



SOUTH YORKSHIRE FIRE AND RESCUE

GENERAL CONDITIONS OF CONTRACT 2018/2019

1 DEFINITIONS AND INTERPRETATIONS

1.1 In these Conditions, unless the context otherwise requires:-

- (i) IF APPLICABLE: “**Acquired Rights Directive**” means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended.
- (ii) “**Agreement**” means this agreement, comprised of the clauses hereto.
- (iii) “**The Authority**” shall mean South Yorkshire Fire and Rescue Authority.
- (iv) “**The Contractor**” shall mean the other party(s) to this Agreement.
- (v) “**Authority Property**” means anything issued or otherwise furnished in connection with the Agreement by or on behalf of the Authority, other than any real property.
- (vi) “**Authority's Responsibilities**” means the responsibilities of the Authority under this Agreement.
- (vii) “**Charges**” means the charges due to the Contractor for the provision of the services.
- (viii) “**Confidential Information**” means information, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including commercially sensitive information, information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, Authority and

Contractor of either Party and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998;

- (ix) “**Contract Period**” means the term of this Agreement as set out in Clause 2 (Scope of Agreement) of this Agreement, subject to early termination (howsoever arising) pursuant to Clause 18 (Termination).
- (x) “**Contractor Personnel**” mean 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.
- (xi) “**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; (iii) all applicable Law about the processing of personal data and privacy.
- (xii) “**Data Protection Impact Assessment**” means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- (xiii) “**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer**” means take the meaning given in the GDPR.
- (xiv) “**Data Loss Event**” means 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.
- (xv) “**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.
- (xvi) “**Default**” means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other
- (xvii) “**Documentation**” means the documentation as specified in the relevant order
- (xviii) “**DPA 2018**” means Data Protection Act 2018
- (xix) “**Employee Liabilities**” means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and

any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Commission for Equal and Human Rights or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis.

- (xx) “**Environmental Information Regulations**” mean the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.
- (xxi) “**FOIA**” means the Freedom of Information Act 2000 and any subordinate legislation guidance and/or codes of practice made or issued under this Act from time to time;
- (xxii) “**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679)
- (xxiii) “**Goods**” means the Goods that the Contractor shall provide for and to the Authority.
- (xxiv) “**Information**” has the meaning given under section 84 of the Freedom of Information Act 2000;
- (xxv) “**Invitation to Tender**” means the statement of service requirement issued by the Authority in respect of the performance of the Services.
- (xxvi) “**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.
- (xxvii) “**LED**” means Law Enforcement Directive (*Directive (EU) 2016/680*)
- (xxviii) “**Non-discharged Orders**” means orders placed by the Authority with the Contractor in respect of which the Services have not been performed by the Contractor at the date of termination of this Agreement
- (xxix) “**Parent Company**” means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the

Contractor. The term "Holding Company" shall have the meaning ascribed by Section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

- (xxx) "**Premises**" means any premises/site where the Services are to be performed
- (xxxi) "**Proposal**" means the Contractor's Proposal, in response to the Invitation to Tender.
- (xxxii) "**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.
- (xxxiii) "**Purchase Order**" means a Purchase Order placed by the Authority in accordance with clause 3 (Ordering Procedure) of the Agreement
- (xxxiv) "**Representative**" means a representative of the Authority or the Contractor as appropriate appointed for the purpose of coordinating the preparation and performance of this Agreement
- (xxxv) "**Requests for Information**" shall have the meaning set out in FOIA or any apparent request for information under the FOIA, or the Environmental Information Regulations.
- (xxxvi) "**Services**" means the services provided by the Contractor in accordance with the Proposal or as particularised on the Purchase Order.
- (xxxvii) "**Sub-Contract**" means any contract or proposed contract between the Contractor and any third party:-

in respect of the Services; and/or the terms "**Sub-Contractor**" and "**Sub-Contracting**" shall be similarly construed.
- (xxxviii) "**Sub-Processor** : any third Party appointed to process Personal Data on behalf of the Contractor related to this Agreement
- (xxxix) IF APPLICABLE: "**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.
- (xl) "**Working Days**" means Monday to Friday inclusive, excluding English public and bank holidays.

