

Tyne and Wear Fire and Rescue Service (TWFRS)

**Standard Terms and Conditions of Contract
for the Purchase of Services**



Tyne and Wear Fire and Rescue Service (TWFRS)

Standard Terms and Conditions of Contract for the Purchase of Services

Contents

Clause

Heading

Standard Terms and Conditions of Contract..... 1

Part A - operative provisions4

A1. Definitions4

A2 Headings..... 11

A3 Notices..... 11

A4 Entire agreement 12

Part B - Provision of Services..... 13

B1 Contract Period 13

B2 Performance 13

B3 Contract Manager 13

B4 Ordering process 14

B5 Risk in and title to goods..... 14

B6 Warranty 14

B7 Contractor’s Employees..... 15

Part C - Price and payment 17

C1 Price and payment..... 17

Part D - Termination and consequences of termination..... 18

D1 Termination 18

D2 Consequences of termination 19

D3 Dispute resolution procedure 19

D4 Survival 20

Part E - Insurance and Liabilities..... 21

E1 Insurance 21

E2 Indemnity and liability..... 21

Part F - protection of information 22

F1 Intellectual property..... 22

F2. Data Protection Act..... 22

F3 Freedom of Information..... 29

F4 Confidentiality 31

F5 Record keeping and monitoring 32

Part G - Statutory obligations 33

G1 Health and safety 33

G2 Corporate requirements 33

G3 Law and Change in Law 33

G4 TUPE and re-tendering..... 34

	Part H - General provisions	35
H1	Contract variation.....	35
H2	Third party rights.....	35
H3	No waiver.....	35
H4	Severance.....	35
H5	Assignment, sub-contracting and responsibility.....	35
H6	Force Majeure.....	36
H7	Inducements.....	36
H8	Costs and expenses.....	37
H9	No agency or partnership.....	37
H10	Non solicitation and offers of employment.....	37
H11	Inspection of Contractor’s premises.....	38
H12	Law and jurisdiction.....	38

Part A - operative provisions

A1 Definitions

The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

'Agreement'	this contract.
'Authorised Officer'	the person duly appointed by the Authority and notified in writing to the Contractor to act as the representative of the Authority for the purpose of the Contract in the Contract Particulars or as amended from time-to-time and in default of such notification the Authority's head of procurement or similar responsible officer.
'Authority'	the Authority named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Authority (whether in part or totally) or which is controlled by or is under common control with the Authority (and the expression 'control' shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
'Assigned Employees'	in respect of clause G4, an individual employed by the Contractor wholly or mainly in the performance of the Services
'Business Day'	any day other than a Saturday or Sunday or a public or bank holiday in England.
'Change in Law'	the coming into effect or repeal (without re-enactment or consolidation) in England of any law, or any amendment or variation to any law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
'Commencement Date'	the commencement date stated in the Contract Particulars.

'Commercially Sensitive Information'	the information listed in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business or which the Contractor has indicated to the Authority that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss.
'Confidential Information'	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). This includes information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA).
'Contract'	<p>the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority.</p> <ol style="list-style-type: none"> <li data-bbox="750 1321 1197 1359">1. The Contract Particulars. <li data-bbox="750 1400 1340 1438">2. The Special Terms and Conditions. <li data-bbox="750 1467 1372 1505">3. The Standard Terms and Conditions. <li data-bbox="750 1545 1418 1657">4. The Tender except to the extent that any element of the Tender has been included in the Contract Particulars.
'Contractor'	the contractor and where applicable this shall include the Contractor's employees, sub-contractors, agents, representatives, and permitted assigns and, if the Contractor is a consortium or consortium leader, the consortium members.

