

GREATER MANCHESTER COMBINED AUTHORITY

CONDITIONS OF CONTRACT

FOR SERVICES

AGREEMENT/CONTRACT NO. XXXXX

**AGREEMENT BETWEEN**

**GREATER MANCHESTER COMBINED AUTHORITY**

**AND**

**XXXXXXXXXXXXX**

**For the Provision of XXXXXXXXX**

**\*REMEMBER TO UPDATE THE CONTENTS PAGE TO INSERT CORRECT PAGE NUMBERS**

**\*REMEMBER TO ADD APPENDICES AS ‘HEADING 1’ SO THAT THE CONTENTS PAGE PICKS THE HEADER UP AND INSERTS TO THE CONTENTS**

**Contents**

[1. Recitals 5](#_Toc397677931)

[1.1. Parties 5](#_Toc397677932)

[2. Operative Provisions 6](#_Toc397677933)

[2.1. Definitions and Interpretation 6](#_Toc397677934)

[2.2. Entire Agreement 8](#_Toc397677935)

[2.3. Contract variation 8](#_Toc397677936)

[2.4. Provision of Services 8](#_Toc397677937)

[2.5. Description of Services 9](#_Toc397677938)

[2.6. Specification of Services 9](#_Toc397677939)

[2.7. Qualifications/Certification 9](#_Toc397677940)

[2.8. Term (Contract Period) 9](#_Toc397677941)

[2.9. Extension Period 9](#_Toc397677942)

[2.10. Supply of Services 9](#_Toc397677943)

[2.11. Provision and Removal of Equipment 10](#_Toc397677944)

[2.12. Manner of Carrying Out the Services 10](#_Toc397677945)

[2.13. Supplier’s Staff 10](#_Toc397677946)

[2.14. Licence to occupy Premises 11](#_Toc397677947)

[2.15. Liquidated Damages 12](#_Toc397677948)

[2.16. Warranty 12](#_Toc397677949)

[2.17. Behaviour Conformance 12](#_Toc397677950)

[2.18. Continuity of Staff 12](#_Toc397677951)

[2.19. Sustainable Procurement 13](#_Toc397677952)

[3. Pricing & Payment 13](#_Toc397677953)

[3.1. Payment 13](#_Toc397677954)

[3.2. Pricing Schedule 14](#_Toc397677955)

[4. Contract Monitoring 14](#_Toc397677956)

[4.1. Evaluation and monitoring of Contract 14](#_Toc397677957)

[4.1.1. Regular meetings 14](#_Toc397677958)

[4.1.2. Participation in meetings by third parties 14](#_Toc397677959)

[4.1.3. Evaluation and monitoring meetings costs 14](#_Toc397677960)

[5. Termination 14](#_Toc397677961)

[5.1. Termination notice 14](#_Toc397677962)

[5.2. Termination at Will 15](#_Toc397677963)

[5.3. Consequences of Termination 15](#_Toc397677964)

[5.4. Dispute Resolution Procedure 16](#_Toc397677965)

[5.5. TUPE and Re-tendering (if applicable) 16](#_Toc397677966)

[5.6. Survival 17](#_Toc397677967)

[6. Insurance 17](#_Toc397677968)

[6.1. Insurance details 17](#_Toc397677969)

[6.2. Indemnity & Liability 17](#_Toc397677970)

[7. Protection of Information 18](#_Toc397677971)

[7.1 Intellectual Property 18](#_Toc397677972)

[7.2. Confidentiality 20](#_Toc397677973)

[7.3. Data Protection 20](#_Toc397677974)

[7.4. Freedom of Information 21](#_Toc397677975)

[7.5. Record Keeping 21](#_Toc397677976)

[8. Statutory Obligations 21](#_Toc397677977)

[8.1. Health & Safety 21](#_Toc397677978)

[8.2. Law 22](#_Toc397677979)

[8.3. Equality and Diversity 22](#_Toc397677980)

[9. General Provisions 22](#_Toc397677981)

[9.1. Authorised Officer 22](#_Toc397677982)

[9.2. Notices 22](#_Toc397677983)

[9.3. Waiver 23](#_Toc397677984)

[9.4. Validity of separate clauses 23](#_Toc397677985)

[9.5. Assignment, Sub contracting & Responsibility 23](#_Toc397677986)

[9.6. Business Continuity 23](#_Toc397677987)

[9.7. Force Majeure 24](#_Toc397677988)

[9.8. Prevention of Bribery 24](#_Toc397677989)

[9.9. Costs & Expenses 26](#_Toc397677990)

[9.10. Non Solicitation & Offers of Employment 26](#_Toc397677991)

[9.11. Legal Jurisdiction 26](#_Toc397677992)

[9.12. Rights of Third Parties 26](#_Toc397677993)

[9.13. Supplier Status 26](#_Toc397677994)

[9.14. Conflict of Interest 26](#_Toc397677995)

[9.15. Publicity 27](#_Toc397677996)

[9.16. Lien 27](#_Toc397677997)

# Recitals

###### Parties

This Contract is made the day of between:

* + 1. **Greater Manchester Combined Authority**,a public authority with its Headquarters at Churchgate House, 56 Oxford Street, Manchester, M1 6EU.

and

* + 1. xxxxxxx a company registered in England and Wales under number xxxxxxx and whose registered office is at xxxxxxx. Now this Contract witnesseth as follows:
    2. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.
    3. Any appendices or schedules referred to herein shall form and be read and construed as part of this Contract.
    4. In consideration of the payments to be made by the Authorityto the Supplier, as hereinafter mentioned, the Supplier hereby covenants the Authorityto supply services in conformity in all respects with the provisions of the Contract.
    5. The Parties hereby agree that the Contract Price shall be:-

(excluding VAT), payable in addition as appropriate) or such other sum as shall become payable in accordance with the Contract.