In respect of the terms "**Working days**" and "**Working Day**" shall be similarly

construed.

- 1.2 As used in this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 1.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.4 A reference to any document other than as specified in Clause 1.3 shall be construed as a reference to the document as at the date of execution of this Agreement.
- 1.5 Each party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.
- 1.6 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.7 Except as otherwise expressly provided in this Agreement, all remedies available to the Contractor or to the Authority for default under this Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not exclude the exercise of any other remedy.
- 1.8 Neither party shall be liable for any default of its obligations under this Agreement to the extent that such default is caused by a failure or delay by the other party in performing its obligations under this Agreement provided and to the extent, that the affected party notifies the other party of such failure or delay within thirty (30) days of the affected party becoming aware of its occurrence and of its likely impact.

2 SCOPE OF AGREEMENT

- 2.1 This Agreement governs the overall relationship of the parties with respect to the provision of Goods or Services. The Authority is entitled (but not required) at any time during the duration of this Agreement to order Goods or Services from the Contractor in accordance with the Ordering Procedures set out in Clause 3, and the Contractor shall provide such Goods or Services in accordance with all applicable provisions of this Agreement.
- 2.2 Subject always to clause 18 (Termination), and notwithstanding any other provision contained herein, this Agreement shall continue in force either:
 - 2.2.1 until all quantities of the Goods are manufactured and delivered or
 - 2.2.2 until the satisfactory completion of Services in accordance with the

Invitation to Tender or

unless an alternative arrangement is otherwise agreed by the Parties.

- 2.3 In the event that the Authority requires that the Agreement be extended for a further period beyond the period stated in Clause 2.2 above, the Authority may extend the period of the Agreement by giving written notice to the Contractor.
- 2.4 In the event that this Agreement is extended as referred to in Clause 2.3 the Contract Period of this Agreement shall apply to any such extension.

3 ORDERING PROCEDURES

- 3.1 Unless otherwise agreed, the Authority shall be entitled at any time during the Contract Period of this Agreement to order Goods or Services from the Contractor by serving a Purchase Order number on the Contractor for the supply of such Goods or Services.
- 3.2 The terms and conditions relating to a Purchase Order shall comprise of all of the Clauses of this Agreement.
- 3.3 Where the Authority or the Contractor see the need for including an additional term in any Purchase Orders, either party may at any time request such term by sending written notice thereof to the other party prior to the placing of a Purchase Order. The parties shall discuss any term requested by either party, but no term shall become part of the Purchase Order to which it relates unless agreed by both parties. In the event of any conflict or inconsistency between any term of a Purchase Order and any provisions of the Clauses, the term in the Purchase Order shall prevail, but only in relation to the Goods or Services supplied under the relevant Purchase Order in which such terms are contained.
- 3.4 Where Goods or Services are ordered and the duration of the Purchase Order extends beyond the Contract Period these terms and conditions shall remain in force and effect within that Purchase Order provided always that such Purchase Order was raised by the Authority prior to the expiry of the Contract Period.
- 3.5 Clause 3.4 shall survive the termination or expiry of this Agreement.

4 SUPPLY AND DELIVERY

- 4.1 During the Contract Period, the Contractor shall supply and deliver to the Authority such Goods of the descriptions and at the prices indicated in the Purchase Order and in such quantities and by such methods of delivery and at such times and places as are set out in the Purchase Order or (if not so set out) as shall be required by the Authority. If the Contract Period expires before the provision supply or delivery of Goods already ordered, the Contractor shall remain liable for the completion of the order. The terms and conditions of this

Agreement shall continue in full force and effect until such completion occurs.