'Contract Manager'	the person named in the Contract Particulars as the Contract Manager and any replacement from time-to-time in accordance with clause B3.2.
'Contract Particulars'	the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, delivery instructions, Commencement Date, authorised officer, Contract Manager, Key Personnel, Commercially Sensitive Information, Contract Period, and the Specification and relevant Contract specific details of the Tender included in the document.
'Contract Period'	the period of the Contract as stated in the Contract Particulars (and any extension in accordance with clause B1).
'Contractor Personnel'	Means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement

'Control'	control as defined by section 416 of the Income and Corporation Taxes Act 1988.
'Controller, Processor, Data Subject, Data Controller, Personal Data, Personal Data Breach, Data Protection Officer'	take the meaning given in the GDPR.
'Data Loss Event'	any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
'Data Processing Schedule'	The schedule detailing the specific data processing requirements in Schedule 1 of these Standard Terms and Conditions
'Data Protection Impact Assessment'	an assessment of the impact of the envisaged processing on the protection of Personal Data.
'Data Protection Legislation'	(i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy.
'Data Subject Request'	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation.
'Data Sharing Agreement'	A binding agreement that documents what data is being shared between the parties and how the data can be used
'Data Sharing Code of Practice'	A code of practice issued by the Information Commissioner in respect to the sharing of personal data.
'DPA'	means the Data Protection Act 2018;

'Delivery Instructions'	the instructions provided in the Contract Particulars and any other information that the Authority considers appropriate to the provision of the Services.
'Employee'	any person employed by the Contractor to perform the Contract which will also include the Contractor's servants, agents, voluntary and unpaid workers and subcontractors and representatives or, in respect of clause G4 (TUPE and re-tendering) and any other TUPE obligation, an individual employed by the Contractor in the performance of the Services.
'EIR'	The Environmental Information Regulations 2004.
'FOIA'	The Freedom of Information Act 2000.
'Force Majeure'	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. This includes without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
'GDPR'	means the General Data Protection Regulation (Regulation (EU) 2016/679);
'Good Industry Practice'	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Contractor engaged in the supply of Services similar to the Services under the same or similar circumstances as those applicable to the Contract.
'HRA'	The Human Rights Act 1998.
'Information'	has the meaning given under section 84 of the Freedom of Information Act 2000.

'Intellectual Property Rights'	patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
'Invitation to Tender'	the Authority's Invitation to Tender for the Contract.
'Joint Data Controllers'	Where two or more Controllers jointly determine the purposes and means of processing
'Key Personnel'	those persons named in the Contract Particulars as being key personnel and any replacement from time-to-time under clause B6.1.5.
'Law'	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply..
'LED'	Law Enforcement Directive (Directive (EU) 2016/680)
'Liabilities'	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.

'Order'	an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
'Party'	A party to this agreement
'Personal data'	shall have the same meaning as set out in the GDPR;
Price	the price of the Services as set out in the Contract Particulars. 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	the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.
'Process'	shall have the same meaning as set out in the GDPR. Processing and Processed shall be construed accordingly;
'Protective Measures'	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.
'Request For Information'	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.
'Replacement Contractor'	any company, organisation or person who replaces the Contractor following termination or expiry of all or part of this Contract
'Request for Information	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

‘Services’	the services described in the Specification to be supplied by the Contractor in accordance with the Contract, together with all equipment required and any associated goods provided by the Contractor in relation to those services.
‘Special Terms and Conditions’	the additional terms and conditions attached which were set out in the Invitation to Tender.
‘Specification’	the specification included in the Contract Particulars setting out the Authority's detailed requirements in relation to the Services.
‘Standard Terms and Conditions’	the terms and conditions set out in this document.
‘Sub-processor’	any third Party appointed to process personal Data on behalf of the Contractor related to this agreement
Tender	the Contractor’s tender for the Services in response to the Authority’s Invitation to Tender.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006.
A1.1	Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, and governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
A1.2	A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.
A2	Headings
A2.1	The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.
A3	Notices
A3.1	Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

A3.2 Any notice serviced will be deemed to have been served as follows:

A3.2.1 Any notice served personally will be deemed to have been served on the day of delivery;

A3.2.2 Any notice sent by post will be deemed to have been served 48 hours after it was posted;

A3.2.3 Any notice sent by fax will be deemed to have been served 24 hours after it was despatched;

A3.2.4 Any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.

