

**NHS BUSINESS SERVICES AUTHORITY
TERMS & CONDITIONS FOR
THE PURCHASE OF GOODS AND SERVICES**

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**NHS BUSINESS SERVICES AUTHORITY
TERMS AND CONDITIONS FOR
THE PURCHASE OF GOODS AND SERVICES**

1. INTERPRETATION

1.1 In the Contract the following words shall have the following meanings unless the context otherwise requires:

“Acceptance Tests” means the acceptance tests described in the Purchase Order;

“Applicable Laws” means all laws (including in relation to health and safety and discrimination), regulations and guidance applicable to the performance of the Services;

“Authorised Officer” means an individual who is designated by the Authority as its official representative for the purposes of liaison and communication with the Contractor and general management of the Contract;

“Authority” means the NHS Business Services Authority whose principal office is Bridge House, 152 Pilgrim Street, Newcastle upon Tyne NE1 6SN;

“Authority Materials” means any materials and/or equipment made available to the Contractor by the Authority for its performance of the Services;

“Background IPR” means any Intellectual Property Rights owned by, licensed by a third party to, or controlled by the Contractor prior to the date of the Contract and Intellectual Property Rights later developed or acquired by the Contractor otherwise than pursuant to the performance of the Contract;

“Conditions” means these terms and conditions (including the Schedules) set out below;

“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 of either party and all personal data within the meaning of the DPA;

“Contract” means the contract between the Authority and the Contractor for the supply and purchase of the Services incorporating these Conditions and the terms of the Purchase Order;

“Contract Period” has the meaning given to it in condition 18.1;

“Contract Requirements” means the description of the Services (including any Service Levels) submitted with the Purchase Order (or, if no such description is submitted with the Purchase Order, the description of the Services submitted with

any documentation inviting the Contractor to tender for the appointment to provide the Services to the Authority);

“Contractor” means the entity detailed on the Purchase Order;

“Contract Price” means the price for the Services as detailed on the Purchase Order;

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including government ministers, government departments (and authorities), government and particular bodies (including arms length bodies established to carry out the functions of government ministers and government departments (and authorities)) and government agencies (or any of them as the context requires);

“Deliverables” means any documents, information, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other materials prepared by, or on behalf of, the Contractor pursuant to the Contract;

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such 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;

“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 materials and/or equipment used by the Contractor in the performance of the Services;

“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” means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including strikes, lockouts or other industrial disputes (save where those involve the workforce of the party so prevented), protests, acts of God, war or national emergency, an act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, explosion, flood, storm, epidemic;

“Foreground IPR” means any Intellectual Property Rights developed or acquired pursuant to the performance of the Services;

“Fraud” means any offence under applicable laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown;

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or entity engaged in the same type of undertaking under the same or similar circumstances;

“Goods” means the goods that the Contractor is required to supply as part of the Services;

“Insolvency Event” means each and any of the following in relation to the Contractor:

- (i) any procedure is commenced with a view to the winding-up or re-organisation of the Contractor and that procedure is not terminated or discharged within 30 days (save that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction);
- (ii) any procedure is commenced with a view to the appointment of a liquidator, administrator, receiver, administrative receiver or trustees in bankruptcy in relation to the Contractor or its assets and that procedure is not terminated or discharged within 30 days;
- (iii) the holder of any security over the assets of the Contractor takes any step to enforce that security and that enforcement is not discharged within 30 days;
- (iv) the assets of the Contractor are subject to attachment, sequestration, execution or similar process and that process is not terminated or discharged within 30 days; or
- (v) the Contractor is unable to pay its debts as they fall due or enters into a composition or arrangement with its creditors or any class of them;

“Intellectual Property Rights” means all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions as may exist now or in the future;

“Key Personnel” means those persons named in the Purchase Order or otherwise identified by either of the parties as being key personnel;

“Location” means the location for the performance of the Services (and if applicable installation of the Goods) as set out in the Contract or as otherwise agreed in writing between the Authority and the Contractor;

“Purchase Order” means an order for the Services which is issued by the Authority to the Contractor. Purchase Orders may be submitted by the Authority to the Contractor by way of a hard copy or electronically at the Authority’s option;

“Regulatory Body” means the 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 investigate, or influence the matters dealt with in the Contract or any affairs of the Authority;

“Replacement Contractor” means the person or persons appointed by the Authority to undertake the Services on expiry of the Contract Period;

“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);

“Returning Employees” means those Staff listed in a schedule to be agreed by the parties prior to the end of the Contract Period who it is agreed were employed by the Contractor (and/or any subcontractor) wholly and/or mainly in the Services immediately before the end of the Contract Period;

“Services” means the services (including the provision of the Goods) that the Contractor is required to perform under the Contract;

“Service Levels” means the service levels applicable to the Services set out in the Purchase Order;

“Staff” means employees, directors, officers, independent contractors and agents of the Contractor or any of its subcontractors or agents employed or engaged in any way in the performance of the Contractor’s obligations under the Contract;

“Staff Vetting Procedures” means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority;

“Transferring Employees” means the Staff who are wholly or mainly assigned to the Services immediately before expiry of the Contract Period and whose contract of employment will transfer to either the Authority or the Replacement Contractor on expiry of the Contract Period pursuant to TUPE;

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

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In the Contract:

1.2.1 the masculine includes the feminine, and the neuter includes the masculine and the feminine;

1.2.2 the singular includes the plural and vice versa;

1.2.3 reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or re-enacted by any subsequent enactment, order, regulation or instrument;

1.2.4 references to “includes”, “including”, “in particular” or “for example” shall be construed without limitation to the generality of the preceding words;

1.2.5 references to the Contractor shall include its Staff;

1.2.6 the word “indemnify” in the Contract will mean to indemnify and keep indemnified the indemnified party from and against all costs (including the costs of enforcement and re-procuring a supplier of the Services as well as the Services themselves), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which the indemnified party incurs or suffers and “indemnity”, “indemnities” and “indemnifies” have a corresponding meaning; and

1.2.7 the headings in the Contract shall not affect their interpretation.

