting Authority Property, the Contractor shall inform the Contracting Authority of the sum payable in respect of any Goods and/or Services which may at the time of possession have been fitted to or (as the case may be) carried out on the Contracting Authority Property, including but not limited to the fitting of any Goods to the Contracting Authority Property. Providing the sum is reasonable, the Contracting Authority shall pay the notified amount within thirty (30) days of receipt of a valid invoice. Any dispute in respect of the amount payable to the Contractor in accordance with this clause shall be dealt with under the dispute resolution procedure in Clause 66.
- 10.14 The Contractor shall be liable for all loss of, or damage to, the Contracting Authority Property (excluding fair wear and tear), unless such loss or damage was caused by the Contracting Authority's Default. The Contractor shall inform the Contracting Authority within (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Contracting Authority Property.
- 10.15 Upon expiry or termination of the Contract the Contractor shall immediately deliver to the Contracting Authority all Contracting Authority Property provided to the Contractor in accordance with this Clause 10 and such Contracting Authority Property shall be handed back in good working order (fair wear and tear excluded). To the extent that the Contracting Authority Property has been incorporated in the Goods as at the date of termination or expiry of the Contract, the Contractor shall use its best endeavours to separate the Contracting Authority Property from the Goods in order to deliver the Contracting Authority Property to the Contracting Authority in accordance with this clause. If the Contracting Authority Property cannot be separated from the Goods, the Contractor shall on the termination or expiry date transfer title to the Goods in which the Contracting Authority Property has been incorporated and shall deliver the same to the Contracting Authority.

11. Access to Goods at the Contractor's Premises

- 11.1 The Contracting Authority and any of its employees, sub-contractors or agents may, during normal business hours and on reasonable notice, access the Goods at the Contractor's Premises in order to, without limitation, inspect, test and carry out works on the Goods and/or take possession of such Goods as the Contracting Authority has title to in accordance with Clause 14 (Risk and Ownership) and Clause 10 (Contracting Authority Property).
- 11.2 The Contractor shall provide all reasonable assistance in relation to the exercise of the Contracting Authority's rights in Clause 11.1 above free of charge.
- 11.3 For the avoidance of doubt, no failure to make a complaint at the time of accessing the Goods in accordance with Clause 11.1 above and no approval given in such

circumstances shall constitute a variation of the Contract or a waiver by the Contracting Authority of any rights or remedies in respect of the Goods and, for the avoidance of doubt, the Contracting Authority reserves the right to reject the Goods in accordance with Clause 13 (Acceptance and Defective Goods).

12. Delivery

12.1 The Contractor shall deliver the Goods at the time(s), date(s) and location(s) specified in the Order Form.

12.2 Unless otherwise stated in the Order, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are received at the Contracting Authority Premises (or such other alternative delivery location as is specified in the Order Form). Where the Goods are collected by the Contracting Authority, the point of delivery shall be when the Goods leave the Contractor Premises.

12.3 Time of delivery is of the essence. If the Contractor fails to deliver the Goods within the time specified in the Order Form the Contracting Authority may release itself from any obligation to accept and pay for the Goods and/or shall be entitled to terminate this Contract, in either case without prejudice to any other rights and remedies of the Contracting Authority under this Contract, including under Clause 27 (Performance Indicators and Service Credits).

12.4 NOT USED

12.5 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Contracting Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within five (5) Working Days and to refund to the Contracting 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 Contracting Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted by the Contracting Authority.

12.6 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Order Form.

13. Acceptance and Defective Goods

13.1 The Contractor shall be responsible for demonstrating to the Contracting Authority that the Goods satisfy the requirements of the Contract.

13.2 The Contracting Authority shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

13.3 For the purposes of Clause 13.2 above, a reasonable time is considered to be no longer than one calendar month or a defined period agreed between the Contractor and the Contracting Authority (with the exception of stage four, which is three months from the date of delivery).

- 13.4 Without prejudice to any other right or remedy which the Contracting Authority may have, including under Clause 27 (Performance Indicators and Service Credits), if the Goods are not supplied in accordance with the Contract the Contracting Authority may (whether or not any part of the Goods have been delivered) reject those Goods and:
- 13.4.1 require the Contractor to repair or replace the rejected Goods at the Contractor's risk and expense within five Working Days of being requested to do so; or
 - 13.4.2 require the Contractor to repay the price of the rejected Goods in full (whether or not the Contracting Authority has previously required the Contractor to repair or replace the rejected Goods);
 - 13.4.3 claim damages for any other costs, expenses or losses resulting from the Contractor 's delivery of the Goods that are not in conformity with the terms of the Contract.
- 13.5 The Contracting Authority's rights and remedies under this Clause 13 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into this agreement by the Sale of Goods Act 1979.
- 13.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Contractor.
- 13.7 If the Contractor fails to promptly repair or replace rejected Goods in accordance with Clause 13.4, the Contracting Authority may, without affecting its other rights under the Contract, obtain substitute Goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Contractor shall reimburse the Contracting Authority for the costs it incurs in doing so.
- 13.8 For the avoidance of doubt, the Contracting Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this Clause 13.

14. Risk and Ownership

- 14.1 Risk in the Goods shall, without prejudice to any other rights or remedies of the Contracting Authority, pass to the Contracting Authority at the time of acceptance of delivery.
- 14.2 Subject to Clause 14.3 below, ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Contracting Authority, including the Contracting Authority's rights and remedies under Clause 13 (Acceptance and Defective Goods), pass to the Contracting Authority at the earlier of (i) the time of acceptance of delivery or (ii) the time of payment by the Contracting Authority of the Contract Price.
- 14.3 Where the Contracting Authority agrees to pay for the Goods in Staged Payments, ownership and passing of title to the Goods to which each Staged Payment relates shall pass to the Contracting Authority at the time of payment by the Contracting Authority of the Staged Payment, but risk shall remain with the Contractor until delivery. The

Contractor shall store Goods to which title has transferred to the Contracting Authority in accordance with this Clause separately from all other goods held by the Contractor so that it remains readily identifiable as belonging to the Contracting Authority. Until the Goods are delivered, the Contractor shall insure the Goods and shall notify its insurer of the Contracting Authority's interest and if required ensure that such interest is noted on the relevant policy.

15. Warranty as to Title

- 15.1 On and from the Commencement Date the Contractor warrants that:
- 15.1.1 the Contractor is the legal owner of the Goods;
 - 15.1.2 the Goods are free from all liens and encumbrances;
 - 15.1.3 the Contractor has the full right and authority to sell and transfer the Goods;
 - 15.1.4 the Contractor will defend to the full extent possible the title of the Goods against any and all claims and demands of all persons.
- 15.2 The Contractor indemnifies the Contracting Authority for all losses, costs and expenses incurred due to the Contractor's breach of this Clause 15.

16. Guarantee

- 16.1 The Contractor shall guarantee the Goods for the Warranty Period against faulty materials and workmanship. If the Contracting Authority shall within such Warranty Period or within twenty five (25) Working Days thereafter give notice in writing to the Contractor of any defect in the Goods as may have arisen during such Warranty Period under proper and normal use, the Contractor shall promptly remedy (or procure the prompt remedying of) such defects or faults (whether by repair or replacement as the Contracting Authority shall elect) free of charge.
- 16.2 The Contractor shall carry out the remedying of defects and faults at a location agreed by the Contracting Authority.
- 16.3 Any Goods rejected or returned by the Contracting Authority shall be returned to the Contractor at the Contractor's risk and expense.
- 16.4 The Contractor shall ensure that all defects or faults are rectified as soon as practicable (and no later than two (2) months' from the date of notification of the defect or fault by the Contracting Authority) and shall use its best endeavours to agree timescales with the Contracting Authority that minimise the time that the Goods are unavailable for operational use.
- 16.5 The Contractor shall, at the Contracting Authority's election, appoint the Contracting Authority to remedy defects or faults in accordance with Clause 16.1 above and in such circumstances the Contractor shall pay the Contracting Authority for the parts, consumables and the cost of labour on a fair and reasonable basis.
- 16.6 For the avoidance of doubt, notwithstanding any other provision in this Contract, the Contracting Authority shall have no obligation to appoint the Contractor to carry out

repair, maintenance or servicing work in respect of the Goods and the Contractor acknowledges that the Contracting Authority shall at all times be entitled to appoint other suppliers to carry out such work.