A4 **Entire agreement**

A4.1 The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

Part B - Provision of Services

B1 Contract Period

- B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
- B1.2 If the Contract Period includes an option to extend and the Authority intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

B2 Performance

- B2.1 The Services shall be provided in accordance with any delivery instructions. If no time for delivery is stated in the delivery instructions the Services shall be delivered between 9am and 5pm on a Business Day.
- B2.2 The time of the delivery of the Services is of essence to the Contract.
- B2.3 The Authority will have the right to observe the Contractor's performance of the Services if the Services are not being performed on the Authority's premises.
- B2.4 If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Authority which prevents or hinders, or may prevent or hinder the Contractor from performing the Services in accordance with the Contract; the Contractor shall inform the Authority and the Authority may, at its absolute discretion, extend the period of the Contract accordingly.
- B2.5 If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Authority immediately.
- B2.6 If the Contractor has a change in Control, the Contractor shall inform the Authority as soon as reasonably practicable.
- B2.7 The Authority retains the Contractor for the performance of the Services on a non-exclusive basis.

B3 Contract Manager

- B3.1 The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
- B3.2 The Contractor shall give notice in writing to the Authority at once of any change in the identity, address and telephone numbers of the person

appointed as Contract Manager. The Contractor shall give maximum possible notice to the Authority before changing its Contract Manager.

B4 Ordering process

B4.1 Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Authority under the provisions of this clause.

B4.2 Except where specified Orders are required to call off the Services the Authority gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.

B4.3 The Orders shall state the type of or part of the Services required including the Authority's requirements with regard to timescale for delivery of those Services.

B5 Risk in and title to goods

B5.1 Risk in any goods provided as part of the Services shall pass to the Authority upon delivery without prejudice to any rights of rejection which may accrue to the Authority under the Contract or otherwise.

B5.2 Title in any goods provided as part of the Services shall pass to the Authority upon delivery or earlier payment.

B6 Warranty

B6.1 The Contractor warrants to the Authority that the Services will be provided as follows:

B6.1.1 in a proper, skilful and workmanlike manner;

B6.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;

B6.1.3 in accordance with the Contract and any descriptions provided by the Contractor;

B6.1.4 to the reasonable satisfaction of the Authorised Officer;

B6.1.5 by Key Personnel (if any) who shall not be released from providing the Services permanently without the written agreement of the Authority, except by reason of:

B6.1.5.1 sickness;

B6.1.5.2 maternity leave;

B6.1.5.3 paternity leave;

B6.1.5.4 termination of employment;

- B6.1.5.5 request by the Authority;
 - B6.1.5.6 the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction; or
 - B6.1.5.7 other extenuating circumstances explained to the Authority; and
 - B6.1.6 any replacements for the Key Personnel shall be subject to the agreement of the Authority and 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. The cost of effecting such replacement shall be borne by the Contractor; and
 - B6.1.7 in a way that the Contractor takes every reasonable precaution to safeguard the Authority's property entrusted to the care of the Contractor.
- B6.2 The Contractor warrants to the Authority that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
 - B6.2.1 be free from defects in design, material and workmanship; and
 - B6.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- B6.3 Without prejudice to the Authority's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Authority shall be entitled to:
 - B6.3.1 require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within 14 days of a request to do so; or
 - B6.3.2 subject to clause E2 (Indemnity and liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Authority in obtaining replacement Services.
- B7 Contractor's Employees**
 - B7.1 The Authority reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:
 - B7.1.1 any member of the Contractor's Employees; and/or

- B7.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Contractor, whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.
- B7.2 When directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably desire.
- B7.3 The Contractor's Employees, engaged within the boundaries of any 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 that establishment and when outside that establishment.
- B7.4 The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.
- B7.5 The Contractor shall replace any of the Contractor's Employees who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor's Employees for any reason, the Contractor shall make sure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
- B7.6 The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Authority under this clause.

Part C - Price and payment

C1 Price and payment

- C1.1 The Authority shall pay the Price for the Services to the Contractor.
- C1.2 The Contractor shall submit a single VAT invoice to the Authority no later than seven days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
- C1.3 Payment of any undisputed invoice will be made no later than 30 days following the date of receipt of the invoice by the Authority.
- C1.4 The Authority reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Authority's satisfaction.
- C1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England base rate from time-to-time. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
- C1.6 The Authority will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Authority to the Contractor against any liability of the Contractor to the Authority (in either case however arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Authority are payable under this Contract. The Authority's rights under this clause will be without prejudice to any other rights or remedies available to the Authority under this Contract or otherwise.
- C1.7 C1.1 The Authority shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- C1.8 C1.2 For the purposes of paragraph C1.7, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 017/1870.
- C1.9 Further details of payment, if any, are set out in the Pricing Schedule.