1.3 If any conflict arises between these Conditions, the Schedules to the Conditions and the Purchase Order then the following order of precedence shall prevail:

1.3.1 the Purchase Order;

1.3.2 the Conditions; and

1.3.3 the Schedules.

1.4 If there is any conflict or inconsistency between two or more Schedules, the Schedules shall take precedence in their order of numerical priority starting with Schedule 1.

2. **CONTRACT TERMS**

2.1 **Basis of Contract**

2.1.1 The Contractor shall perform, and the Authority shall purchase, the Services on the terms of the Contract, and the Contractor acknowledges that the Contract contains the only terms on which the Authority is prepared to purchase the Services from the Contractor.

2.1.2 The Contract shall supersede any terms and conditions which the Contractor purports to apply to its supply of the Services to the Authority (including any terms contained in invoices or delivery notes relating to the Goods).

2.2 **Variation**

2.2.1 No variation to the Contract will be effective unless agreed in writing and signed by the Authorised Officer. Agreed variations shall be appended to the Contract.

2.2.2 The Authority may, by notice in writing to the Contractor at any time during the Contract term, vary the Contract Requirements without affecting the continuation of the Contract.

2.2.3 The Authority's notice to vary shall give details of the variation and the date on which the Authority requires it to take effect.

2.2.4 Within 5 days of receipt of the Authority's notice to vary, the Contractor shall either sign the notice and return it to the Authority or contact the Authority to discuss the variation.

2.2.5 If the Contractor contacts the Authority to discuss the variation, the parties shall work together to agree any proposed variation and once the variation has been agreed it shall be implemented and (if applicable) the Contract Price shall be adjusted in accordance with condition 4.2.

3. **PERFORMANCE AND RISK**

3.1 **Performance at Location**

The Contractor shall perform the Services at the Location in accordance with the instructions set out in the Purchase Order or as otherwise set out in these Conditions or agreed by the parties in writing.

3.2 **Time of Performance**

3.2.1 The time of performance shall be set out on the Purchase Order (or as otherwise set out in these Conditions or agreed in writing by the parties) and if no time for performance is expressly agreed then performance shall commence within 14 days of receipt by the Contractor of the Purchase Order (and it shall be the Contractor's responsibility to gain the requisite authorities to access the Location within this timeframe).

3.2.2 The Authority may alter an agreed time of performance provided that a minimum of 3 days' notice is given to the Contractor in writing.

3.2.3 Failure by the Contractor to perform the Services within the time agreed shall entitle the Authority to terminate the relevant Purchase Order.

3.3 **Instalments**

3.3.1 Services performed in instalments may be rejected by the Authority unless the Authority has previously agreed in writing to accept performance by instalments.

3.3.2 If the Authority agrees in writing to accept performance of the Services by instalments, the Contract will be construed as a single Contract for all instalments.

3.3.3 If the Contractor fails to perform any instalment(s) of the Services the Authority may, at its option, treat the whole Contract as repudiated and terminate the Contract. The Authority agrees not to unreasonably invoke this option to terminate.

3.4 **Adequacy of Location, Equipment and Authority Materials**

3.4.1 The Contractor shall:

(a) satisfy itself that the Location is suitable for the performance of the Services (including installation of the Goods) (in liaison with the Authorised Officer if appropriate) and that access to and from the Location and the site on which the Services will be performed and/or the Goods will be installed at the Location is satisfactory and adequate;

(b) satisfy itself that the Equipment and Authority Materials are of satisfactory quality and suitable for use in the performance of the Services; and

(c) maintain all Equipment and Authority Materials on the Location in a safe, clean and serviceable condition.

3.4.2 The Contractor shall be responsible for the complete installation of the Goods, including off-loading, erection, electrical and mechanical connections, testing and commissioning.

3.5 **Risk**

3.5.1 Risk and property in the Goods shall pass to the Authority when the Goods have been installed and (if applicable) passed the Acceptance Tests (except if the Goods have been paid for by the Authority before installation when the property in the Goods shall pass to the Authority on payment).

- 3.5.2 Equipment shall be and remain at the sole risk of the Contractor whether or not it is situated at the Location.
- 3.5.3 The Contractor shall be liable for any loss or damage caused to the Goods prior to the date of their delivery to the Authority (or if later installation).
- 3.5.4 The Contractor shall be liable for any loss or damage to the Authority Materials whilst the Authority Materials are in its possession or control.

4. **PRICE AND PAYMENT**

4.1 **Price of the Services**

- 4.1.1 The Contract Price for the Services is specified in the Purchase Order.
- 4.1.2 The Purchase Order shall detail any discounts which are or may be due to the Authority (for example discounts for early settlement).
- 4.1.3 If any sum (not being the Contract Price) is expressed to be payable under the Contract then that sum will be payable in accordance with this condition 4.
- 4.1.4 The Contract Price (and any sum payable in addition to the Contract Price) is exclusive of value added tax but inclusive of any other applicable import or export sales tax or duties and the cost of any import or export licences.
- 4.1.5 The Contract Price is inclusive of the cost of all labour costs, materials, packaging, delivery of the Goods and installation of the Goods (if applicable) unless otherwise stated in the Purchase Order.

4.2 **Variation to the Contract Price**

- 4.2.1 The Contractor may vary the Contract Price only if the Contract is varied under condition 2.2 in such a way as to affect the Contract Price.
- 4.2.2 If agreement between the parties cannot be reached on the adjustment to the Contract Price within 3 months from the date the variation is made, the dispute shall be referred to dispute resolution in accordance with condition 27.
- 4.2.3 Until the adjusted Contract Price is agreed, the Authority shall continue to pay the Contractor at the rate current prior to the variation. When the adjusted Contract Price is agreed, the Contractor shall pay (or be entitled to recover from the Contractor as the case may be) such sum, if any, as is equal to the difference between the amount which should have been paid in accordance with the adjusted Contract Price and the amount which was actually being paid when the adjusted price was agreed. This

sum shall be calculated from the date of the variation until the date the adjusted Contract Price is agreed.