- 16.7 The Contracting Authority's rights under this Clause shall be without prejudice to without prejudice to any other rights and remedies which the Contracting Authority may have.

17. Third Party Warranties

- 17.1 The Contractor acknowledges that the Contracting Authority may have the benefit of certain warranties and/or product guarantees provided to the Contracting Authority by third parties in respect of the Contracting Authority Property ("the Third Party Warranties").

- 17.2 In performing its obligations under the Contract, the Contractor shall ensure that nothing is done which would entitle the relevant third party to cancel, rescind or suspend the benefit of any of the Third Party Warranties, or to treat any Third Party Warranties as voided in whole or part.

- 17.3 The Contractor indemnifies the Contracting Authority in full against all costs, expenses, damages and losses (whether direct or indirect) incurred or paid by the Contracting Authority arising from the Contractor's breach of this Clause 17.

18. Training

- 18.1 Where indicated in the Order Form, the Contract Price shall include the cost of instruction of the Contracting Authority's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements detailed in the Order Form.

PART C – PROVISION OF SERVICES

19. The Services

- 19.1 The Contractor shall provide the Services during the Contract Period in consideration of the payment of the Contract Price.

- 19.2 The Contractor shall ensure that the Services:

19.2.1 comply in all respects with the Specification; and

19.2.2 are supplied in accordance with the Order Form, the Tender and the provisions of the Contract.

- 19.3 The Contractor shall perform its obligations under this Contract, including in relation to the supply of the Goods and provision of the Services, in accordance with:

19.3.1 the Quality Standards;

19.3.2 Good Industry Practice; and

19.3.3 all applicable Laws.

- 19.4 The Contractor shall at all times maintain accreditation with the relevant Quality Standards authorisation body.
- 19.5 The Contractor shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper provision of the Services.
- 19.6 The Contracting Authority and any of its employees, sub-contractors or agents may inspect and examine the manner in which the Contractor supplies the Services at the Contractor Premises during normal business hours on reasonable notice.
- 19.7 If the Contracting Authority informs the Contractor in writing that the Contracting Authority reasonably believes that any part of the Services does not meet the requirements of this Contract the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Contracting Authority.
- 19.8 Time shall be of the essence in respect of the provision of the Services.

20. Customer Support

- 20.1 The Contractor shall provide the Customer Support Services during the Contract Period.
- 20.2 The Contractor shall promptly respond to any requests for the Customer Support Services.

21. Key Personnel

- 21.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Contracting Authority. The Key Personnel shall not be released from providing the Services without the agreement of the Contracting Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 21.2 Any replacements to the Key Personnel shall be subject to the agreement of the Contracting Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 21.3 The Contracting Authority shall not unreasonably withhold its agreement under Clauses 21.1 or 21.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on this Contract which could be caused by a change in Key Personnel.

22. Contractor's Staff

- 22.1 The Contracting Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Contracting Authority Premises:

22.1.1 any member of the Staff; or

- 22.1.2 any person employed or engaged by any member of the Staff whose admission or continued presence would, in the reasonable opinion of the Contracting Authority, be undesirable.
- 22.2 At the Contracting Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with this Contract to the Contracting Authority Premises, specifying the capacities in which they are concerned with this Contract and giving such other particulars as the Contracting Authority may reasonably request.
- 22.3 The Contractor's Staff, engaged within the boundaries of the Contracting Authority Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Contracting Authority Premises.
- 22.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 22.5 The Contracting Authority may require the Contractor to ensure that any person employed in the provision of the Goods and/or Services has undertaken a HMG Baseline Personnel Security Standard check, to include a Disclosure and Barring Service check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Goods and Services.
- 22.6 If the Contractor fails to comply with Clause 22.2 within two (2) months of the date of the request and in the reasonable opinion of the Contracting Authority, such failure may be prejudicial to the interests of the Contracting Authority, then the Contracting Authority may terminate this Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Authority.
- 22.7 The decision of the Contracting Authority as to whether any person is to be refused access to the Contracting Authority Premises and as to whether the Contractor has failed to comply with the requirements of this Clause 22 shall be final and conclusive.
- 22.8 The Contractor will ensure that each of the Staff is suitably qualified, adequately trained, displays photographic identification and is capable of providing the applicable Services in respect of which they are engaged.
- 23. Employment indemnity**
- 23.1 The Contractor shall both during and after the Contract Period indemnify the Contracting Authority against all Employee Liabilities that may arise as a result of any claims brought against the Contracting Authority by any person where such claim arises from any act or omission of the Contractor or any of its Staff, sub-contractors or agents.

24. Provision and Removal of Equipment

- 24.1 The Contractor shall provide all the Equipment necessary for the provision of the Services.
- 24.2 The Contractor shall not deliver any Equipment nor begin any work on the Contracting Authority Premises without obtaining prior Approval.
- 24.3 All Equipment brought onto the Contracting Authority Premises shall be at the Contractor's own risk and the Contracting Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Contracting Authority's negligence or breach of contract. The Contractor shall provide for the haulage or carriage of the Equipment to the Contracting Authority Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Contracting Authority Premises will remain the property of the Contractor.
- 24.4 The Contractor shall maintain all items of Equipment within the Contracting Authority Premises in a safe, serviceable and clean condition.
- 24.5 The Contractor shall, at the Contracting Authority's written request, at its own expense and as soon as reasonably practicable:
- 24.5.1 remove from the Contracting Authority Premises any Equipment which in the reasonable opinion of the Contracting Authority is either hazardous, noxious or not in accordance with this Contract; and
 - 24.5.2 replace such item with a suitable substitute item of Equipment.
- 24.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services and shall leave the Contracting Authority Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Contracting Authority Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

25. Licence to occupy Contracting Authority Premises

- 25.1 Any land or premises made available from time to time to the Contractor by the Contracting Authority in connection with this Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under this Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same on completion, termination or abandonment of this Contract.
- 25.2 The Contractor shall limit access to the Contracting Authority Premises to such Staff as is necessary to enable it to perform its obligations under this Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Contracting Authority Premises as the Contracting Authority may reasonably request.

- 25.3 Should the Contractor require modifications to the Contracting Authority Premises, such modifications shall be subject to prior Approval and shall be carried out by the Contracting Authority at the Contractor's expense. The Contracting Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Contracting Authority.
- 25.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of the Contracting Authority Premises as determined by the Contracting Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 25.5 The Parties agree that there is no intention on the part of the Contracting Authority to create a tenancy of any nature whatsoever in favour of the Contractor or its staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Contract, the Contracting Authority retains the right at any time to use any Contracting Authority Premises owned or occupied by it in any manner it sees fit.

PART D - PAYMENT, CONTRACT PRICE

26. Contract Price

- 26.1 In consideration of the Contractor's performance of its obligations under this Contract, the Contracting Authority shall pay the Contract Price in accordance with Clause 28 (Payment and VAT).
- 26.2 The Contract Price shall be the full and exclusive remuneration of the Contractor in respect of the supply of the Goods and Services. Unless otherwise agreed in writing by the Contracting Authority, the Contract Price shall include every cost and expense of the Contractor directly or indirectly incurred in connection with the Contract.
- 26.3 The Contracting Authority shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Goods and Services supplied in accordance with this Contract.