* + 1. The Authority hereby covenants to pay to the Supplier in consideration of the services supplied at the Contract Price, at the times and in the manner prescribed by the Contract.
    2. This Contract shall in all respects be governed by and interpreted in accordance with English Law. The Parties further agree that any lawsuit arising out of or relating to the transaction contemplated herein may only be brought within English Courts
    3. It should be noted that headings in this Contract are for information only and do not form part of or affect the construction of this Contract.
    4. References to statutes shall include statutory modification, re-enactment, extension, consolidation or replacement thereof, any corresponding provision in repealed enactments and any other regulation, instrument or other subordinate legislation made under the relevant statute of statutory instrument
    5. Special Provisions (insert if any REMOVE)

# Operative Provisions

###### Definitions and Interpretation

The terms and conditions under this Contract for the supply of Services ("Conditions") shall have the meaning set out below:

**“Authorised Officer**” means any officer of the Authority authorised by the Authority’s Clerk

**“Authority”/”Authorities”** means the Party/Parties listed at 1.1.1

**“Authority’s Clerk**” means the Clerk to the Combined Authority or Solicitor for the time being to the Authority.

"**Authority's Premises**" means land or buildings owned or occupied by the Authority;

**“Business Day”** means any day other than Saturday and Sunday, or a public or Bank Holiday.

**“Commencement Date**” means the date specified in clause 2.8

"**Condition**" means a term or requirement stated in the Contract, that is fundamental to the performance of the Contract;

"**Confidential Information**" means all information obtained by the Supplier from the Authority or any other department, agency or office of Her Majesty's Government relating to and connected with the Contract and the Services, including but not limited to the Contract itself and the provisions of the Contract;

"**Contract**" means this agreement concluded between the Authority and the Supplier for the supply of Services, including without limitation these Conditions (to the extent that they are not expressly excluded or modified), all specifications, plans, drawings and other documents which are incorporated into the agreement;

"**Contract Price**" means the price payable by the Authority to the Supplier in consideration of the provision of the Services, excluding VAT;

**“Data Protection Legislation”** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent, to the extent that it relates to processing of personal data and privacy; (iiii) all applicable Law about the processing of personal data and privacy;

**“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer”** take the meaning given in the GDPR.

**“Data Loss Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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 Protection Impact Assessment”** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**“Data Subject Access 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.

**DPA 2018:** Data Protection Act 2018

**GDP:** the General Data Protection Regulation (Regulation (EU) 2016/679)

**LE:** Law Enforcement Directive (Directive (EU) 2016/680)

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

**“Sub-processor”** means any third Party appointed to process Personal Data on behalf of the Supplier related to this Contract.

"**DPA**" means The Data Protection Act 2018

"**Employee**" means any person employed by the Supplier to perform or supply the Services which will also include the Supplier's servants, agents, voluntary and unpaid workers and subcontractors and representatives.

"**EIR**" means the Environmental Information Regulations 2004.

**“Equipment”** means the tools, hardware or software the Supplier will utilise in the carrying out of the Services under this Contract.

**“Expiry Date”** means the date specified in [clause 2.8](#_Term_(Contract_Period)) (not accounting for allowable extensions)

**"Force Majeure"** means any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either Party, including without limitation: government regulations, acts of God, war, fire, flood, storm, tempest, epidemic, disaster, explosion, acts of terrorism and national emergencies. It does not include any industrial action occurring amongst the Supplier’s Staff or any staff of any sub-contractor, or any of the matters referred to in [clause 9.6.3](#_Force_Majeure).

"**FOIA**" means The Freedom of Information Act 2000.

**“Good Industry Practice”** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the supply of services of the same or similar nature.

"**Intellectual Property Rights**" means patents, trademarks, service marks, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, know how, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom.

**“Greater Manchester Combined Authority”** is the governing body for Greater Manchester Fire & Rescue Service (GMFRS).

**“Law”** means legislation, [Common Law](http://legal-dictionary.thefreedictionary.com/Common+Law), and a host of other legal norms established by Parliament, the Crown, and the judiciary.

**“Liabilities”** means all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

"**Liquidated Damages**" means an amount of money agreed upon by both Parties to the Contract which the Supplier will pay to the other Party upon causing delay to the Contract.

“**Parties**” means those Parties listed at Clause 1, the Authority and the Supplier.

**“Price”** means the price of the Services as set out in the Section 3 of this Contract. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.

**“Pricing Schedule”** means the schedule in [clause 3.2](#_Pricing_Schedule) of this Contract detailing the pricing.

**“Public Bank Holiday”** means a day on which banks are officially closed, observed as a public holiday.

**“Quality Standards”** meansthe standards defined in clauses [2.5](#_Description_of_Services) and [2.6](#_Specification_of_Services) of this Contract but as a minimum shall be to the standards and protocol described by the relevant governing professional body and/or relevant recognised industry association standard.

**“Relevant Offence”** means thoseoffences defined in Statutory Instrument ‘Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009’ (S.I 2009 no.37) (as amended).

**“Service(s)”** means those Services as described in the clauses [2.5](#_Description_of_Services) and [2.6](#_Specification_of_Services) (Description and Specification of Services) of this Contract or such other documentation as appended to this Contract.

**“Specification”** means the specification included in [clause 2.6](#_Specification_of_Services) setting out the Authority's detailed requirements in relation to the Services.

**“Standard Terms and Conditions”** means the terms and conditions set out in this document.

**“Supplier”** means the Party listed at 1.1.2

"**Tender**" means the Supplier’s response to the Authority’s request incorporating the Specification howsoever supplied.