Part D - Termination and consequences of termination

D1 Termination

- D1.1 Subject to the provisions of clause H6 (Force majeure) the Authority may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:
- D1.1.1 the Contractor becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;
 - D1.1.2 the Contractor is convicted of a criminal offence;
 - D1.1.3 the Contractor ceases or threatens to cease to carry on its business;
 - D1.1.4 the Contractor has a change in Control which the Authority believes will have a substantial impact on the performance of the Contract;
 - D1.1.5 there is a risk or a genuine belief that reputational damage to the Authority will occur as a result of the Contract continuing;
 - D1.1.6 the Contractor 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 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;
 - D1.1.7 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or
 - D1.1.8 the Contractor commits persistent minor breaches of this Contract whether remedied or not.
- D1.2 The Authority reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.
- D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Authority has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
- D1.4 The Authority reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

D2 Consequences of termination

D2.1 If this Contract is terminated in whole or in part the Authority shall:

D2.1.1 be liable to pay to the Contractor 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

D2.1.2 except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Authority to the Contractor under this Contract or any other Contract and to recover the same from the Contractor 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

D2.1.3 where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E2.4; and/or

D2.1.4 in the event that any sum of money owed by the Contractor to the Authority exceeds any sum of money owed by the Authority to the Contractor under this Contract then the Authority shall, at its sole discretion, be entitled to deduct from any future Authority's spend or to recover from the Contractor's.

D2.2 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.

D3 Dispute resolution procedure

D3.1 If a dispute arises between the Authority and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.

D3.2 If a dispute is not resolved within 14 days of referral under clause D3.1 then either party may refer it to the chief executive or appropriate nominated officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.

D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to

a mediator appointed by agreement between the parties. This must be within 14 days of one party requesting mediation with the costs of mediation determined by the mediator.

D3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

D4 **Survival**

D4.1 The following clauses will survive termination or expiry of the Contract:

- D4.1.1 clause B5 (Risk in and title to the goods);
- D4.1.2 clause D2 (Consequences of termination);
- D4.1.3 clause E2 (Indemnity and liability);
- D4.1.4 clause F1 (Intellectual property);
- D4.1.5 clause F2 (Data Protection)
- D4.1.6 clause F3 (Freedom of Information);
- D4.1.7 clause F4 (Confidentiality);
- D4.1.8 clause F5 (Record keeping and monitoring);
- D4.1.9 clause G4 (TUPE and re-tendering);
- D4.1.10 clause H4 (Severance);
- D4.1.11 clause H10 (Non solicitation and offers of employment); and
- D4.1.12 clause H12 (Law and jurisdiction).

Part E - Insurance and Liabilities

E1 Insurance

- E1.1 The Contractor shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
- E1.2 The Contractor 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.
- E1.3 If the Contractor 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 Contractor the cost of such insurance together with a reasonable administration charge.

E2 Indemnity and liability

- E2.1 Neither party seeks to exclude or limit its liability for:
 - E2.1.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);
 - E2.1.2 fraudulent misrepresentation; or
 - E2.1.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.
- E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.
- E2.3 Subject to clauses E2.1, E2.2 and E2.5, the Contractor's liability to the Authority under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.
- E2.4 Subject to clauses E2.1 and E2.2, the Authority's liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to 125% of the proportion of the Price which is paid and payable at the time that the liability arises.
- E2.5 The Contractor shall indemnify the Authority in full without limit of liability for any direct loss of or damage to the real or personal property of the Authority or any third party, including Intellectual Property Rights, or injury 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

Contractor's negligence, any defect or fault in the Services or any act or omission of the Contractor in delivering the Services.

Part F - Protection of information

F1 Intellectual property

F1.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

F1.1.1 provided to the Contractor by the Authority shall remain the property of the Authority; and

F1.1.2 prepared by or for the Contractor 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 Contract Particulars.