27. Performance Indicators and Service Credits

- 27.1 The Contractor shall supply the Goods and provide the Services in such a manner so as to meet or exceed the Target Performance Level for each Key Performance Indicator.
- 27.2 Without prejudice to any other right or remedy which the Contracting Authority may have, if a KPI Failure occurs Service Credits shall be deducted from the Contract Price in accordance with Appendix 2 to this Call-Off Contract.
- 27.3 Without prejudice to any other rights or remedies which the Contracting Authority may have, if a KPI Failure occurs the Contractor acknowledges and agrees that the Contracting Authority shall have the right to exercise (in its absolute sole discretion) all or any of the following remedial actions:

27.3.1 The Contracting Authority shall be entitled to require the Contractor, and the Contractor agrees to prepare and provide to the Contracting Authority, an improvement plan within fourteen (14) Working Days of a written request by the Contracting Authority for such improvement plan. The Contracting Authority shall be entitled to approve such improvement plan and require that the Contractor implement such improvement plan as soon as reasonably practicable;

27.3.2 The Contracting Authority shall be entitled to require the Contractor, and the Contractor agrees to attend, within a reasonable time one (1) or more meetings at the request of the Contracting Authority in order to resolve the issues raised by the Contracting Authority in its notice to the Contractor requesting such meetings;

27.3.3 The Contracting Authority shall be entitled to serve an improvement notice on the Contractor and the Contractor shall implement such requirements for improvement as set out in the improvement notice.

27.4 In the event that the Contracting Authority has, in its absolute sole discretion, invoked one or more of the remedies set out in clause 27.3 above and:

27.4.1 the Contractor fails to comply in all material respects with the improvement plan issued in accordance with clause 27.3.1 above; and/or

27.4.2 the Contractor fails to attend a meeting convened in accordance with clause 27.3.2 above; and/or

27.4.3 the Contractor fails to comply in all material respects with an improvement notice issued by the Contracting Authority in accordance with clause 27.3.3 above; and/or

27.4.4 two further KPI Failures occur

then (without prejudice to any other rights and remedies of termination provided for in the Contract), the Contracting Authority shall be entitled to terminate the Contract with immediate effect on written notice to the Contractor.

27.5 The Contractor shall monitor and record the Contractor's performance of the Contract by reference to the Key Performance Indicators in accordance with Appendix 2 to this Call-Off Contract (Monitoring Contract Performance).

28. Payment and VAT

28.1 The Contracting Authority shall pay all sums due to the Contractor within thirty (30) days of receipt of a valid invoice, submitted in accordance with the payment profile set out in the Order Form.

28.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and Services supplied and that it is supported by any

other documentation reasonably required by the Contracting Authority to substantiate the invoice.

- 28.3 Where the Contractor enters into a sub-contract with a contractor or supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 28.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- 28.5 The Contractor shall indemnify the Contracting Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Contracting Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this Clause 28 shall be paid by the Contractor to the Contracting Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Authority.

29. Recovery of Sums Due

- 29.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Authority in respect of any breach of the Contract), the Contracting Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Contracting Authority.
- 29.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 29.3 Any Service Credits recoverable in accordance Clause 27 (Performance Indicators and Service Credits) shall be deducted from the invoice raised immediately following the imposition of the Service Credits and shall be clearly itemised.
- 29.4 The Contractor shall make all payments due to the Contracting 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 Contracting Authority to the Contractor.
- 29.5 All payments due shall be made within a reasonable time unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

30. Euro

- 30.1 Any requirement of Law to account for the Goods and Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Contracting Authority.

30.2 The Contracting Authority shall provide all reasonable assistance to facilitate compliance with Clause 30.1 by the Contractor.

31. Not used

32. Continuous Improvement

32.1 The Contractor shall have an on-going obligation throughout the Contract Period to identify new or potential improvements to the Goods and Services pursuant to which it shall regularly review with the Contracting Authority the Goods and Services and the manner in which it is providing the Goods and Services with a view to:

32.1.1 reducing the Contracting Authority's costs (including the Contract Price); and/or

32.1.2 improving the quality and efficiency of the Goods and Services

32.2 The Contractor shall ensure that the information that it provides to the Contracting Authority in accordance with this Clause 32 shall be sufficient for the Contracting Authority to decide whether any improvement to the Goods and Services should be implemented. The Contractor shall provide any further information that the Contracting Authority requests in connection with any improvements to the Goods and Services identified by the Contractor.

32.3 Notwithstanding the Contractor's obligations under this Clause 32, the Contracting Authority shall be entitled to regularly benchmark the Contract Price and performance of the Goods and Services, against other suppliers providing goods and services substantially the same as the Goods and Services during the Contract Period in order to compare the Contract Price and level of performance of the Goods and Services with charges and services offered by third parties so as to provide the Contracting Authority with information for comparison purposes.

32.4 The Contracting Authority shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 32.2 above.

32.5 The Contracting Authority shall be entitled to disclose the results of any benchmarking of the Contract Price and provision of the Goods and Services carried out under Clause 32.3 to the Contracting Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).

32.6 The Contractor shall use all reasonable endeavours and act in good faith to supply information required by the Contracting Authority in order to undertake the benchmarking in accordance with Clause 32.3 and such information requirements shall be at the discretion of the Contracting Authority.

32.7 Where, as a consequence of any benchmarking carried out by the Contracting Authority under Clause 32.3, the Contracting Authority decides improvements to the Goods and Services should be implemented such improvements shall be implemented by way of the Contract Change procedures set out in Clause 48 (Change Control).

- 32.8 As part of the Contractor's continuous obligations, the Contractor shall identify and report to the Contracting Authority quarterly in the first year of the Contract and once every six (6) months for the remainder of the Contract Period on:
- 32.8.1 the emergence of new and evolving relevant technologies which could improve the Goods and Services, and those technological advances in relation to the Goods and Services potentially available to the Contractor and the Contracting Authority which the Parties may wish to adopt;
 - 32.8.2 proposals for implementation of the new and improved technological advances under Clause 32.8.1 shall not amount to any reduction in the functionality, performance, capacity or quality of the Goods; and
 - 32.8.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Contracting Authority which might result in efficiency or productivity gains or in reduction of operational risk.
- 32.9 The benefit of any work carried out by the Contractor to improve or update the Goods and Services or to facilitate their delivery to any other Contracting Body and/or any alterations or variations to the Contract Price or the provision of the Goods and Services which are identified in the Continuous Improvement Plan produced by the Contractor and/or as a consequence of any benchmarking carried out by the Contracting Authority pursuant to this Clause 32, shall be implemented by the Contractor (subject to the Framework Agreement) at no additional cost to the Contracting Authority.

PART E - STATUTORY OBLIGATIONS AND REGULATIONS

33. Prevention of Fraud and Corruption

- 33.1 The Contractor shall operate a policy which complies with statutory obligations under the Bribery Act 2010, which shall be supported and led by its senior management.
- 33.2 The Contractor shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or for showing or refraining from showing favour or disfavour to any person in relation to the Contract.
- 33.3 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent fraud by the Staff and the Contractor (including its shareholders, members and directors) in connection with the Contract and shall notify the Contracting Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 33.4 If the Contractor or the Staff engages in conduct prohibited by this Clause 33 or commits fraud in relation to the Contract or any other contract with the Crown (including the Contracting Authority) the Contracting Authority may:
- 33.4.1 terminate the Contract and recover from the Contractor the amount of any loss suffered by the Contracting Authority resulting from the termination, including the cost reasonably incurred by the Contracting Authority of making other arrangements for the supply of the Services and any additional expenditure

incurred by the Contracting Authority throughout the remainder of the Contract;
or

33.4.2 recover in full from the Contractor any other loss sustained by the Contracting Authority in consequence of any breach of this Clause.

34. Discrimination

34.1 The Contractor shall operate an equal opportunities policy which complies with statutory obligations under the Equality Act 2010 or other relevant or equivalent legislation or any statutory modification or re-enactment thereof.