**“TUPE”,** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

* + 1. Throughout the documentation relating to this Contract the masculine shall include the feminine and neuter, the singular shall include the plural and vice versa.
    2. In case of any conflict or inconsistency between the general Conditions and special conditions, the latter shall prevail.

###### Entire Agreement

The Contract constitutes the entire agreement and understanding between the Parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Contract provided that neither Party excludes liability for fraudulent misrepresentations upon which the other Party has relied.

###### Contract variation

No variation or amendment to the Contract is valid unless it is in writing and signed by both Parties.

###### Provision of Services

* + 1. The Supplier warrants to the Authority that:
       1. The manner in which the Services are provided will conform with the Authority’s Specification and the terms of the Contract;
       2. The Services will be provided in accordance with all applicable legislation from time to time in force and the Supplier will inform the Authority as soon as it becomes aware of any changes in that legislation.
    2. The Supplier will provide timely commencement and provision of the Services in accordance with time scales agreed by the Authority. Time shall only be of the essence of the Contract if the Authority so specifies in writing.
    3. The Authority's rights under this Contract are in addition to the statutory terms implied in favour of the Authority by the Supply of Goods and Services Act 1982 and any other statute.
    4. Without prejudice to [clause 3.1](#_Hlt63047628) the Authority may reduce the Price payable in respect of any Services by a reasonable amount in circumstances where in the reasonable opinion of the Authority the Supplier has either failed to provide those Services or has provided them inadequately;
    5. The Authority may at any time notify the Supplier in writing to suspend provision of the Services. If the Authority gives such notification to the Supplier or otherwise delays the Supplier’s ability to provide the Services (other than as a consequence of a Force Majeure Event or a breach of contract or breach of duty on the part of the Supplier) the Authority shall, subject to the Supplier using its best endeavours to mitigate its losses, reimburse the Supplier:
       1. for any resulting unavoidable and reasonably foreseeable direct losses; and
       2. for the cost of any binding commitments entered into by the Supplier with a third party which cease to be required due to the suspension or delay and in respect of which the Supplier cannot obtain a refund (where the Supplier has already paid in relation to the commitment) or is obliged to pay (where the Supplier has not already paid in relation to the commitment).
    6. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Supplier, at any other premises where any part of the Services is being performed.
    7. The provisions of this [clause 2.4](#_Provision_of_Services) shall survive any performance, acceptance or payment pursuant to the Contract and shall extend to any substituted or remedial services provided by the Supplier.

###### Description of Services

* + 1. Insert or add refer to Appendix xx

###### Specification of Services

* + 1. Insert or add refer to Appendix xx

###### Qualifications/Certification

###### 2.7.1 .

2.7.2

###### Term (Contract Period)

The Contract shall take effect on the Commencement Date and shall expire on the Expiry Date, unless it is terminated in accordance with the provisions of the Contract, or extended under [Clause 2.9](#_Extension_Period).

Commencement Date:

Expiry Date:

###### Extension Period

The Authority reserves the right to extend the term of this Contract by up to **twelve (12) months** by giving written notice to the Supplier not less than one (1) month prior to the last day of the Contract Period.

###### Supply of Services

* + 1. The Supplier shall supply the Services during the Contract Period in accordance with the Authority’s requirements as set out in the Specification and provisions of the Contract in consideration of the payment of the Contract Price.
    2. If the Authority informs the Supplier in writing or via email that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Service in accordance with the requirements of the Contract within a reasonable time to be agreed with by the Authority.

###### Provision and Removal of Equipment

* + 1. The Supplier shall provide all the Equipment necessary for the supply of the Services.
    2. The Supplier shall not deliver any Equipment, nor begin any work on the Authority‘s Premises without obtaining prior Approval.
    3. All Equipment brought onto the Authority’s Premises shall be at the Supplier’s own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Authority’s negligence.
    4. The Supplier shall maintain all items of their Equipment within the Authority’s Premises in a safe, serviceable and clean condition.
    5. The Supplier shall, at the Authority’s written request, at its own expense and as soon as reasonably practicable:
       1. remove from the Authority’s Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
       2. replace such item with a suitable substitute item of Equipment.
    6. On completion of the Services the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Services and shall leave the Authority’s Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Authority’s Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or their Staff.

###### Manner of Carrying Out the Services

* + 1. The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body.
    2. The Supplier shall ensure that all Supplier 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.
    3. While supplying Services at Authority’s Premises, the Supplier shall ensure that its staff behave in an orderly and quiet manner, as may reasonably be practicable having regard to the nature of the duties being performed by them.
    4. The Supplier shall ensure that its staff carry out their duties and behave while on the Authority's premises in such a way as to cause no unreasonable or unnecessary disruption to the routines and procedures of the Authority's staff.

###### Supplier’s Staff

* + 1. The Authority may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Authority’s Premises:
       1. any member of the Supplier’s Staff; or
       2. 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.

* + 1. At the Authority’s written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Authority’s Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
    2. The Supplier’s Staff, engaged within the boundaries of the Authority’s 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 Authority’s Premises.
    3. The Authority will require the Supplier to ensure, at their own cost, that any person employed in the provision of the Services has undertaken a Disclosure & Records Barring Service (DBS) check to the standard detailed below:

2.13.4.1 Standard

2.13.4.2 Enhanced

2.13.4.3 Enhanced with barred lists

* + 1. The Supplier shall ensure that no person who discloses that he/she has a Relevant Offence, or is found by the Supplier to have a Relevant Offence (whether as a result of a police check or through the Disclosure & Records Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.
    2. The Supplier will ensure that its staff, while on the Authority's premises, maintain a high standard of personal hygiene and prohibit from smoking.
    3. The Supplier shall require his staff at all times while on Authority's premises to be properly and presentably dressed in appropriate uniforms or work wear to be agreed with the Authority.
    4. The Supplier shall provide, and shall require their staff to wear at all times when on the Authority's premises an identification badge in such form as agreed by the Authorised Officer.