4.3 **Payment**

- 4.3.1 Invoices shall be clearly marked with the Authority's Purchase Order number (except if this is not applicable in which case the invoice must be marked with the name of the contract and the Authority budget holder), the name and address of the Authority and the description and quantity of the Services and the period to which they relate.
- 4.3.2 The Authority shall pay the Contract Price to the Contractor within 30 days of its receipt of a valid invoice.
- 4.3.3 Invoices may be submitted by the Contractor to the Authority by way of a hard copy (to: Accounts Payable, NHS Business Services Authority, 3rd Floor, Bridge House, 152 Pilgrim Street, Newcastle upon Tyne NE1 6SN) or electronically (to: accountspayable@ppa.nhs.uk) at the Authority's option.
- 4.3.4 If any sum of money is recoverable from or payable by the Contractor under the Contract to the Authority the same may be deducted by the Authority from any sum due to the Contractor or from any sum which at any time may become due to the Contractor under the Contract or under any other contract between the Authority and the Contractor.
- 4.3.5 If the Authority fails to make payment in accordance with this condition 4.3, the Contractor shall be entitled to charge interest on undisputed late payments at a rate of 3% per annum above the base rate of the Bank of England from time to time in force.
- 4.3.6 The Authority shall not be responsible for the payment of any charges for any additional services which are supplied in excess of the Services ordered under a Purchase Order or any variation of it, unless authorised in writing by a further Purchase Order.
- 4.3.7 No payment of or on account of the Contract Price shall constitute any admission by the Authority as to proper performance by the Contractor of its obligations.

5. **SUPPLY OF SERVICES**

5.1 **Quality**

- 5.1.1 The Services shall:
- (a) be supplied strictly in accordance with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority;

- (b) conform to all Applicable Laws; and
- (c) be undertaken in accordance with Good Industry Practice.

5.1.2 The Goods shall, in addition to the requirement set out in condition 5.1.1:

- (a) be new;
- (b) be of first class quality and fit for their purpose; and
- (c) be supplied strictly in accordance with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority.

5.1.3 The Authority may inspect the manner in which the Contractor supplies the Services at the Location at any time.

5.1.4 The Contractor shall adhere to the Authority's Supplier Code of Conduct as amended from time to time.

5.2 **Guarantee**

5.2.1 The Contractor guarantees that the Goods will be defect free and comply with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority for a period of 12 months commencing on the date of delivery or, if later, installation (the "**Guarantee Period**").

5.2.2 During the Guarantee Period the Contractor shall, free of charge, replace or repair (at the Authority's option) any Goods which are found to be defective or which do not comply with the Contract Requirements and/or (at the option of the Authority) any samples previously provided to the Authority.

5.2.3 Any Goods which are replaced or repaired in accordance with condition 5.2.2 shall be guaranteed in accordance with condition 5.2.1 except that the Guarantee Period shall be deemed to commence on the date on which the Goods are replaced or repaired.

5.2.4 The Contractor will assign to the Authority, upon request, the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods or any part or parts of the Goods.

5.3 **Spare Parts**

The Contractor shall make available to the Authority, its agents or contractors any necessary spare parts and components to ensure that the Goods can be maintained in safe working operation for a period of not less than 10 years from

the date of delivery and shall be in a position to offer a maintenance service to the Authority if so required.

5.4 **Disaster recovery and business continuity**

The Contractor warrants that it will implement and maintain throughout the term of the Contract business continuity and disaster recovery plans to ensure continuity of the Services in accordance with Good Industry Practice. The Contractor will:

- 5.4.1 provide copies of its business continuity and disaster recovery plans to the Authority on written request of the Authority;
- 5.4.2 regularly test its business continuity and disaster recovery plans (and in any event no less frequently than once every six months) to ensure that those plans are adequate to ensure continuity of the Services and provide a written summary of the results of those tests to the Authority on completion of the tests; and
- 5.4.3 update its business continuity and disaster recovery plans from time to time as maybe required to ensure that those plans are adequate.

6. **INSPECTION, REJECTION AND ACCEPTANCE**

6.1 **Inspection and rejection of Service**

- 6.1.1 The Services shall be inspected by or on behalf of the Authority within a reasonable time of their completion and may be rejected by the Authority if they are found:
 - (a) not to comply with any term, whether expressed or implied, of the Contract and in particular the Contract Requirements; or
 - (b) to incorporate Goods which are damaged or defective in any way or of an incorrect quantity.
- 6.1.2 If the Contractor fails to perform the Services in accordance with the Contract (other than as a direct result of an act or omission by the Authority) the Contractor shall, at its own expense, re-perform the Services in accordance with the requirements of the Contract within the reasonable timescales specified by the Authority.

6.2 **Acceptance Tests**

- 6.2.1 If applicable, upon completion of installation of the Goods the Contractor shall notify the Authority that installation is complete and that the Goods are ready for submission to the Acceptance Tests. The Authority shall then be entitled to carry out the Acceptance Tests.

6.2.2 The Authority shall notify the Contractor if the Goods pass or fail the Acceptance Tests. If the Goods fail the Acceptance Tests then the Acceptance Tests shall be repeated. If the Goods pass the Acceptance Tests then the Goods will be deemed to have been accepted.

6.2.3 The Authority may reject the Goods if the Goods fail the Acceptance Tests more than twice and/or if following installation they are found:

(a) to be damaged or defective in any way; or

(b) not to comply with any term, whether expressed or implied, of the Contract and in particular the Contract Requirements.

6.3 **Rejection of Goods**

6.3.1 Goods rejected by the Authority shall be removed (and the Location made good to the standard it was in prior to performance of the Services) by the Contractor at its own expense within 14 days from the date of the Authority's notification of rejection. If the Contractor fails to make good the Location and/or remove the rejected Goods within such period the Authority may make good the Location and/or return the rejected Goods at the Contractor's risk and expense (including the costs of de-installation) and/or charge the Contractor for the cost of storage from the date of rejection.

6.3.2 The Authority's right of rejection shall continue irrespective of whether the Authority has accepted the Services. In particular, taking delivery, inspection, use of the Goods or payment by the Authority for the Services or part of them shall not constitute acceptance, waiver or approval and shall be without prejudice to any right or remedy that the Authority may have against the Contractor.