34.2 The Contractor shall not undertake the supply of the Goods and provision of the Services in such a way as would render it or the Contracting Authority in breach of the Equality Act 2010 and shall indemnify the Contracting Authority against any claims that may be brought in respect of breaches of the Equality Act 2010 by the Contractor.

34.3 The Contractor shall notify the Contracting Authority, in writing, as soon as it becomes aware of any investigation of or proceeding brought against the Contractor by any court or tribunal or commission.

34.4 If any court or tribunal or commission should make any finding of unlawful discrimination against the Contractor, then the Contractor shall take all necessary steps to prevent reoccurrence of such unlawful discrimination. The Authority may require the Contractor to provide full details of the steps taken to prevent such reoccurrence.

34.5 The Contractor's equal opportunities policy shall be set out in any instructions circulated to those members of the Contractor's Staff concerned with recruitment, training and promotion; in relevant documentation available to its Staff and others; and in its recruitment advertisements and other relevant literature. The Contractor may be required to provide to the Contracting Authority copies of such instructions, documents, advertisements and other literature on request.

34.6 The Contractor shall record, monitor and report on the characteristics of its workforce in relation to recruitment, selection, promotion, training and leavers in accordance with the principles of the Equality Act 2010 and to the extent permitted by the Data Protection Act 1998. The Contractor shall provide the Contracting Authority, on request, with evidence of its monitoring information on request.

34.7 Where the Contractor, its agents or Staff are required to carry out work on the Contracting Authority Premises or alongside the Contracting Authority's employees on any other premises, the Contractor shall comply with the Contracting Authority's employment policy and codes of practice relating to equal opportunities. In relation to the Contractor's Goods delivery and those people affected by that Goods delivery, the Contractor shall ensure full compliance with all policies, procedures and practices and recognise the diversity of the end users.

34.8 The Contractor shall provide the Contracting Authority, on request, with evidence of compliance with statutory obligations and the provisions of this Clause 34.

34.9 The Contractor shall, in the course of performing its obligations under this Contract, comply in all material respects with the provisions of the Human Rights Act 1998 and shall indemnify the Contracting Authority against any claims that may be brought in respect of breaches of the Human Rights Act by the Contractor.

34.10 The Contractor shall provide the Contracting Authority with evidence of compliance with the statutory obligations and the provisions of this Clause 34 on request and shall take all reasonable steps to secure the observance of Clause 34 by all Staff.

35. The Contracts (Rights of Third parties) Act 1999

35.1 Save as for the rights specified in this Contract a person who is not a Party to this Contract shall have no right to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third parties) Act 1999.

36. The Environment

36.1 Whilst the Contractor shall operate in an environmentally conscious manner in all its activities, the Contractor shall, when working on the Contracting Authority Premises, perform its obligations under this Contract in accordance with the Contracting Authority's environmental aims, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

37. Health and Safety

37.1 The Contractor shall promptly notify the Contracting Authority of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract. The Contracting Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Contracting Authority Premises and which may affect the Contractor in the performance of its obligations under this Contract.

37.2 While on the Contracting Authority Premises, the Contractor shall comply with any health and safety measures implemented by the Contracting Authority in respect of staff and other persons working there.

37.3 The Contractor shall notify the Contracting Authority immediately in the event of any incident occurring in the performance of its obligations under this Contract on the Contracting Authority Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

37.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to staff and other persons working on the Contracting Authority Premises in the performance of its obligations under this Contract.

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

38. Transfer of Undertakings (Protection of Employment) Regulations 2006

38.1 The Contractor acknowledges that the Contracting Authority has made no assurance about the effect of TUPE and has formed its own view on whether TUPE applies before submitting its Tender. The Contractor agrees that the Contract Price shall not be varied on the grounds that TUPE does or does not apply, irrespective of the belief of the Contracting Authority or the Contractor prior to the execution of the Contract.

38.2 No compensation or remuneration shall be payable by the Contracting Authority, where the nature, extent, effect or character of any obligations acquired by the Contractor under the Contract as a result of the effects of TUPE may be different from that envisaged.

38.3 The Contracting Authority does not accept any responsibility for and gives no warranty in respect of any TUPE information which has been supplied to the Contractor by the Contracting Authority.

38.4 Upon receipt of any request from the Contracting Authority made to the Contractor during the Contract Period or within twelve months before the expiry or early termination of this Contract, the Contractor shall supply to the Contracting Authority or if the Contracting Authority shall so require any replacement provider of the Goods and/or Services, or the part thereof, such information in respect of the terms and conditions of employment of its employees associated with the provision of the Goods and Services by the Contractor and all employment records relating to employees engaged by the Contractor in the performance of this Contract as the Contracting Authority shall reasonably require and in whatever form the Contracting Authority shall reasonably require to enable the Contracting Authority or any replacement provider to comply with its obligations under TUPE.

38.5 The Contractor shall not in anticipation of the termination of the Contract change the identity of any of the employees engaged in providing the Goods and Services, increase or decrease the number of employees or vary any of the terms and conditions on which they are employed unless otherwise agreed in writing by the Contracting Authority and shall indemnify and hold harmless the Contracting Authority from and against any breach of this Clause.

38.6 The Contractor shall indemnify the Contracting Authority and any replacement provider of the Goods and Services or part thereof fully in respect of any claims, losses, costs, expenses, demands and liabilities arising from the provision of information or the failure to provide information under Clause 38.4

38.7 If TUPE applies upon termination or expiry of this Contract:

38.7.1 The Contractor shall indemnify the Contracting Authority against any liability the Contracting Authority may have in respect of any claim or allegation made by any employee of the Contractor after the termination date in respect of any

act or omission of the Contractor which gives rise to redundancy, wrongful dismissal or unfair dismissal before the termination date.

38.8 In Clause 38.7.1 'employee of the Contractor' means an individual in the employment of the Contractor on or before the termination date.

38.9 This Clause 38 shall survive termination of this Contract

PART F – PROTECTION OF INFORMATION

39. Data Protection

39.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 39 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

39.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Contracting Authority is the data controller and the Contractor is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).

39.3 The Contractor shall notify the Contracting Authority immediately if it considers that any of the Contracting Authority's instructions infringe the Data Protection Legislation.

39.4 The Contractor shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Contracting 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 Contract;
- (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.

39.5 Without prejudice to the generality of clause 39.1, the Contracting Authority will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Contractor for the duration and purposes of this agreement.

39.6 Without prejudice to the generality of clause 39.1, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this agreement:

- 39.6.1 process that Personal Data only on the written instructions of the Contracting Authority unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to process Personal Data (**Applicable Laws**). Where the Contractor is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Contractor shall promptly notify the Contracting Authority of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Contracting Authority;
- 39.6.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 39.6.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 39.6.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:
- (a) the Contracting Authority or the Contractor has provided appropriate safeguards in relation to the transfer;
 - (b) the data subject has enforceable rights and effective legal remedies;
 - (c) 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; and
 - (d) the Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;
- 39.6.5 assist the Contracting Authority, at the Contracting Authority's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 39.6.6 at the written direction of the Contracting Authority, delete or return Personal Data and copies thereof to the Contracting Authority on termination of the agreement unless required by Applicable Law to store the Personal Data; and

- 39.6.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 39 and allow for audits by the Contracting Authority or the Contracting Authority's designated auditor.
- 39.7 Subject to clause 39.8, the Contractor shall notify the Contracting Authority immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject 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.
- 39.8 The Contractor's obligation to notify under clause 39.7 shall include the provision of further information to the Contracting Authority in phases, as details become available.
- 39.9 Taking into account the nature of the processing, the Contractor shall provide the Contracting Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 39.7 (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:
- (a) the Contracting Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Contracting Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Contracting Authority following any Data Loss Event;