###### Licence to occupy Premises

Any land or Premises made available from time to time to the Supplier by the Authority in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract. The Authority reserves the right to revoke such licence at any time.

###### Liquidated Damages

* + 1. If applicable, the Supplier shall pay to the Authority liquidated damages (not by way of penalty) for delays in provision or supply of the Service upon the terms set out in [Clause 2.10](#_Supply_of_Services). The provisions set out in this [Clause 2.15](#_Liquidated_Damages) are in addition to and do not restrict, limit or otherwise affect any other remedies available to the Authority under the Contract. The Liquidated Damages are detailed below:
    2. *Insert details or remove*

###### Warranty

* + 1. The Supplier warrants the Services provided under this Contract, and warrants that if any part of the Services provided does not comply with the Authority’s instructions or has not been undertaken to the standards prescribed by the relevant professional body or trade association, then the Supplier shall undertake corrective work to the satisfaction of the Authority at no additional cost to the Authority.
    2. If the Supplier is unable to undertake corrective work to the satisfaction of the Authority and within a reasonable timeframe, then the Authority shall be entitled to engage the services of an alternative supplier to complete and/or correct the unsatisfactory Services, and shall be entitled to charge the Supplier the reasonable cost of engaging the said third party or to withhold the fees by way of set-off.

###### Behaviour Conformance

* + 1. The Supplier hereby accepts full responsibility for the behaviour, acts, omissions or negligence of the Supplier’s Staff. The Supplier shall ensure that the Supplier’s Staff are appraised of and understand the terms and conditions contained herein to the level necessary to perform their duties in accordance with such terms and conditions. The Supplier shall enforce (on becoming aware of or following notification of failure to comply) compliance with the said terms and conditions.
    2. If any the Supplier’s Staff for any reason are requested to attend the Authority’s Premises, the Supplier’s Staff shall be polite and courteous, and shall when required provide proof of identity, and declare that they are acting on behalf of the Supplier.

###### Continuity of Staff

* + 1. The Authority reserves the right to request or reject any specific individual(s) who may be allocated by the Supplier to perform the Services. The Authority will not unreasonably withhold its approval of any specific individual(s).
    2. Once allocated to the Contract, the Supplier shall endeavour not to substitute an alternative individual(s) part way through the Contract Period.
    3. In the event that the Supplier is unable due to unforeseen circumstances to continue to supply the same individual(s) for the full duration of the Contract the Supplier shall suggest an alternative individual(s) to the Authority for its approval to complete the Contract activities. The Authority shall be under no obligation to accept the provision of the Services by any such replacement individual(s), and the Authority may, at its option, terminate the Services against that project forthwith, and [Clause 5](#_Termination) regarding termination shall apply.
    4. Where an alternative individual(s) is approved by the Authority, the Supplier shall ensure:
       1. that the replacement individuals(s) are familiarised with the Contract by the Supplier
       2. that the project is not delayed in any way as a result of the change in Supplier’s Staff

###### Sustainable Procurement

* + 1. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Supplier shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.
    2. The Supplier shall, when working at the Authority’s Premises, provide the Services 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 use of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

# Pricing and Payment

###### The prices applicable to the provision of the Services are as detailed (select one of the following)

* + 1. The Authority will use reasonable endeavours to ensure payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Authority.
    2. The Authority reserves the right to withhold payment in whole or in part, without payment of interest, where the Supplier has either failed to supply the Services at all or has supplied Services which, in the reasonable opinion of the Authority, are unsatisfactory and any invoice relating to such Services will not be paid unless or until the Services have been delivered to the Authority’s satisfaction.
       1. If the Supplier believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the Authorised Officer or the named contact on the face of the Contract. In the event that the problem is not resolved to satisfaction, the Supplier should write to the Authority’s Head of Procurement setting out the Supplier’s case.
       2. For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of thirty (30) days commencing on the day when the Authority received the invoice, or, if the Supplier had not supplied the Services before submitting the invoice, the last day of a period of 30 days commencing on the day when the Supplier had completed supply of the relevant Services.

###### Pricing Schedule

* + 1. The prices applicable to the Services are as detailed (select one of the following) below and insert table here OR in Appendix XX.

3.2.2 The rates quoted in the Pricing Schedule are fully inclusive of all the Supplier’s costs in provision of the Services. There will be no amendment to the Pricing Schedule without agreement in writing between the Parties.

# Contract Monitoring

###### Evaluation and monitoring of Contract

###### Regular meetings

The Supplier and the Authority are required to meet regularly or, as and when deemed necessary by the Authority, to evaluate and monitor their performance under the Contract. These meetings are intended to promote co-operation and efficiency.

###### Participation in meetings by third parties

* + - 1. Consultants and sub-contractors, (if appropriate) and others concerned with the Service may be invited to participate in the meetings held under [clause 4.1.1](#_Regular_meetings), but only if both Parties agree in writing.
      2. Under [clause 4.1.2](#_Participation_in_meetings) both Parties agree that the mere participation by third parties (such as consultants and subcontractors) in the meetings will not give such parties any rights or responsibilities pursuant to this contract which is made between the Authority and the Supplier.

###### Evaluation and monitoring meetings costs

The Supplier, the Authority and others who participate in evaluation and monitoring meetings must meet their own costs for attendance at the meetings.