7. **PERFORMANCE OF CONTRACT**

7.1 **Staff**

7.1.1 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

7.1.2 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Location:

(a) any member of the Staff; or

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

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

- 7.1.3 At the 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 the Contract to the Location, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 7.1.4 The Contractor's Staff, engaged within the boundaries of the Location, 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 Location.
- 7.1.5 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.
- 7.1.6 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a conviction relevant to the Services, or is found by the Contractor to have a conviction relevant to the Services (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 Services.
- 7.1.7 If the Contractor fails to comply with condition 7.1.3 within 2 months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the 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 Authority.
- 7.1.8 The decision of the Authority as to whether any person is to be refused access to the Location and as to whether the Contractor has failed to comply with condition 7.1.2 shall be final and conclusive.

7.2 **Key Personnel**

- 7.2.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority.
- 7.2.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- 7.2.3 Any replacements to the Key Personnel shall be subject to the agreement of the 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.

7.2.4 The Authority shall not unreasonably withhold its agreement under conditions 7.2.2 or 7.2.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

7.2.5 The Contractor shall make every effort to ensure that retention levels of Staff are high.

8. **INTELLECTUAL PROPERTY**

8.1 **Licence of Authority's Intellectual Property Rights**

8.1.1 Save as set out in this condition 8.1, nothing in the Contract gives the Contractor any right to use or exploit the Intellectual Property Rights of the Authority.

8.1.2 The Authority grants the Contractor a non-exclusive, royalty free, non-transferable licence to use any specifications, materials and/or other data provided by the Authority to the Contractor in connection with the Purchase Order or otherwise in connection with the Services ("**Authority IPR**") for the purpose of performing its obligations under the Contract and for the term of the Contract only.

8.1.3 All Authority IPR will:

- (a) at all times remain the property of the Authority;
- (b) be delivered up to the Authority immediately on request (and immediately on termination of the Contract without request);
- (c) be used by the Contractor solely for the purpose of completing the Purchase Order; and
- (d) be held by the Contractor at the Contractor's risk;

and the Contractor will:

- (e) not delete or remove any proprietary notices contained within or relating to the Authority IPR;
- (f) perform secure back-ups of all Authority IPR and shall ensure that up-to-date back-ups are stored off-site in accordance with its business continuity and disaster recovery plans. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority on request;

- (g) ensure that any system on which the Contractor holds any Authority IPR including back-up data, is a secure system;
- (h) take responsibility for preserving the integrity of Authority IPR and preventing the corruption or loss of Authority IPR; and
- (i) deliver the Authority IPR to the Authority on request in the format reasonably required by the Authority.

8.1.4 The Contractor shall indemnify the Authority against any liabilities incurred by the Authority arising from the Contractor's unlicensed use of the Authority IPR (including pursuant to an infringement of any third party Intellectual Property Right by that use).

8.2 **Contractor's Intellectual Property**

8.2.1 The Contractor grants the Authority a non-exclusive, perpetual, royalty free, transferable licence to use the Background IPR (with a right to grant sub-licences) to the extent required to enable the Authority to use the Deliverables for whatever purpose it wishes (and in particular to enable the Authority to carry out future procurement related activity). Save as set out in this condition 8.2.1 the Authority shall have no rights in or to the Background IPR.

8.2.2 All Foreground IPR in the Deliverables shall vest in and be owned exclusively by the Authority and the Contractor hereby assigns to the Authority all Foreground IPR in the Deliverables together with all rights to apply for registration of any related Intellectual Property Rights. This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Deliverables.

8.2.3 The Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior written approval, use or disclose any Foreground IPR in the Deliverables.

8.3 **Infringement of Intellectual Property Rights by the Goods and Services**

8.3.1 The Contractor warrants that the provision of the Services and the Authority's use, exploitation and/or resale (including by sublicense of the Intellectual Property Rights in the Deliverables and Goods if applicable) of the Deliverables and Goods shall not infringe any third party rights (including Intellectual Property Rights).

8.3.2 If the provision of the Services or use of the Goods under the Contract or the use of the Deliverables is found to infringe the Intellectual Property Rights of a third party the Contractor shall, at its own expense, promptly take either or both of the following actions:

- (a) use all reasonable efforts to procure (for the benefit of the Authority) the right to continue performing the Services and/or the right for the Authority to continue to use any infringing Goods or Deliverables; or
- (b) modify or replace any infringing Services, Goods or Deliverables so that there is no further infringement, provided that such modification or replacement shall be effected by the Contractor with the minimum of interruption to the operation or performance of the Services in accordance with the Contract.

8.3.3 The Contractor shall indemnify, and keep indemnified, the Authority against any liabilities incurred by the Authority arising from:

- (a) the manufacture, supply, delivery or use of the Services or other articles (including the Goods and Deliverables) by the Contractor; and
- (b) the Authority's use, exploitation, resale (including by sublicense of the Intellectual Property Rights in the Deliverables and Goods if applicable) of the Deliverables and Goods;

including pursuant to an infringement of any third party Intellectual Property Rights by that use, exploitation, resale, sublicense, manufacture, supply or delivery by the Authority or any sublicensee.

8.3.4 Condition 8.3.3 shall not apply if the liabilities incurred arise as a direct consequence of the Contractor's use of or compliance with any drawings, specifications and/or other data provided by the Authority to the Contractor and in this situation the Authority will indemnify the Contractor (provided the Contractor takes reasonable steps to mitigate its losses) against any liabilities incurred by the Contractor pursuant to its use of any drawings, specifications and/or other data provided by the Authority to the Contractor in accordance with this Contract.

8.4 **Further assurance and moral rights**

- 8.4.1 The Contractor shall at the request and cost of the Authority (whether during or after termination of the Contract), sign and execute all such deeds and documents and do all such acts and things as the Authority may reasonably require to apply for, obtain and vest and maintain in the name of the Authority alone (including by way of assignment) any Intellectual Property Rights which vest in and/or are assigned to the Authority in accordance with this condition 8 and defend any proceedings to oppose the vesting of any such Intellectual Property Rights in the name of the Authority.
- 8.4.2 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Staff during the performance of the Contract.