- (e) assistance as requested by the Contracting Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.
- 39.10 The Contracting Authority does not consent to the Contractor appointing any third party processor of Personal Data under this agreement.
- 39.11 The Contractor may, at any time on not less than 30 days' notice, revise this clause 39 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 39.12 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Contracting Authority may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 39.13 The Contractor warrants that it has obtained and will maintain during the Contract Period a Cyber Essentials certificate. (In this sub-clause "Cyber Essentials" means the Government-backed, industry-supported scheme known as Cyber Essentials which has been set up to help organisations protect themselves against the most common threats found on the internet).
- 39.14 Should the Contracting Authority be required to transfer any Personal Data to the Contractor under this Contract, the Personal Data shall be clearly marked for the attention of the Personal Data contact named within Framework Schedule 5 – Order Form and Call-Off Contract – Part 1 Order Form. Any Personal Data sent via post, shall be sent via a method that requires signing by the recipient.
- 39.15 The provision of this Clause 39 shall apply during this Contract and shall survive termination of this Contract.
- 39.16 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Contracting Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

40. Confidential Information

- 40.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 40.1.1 treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and

- 40.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- 40.2 The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.
- 40.3 The Contractor shall not use any Confidential Information it receives from the Contracting Authority otherwise than for the purposes of the Contract.
- 40.4 Nothing in Clauses 40.1 to 40.3 shall prevent the Contracting Authority disclosing any Confidential Information obtained from the Contractor:
- 40.4.1 for the purpose of the examination and certification of the Contracting Authority's accounts; or
- 40.4.2 to any consultant, contractor or other person engaged by the Contracting Authority,
- 40.5 Nothing in Clauses 40.1 to 40.3 shall prevent either Party from:
- 40.5.1 using any techniques, ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights, or
- 40.5.2 disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.
- 40.6 In the event that the Contractor fails to comply with Clauses 40.1 to 40.3, the Contracting Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- 40.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Goods and Services under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.
- 40.8 The Contractor will immediately notify the Contracting Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Goods and Services under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Clauses 40.1 to 40.3. The Contractor will co-operate with the Contracting Authority in any investigation that the Contracting Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

41. Freedom of Information

- 41.1 The Contractor acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations.
- 41.2 The Contractor shall and shall procure that any sub-contractors shall;
- 41.2.1 transfer to the Contracting Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
- 41.2.2 provide the Contracting Authority with a copy of all Information in its possession, or power in the form that the Contracting Authority requires within five Working Days (or such other period as the Contracting Authority may specify) of the Contracting Authority's request; and
- 41.2.3 provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.
- 41.3 The Contracting Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 41.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contracting Authority.
- 41.5 The Contractor acknowledges that the Contracting Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Goods and Services in certain circumstances:
- 41.5.1 without consulting the Contractor; or
- 41.5.2 following consultation with the Contractor and having taken their views into account;
- 41.6 provided always that where Clause 41.5.1 applies the Contracting Authority shall take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- 41.7 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Contracting Authority to inspect such records as requested from time to time.

41.8 The Contractor acknowledges that the Commercially Sensitive Information listed in the Order Form is of indicative value only and that the Contracting Authority may be obliged to disclose it in accordance with this Clause 41.

42. Publicity, Media and Official Enquiries

42.1 Without prejudice to the Contracting Authority's obligations under the FOIA, the Contractor shall not make any press announcement or publicise this Contract or any part thereof in any way, except with the prior written consent of the Contracting Authority.

42.2 The Contractor shall take reasonable steps to ensure that its Staff, agents, sub-contractors, suppliers, professional advisors and consultants comply with Clause 42.1.

42.3 The Authority shall be entitled to publicise this Contract and in accordance with any legal obligation upon the Contracting Authority including any examination of this Framework Agreement by the Contracting Authority's auditor or otherwise.

42.4 The Contractor shall not do anything which may damage the reputation of the Contracting Authority or bring the Contracting Authority into disrepute.

43. Security

43.1 The Contracting Authority shall be responsible for maintaining the security of the Contracting Authority Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Contracting Authority while on the Contracting Authority Premises, and shall ensure that all staff comply with such requirements.

44. Intellectual Property Rights

44.1 All Intellectual Property Rights in any materials provided by the Contracting Authority to the Contractor for the purposes of this Contract shall remain the property of the Contracting Authority but the Contracting Authority hereby grants the Contractor a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Contractor to perform its obligations under the Contract.

44.2 All Intellectual Property Rights in any materials created or developed by the Contractor pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Contracting Authority.

44.3 The Contractor shall indemnify, and keep indemnified, the Contracting Authority in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Contracting Authority as a result of or in connection with any claim made against the Contracting Authority for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Contractor or any Staff.

44.4 The Contractor shall on during and after the Contract Period fully indemnify and keep fully indemnified and hold the Contracting Authority harmless from and against all actions, suits, claims, demands, losses (whether direct or indirect), charges, damages, costs and expenses and other liabilities which the Contracting Authority may suffer or incur as a result of any claim that the rights granted to the Contracting Authority pursuant to this Contract and/or the performance by the Contractor of the Services and/or supply of the Goods and/or the possession or use by the Contracting Authority of the Goods infringes or allegedly infringes a third party's Intellectual Property Rights

44.5 The Contractor shall have no rights to use any of the Contracting Authority's names, logos or trademarks without prior Approval.

45. Audit

45.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of this Contract including the Goods and Services supplied under it, all expenditure reimbursed by the Contracting Authority, and all payments made by the Contracting Authority. The Contractor shall on request afford the Contracting Authority or the Contracting Authority's representatives such access to those records as may be requested by the Contracting Authority in connection with this Contract.

PART G - CONTROL OF THE CONTRACT

46. Transfer and Sub-contracting

46.1 The Contractor may not assign, novate or sub-contract any of its rights or duties under this Contract without the express written approval of the Supervising Officer. Notwithstanding such approval, the Contractor shall not be relieved from any liabilities or obligations under the Contract.

46.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though those acts or omissions were its own.

46.3 Where the Contracting Authority has consented to the placing of sub-contracts:

46.3.1 copies of each sub-contract (which shall be no less onerous than the terms of the Call-Off Contract, unless otherwise agreed by the Contracting Authority in writing) shall, at the request of the Contracting Authority, be sent by the Contractor to the Contracting Authority as soon as reasonably practicable; and

46.3.2 where applicable, and at any time, the Contracting Authority may request the Contractor to procure deed(s) of warranty from any sub-contractor(s) in favour of the Contracting Authority, or other third party identified by the Contracting Authority. Such deed(s) of warranty to be in a form prescribed by the Contracting Authority and delivered executed within 15 Working Days of any such request.

46.4 The Contracting Authority may assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof to:

- 46.4.1 any public authority; or
- 46.4.2 any other body established under statute in order substantially to perform any of the functions that had previously been performed by the Contracting Authority; or
- 46.4.3 any private sector body which substantially performs the functions of the Contracting Authority,

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

- 46.5 Any change in the legal status of the Contracting Authority such that it ceases to be a contracting authority for the purposes of the Regulations shall not, subject to Clause 46.8, affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the Contracting Authority.
- 46.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 46.4 to a body which is not a contracting authority for the purposes of the Public Procurement Regulations 2015 or if there is a change in the legal status of the Contracting Authority such that it ceases to be a contracting authority for the purposes of the Regulations (in the remainder of this Clause both such bodies being referred to as the "Transferee"):
 - 46.6.1 the rights of termination of the Contracting Authority in Clauses 58 (Termination on change of control and insolvency) and 59 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or default of the Transferee; and
 - 46.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the contract or any part thereof with the prior consent in writing of the Contractor.
- 46.7 The Contracting Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under this Contract. In such circumstances the Contracting Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under this Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 46.8 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of this Contract.