# Termination

###### Termination notice

* + 1. Subject to the provisions of [clause 9.6](#_Force_Majeure) (Force Majeure) the Authority may terminate the Contract with immediate effect by notice in writing to the Supplier on or at any time if:
       1. the Supplier becomes bankrupt, insolvent, makes any composition with its creditors, has a Deputy appointed under the Mental Capacity Act 2005 or dies; or
       2. the Supplier is convicted of a criminal offence; or
       3. the Supplier ceases or threatens to cease to carry on its business; or
       4. the Supplier has a change in its control which the Authority believes will have a substantial impact on the performance of the Contract; or
       5. there is a risk or a genuine belief that there is a risk that reputational damage to the Authority will occur as a result of the Contract continuing to provide the Services. Such risk to be determined by the Authority in its sole discretion; or
       6. the Supplier is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Authority within fourteen (14) days, or such other reasonable period as may be specified by the Authority after issue of a written notice specifying the breach and requesting it to be remedied; or
       7. there is a material or substantial breach by the Supplier of any of its obligations under this Contract which is incapable of remedy; or
       8. the Supplier commits persistent minor breaches of this Contract, whether remedied or not.

###### Termination at Will

The Authority reserves the right to terminate the Contract at will, in whole or in part, at any time with thirty (30) days’ notice.

###### Consequences of Termination

* + 1. If this Contract is terminated in whole or in part the Authority shall:
       1. where termination arises under [clause 5.1](#_Termination_notice), be liable to pay to the Supplier only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
       2. where termination arises under [clause 5.1](#_Termination_notice), be entitled to deduct from any sum or sums which would have been due from the Authority to the Supplier under this Contract or any other contract and to recover the same from the Supplier as a debt any sum in respect of any loss or damage to the Authority resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
       3. where termination arises under [clause 5.2](#_Termination_at_Will), pay to the Supplier any reasonable, direct and quantifiable costs reasonably incurred by the Supplier due to early termination.
       4. in the event that any sum of money owed by the Supplier to the Authority (the Supplier’s debt) exceeds any sum of money owed by the Authority to the Supplier (the Authority’s debt) under this Contract then the Authority shall, at its sole discretion, be entitled to deduct the Supplier’s debt from any future Authority’s debt or to recover the Supplier’s debt as a civil debt.
    2. Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under the Contract.

###### Dispute Resolution Procedure

* + 1. If a dispute arises between the Authority and the Supplier in connection with the Contract, the Parties shall in good faith try to resolve such dispute by means of prompt discussion at an appropriate managerial level.
    2. If a dispute is not resolved within fourteen (14) days of referral under [clause 5.4.1](#_Dispute_Resolution_Procedure) then either Party may refer it to the appropriate nominated officer of each Party for resolution who shall meet for discussion within fourteen (14) days or longer period as both Parties may agree.
    3. Provided that both Parties consent, a dispute not resolved in accordance with clauses 5.4.1 and 5.4.2, shall next be referred at the request of either Party to a mediator appointed by agreement between the Parties within fourteen (14) days of one Party requesting mediation with the costs of mediation determined by the mediator.

###### TUPE and Re-tendering (if applicable)

* + 1. In the event of expiry or termination of the Contract or whenever reasonably requested by the Authority in preparation for tendering arrangements, the Supplier will provide the Authority with such assistance, as the Authority may require and provide at no cost to the Authority any information the Authority (whether on its own account or on behalf of any potential or confirmed replacement supplier) may request in relation to the employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.
    2. The Supplier authorises the Authority to pass any information supplied to any replacement supplier or potential replacement supplier and the Supplier will secure all necessary consents from relevant Employees in order to do this.
    3. The Supplier will keep the Authority and any replacement supplier indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.
    4. The Supplier undertakes to the Authority that, during the twelve months prior to the end of the contract period the Contract shall not (and shall procure that any sub-contractor shall not) without the prior consent of the Authority (such consent not be unreasonably withheld or delayed):
       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 Supplier 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;
       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)
       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 delivery of Services by the Supplier), (provided that any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services);
       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.

###### Survival

The following clauses will survive termination or expiry of the Contract: [Clause 5.3 (Consequences of Termination)](#_Consequences_of_Termination), [Clause 6.5 (Insurance)](#_Insurance), [Clause 7.1 (Intellectual Property)](#_Intellectual_Property), [Clause 7.2 (Confidentiality)](#_Confidentiality), [Clause 7.3 (Data Protection)](#_Data_Protection), [Clause 7.4 (Freedom of Information)](#_Freedom_of_Information), [Clause 7.5 (Record Keeping)](#_Record_Keeping), [Clause 8.2 (Law)](#_Law) and [Clause 9.9 (Non Solicitation and Offers of Employment)](#_Non_Solicitation_&).

# Insurance

###### Insurance details

* + 1. The Supplier shall maintain insurance necessary to cover any liability arising under the Contract as set out below:
       1. Public Liability/3rd Party - £5M each claim
       2. Employers Liability £10M each claim
       3. Professional indemnity £2M each claim
    2. A copy of Insurance Certification shall form Appendix XX to this Contract.
    3. The Supplier shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.
    4. If the Supplier does not maintain the necessary insurances under the Contract, the Authority may insure against any risk in respect of the default and may charge the Supplier the cost of such insurance together with a reasonable administration charge.
    5. The Supplier is/is not required to maintain Professional Indemnity insurance for a period of XX years following completion of the Services/Contract Period.