9. **AUDIT AND RECORDS**

- 9.1 The Contractor shall keep and maintain for a period of 6 years following termination of the Contract, or as long a period as may be agreed between the parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority.
- 9.2 The Contractor shall on request afford the Authority or the Authority's representatives such access to its premises and those records as may be requested by the Authority from time to time (including access onto any premises where records are kept but Services are not performed) to audit the provision of the Services and in particular to assess the Contractor's compliance with condition 16.

10. **HEALTH AND SAFETY AND ACCESS TO AUTHORITY PREMISES**

- 10.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's premises and which may affect the Contractor in the performance of its obligations under the Contract.
- 10.2 While on the Authority's premises or at any time when working with or in proximity to any employees or agents of the Authority or working with any equipment or items owned or controlled by the Authority, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.
- 10.3 The Contractor shall notify the Authority immediately in the event of any incident or near miss occurring in the performance of its obligations under the Contract on the Authority's premises or at any time when working with or in proximity to any employees or agents of the Authority or working with any equipment or items owned or controlled by the Authority where that incident causes any personal injury or damage to property which could give rise to personal injury or creates a reasonably foreseeable risk of personal injury or damage to property.
- 10.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, orders, guidance, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Authority's premises in the performance of its obligations under the Contract.
- 10.5 The Contractor shall ensure that its Staff display on their clothing at all times when they are on the Authority's premises the form of identification requested by the Authority (and if applicable the Contractor shall provide such identification if it is not provided by the Authority).

- 10.6 All Staff shall report to the Authorised Officer on arrival and departure from the Authority's premises. Visits to the Authority's premises are not permitted without the consent of the Authorised Officer.
- 10.7 The Contractor shall cause as little interference as possible with other activities on the Authority's premises. The Contractor shall remove from the Authority's premises any of the Staff if the Authority so requests.
- 10.8 The Contractor will, and will procure that its Staff will, comply with any instructions issued by the Authority to the Contractor or the Contractor's Staff whilst on the Authority's premises.
- 10.9 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) and any other health and safety documents (as considered relevant by the Authority) which may be requested from time to time is made available to the Authority on request.
- 10.10 The Contractor shall promptly inform the Authority of any amendments, revisions or other changes which are made to its health and safety policy statement or other health and safety documents during the term of the Contract.
- 10.11 The Contractor shall immediately upon receipt of any information, instruction, application or other communication relating to health and safety matters concerning the Authority, the Goods, Services or the Location (including inspections, claims, investigations, prosecutions or other proceedings) disclose full details to the Authority.

11. PREVENTION OF CORRUPTION AND FRAUD

11.1 Corruption

- 11.1.1 The Contractor shall not offer or give, or agree to give, to any person any gift or consideration of any kind as an inducement or reward for doing or for not doing, or for having done or not done, any action in relation to the obtaining or execution of the Contract or any other contract with the Authority, or for showing or not showing favour or disfavour to any person in relation to the Contract or any other contract with the Authority or any Crown body.
- 11.1.2 The Authority shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination in the following circumstances:
- (a) if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or for not doing, or for having done or not done, any action in relation to the obtaining or signature of the Contract or any other contract with the Authority or any Crown body;

- (b) if the Contractor shall have shown or not shown favour or disfavour to any person in relation to the Contract or any other contract with the Authority or any Crown body;
- (c) if the any of the acts described in this condition 11.1.2 shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor); and
- (d) if in relation to the Contract or any other contract with the Authority or any Crown body the Contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010, or shall have given any fee or reward to any officer of the Authority which shall have been extracted or accepted by such officer under cover of his office or employment and is otherwise than such officer's proper remuneration.

11.2 **Fraud**

- 11.2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Authority.
- 11.2.2 The Contractor shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 11.2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:
 - (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the duration of the Contract; or
 - (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this condition 11.2.

12. **ENVIRONMENTAL CONSIDERATIONS**

- 12.1 The Contractor shall, when working at the Location, perform its obligations under the Contract in accordance with the Authority's environmental policy, (which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment) and in accordance with all applicable law relating to the environment and the disposal of goods.

12.2 The Contractor shall meet all reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this condition 12.

13. **CONFIDENTIALITY**

13.1 Except to the extent set out in this condition 13 or where disclosure is expressly permitted elsewhere in the Contract, each party shall:

13.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

13.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

13.2 Condition 13.1 shall not apply to the extent that:

13.2.1 such disclosure is a requirement of Applicable Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to condition 14;

13.2.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

13.2.3 such information was obtained from a third party without obligation of confidentiality;

13.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

13.2.5 such information is independently developed without access to the other party's Confidential Information.

13.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

13.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

13.5 At the written request of the Authority, the Contractor shall procure that those members of the Staff identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

13.6 Nothing in the Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:

- 13.6.1 to the Crown. All Crown bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body;
- 13.6.2 to any consultant, contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;
- 13.6.3 for the purpose of the examination and certification of the Authority's accounts; or
- 13.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- 13.7 The Authority shall use all reasonable endeavours to ensure that any Crown body, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to condition 13.6 is made aware of the Authority's obligations of confidentiality.
- 13.8 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of the Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the Contract, to the general public.
- 13.9 The Contractor shall indemnify the Authority against any liabilities incurred by the Authority arising from the Contractor's breach of this condition 13.
- 13.10 **Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**
- 13.10.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) Section 182 of the Finance Act 1989.
- 13.10.2 In the event that the Contractor or its Staff fail to comply with this condition 13.10, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

14. **FREEDOM OF INFORMATION**

14.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its information disclosure obligations.

14.2 The Contractor shall, and shall procure that any sub-contractors shall, (i) transfer to the Authority all Requests for Information that it (or any sub-contractors) receives as soon as practicable and in any event within two Working Days of receipt and (ii) provide the Authority with any assistance the Authority may require in relation to a Request for Information received by the Authority, the Contractor or a sub-contractor, and in any case the Contractor shall:

14.2.1 provide the Authority with a copy of all information relating to the Request for Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and

14.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the 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.

14.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any information relating to a Request for Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

14.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

14.5 The Contractor acknowledges that (notwithstanding the provisions of condition 13) the 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 Services in certain circumstances:

14.5.1 without consulting the Contractor; or

14.5.2 following consultation with the Contractor and having taken its views into account;

provided always that where condition 14.5.1 applies the Authority shall, in accordance with any recommendations of the Code, 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.