47. Waiver

- 47.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either party to exercise, or any delay in exercising, any right or

remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

- 47.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with Clause 6 (Notices).
- 47.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

48. Change Control

- 48.1 Subject to the provisions of this Clause 48, the Contracting Authority may request a Change by completing and sending the Change Form to the Contractor giving the Contractor sufficient information of the proposed Change for the Contractor to assess the extent of the Change and any additional cost that may be incurred.
- 48.2 The Contractor shall respond to a request for a Change within the time limits specified by the Contracting Authority in the request.
- 48.3 Without charge to the Contracting Authority, the Contractor shall prepare an assessment of the proposed Change including without limitation the following:
- 48.3.1 details of the cost of the proposed Change, including any increase or decrease in the Contract Price (a detailed price estimate shall be provided by the Contractor, including a breakdown of how the costing has been calculated, and such estimate shall be consistent with the calculation of the Contract Price and shall otherwise be fair and reasonable in all the circumstances);
 - 48.3.2 any variation to the terms of the Contract that will be required as a result of the Change;
 - 48.3.3 a timetable for the implementation of the Change;
 - 48.3.4 such other information as the Contracting Authority may reasonably request.
- 48.4 In the event that the Contractor is unable to provide the Change or where the Parties are unable to agree a variation to the Contract Price, the Contracting Authority may:
- 48.4.1 agree that the Change shall not be implemented;
 - 48.4.2 propose an amendment to the Change; or
 - 48.4.3 terminate the Contract with immediate effect, except where the Contractor has already delivered part or all of the Goods and Services in accordance with the Order Form or where the Contractor can show evidence of substantial work being carried out to fulfil the Order Form, and in which case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the dispute resolution procedure in Clause 65.

48.5 In the event that the Parties agree the Change, the Parties shall vary the Contract in writing to give effect to the Change.

48.6 The Contracting Authority may not propose any Change which:

48.6.1 may prevent the Framework Contractor from performing its obligations under the Framework Agreement; or

48.6.2 is in contravention of any Law, including but not limited to the Public Contract Regulations 2015.

49. Severability

49.1 If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

50. Remedies Cumulative

50.1 Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

51. Monitoring of Contract Performance

51.1 The Contractor shall comply with the Monitoring Schedule including but not limited to providing such data and information as the Contractor may be required to produce under this Contract.

52. Entire Agreement

52.1 The Contract contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract. Nothing in this Clause shall exclude liability for fraud or fraudulent misrepresentation.

53. Counterparts

53.1 This Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

PART H - LIABILITIES, INDEMNITY AND INSURANCE

54. Liability

54.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

54.1.1 death or personal injury caused by its negligence;

- 54.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
- 54.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982; and
- 54.1.4 any other matter which, by Law, may not be excluded or limited.

54.2 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 Contracting Authority or by breach by the Contracting Authority of its obligations under this Contract.

54.3 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.

55. Indemnity

55.1 The Contractor shall indemnify the Contracting Authority and keep the Contracting Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Goods and Services or the performance or non-performance by the Contractor of its obligations under this Contract or the presence of the Contractor or any Staff on the Contracting Authority Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

56. Insurance

56.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing 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 this Contract (including death or personal injury, loss of or damage to property or any other loss) and including as a minimum the policies of insurance and limits of indemnity set out in the Framework Agreement Invitation to Tender. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

56.2 The Contractor shall hold employer's liability insurance in respect of staff in accordance with any legal requirement from time to time in force.

56.3 The Contractor shall give the Contracting Authority, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

56.4 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Authority may make

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

- 56.5 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under this Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in Clause 55 (Indemnity).
- 56.6 Without prejudice to Clause 56.1 above, the Contractor shall (and shall ensure that its agents and sub-contractors shall) effect and maintain the insurances specified in clause G1 of the Framework Agreement and the Order Form. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- 56.7 Without prejudice to Clause 56.1 above, the Contractor shall (and shall ensure that its agents and sub-contractors shall) effect and maintain appropriate motor trade insurance cover during the Contract Period in respect of the Goods.

57. Warranties and Representations

- 57.1 The Contractor warrants and represents to the Contracting Authority that:
- 57.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
 - 57.1.2 in entering this Contract it has not committed any Fraud;
 - 57.1.3 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
 - 57.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender are true, accurate and not misleading, save as may have been specifically disclosed in writing to the Contracting Authority prior to execution of the Contract and it will promptly advise the Contracting 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 and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
 - 57.1.5 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 have a material adverse effect on its ability to perform its obligations under this Contract;
 - 57.1.6 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;

- 57.1.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- 57.1.8 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Contract;
- 57.1.9 its supply of the Goods and its provision of the Services under this Contract will not in any way constitute an infringement or other violation of any Intellectual Property Rights of any third party;
- 57.1.10 in the three (3) years prior to the date of this Contract:
- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Contract.
 - (d) it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Contract.

57.2 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Contracting Authority would have in respect of breach of that provision by the Contractor if that provision had not been so expressed.

57.3 The Contractor acknowledges and agrees that:

57.3.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Contracting Authority into entering into this Contract; and

57.3.2 the Contracting Authority has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

PART I - DEFAULT, DISRUPTION AND TERMINATION

58. Termination on insolvency and change of control

58.1 The Contracting Authority may terminate this Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- 58.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 58.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 58.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
 - 58.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 58.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 58.1.6 it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - 58.1.7 being a "small company" within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 58.1.8 the Contracting Authority identifies; a serious infringement of its obligations of the Public Contracts Regulations 2015.
 - 58.1.9 the contract will or has been subject to a substantial modification that constitutes a new award; or mandatory exclusion grounds are discovered.
 - 58.1.10 any event similar to those listed in Clauses 58.1.1 to 58.1.9 occurs under the law of any other jurisdiction.
- 58.2 The Contracting Authority may terminate this Contract with immediate effect by notice in writing where the Contractor is an individual and:
- 58.2.1 an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
 - 58.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
 - 58.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

- 58.2.4 the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- 58.2.5 a creditor or encumbrancer 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 Contractor's assets and such attachment or process is not discharged within 14 days; or
- 58.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- 58.2.7 he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 58.2.8 the Contracting Authority identifies; a serious infringement of its obligations of the Public Contracts Regulations 2015.
- 58.2.9 the Contract will or has been subject to a substantial modification that constitutes a new award; or mandatory exclusion grounds are discovered.
- 58.2.10 any event similar to those listed in Clauses 58.2.1 to 58.2.10 occurs under the law of any other jurisdiction.

58.3 The Contractor shall notify the Contracting Authority immediately if the Contractor undergoes a change of control within the meaning of section 450 and 451 of the Corporation Taxes Act 2010 ("**change of control**"). The Contracting Authority may terminate the Contract by notice in writing with immediate effect within six months of:

- 58.3.1 being notified that a change of control has occurred; or
- 58.3.2 where no notification has been made, the date that the Contracting Authority becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

59. Termination on Default

59.1 The Contracting Authority may terminate this Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- 59.1.1 the Contractor has not remedied the Default to the satisfaction of the Contracting Authority within ten (10) Working Days, or such other period as may be specified by the Contracting Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- 59.1.2 the Default is not, in the opinion of the Contracting Authority, capable of remedy; or
- 59.1.3 the Default is a Material Breach;

59.1.4 two (2) or more KPI Failures occur in any period of three (3) consecutive months.

59.2 If the Contracting Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Contracting Authority in writing of such failure to pay. If the Contracting Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Contracting Authority exercising its rights under Clause 29 (Recovery of Sums Due).

60. Termination at will

60.1 The Contracting Authority shall have the right to terminate this Contract, or to terminate the provision of any part of this Contract, at any time by giving three (3) months' written notice to the Contractor.