###### Indemnity & Liability

* + 1. Neither Party seeks to exclude or limit its liability for:
       1. death or personal injury caused by its own negligence (but will not be liable for death or personal injury caused by the other party’s negligence); or
       2. fraudulent misrepresentation; or
       3. any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
    2. The Supplier shall indemnify the Authority in full without limit of liability for any loss damage or claim , including any loss or claim relating to Intellectual Property Rights and injury loss or damage claimed by any third party and against all Liabilities awarded against or incurred by the Authority (including legal expenses on an indemnity basis) arising from the Supplier’s negligence, any fault or short fall in the Services or any act or omission of the Supplier in supplying, and delivering the Services.
    3. The Supplier shall indemnify the Authority against all claims and against all liabilities, costs, expenses, damages and losses (including any direct, indirect, loss of goodwill, loss of production, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Authority arising out of or in connection with :
       1. any breach by the Supplier of the warranties contained in the conditions of this Contract;
       2. the Supplier’s negligence or breach of statutory duty;
       3. any misrepresentation (including fraudulent misrepresentation) made by the Supplier.

# Protection of Information

###### 7.1 Intellectual Property

* + 1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
       1. provided to the Supplier by the Authority shall remain the property of the Authority;
       2. prepared by or for the Supplier specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Authority subject to any exceptions set out in the Specification.
    2. The Supplier shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Supplier shall procure that the owner of the Intellectual Property Rights grant to the Authority a non-exclusive licence, or if the Supplier is itself a licensee of those rights, the Supplier shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Authorities, the replacement Supplier or to any other third party supplying Goods to the Authority, and shall be granted at no cost to the Authority.
    3. It is a condition of the Contract that the supply of Services/Goods to the Authority and the possession and use of the Services/Goods by the Authority will not infringe any Intellectual Property Rights of any third party and the Supplier shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Authority in full without limit or liability against all Liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to;
       1. items or materials based upon designs supplied by the Authority; or

7.1.3.2 any use by the Authority of the Services/Goods in combination with any item not supplied by the Supplier where such use of the Services/Goods directly gives rise to the claim, demand or action

7.1.3.3 any modification carried out by or on behalf of the Authority to the Services/Goods if such modification is not authorised by the Supplier in writing.

7.1.4 If a claim or demand is made or action brought to which Clause 7.1.3 may apply or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense either:

7.1.4.1 modify the Services/Goods without reducing the performance and functionality of the same, or substitute alternative Services/Goods of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to **such modified or** substitute Services/Goods, provided that modified or substitute Services/Goods shall be acceptable to the Authority, such acceptance not to be unreasonably withheld; or

7.1.4.1 procure a licence to supply the Services/Goods to the Authority and for the Authority to possess and use the Services/Goods which are subject to the alleged infringement, on terms which are acceptable to the Authority.

7.1.5 The Supplier shall promptly notify the Authority if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Rights which may affect the Authority’s use or possession of the Services/Goods.

7.1.6 If a modification or substitution in accordance with Clause 7.1.4.1 is not possible so as to avoid the infringement or the Supplier has been unable to procure a licence in accordance with Clause 7.1.4.2 the Authority **shall be entitled to terminate this Contract in accordance with Clause 5.1 (g).**

7.1.7 The Authority shall promptly notify the Supplier if any claim or demand is made or action brought against the Authority to which Clause 7.1.3 may apply. The Supplier shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the Authority hereby agrees to grant to the Supplier exclusive control of any such litigation and such negotiations.

* + 1. The Authority shall at the request of the Supplier and at the Supplier’s expense afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority to which Clause 7.1.3 may apply or any claim or demand made or action brought against the Supplier to which Clause 7.1.5 may apply.
    2. The Supplier will indemnify the Authority against all damages and costs finally awarded against the Authority as a result of such action but will not be responsible for any settlement or compromise made without its consent.
    3. The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 7.1.3 may apply or any claim or demand made or action brought against the Supplier to which Clause 7.1.5 may apply.
    4. At the termination of the Contract the Supplier shall immediately return to the Authority all materials, work or records held in relation to the Services/Goods, including any back-up media.
    5. *Insert any specific IPR agreements which may be required – or insert NOT USED* or *refer to Appendix XX*.

###### Confidentiality

7.2.1 Subject to the provisions of the Freedom of Information Act 2000 (FOIA) all information supplied by the Authority howsoever transferred shall be treated as confidential and shall not be disclosed or used otherwise than for the purpose of satisfying the requirements of the Contract. Similarly, any written material or drawings supplied by the Authority to the Supplier shall remain subject to the Authority’s copyright and shall not be copied or used for any purpose other than satisfying the requirements of the Contract. The Supplier shall promptly return when requested by the Authority all written materials and drawings so supplied.

7.2.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the text of this Contract and any Schedules to this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Contract or its Schedules is exempt from disclosure in accordance with the provisions of the Act.

###### Data Protection

7.3.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in the Schedule hereto by the Authority and may not be determined by the Supplier.

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

7.3.3 The Supplier shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:

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

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

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

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

7.3.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

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

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

(i) nature of the data to be protected;

(ii) harm that might result from a Data Loss Event;

(iii) state of technological development; and

(iv) cost of implementing any measures;

(c) ensure that :

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

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

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

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

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

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

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

(i) the Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Authority;

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

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

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

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

7.3.5 Subject to clause 7.3.6, the Supplier shall notify the Authority immediately if it:

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

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

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

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

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

(f) becomes aware of a Data Loss Event.

7.3.6 The Supplier’s obligation to notify under clause 7.3.5 shall include the provision of further information to the Authority in phases, as details become available.

7.3.7 Taking into account the nature of the processing, the Supplier shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 7.3.5 (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

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

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

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

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

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

7.3.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

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

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

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

7.3.9 The Supplier shall allow for audits of its Data Processing activity by the Authority or the Authority’s designated auditor.

7.3.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation .

7.3.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Supplier must:

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

(b) obtain the written consent of the Authority;

(c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 7.3.11 such that they apply to the Sub-processor; and

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

7.3.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

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

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

###### Freedom of Information

* + 1. The Authority is subject to the Freedom of Information Act 2000 and the Environmental Information Regulations (EIR) 2004 (‘the Acts’). As part of the Authority’s duties under the Acts it may be required to disclose information forming part of the Contract to the Information Commissioners Office or anyone who makes a reasonable request.
    2. The Authority is responsible for determining in its discretion whether any information is commercially sensitive information, and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
    3. The Supplier shall assist and co-operate with the Authority (at the Supplier’s expense) to enable the Authority to comply with the information disclosure requirements under the Acts and in doing so will comply with any timescale notified to it by the Authority.

7.4.4 Notwithstanding any other term of this Contract, the Supplier hereby gives its consent for the Authority to publish this Contract and its Schedules in its entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Authority decides is most appropriate.

###### Record Keeping

* + 1. To assist the Authority with its record keeping and monitoring requirements, including auditing and National Audit office requirements, the Supplier shall keep and maintain for six (6) years (or any longer period of time in accordance with specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it and all payments made by the Authority. The Supplier shall on request allow the Authority such access to (and copies of) those records as may be required by the Authority in connection with the Contract.
    2. The Supplier will at its own cost, provide any information that may be required by the Authority to comply with the Authority’s procedures for monitoring of the Contract.

# Statutory Obligations

###### Health & Safety

* + 1. While on the Authority’s Premises the Supplier shall comply with any health and safety measures implemented by the Authority in respect of persons working on the Authority’s Premises.
    2. The Supplier shall:
       1. notify the Authority immediately in the event of any incident occurring in the provision of the Services on the Authority’s Premises, where that incident causes any personal injury or damage to property which could give rise to personal injury.
       2. take all necessary measures to 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 those of its employees, consultants, agents or sub-contractors that provide the Services.
       3. ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Authority on request.
       4. The Supplier shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this Condition.

###### Law

The Supplier shall comply at all times with the Law in its performance of the Contract.

###### Equality and Diversity

* + 1. The Supplier will conform (in so far as is permitted by law and in so far as has been communicated) to all legislation relating to Equality and Diversity and to the Authority’s Policies and Codes of Practice in relation to its obligations under the Contract.
    2. For the avoidance of doubt this means that the Supplier must give appropriate consideration to the 9 protected characteristics detailed in the Equality Act (2010). These are: Age, Disability, Gender Re-assignment, Marriage & Civil Partnership, Pregnancy & Maternity, Race, Religion & Belief, Sex & Sexual Orientation.

# General Provisions

###### Authorised Officer

The Authorised Officer or their appointed Deputy shall be the duly authorised representative of the Authority. Any Notice, information or communication given or made by the Authorised Officer shall be deemed to have been made by the Authority.

###### Notices

* + 1. Any formal notice required by this Contract to be given by either Party to the other shall be in writing and shall be served personally, by sending it by registered post or recorded delivery to the appropriate address notified to each other as set out in the Recitals.
       1. Formal notices shall not be accepted by email.
    2. Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served forty eight (48) hours after it was posted. If the date of service falls on a weekend or public bank holiday, then it will be deemed served on the next Business Day.

###### Waiver

* + 1. The failure by either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy. A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.
    2. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause [9.2](#_Notices) (Notices)

###### Validity of separate clauses

If any of the provisions of the Contract become invalid this shall not affect the validity of the remaining provisions. In the event of such occurrence the Parties shall, in so far as it is legally permitted, agree on the replacement of the invalid provision with a valid one achieving the same or similar purpose.

###### Assignment, Sub contracting & Responsibility

* + 1. The Supplier shall not sub-contract any of its obligations under the Contract without the prior written permission of the Authority. Where such permission is granted, the Supplier shall ensure the provisions of the Contract are reflected in its contractual arrangements with its sub-contractors and are enforced against them.
    2. The Authority shall be entitled to:
       1. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2006); or
       2. transfer, assign or novate its rights and obligations where required by Law.
       3. transfer, assign or novate its rights to a successor body or organisation.
    3. The Supplier shall remain responsible and liable for the acts and omissions of sub-contractors, servants, agents and employees as though they were its own.

###### Business Continuity

* + 1. The Supplier shall have a robust Business Continuity Plan in place which is acceptable to the Authority to ensure that the provision of Goods to the Authority will be maintained in the event of disruption, including but not limited to disruption to information technology systems, to the Suppliers operations and those of sub-contractors to the Supplier, however caused.
       1. The Business Continuity Plan shall be available for the Authority to inspect and to practically test at any reasonable time and shall be subject to regular updating and revision throughout the term of the Contract.
       2. A copy of the Business Continuity Plan is enclosed under Appendix XX
    2. The Authority may require the Supplier to conduct additional tests of the Business Continuity Plan where the Authority considers it necessary, including where there may be a change to the Goods or any underlying business processes or on the occurrence of any event which may increase the likelihood of the need to implement the Business Continuity Plan.
       1. The Authority reserves the right to attend any Business Continuity Plan test undertaken by the Supplier.
    3. The Parties shall comply with the provisions of the Business Continuity Plan and the Supplier shall ensure that it is able to implement the Business Continuity Plan at any time in accordance with its term.