- 14.6 The Contractor shall ensure that all information relating to the Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

15. **LIMITATION OF LIABILITY AND INSURANCE**

15.1 **Liability**

15.1.1 Nothing in the Contract limits either party's liability for death or personal injury, for fraud or fraudulent misrepresentation, or for any other liability to the extent it may not be excluded or limited by law.

15.1.2 Subject to condition 15.1.1, neither party shall be liable (including in negligence) to the other for any special, indirect, consequential or pure economic loss, loss of turnover, profits (save as incorporated into the Contract Price) or goodwill, whether or not the loss in question would arise in the ordinary course of events or was in the contemplation of the parties as at the date of the Contract, is reasonably foreseeable or otherwise. Nothing in this condition 15.1.2 shall limit the Contractor's liability in relation to any of the indemnities given by it to the Authority under the Contract (in accordance with condition 1.2.6).

15.1.3 Subject to conditions 15.1.1 and 15.1.2:

(a) the Authority's liability (including in negligence) to the Contractor under the Contract is limited (in aggregate) to payment of the Contract Price; and

(b) the Contractor's liability (including in negligence) to the Authority under the Contract is limited (in aggregate) to the greater of £1,000,000 (one million pounds) or two times the Contract Price.

15.2 **Insurance**

15.2.1 The Contractor shall take out at its own expense and maintain in force, for a period of 6 years after the Contractor ceases to have any obligations under this Contract, adequate insurance to meet its liabilities under the Contract. In particular, the Contractor shall maintain the insurances set out in Schedule 1 and shall produce (on request) a copy of the relevant insurance policy and renewal receipts for inspection by the Authority.

15.2.2 The Contractor shall not allow its insurance cover to be cancelled or to be allowed to lapse during the term of the Contract and shall give the Authority 30 days prior written notice before such insurance is cancelled or is altered in its scope or coverage (unless the scope or coverage is being enhanced).

15.2.3 The provisions of this condition 15.2 in no way limits the Contractor's liability under the Contract.

16. **DATA PROTECTION**

16.1 For the purposes of this condition 16.1, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DPA.

16.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

16.3 Notwithstanding the general obligation in condition 16.2, where the Contractor is processing Personal Data as a Data Processor for the Authority the Contractor shall:

16.3.1 Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract);

16.3.2 comply with all Applicable Laws;

16.3.3 Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under this Contract or as is required by Applicable Law or any Regulatory Body;

16.3.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure (and shall provide written evidence that it has done the same to the Authority on written request of the Authority). These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

16.3.5 take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;

16.3.6 obtain prior written consent from the Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;

16.3.7 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Authority (which consent shall be subject to the Contractor's agreement to comply with the obligations placed on a data controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA and any other reasonable requirements of the Authority);

16.3.8 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this condition 16.3;

16.3.9 ensure that none of its Staff publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;

16.3.10 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Authority or in compliance with a legal obligation imposed upon the Authority; and

16.3.11 notify the Authority (within two Working Days) if it receives:

(a) a request from a Data Subject to have access to that person's Personal Data; or

(b) a complaint or request relating to the Authority's obligations under the DPA;

and the Contractor shall provide the Authority with any assistance the Authority may require in relation to any such request or complaint (whether the request or complaint is received by the Authority, the Contractor or a subcontractor) within the timescales required by the Authority; and

16.3.12 deliver up to the Authority all Personal Data held by the Contractor on written request of the Authority (and in any case on termination of this Contract).

16.4 The provisions of condition 16.3 shall apply during the Contract Period and indefinitely after its expiry.

16.5 The Contractor shall indemnify the Authority against any liabilities incurred by the Authority arising from the Contractor's breach of this condition 16.

17. **TUPE**

The Authority and Contractor agree that Schedule 2 will apply to any personnel which are affected by TUPE.

18. **TERM AND TERMINATION**

18.1 **Contract Period**

The Contract shall remain in force for the period specified in the Purchase Order (the "Contract Period").

18.2 **Termination for an Insolvency Event**

The Authority may terminate the Contract if the Contractor suffers an Insolvency Event.

18.3 **Termination for change of control**

The Authority may terminate the Contract if there is a change in the entity which controls the Contractor and the Authority, acting reasonably, believes that change adversely affects the business of the Authority.

18.4 **Termination for breach**

18.4.1 Either party may terminate the Contract if:

- (a) the other commits a material breach of the Contract which is not capable of remedy; or
- (b) the other commits a material breach of the Contract which is capable of remedy but fails to remedy that breach within 30 days of receipt of a notice from the non-defaulting party requiring it to remedy that breach.

18.4.2 For the purposes of condition 18.4.1 the following breaches are deemed to be material breaches by the Contractor which are not capable of remedy:

- (a) the failure by the Contractor to comply with condition 8 (Intellectual Property);
- (b) the failure by the Contractor to comply with condition 11 (Prevention of Corruption and Fraud);
- (c) the failure by the Contractor to comply with condition 13 (Confidentiality);
- (d) the failure by the Contractor to comply with condition 14 (Freedom of Information);
- (e) the failure by the Contractor to comply with condition 15.2 (Insurance);
- (f) the failure by the Contractor to comply with condition 16 (Data Protection);
- (g) the Contractor suffers an event which means it is unable to lawfully supply the Services (for example loss of a relevant licence);
- (h) the Contractor fails to meet the Service Levels; and
- (i) the failure by the Contractor to comply with any condition of the Contract, or any provision which is expressed to be of the essence or

which failure expressly or impliedly gives the Authority a right to terminate the Contract.

18.5 **Termination for convenience**

The Authority may terminate any part of the Contract at any time by giving the Contractor 3 month's written notice.

18.6 **Consequences of termination**

18.6.1 Neither the expiry nor the termination of the Contract shall prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue either to the Authority or to the Contractor.

18.6.2 The right of either party to terminate the Contract pursuant to this condition 18 and/or any other provision of the Contract is without prejudice to that party's other rights and remedies.