61. Consequences of Expiry or Termination

61.1 Where the Contracting Authority terminates the Contract under Clause 59 (Termination of Default) and then makes other arrangements for the supply of Goods and/or Services, such termination shall be at no loss or cost to the Contracting Authority and the Contractor hereby indemnifies the Contracting Authority against any such losses or costs which the Contracting Authority may suffer as a result of any such termination. For the avoidance of doubt, and without prejudice to its other rights, the Contracting Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Authority throughout the remainder of the Contract Period. The Contracting Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 59 (Termination of Default), no further payments shall be payable by the Contracting Authority to the Contractor until the Contracting Authority has established the final cost of making the other arrangements envisaged under this Clause.

61.2 Where the Contracting Authority terminates the Contract under Clause 60 (Termination at Will), the Contracting Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contracting Authority shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Contracting Authority, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under Clause 60 (Termination at Will).

61.3 The Contracting Authority shall not be liable under Clause 61.2 to pay any sum which:

- 61.3.1 was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- 61.3.2 when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract period; or
- 61.3.3 is a claim by the Contractor for:
- (a) loss of profit;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) any indirect, special or consequential loss or damage due to early termination of the Contract.
- 61.4 Upon termination or expiry of the Contract, the Contractor shall:
- 61.4.1 give all reasonable assistance to the Contracting Authority and any incoming supplier of the Goods and/or Services and assist and co-operate with the Contracting Authority to ensure an orderly transition of the provision of the Goods and Services to the replacement supplier and/or the completion of any work in progress;
- 61.4.2 immediately deliver to the Contracting Authority all Contracting Authority Property provided to the Contractor in accordance with Clause 10 (Contracting Authority Property);
- 61.4.3 immediately deliver to the Contracting Authority all Goods to which ownership has transferred to the Contracting Authority in accordance with Clause 14 (Risk and Ownership);
- 61.4.4 promptly provide all information concerning the provision of the Goods and Services which may reasonably be requested by the Contracting Authority for the purposes of adequately understanding the manner in which the Goods and Services have been provided or for the purpose of allowing the Contracting Authority or the replacement contractor to conduct due diligence;
- 61.4.5 immediately return to the Contracting Authority all Confidential Information, Personal Data and Intellectual Property in its possession or in the possession or under the control of any agent or sub-contractor which was obtained or produced in the course of providing the Goods and Services;
- 61.4.6 immediately vacate any Contracting Authority Premises and any licence granted pursuant to this Contract shall terminate without the need to serve notice.
- 61.5 If the Contractor fails to comply with Clauses 61.4.2 to 61.4.3 above, the Contracting Authority may recover possession of the items to which they relate and the Contractor grants a licence to the Contracting Authority or its appointed sub-contractors or agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted agents or sub-contractors where any such items may be held.

- 61.6 Where termination arises under Clause 58 (Termination on insolvency and change of control) or Clause 59 (Termination on Default), the Contractor shall provide all assistance under Clause 61.4 free of charge. Otherwise, the Contracting Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.
- 61.7 Save as otherwise expressly provided in the Contract, termination or expiry of the Contract shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under Clauses 13 (Acceptance and Defective Goods), 14 (Risk and Ownership), 16 (Guarantee) 28 (Payment and VAT), 29 (Recovery of Sums Due), 33 (Prevention of Fraud and Corruption), 39 (Data Protection), 40 (Confidential Information), 41 (Freedom of Information), 44 (Intellectual Property Rights), 45 (Audit), 50 (Remedies Cumulative), 54 (Liability), 55 (Indemnity), 56 (Insurance), 61 (Consequences of Expiry or Termination), and 64 (Governing Law and Jurisdiction), or without limitation any other provision of the Contract that either expressly or by implication has effect after termination or expiry.

62. Disruption

- 62.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Contracting Authority, its employees or any other Contractor employed by the Contracting Authority.
- 62.2 The Contractor shall immediately inform the Contracting Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under this Contract.
- 62.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under this Contract.
- 62.4 If the Contractor's proposals referred to in Clause 62.3 are considered insufficient or unacceptable by the Contracting Authority acting reasonably, then this Contract may be terminated with immediate effect by the Contracting Authority by notice in writing.
- 62.5 If the Contractor is temporarily unable to fulfil the requirements of this Contract owing to disruption of normal business of the Contracting Authority, the Contractor may request a reasonable allowance of time and, in addition, the Contracting Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

63. Force Majeure

- 63.1 Neither Party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from a Force Majeure Event.
- 63.2 Each Party shall promptly notify the other Party in writing when a Force Majeure Event cause a delay or failure in performance and when it ceases to do so.

- 63.3 Notwithstanding the rest of this Clause 63, the Contractor shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of the Force Majeure Event.
- 63.4 If the Force Majeure Event continues for a continuous period of more than two (2) months, either Party may terminate the Contract by written notice to the other Party.
- 63.5 For the avoidance of doubt, it is hereby expressly agreed that industrial relations difficulties, and failure to provide adequate Premises, Equipment, materials, consumables and/or Staff or similar matters, which a prudent and diligent Contractor could have avoided with the application of foresight, are not to be considered as Force Majeure Events.
- 63.6 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or Contractor shall be regarded as due to a Force Majeure Event only if that agent or sub-contractor is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

PART J - DISPUTES AND LAW

64. Governing Law and Jurisdiction

- 64.1 Subject to the provisions of Clause 65 (Dispute Resolution), the Contracting Authority and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

65. Dispute Resolution

- 65.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to a board director (or equivalent) of each Party.
- 65.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 65.3 If the dispute cannot be resolved by the Parties pursuant to Clause 65.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 65.5 unless:
- 65.3.1 the Contracting Authority considers that the dispute is not suitable for resolution by mediation; or
- 65.3.2 the Contractor does not agree to mediation.
- 65.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

- 65.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- 65.5.1 a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) to appoint a Mediator;
 - 65.5.2 The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution (CEDR) to provide guidance on a suitable procedure;
 - 65.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - 65.5.4 If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - 65.5.5 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.
- 65.6 Subject to Clause 65.2, the Parties shall not institute court proceedings until the procedures set out in Clause 65.1 and 65.3 have been completed save that:
- 65.6.1 the Contracting Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 65.7.
 - 65.6.2 if the Contractor intends to commence court proceedings, it shall serve written notice on the Contracting Authority of its intentions and the Contracting Authority shall have twenty-one (21) days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with Clause 65.7.
 - 65.6.3 the Contractor may request by notice in writing to the Contracting Authority that any dispute be referred and resolved by arbitration in accordance with Clause 66.7, to which the Contracting Authority may consent as it sees fit.
- 65.7 In the event that any arbitration proceedings are commenced pursuant to Clause 65.6:

- 65.7.1 the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- 65.7.2 the Contracting Authority shall give a written notice of arbitration to the Contractor (the "Arbitration Notice") stating:
- (a) that the dispute is referred to arbitration; and
 - (b) providing details of the issues to be resolved;
- 65.7.3 the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with Clause (65.6.2) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- 65.7.4 the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- 65.7.5 if the Parties fail to agree the appointment of the arbitrator within ten (10) days of the Arbitration Notice being issued by the Contracting Authority under Clause 65.7.2 or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- 65.7.6 the arbitration proceedings shall take place in London and in the English language; and
- 65.7.7 the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

66. Assistance in Legal Proceedings

- 66.1 If requested to do so by the Supervising Officer, the Contractor shall co-operate fully with the Contracting Authority (including, but not limited to the provision of documentation and statements from staff) in connection with any legal proceedings, Local Government Ombudsman enquiries, inquiry, arbitration tribunal or court proceedings in which the Contracting Authority may become involved, or any relevant disciplinary hearing internal to the Contracting Authority, arising out of the provision of the Goods and Services, and the Contractor shall if requested by the Supervising Officer give evidence in such inquiries, arbitration, proceeding or hearings.
- 66.2 Where the Contractor or any of its Staff become aware of any incident, maladministration, accident or other matter which may give rise to an Local Government Ombudsman inquiry, claim or legal proceedings in respect of the provision or failure to provide the Goods and Services, it shall notify the Supervising Officer immediately in writing. Such notification shall include all relevant information to enable the Supervising Officer to investigate the matter fully.
- 66.3 Such information provided or assistance rendered by the Contractor pursuant to the obligation in this Clause, in whatever form, shall be at no cost to the Contracting Authority.