###### Force Majeure

* + 1. Neither Party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
    2. If the Authority or the location at which the Services are to be delivered is affected by circumstance of Force Majeure, the Authority shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Supplier against the Authority nor entitle the Supplier to terminate the Contract.
    3. Industrial action by, or illness or shortage of the Supplier’s employees, agents or subcontractors, failure or delay by any of the Supplier’s contractors to supply goods, components, services or materials shall not be regarded as an event of Force Majeure.
    4. If either Party is subject to a Force Majeure Event it shall not be in breach of the Contract provided that:
       1. it promptly notifies the other Party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
       2. it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
       3. it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under the Contract in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
       4. If the Force Majeure Event prevails for a continuous period of more than two (2) months, either Party may terminate the Contract by giving ten (10) Business Days’ written notice to the other. On the expiry of this notice period, the Contract will terminate. Such termination shall be without prejudice to the rights of either Party in respect of any breach of the Contract occurring prior to such termination.

###### Prevention of Bribery

* + 1. In this clause, “Bribery Act”means the Bribery Act 2010 and “Prohibited Act” means any of the following:
       1. to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to (i) induce that person to perform improperly a relevant function or activity or (ii) reward that person for improper performance of a relevant function or activity; or
       2. to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; or
       3. committing any offence (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Authority; or (iv) defrauding, attempting to defraud or conspiring to defraud the Authority.
    2. The Supplier shall not commit a Prohibited Act and ensure that any of its employees, consultants, agents, or sub-contractors shall not commit a Prohibited Act in connection with the Contract.
    3. The Supplier warrants, represents and undertakes to the Authority that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of this Contract.
    4. Where the Supplier commits a Prohibited Act in relation to this or any other contract with the Authority, the Authority has the right to:
       1. Terminate the Contract and recover from the Supplier 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 provision of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
       2. Recover in full from the Supplier any other loss sustained by the Authority in consequence of any breach of this clause whether or not the Contract has been terminated.
    5. The Supplier shall, if requested, provide the Authority with any reasonable assistance to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act.
    6. The Supplier shall have and maintain an anti-bribery policy (which shall be disclosed to the Authority on request) to prevent it and any of its employees, consultants, agents or sub-contractors from committing a Prohibited Act and shall enforce it where appropriate.
    7. If any breach is suspected or known, the Supplier must notify the Authority immediately.
    8. If the Supplier notifies the Authority that it suspects or knows that there may be a breach, the Supplier must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation. This obligation shall continue for three years following the expiry or termination of this Contract.

###### Costs & Expenses

Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

###### Non Solicitation & Offers of Employment

The Supplier agrees that as from the effective date of this Contract until twelve (12) months after expiration, it shall not directly or indirectly actively solicit or hire for employment or engagement, or entice away on behalf of itself or any other person or organisation, any of the Authority’s staff who have been directly associated with this Contract and who are then still employed by the Authority, without the Authority’s prior written consent.

###### Legal Jurisdiction

The Contract shall in all respects be governed by and interpreted in accordance with English Law. The Parties further agree that any lawsuit arising out of or relating to the transaction contemplated herein may only be brought within English Courts

###### Rights of Third Parties

It is not intended that the Contract, either expressly or by implication, shall confer any benefit on any person who is not a party to the Contract and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

###### Supplier Status

Nothing in the Contract shall create or be construed as creating a partnership, joint venture, a contract of employment or relationship of employer and employee, or a relationship of principal and agent between the Authority and the Supplier.

###### Conflict of Interest

* + 1. The Supplier shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Authority in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Authority may reasonably require.
    2. Where the Authority is of the opinion that the conflict of interest notified to it is capable of being avoided or removed, the Authority may require the Supplier to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:
       1. if the Supplier fails to comply with the Authority's requirements in this respect; or
       2. if, in the opinion of the Authority, it is not possible to remove the conflict, the Authority may terminate the Contract immediately and recover from the Supplier the amount of any loss resulting from such termination.
    3. Notwithstanding paragraph 9.14.2 of this Condition , where the Authority is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Supplier of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Authority may terminate the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Supplier the amount of any loss resulting from such termination.

###### Publicity

Neither the Authority nor the Supplier shall publicise in any media or public announcement information regarding the terms of the Contract, or the Services supplied, without the prior written consent of the other Party in either case such consent not to be unreasonably withheld.

###### Lien

The Supplier will not permit its employees to file any liens against the property or realty of the Authority to secure payment under this Contract. If any liens or interest arise as a result of the Supplier’s action or inaction the Supplier will remove the liens at its sole cost or expense within ten (10) Business Days.

**Schedule - Processing, Personal Data and Data Subjects**

1. The Supplier shall comply with any further written instructions with respect to processing by the Authority.

2. Any such further instructions shall be incorporated into this Schedule.

|  |  |
| --- | --- |
| Description | Details |
| Subject matter of the  processing | [This should be a high level, short description of what the processing is about i.e. its subject matter] |
| Duration of the processing | [Clearly set out the duration of the processing including dates] |
| Nature and purposes of  the processing | [Please be as specific as possible, but make sure that you cover all intended purposes.  The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction,  erasure or destruction of data (whether or not by automated means) etc.  The purpose might include: employment processing, statutory obligation, recruitment assessment etc] |
| Type of Personal Data | [Examples here include: name, address, date of birth, NI  number, telephone number, pay, images, biometric data etc] |
| Categories of Data  Subject | [Examples include: Staff (including volunteers, agents, and  temporary workers), customers/ clients, suppliers, patients,  students / pupils, members of the public, users of a particular  website etc] |
| Plan for return and  destruction of the data  once the processing is  complete UNLESS  requirement under union or member state law to preserve that type of data | [Describe how long the data will be retained for, how it be  returned or destroyed] |

**AS WITNESS the hands of the Parties**

|  |  |
| --- | --- |
| Signed by an authorised signatory for and on behalf of the Authority |  |
| Signature: |  |
| Name in Capitals: |  |
| Date: |  |
|  |  |
| Signed by the Supplier or by authorised person on behalf of the Supplier |  |
| Signature: |  |
| Name in Capitals: |  |
| Date: |  |