F1.2 The Contractor 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 Contractor shall procure that the owner of the Intellectual Property Rights grant to the Authority a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor 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-licence, transfer, novate or assign to other Authority's, the Replacement Contractor or to any other third party providing Services to the Authority, and shall be granted at no cost to the Authority.

F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Authority 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 the act or omission of the Authority.

F1.4 At the termination of the Contract the Contractor shall at the request of the Authority immediately return to the Authority all materials, work or records held in relation to the Services, including any back-up media.

F2 Data Protection

F2.1 The Contractor shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.

F2.2 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor is acting as **Data Controller** for any data provided to the

Contractor by the Authority or vice versa under this Agreement then the following provisions shall apply;

F2.2.1 The Contractor and the Authority shall comply with the Data sharing Code of Practice, as amended from time to time; and

F2.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably refuse to enter into a Data Sharing Agreement.

F2.3 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor and the Authority are acting as **Joint Data Controllers** within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Agreement then the following provisions shall apply;

F2.3.1 The Parties shall designate between them a point of contact for Data Subjects in relation to any Personal Data under the joint control of the Parties.

F2.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment.

F2.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the following;

- a) Nature of the data to be protected;
- b) Harm that might result from a Data Loss Event;
- c) State of technological development; and
- d) Cost of implementing any measures.

F2.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Employee or staff who have access to the Personal Data and ensure that they are aware and comply with that Party's data protection obligations and have undergone adequate training in the use, care, protection and handling of Personal Data.

F2.3.5 Each Party shall notify the other Party immediately if it:

- a) Receives a Data Subject Request (or purported Data Subject Request) in relation to any data under the joint control of the Parties;

- b) Receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
- c) Receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;
- d) Receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
- e) Receives a request from any third party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
- f) Becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties.

F2.3.6 Each party shall designate a Data Protection Officer if required by the Data Protection Legislation.

F2.3.7 The Contractor must ensure that there is a lawful basis for its processing of Personal Data and provide information to the Authority in pseudonymised or anonymised form where possible.

F2.3.8 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

F2.4 In particular and without prejudice to the generality of clause F2.1 above, if the Contractor is acting as **Data Processor** for any data provided to it by the Authority under this Agreement then the following provisions shall apply;

F2.4.1 The Data Processing Schedule shall apply and the only processing that the Contractor is authorised to do is listed in the Data Processing Schedule (as may be amended by the Authority) and may not be determined by the Contractor.

F2.4.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.

F2.4.3 The Contractor 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.

F2.4.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with New Data Protection Legislation, namely the General Data Protection Regulation ('GDPR') and the Data Protection Act 2018, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the following:
 - (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 the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
- d) it takes all reasonable steps to ensure the reliability and integrity of any Employees who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Contractor's duties under this clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor or Affiliate;
 - (iii) 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 Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and

- e) 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 Contractor 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;
 - (i) the Data Subject has enforceable rights and effective legal remedies;
 - (ii) the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Authority in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by the Authority with respect to the processing of the Personal Data

F2.4.5 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 Contractor is required by Law to retain the Personal Data.

F2.4.6 The Contractor shall notify the Authority immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (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.

F2.4.7 The Contractor's obligation to notify under clause F2.4.6 shall include the provision of further information to the Authority in phases, as details become available.

F2.4.8 Taking into account the nature of the processing, the Contractor 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 such legislation (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 Request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions;
- c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority);
- d) assistance as requested by the Authority following any Data Loss Event including providing the Authority with the following information:
 - (i) describe the nature of the breach including the categories and approximate number of both Data Subjects and Personal Data records concerned;
 - (ii) describe the likely consequences
 - (iii) describe the measures taken or proposed to address the breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 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.
- f) the Authority with any information reasonably requested.

F2.4.9 The Contractor shall indemnify the Authority against any costs, claims, actions or otherwise brought against the Authority arising as a result of the Contractor's breach of any of its data protection obligations.

F2.4.10 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause.

F2.4.11 The Contractor shall designate a Data Protection Officer if required by Data Protection Legislation.