Appendix 1 – Change Form

The Change Form is provided as a separate document.

Appendix 2 – Monitoring Contract Performance

1. General

- The Contracting Authority may monitor the performance of the Contractor by any means, which are practical and reasonable.
- The Contract shall be monitored against this appendix, incorporating Key Performance Indicators and key performance targets, as agreed between the Contractor and the Contracting Authority.
- Any performance issues, non-compliances or failure against the Contract will be managed by the Contracting Authority.
- The objectives of this appendix are to:
 - a) ensure that the Goods and Services are delivered to a consistent quality standard that meet the requirements of the Contracting Authority;
 - b) provide a mechanism whereby the Contracting Authority can understand the level of performance per Goods and Services delivered, and quickly identify performance issues or failures to enable corrective action plans to be developed and deployed;
 - c) create a platform to enable continuous improvement in the levels of delivery of Goods and provision of Service Levels provided to the Contracting Authority and thereby enhance and increase value for money.

2. Quality Monitoring

The Contractor shall monitor the provision of the Goods and Services, in accordance with the provisions of the Contract, on a daily basis to ensure that compliance with the Contract documentation, keeping a written record of all deficiencies, key performance events and Force Majeure events.

3. Performance Review Meetings

- In addition to the daily operational contact between the Contracting Authority and the Contractor the Parties shall meet regularly to discuss their respective levels of satisfaction in respect of the Call-off Contract and to agree any changes necessary to address areas of dissatisfaction.
- The Contractor shall ensure that a suitable member of the Contractor's personnel attends monitoring meetings, together with such other meetings as are reasonably required by the Contracting Authority in relation to the performance of the Contractor under the Call-off Contract.
- Performance review meetings will take place at the frequency set out in the Order Form, or more frequently if necessary.
- The location of the meetings will be at a location to be agreed between the Parties or at a location as may be agreed between the Parties from time to time.

- Should the most appropriate member of the Contractor's staff be unable to attend the meeting, then a suitable replacement of equivalent status shall be fully briefed and shall attend on his behalf.
- The Contractor is responsible for providing management information and statistical information as required by the Contracting Authority. The exact format of the statistics and the information and level of detail required to be included in it shall be that reasonably specified from time to time by the Supervising Officer and shall be provided within such timescale as the Supervising Officer may reasonably specify. The Supervising Officer may vary this from time to time as the need arises.

4. Key Performance Indicators, Key Performance Targets and Service Credits

- The Key Performance Indicators and key performance targets set out in Appendix 2 to this Schedule 5 will apply in respect of the performance by the Contractor of the Contract.
- The Contractor shall monitor and record the Contractor's performance of the Contract by reference to the criteria applicable to each of the Key Performance Indicators (as summarised in the table in Appendix 2 to this Schedule 5), including any Force Majeure Events, deficiencies and complaints for the purpose of preparing and delivering to the Contracting Authority a Key Performance Indicator Report at the frequency set out in the Order Form.
- If, in any month starting on or after the commencement date of the Contract, the Contractor fails to meet any key performance target, then the Contractor shall be liable to the Contracting Authority for the Service Credits set out within this appendix, provided that:-
 - no KPI Failure which results from a Force Majeure Event shall result in the allocation of a service credit point;
 - a deficiency which is not of a type specified in the matrix shall not attract a Service Credit point.
- The Contracting Authority will inform with the Contractor at what point it elects to exercise the collection of Service Credits.
- For each Service Credit point accrued a financial deduction of ten pounds £10 (exclusive of VAT) shall be made by the Contractor from the amount(s) otherwise due to the Contractor under the Contract.
- Accrued Service Credit points will be reported in the Key Performance Indicator Report and shall be targeted by the Contractor for improvement.
- The deduction of Service Credits from the Contract Price in the event of a KPI Failure shall be without prejudice to the other rights or remedies that the Contracting Authority may have, including under Clause 59 (Termination on Default) of the Call-Off Terms and Conditions.
- These Key Performance Indicators and Service Credits shall be applicable for the life of the Goods, unless agreed otherwise with the Contracting Authority.

Table of Key Performance Indicators, Key Performance Targets and Service Credits

These KPIs shall apply as standard to all Contracts unless otherwise agreed between the Contracting Authority and the Contractor. Changes to these standard KPIs or the addition of new ones shall be captured within the Order Form.

| Service item | Target | Method of measurement | Frequency of measurement | Measured and reviewed by: | KPI Failure | Service Credits (each point is worth £10) |
|-------------------------------|--|---|--------------------------|--------------------------------------|--|---|
| Delivery | <p><u>Vehicles only:</u></p> <p>All completed vehicles to be delivered on or before the due date as agreed by both Parties (where delivered before the delivery date, this must have prior agreement with the Contracting Authority).</p> | Date due against date delivered (at agreed location) | Per vehicle | Contractor and Contracting Authority | Failure of the Contractor to deliver completed vehicle to the agreed location on time | <p>5 points per working day that the vehicle is late (to a maximum of 100 points per vehicle).</p> <p>Applicable from the first working day after the agreed date for delivery.</p> |
| Delivery | <p><u>Other Goods:</u></p> <p>All other Goods (includes impress stock, any other parts and components, equipment or items ordered by the Contracting Authority via this Contract) to be delivered on or before the due date as agreed by both Parties.</p> | Date due against date delivered (at agreed location) | As required | Contractor and Contracting Authority | Failure to deliver any other Goods (including impress stock, any other parts and components, equipment or items ordered by the Contracting Authority via this Contract) to the agreed location on time | 1 point per failure, up to 15 points per calendar month |
| Compliance with Specification | All delivered vehicles (including any installed and/or loose equipment) to meet the Specification, including applicable quality standards, the prototype (where applicable) and agreed design | <p>Pre-delivery inspection (by the Contractor)</p> <p>Post-delivery inspection (by Contracting Authority)</p> | Per vehicle | Contractor and Contracting Authority | Failure of deliver vehicles (including any installed and/or loose equipment) to meet the Specification, including applicable quality standards, the prototype (where applicable) and agreed design | 20 points per failure |

| | | | | | | |
|---|---|---|----------------------------|------------------------------------|--|---|
| Compliance with Specification | <p>Issues / snagging resolution:</p> <p>Supervising Officer to determine priority for resolution for each individual issue/snag. Both Parties to agree method of resolution</p> <p>Priority 1 - within 24 hours,</p> <p>Priority 2 - within three working days,</p> <p>Priority 3 – within one week,</p> <p>Priority 4 - within two weeks,</p> <p>Priority 5 - within four weeks</p> | Time from issue/snag raised to time resolve | Per issue/snag | Contractor & Contracting Authority | Failure to resolve issues/snags within agreed timescales | 2 points per failure of each individual issue/snag, up to 45 points per vehicle |
| Warranty Repairs and Defect Rectification | <p>Supervising Officer to determine priority for resolution for each warranty repair and/or defect rectification. Both Parties to agree method of resolution.</p> <p>Time for Contractor to respond and resolve:</p> <p>Priority 1 - within 24 hours,</p> <p>Priority 2 - within three working days,</p> <p>Priority 3 – within one week,</p> <p>Priority 4 - within two weeks,</p> <p>Priority 5 - within four weeks</p> | Time from repair / rectification raised to time resolve | Per repair / rectification | Contractor & Contracting Authority | Failure of the Contractor to respond to and resolve warranty repairs and any other defects within agreed timescales. | 3 points per failure up to 15 points per calendar month |