18.6.3 On termination of the Contract:

- (a) the Authority will pay the Contractor all monies properly due and/or incurred by the Contractor at the date of termination;
- (b) the Contractor shall promptly refund to the Authority any monies paid in advance on a pro-rata basis;
- (c) each party shall return to the other party all property belonging to the other party then in its possession or control; and
- (d) the Contractor shall vacate the Location leaving it in good condition and repair.

18.6.4 The conditions in the Contract which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination including in particular conditions 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17 and 20.

19. **REMEDIES CUMULATIVE**

Except as otherwise expressly provided by the Contract, all remedies available to the Authority for breach of the 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.

20. **NOTICES AND COMMUNICATIONS**

20.1 Any notice or request required or permitted to be given or made under the Contract shall be in writing.

20.2 Such notice or request shall be deemed to have been served:

- 20.2.1 if sent by email, when the sender receives a reply confirming delivery;
- 20.2.2 if delivered by hand, at the time and date of delivery;
- 20.2.3 if sent by fax, at the time and date of the successful fax transmission report;
- 20.2.4 if sent by recorded delivery or registered post, 48 hours from the date of posting (such date as evidenced by postal receipt); and
- 20.2.5 if sent by registered airmail, five days from the date of posting;

provided that, where in the case of delivery by hand, email or transmission by fax, such delivery or transmission occurs either after 4.00 pm on a Working Day, or on a day other than a Working Day, service will be deemed to occur at 9.00 am on the next Working Day.

21. RELATIONSHIP OF PARTIES

- 21.1 Nothing in the Contract is intended or shall be construed to create a relationship or agency or partnership between the parties.
- 21.2 Except as expressly authorised in the Contract, neither party shall have any authority to act or make representations on behalf of the other party, and nothing in the Contract shall impose any liability on either party in respect of any liability incurred by the other party to a third party.
- 21.3 The Contractor's status shall be that of an independent contractor and it is expressly understood that the Contractor is not an employee or servant of the Authority.

22. FORCE MAJEURE

- 22.1 Neither party to the Contract will be deemed to be in breach of the Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to Force Majeure, provided that it has and continues to comply with its obligations set out in condition 22.2.
- 22.2 If a party's performance of its obligations under the Contract is affected by Force Majeure:
 - 22.2.1 it will give written notice to the other party, specifying the nature and extent of the Force Majeure, within three days of becoming aware of the Force Majeure and will, at all times, use all reasonable endeavours to bring the Force Majeure event to an end and, whilst the Force Majeure is continuing, to mitigate its severity;

22.2.2 subject to the provisions of condition 22.3, the date for performance of such obligation will be deemed suspended only for a period equal to the delay caused by such event; and

22.2.3 it will not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.

22.3 If the Force Majeure in question continues for more than three months, the party not subject to the Force Majeure may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

23. TRANSFER AND SUB-CONTRACTING

23.1 The Contractor may not assign or transfer the Contract or any of its rights or obligations, (including by way of subcontracting) without the prior written consent of the Authority. Any attempt to assign, transfer or subcontract without consent shall be in material breach of the Contract.

23.2 If the Authority permits the Contractor to subcontract any or all of its obligations under the Contract, the Contractor shall:

23.2.1 remain primarily liable for performance of the Contract;

23.2.2 procure that its subcontractors sign up to terms no less stringent than those set out in the Contract which are relevant to the performance of the subcontractor in question; and

23.2.3 ensure that a provision is included in such a subcontract which requires payment to be made of all sums due by the Contractor to the subcontractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

23.3 The Authority may upon notice to the Contractor assign, transfer or subcontract the Contract or any of its rights or obligations, in whole or in part, to a third party.

24. WAIVER

No waiver of any provision of the Contract shall be effective unless it is agreed to by both parties in writing. No waiver of any default shall constitute a waiver of any subsequent default.

25. SEVERABILITY

If any provision of the Contract is or becomes illegal, void or unenforceable for any reason, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity so fundamental as

to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith negotiation to remedy such invalidity.

26. THIRD PARTY RIGHTS

The parties to the Contract do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

27. DISPUTE RESOLUTION

The parties will refer all disputes relating to the subject matter of the Contract to the dispute resolution procedure set out in Schedule 3.

28. CHOICE OF LAW AND JURISDICTION

Subject to condition 27, the parties shall accept the non-exclusive jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English law.

29. ENTIRE AGREEMENT

29.1 The Contract and other documents (if any) referred to in it which are incorporated into and form part of the Contract contain all the terms which the parties have agreed in relation to the subject matter of the Contract and those documents and supersede any prior written or oral agreements, representations or understandings between the parties.

29.2 The parties acknowledge that the Contract has not been entered into wholly or partly in reliance on, nor has either party been given any warranty, statement, promise or representation made by or on their behalf, other than as expressly set out in the Contract and the documents referred to in condition 29.1. To the extent that any such warranties, statements, promises or representations have been given, the recipient party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.

29.3 Nothing in this condition 29 will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

30. DISCRIMINATION

30.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, gender reassignment, pregnancy or maternity, marital or civil partnership status or age and without prejudice to the generality of the foregoing, the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2010, the Human Rights Act 1998 or other

relevant or equivalent legislation, or any statutory modification or re-enactment of those laws.

30.2 The Contractor shall take all reasonable steps to secure the observance of condition 30.1 by all Staff.

Long form terms and conditions: goods and services including purchase order to be accessed through NHS BSA website (November11)

SCHEDULE 1

Insurance

The Contractor shall maintain the following insurances for no less than the following amounts:

1. public liability insurance of £[AMOUNT];
2. employers liability insurance of £[AMOUNT];
3. professional indemnity insurance of £[AMOUNT]; and
4. product liability insurance of £[AMOUNT].