F2.4.12 The Contractor shall, before allowing any Sub-processor or Affiliates to process any Personal Data related to this Agreement;

- a) notify the Authority in writing of the intended Sub-processor/Affiliate and the processing to be undertaken;

- b) obtain the written consent of the Authority;
- c) enter into a written agreement with the Sub-processor/Affiliate which give effect to the terms set out in this clause such that they apply to the Sub-processor/Affiliate; and
- d) provide the Authority with such information regarding the Sub-processor/Affiliate as the Authority may reasonably require.

F2.4.13 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor/Affiliate.

F2.4.14 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 Contractor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

F2.4.15 The Authority may, at any time on not less than 30 Working Days' notice, revise any part of this clause F2.4 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 Agreement).

F2.5 The Contractor shall permit the Authority or the Authority's representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with any audit rights of the Authority under this Agreement or in accordance with the Law, the Contractor's data processing activities (and/or those of its Affiliates, Sub-processors and agents) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement. Where the Authority requires information for the purposes of quality management and audit processes, the Contractor must consider whether the Authority's request can be met through pseudonymisation or aggregated data which does not contain Personal Data.

F2.6 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor 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.

F2.7 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

F2.8 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

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

(b) obtain the written consent of the Customer;

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

(d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require¹³ The Contractor shall remain fully liable for all acts or omissions of any Sub-processor

The Customer 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 Agreement).

F2.9 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

F3. Freedom of Information

F3.1 The Contractor acknowledges that the Authority is subject to the requirement of the Code of Practice on Government information, FOIA and the EIR and shall assist and cooperate with the Authority to enable the Authority to comply with its information disclosure obligations.

F3.2 The Contractor shall and shall procure that its sub-contractors shall do all of the following where relevant.

- F3.2.1 Transfer to the Authority all requests for information that it receives as soon as practicable and in any event within two Business Days of receiving a Request for Information.
 - F3.2.2 Provide the Authority with a copy of all information in possession, or power in the form that the Authority requires within five Business Days (or such other period as the Authority may specify) of the Authority's request.
 - F3.2.3 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 EIR.
- F3.3 The Authority shall be responsible for determining in its absolute discretion despite any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the EIR
- F3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.
- F3.5 The Contractor acknowledges that (despite the provisions of clause F4) the Authority may, be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services:
- F3.5.1 in certain circumstances without consulting the Contractor; or
 - F3.5.2 following consultation with the Contractor and having taken their views into account.
- F3.6 Provided always that where clause F3.5.1 applies the Authority shall, in accordance with any recommendations of the code, take reasonable steps, where appropriate, to give the Contractor advance notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.
- F3.7 The Contractor shall make sure that all information is retained for disclosure in accordance with any record keeping obligations of the Contractor under this Contract and shall permit the Authority to inspect such records as requested from time-to-time.
- F3.8 The Contractor acknowledges that the Commercially Sensitive Information is indicative only and that the Authority may be obliged to disclose it in accordance with clause F3.

F4 Confidentiality

- F4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each party shall do each of the following:
- F4.1.1 Treat the other party's Confidential Information as confidential and safeguard it accordingly; and
 - F4.1.2 Not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
- F4.2 Paragraph F4.1 shall not apply to the extent that any one or more of the following applies to the relevant information or disclosures:
- F4.2.1 Such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause F3 (Freedom of Information);
 - F4.2.2 Such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - F4.2.3 Such information was obtained from a third party without obligation of confidentiality;
 - F4.2.4 Such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; and
 - F4.2.5 It is independently developed without access to the other party's Confidential Information.
- F4.3 The Contractor may only disclose the Authority's Confidential Information to the Contractor personnel who are directly involved in the provision of the Services and who need to know the information, and shall make sure that such Contractor personnel are aware of and shall comply with these obligations as to confidentiality.
- F4.4 The Contractor shall not, and shall procure that the Contractor personnel do not, use any of the Authority's Confidential Information received other than for the purposes of this Contract.
- F4.5 At the written request of the Authority and if reasonable in the circumstances to make that request, the Contractor shall procure that those members of the Contractor personnel identified in the Authority's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

F4.6 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information in any one or more of the following circumstances.

F4.6.1 To any Crown body or any other contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the Authority. All crown bodies or such contracting authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other such contracting authorities 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 or other contracting authority;

F4.6.2 To any consultant, Contractor or other person engaged by the Authority or any person conducting an Office of Government Commerce gateway review;

F4.6.3 For the purpose of the examination and certification of the Authority's accounts; and/or

F4.6.4 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.

F5 Record keeping and monitoring

F5.1 The Contractor 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.

F5.2 In order to assist the Authority in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of:

F5.2.1 the Contract including the Services supplied under it,

F5.2.2 all expenditure reimbursed by the Authority, and

F5.2.3 payments made by the Authority.

The Contractor shall on request allow the Authority or the Authority's representatives such access to (and copies of) those records as may be required by the Authority in connection with the Contract.

F5.3 The Contractor 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.

Part G - Statutory obligations

G1 Health and safety

G1.1 The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Authority.

G2. Corporate requirements

G2.1 The Contractor shall comply with all obligations under the HRA.

G2.2 The Contractor shall comply with all Authority policies and rules, such as, but not limited to:

G2.2.1 equality and diversity policies;

G2.2.2 sustainability;

G2.2.3 information security rules;

G2.2.4 whistleblowing and/or confidential reporting policies; and

G2.2.5 all site rules relevant to the fulfilment of the Contractor's obligations in the performance of the Services.

G2.3 The Contractor shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

G2.4 The Contractor shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in Law of the ability of the Employees to work in the United Kingdom.

G2.5 If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Authority with:

G2.5.1 details of the finding; and

G2.5.2 the steps the Contractor has taken to remedy the situation.

G3 Law and Change in Law

G3.1 The Contractor shall comply at all times with the Law in its performance of the Contract.

G3.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within 14 days of the Contractor notifying the

Authority of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within 14 days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.

G3.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

G4 TUPE and re-tendering

G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Authority in preparation for tendering arrangements the Contractor 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 Contractor) may request in relation to the Employees including but not limited to, providing Employee liability information as required under Regulation 11 of TUPE.

G4.2 The Contractor authorises the Authority to pass any information supplied to any Replacement Contractor or potential Replacement Contractor and the Contractor will secure all necessary consents from relevant Employees in order to do this.

G4.3 The Contractor will keep the Authority and any Replacement Contractor 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.

Part H - General provisions

H1 Contract variation

H1.1 Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Authority and the Contractor.

H1.2 The Authority shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Authority confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised delivery instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.

H2 Third party rights

H2.1 This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

H3 No waiver

H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.

H3.2 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 A3 (Notices).

H4 Severance

H4.1 If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.

H5 Assignment, sub-contracting and responsibility

H5.1 Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Authority, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.

H5.2 The Authority shall be entitled to:

H5.2.1 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

H5.2.2 transfer, assign or novate its rights and obligations where required by Law.

H5.3 The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.

H6 **Force Majeure**

H6.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.

H6.2 If the Authority or the delivery location 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 Contractor against the Authority nor entitle the Contractor to terminate the Contract.

H6.3 Industrial action by, or illness or shortage of the Contractor's Employees, agents or subcontractors, failure or delay by any of the Contractor's suppliers to supply goods, components, Services or materials and breach of the Contractor's warranties under clause B6 shall not be regarded as an event of Force Majeure.

H6.4 If the event of Force Majeure continues for more than two months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.

H6.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and Liabilities which accrued prior to termination will continue to exist.

H7 **Inducements**

H7.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

H7.2 The Contractor warrants that it has not paid commission nor agreed to pay any commission to any employee or representative of the Authority by the Contractor or on the Contractor's behalf.

H7.3 Where the Contractor engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Authority, the Authority has the right to:

H7.3.1 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 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

H7.3.2 recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause whether or not the Contract has been terminated.

H8 Costs and expenses

H8.1 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.

H9 No agency or partnership

H9.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

H10 Non solicitation and offers of employment

H10.1 The Contractor agrees that it will not, without the prior written consent of the Authority, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

H10.1.1 solicit or entice, or endeavour to solicit or entice, away from the Authority, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Authority at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

H11 Inspection of Contractor's premises

H11.1 The Contractor shall permit the Authority to make any inspections or tests which may reasonably be required in respect of the Contractor's premises in relation to the Contract.

H12 Law and jurisdiction

H12.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.