SCHEDULE 2

TUPE

1. The parties hereby acknowledge that, pursuant to TUPE, there will be a relevant transfer on the date that the Contract commences and that contracts of employment for Transferring Employees will take effect as if originally made between the Contractor and such employees (save for those who object pursuant to Regulation 4(7) of TUPE).
2. The Authority shall indemnify and keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contractor may suffer or incur as a result of or in connection with:
 - 2.1 any claim or demand by any Transferring Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Authority in respect of any Transferring Employee on or before the date of commencement of the Contract;
 - 2.2 any failure by the Authority to comply with its obligations under Regulations 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Contractor to comply with its duties under Regulation 13 of TUPE; and
 - 2.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person.
3. The Authority shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period up to and including the date of commencement of the Contract (including bonuses or commission which are payable after the commencement date but attributable in whole or in part to the period on or before the commencement date), and will indemnify/keep indemnified and hold the Contractor harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contractor may incur in respect of the same.
4. The Contractor shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the date of commencement of the Contract (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the commencement date but which are attributable in whole or in part to the period after the commencement date and will indemnify/keep indemnified and hold the Authority harmless from and against all

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actions, suits, claims, damages, costs and expenses and other liabilities which the Authority may incur as a result of the same.

5. Not later than twelve months prior to the end of the Contract Period, the Contractor shall fully and accurately disclose to the Authority all information that the Authority may reasonably request in relation to the Staff including the following:
 - 5.1 the total number of Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Applicable Laws and their employment status and employer;
 - 5.2 the identity, date of commencement of employment or engagement, age, gender, salary or other remuneration, future pay settlements and redundancy and pensions entitlements of the Staff referred to in paragraph 5.1;
 - 5.3 the terms and conditions of employment/engagement of the Staff referred to in paragraph 5.1 their job titles and qualifications;
 - 5.4 details of any disciplinary or grievance proceedings ongoing (or those within the previous two years) or circumstances likely to give rise to such proceedings and details of any claims current or threatened (or those within the previous two years);
 - 5.5 details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union; and
 - 5.6 details of such individuals on long-term sickness absence, maternity or other statutory leave or absence from work.
6. At intervals to be stipulated by the Authority (which shall not be more frequent than every thirty days) and immediately prior to the end of the Contract Period the Contractor shall deliver to the Authority a complete update of all such information which shall be disclosable pursuant to paragraph 5.
7. At the time of providing the information disclosed pursuant to paragraph 5 and 6, the Contractor shall warrant the completeness and accuracy of all such information and the Authority may assign the benefit of this warranty to any Replacement Contractor.
8. The Authority may use the information it receives from the Contractor pursuant to paragraphs 5 and 6 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
9. The Contractor shall indemnify and keep indemnified and hold the Authority and the Crown (each for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority or the Crown or any Replacement Contractor may suffer or incur as a result of or in connection with:

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- 9.1 the provision of information pursuant to paragraphs 5 or 6;
 - 9.2 any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each case arising directly or indirectly from any act, fault or omission of the Contractor or any sub-contractor in respect of any Returning Employee on or before the end of the Contract Period;
 - 9.3 any failure by the Contractor or any subcontractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Authority or a Replacement Contractor to comply with its duties under Regulation 13 of TUPE;
 - 9.4 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Contractor or any subcontractor to comply with any legal obligation to such trade union, body or person; and
 - 9.5 any claim by any person who is transferred by the Contractor to the Authority and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
10. If the Contractor becomes aware that the information it provided pursuant to paragraph 5 or 6 has become untrue, inaccurate or misleading, it shall notify the Authority and provide the Authority with up to date information.
 11. This Schedule 2 applies during the Contract Period and indefinitely thereafter.
 12. The Contractor undertakes to the Authority that, during the twelve months prior to the end of the Contract Period the Contractor shall not (and shall procure that any subcontractor shall not) without the prior consent of the Authority (such consent not to be unreasonably withheld or delayed):
 - 12.1 amend or vary (or purport or promise to amend or vary) the terms and conditions of employment or engagement) (including, for the avoidance of doubt, pay) of any Staff (other than where such amendment or variation has previously been agreed between the Contractor and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);
 - 12.2 terminate or give notice to terminate the employment or engagement of any Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capability);
 - 12.3 transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) will not have any adverse impact upon the

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delivery of the Services by the Contractor, (provided that any such transfer, removal, reduction or variation is not in anyway related to the transfer of the Services));

12.4 recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

SCHEDULE 3

Dispute Resolution Procedure

1. If any dispute arises out of the Contract (“**a Dispute**”) the parties will attempt to resolve it by negotiating in good faith. Subject to paragraph 9 to this Schedule 3 the procedures set out in the rest of this Schedule 3 will be followed prior to the issue of any proceedings or in relation to any Dispute concerning matters of procedure and management. The representatives authorised to represent the parties in relation to a Dispute are detailed at paragraph 10 to this Schedule 3.
2. Any Dispute which the parties fail to resolve within 2 Working Days of its first notification by one party to the other will be referred to the Level 1 representatives for resolution.
3. If the relevant Dispute remains unresolved within 2 Working Days of its referral to the Level 1 representatives the Dispute will be referred to the Level 2 representatives for resolution.
4. If the relevant Dispute remains unresolved within 2 Working Days of its referral to the Level 2 representatives the Dispute will be referred to the Level 3 representatives for resolution.
5. If negotiations fail to resolve such Dispute the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (“**CEDR**”) model mediation procedure.
6. To initiate mediation a party shall give notice in writing (a “**Mediation Notice**”) to the other party requesting mediation of the dispute and shall send a copy thereof to CEDR asking CEDR to nominate a mediator in the event that the parties shall not be able to agree such appointment by negotiation.
7. The mediation shall commence within 28 days of the Mediation Notice being served.
8. Neither party will terminate such mediation until each party has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter paragraph 14 of the CEDR model mediation procedure will apply. Neither party will commence legal proceedings against the other until thirty days after such mediation of the dispute in question has failed to resolve the dispute.
9. The dispute resolution procedure set out in this Schedule 3 will not prevent the affected party from:
 - 9.1 seeking injunctive relief in the case of any breach or threatened breach by the other party of any obligation of confidentiality or any infringement by the other party to the Contract of the affected party’s Intellectual Property Rights; or
 - 9.2 commencing any proceedings where this is reasonably necessary to avoid any loss of a claim due to the rules on limitation of actions.

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10. The authorised representatives are as follows:

LEVEL	AUTHORITY	CONTRACTOR
LEVEL 1	Authorised Officer	
LEVEL 2	Head of Business Unit	
LEVEL 3	Commercial Director	