- 4.2 The point of delivery of the Goods shall be when a Representative of the Authority gives written acknowledgement that the Goods have been removed from the transporting vehicle and deposited at the Authority's delivery address as specified in the Purchase Order. Except where otherwise specified in the Purchase Order, delivery shall include the unloading, stacking and/or installation of the Goods by the Contractor personnel, sub-contractors, suppliers or carriers at such place as the Authority or duly authorised Representative(s) shall reasonably direct, and they shall at all times comply with the reasonable requirements of the Authority's security procedures.
- 4.3 Access to the Authority's Premises and any labour and equipment that may be provided by the Authority in connection with delivery of the Goods shall be provided without acceptance by the Authority of any liability whatsoever and the Contractor shall indemnify the Authority against each and every action, proceeding, liability, cost, claim loss expense (including reasonable legal fees and disbursements on a solicitor and client basis) and demands which the Authority may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor personnel, Sub-Contractors, suppliers or carriers.
- 4.4 The Authority shall be under no obligation to accept or pay for any Goods delivered until the date of delivery specified in the Purchase Order.
- 4.5 Unless otherwise specified, time shall be of the essence:
 - 4.5.1 for ordering of the Goods;
 - 4.5.2 for the delivery of the Goods;
 - 4.5.3 for any times when the Services are to be performed, whether given or agreed to by the Contractor;
 - 4.5.4 for the length of time that any of the Services are to take, whether specified in the specification or otherwise; or
 - 4.5.5 for the completion date or such other date as agreed by the parties.

5 QUALITY AND APPROVAL

- 5.1 All Goods supplied hereunder shall comply with any relevant European regulations. The Authority may reject any Goods which it believes are not of satisfactory quality or in accordance with any relevant European regulations specification. In all cases of rejection the Contractor shall at his own expense remove the rejected Goods and replace the same as the Authority shall direct (acting reasonably) with Goods approved by the Authority without additional charge to the Authority.

6 ANALYSIS AND TESTS

6.1 At any time the Authority may analyse or test the Goods forming the subject matter of the Agreement, and where such tests indicate that the Goods do not conform with the specification the Authority may reject any Goods at the Contractor's risk and expense.

7 ALTERATION OF PLACE OF MANUFACTURE

7.1 Where the Contractor has stated that the Goods will be manufactured at a particular place or places, it shall not alter such place or places without the prior written consent of the Authority.

8 DELIVERY AND CARRIAGE

8.1 The Goods shall be delivered free of charge to the Authority at the place or places agreed or otherwise specified by the Authority, and shall remain at the Contractor's risk until completion of delivery the Authority has notified the Contractor that the Goods have been accepted. Where the Goods are to be supplied by weight, and the goods cannot be weighed at the place of delivery, the Contractor shall produce a weight ticket.

9 PACKAGING

9.1 Where the Goods are to be sold by weight, the weight of all packing materials shall be deducted from the gross weight of the Goods and the Authority shall pay only for the net weight thereof. The Authority shall not be liable for the return of any such packing materials.

10 DELIVERY NOTES, INVOICES AND PAYMENT

10.1 The Contractor shall comply with all requirements of the Authority's Representative with regard to the invoicing and identification of Goods. In the absence of any such requirements, the Contractor shall, on the day on which any Goods are dispatched to the Authority, forward to the Authority a delivery note or delivery notes giving full particulars thereof, together with price and purchase order number. The Authority shall not be obliged to accept delivery of any Goods unless such delivery note or notes and invoice are produced as aforesaid.

11 TITLE AND RISK

11.1 The title in the Goods supplied to the Authority by the Contractor under this Agreement shall pass to the Authority when they have been paid for in full cleared funds delivered to the location specified by the Authority in the Purchase Order, without prejudice to the Authority's right to reject the Goods if they are defective or not in accordance with the Authority's specification.

11.2 The risk in the Goods shall pass to the Authority on completion of delivery as

specified in the Purchase Order provided always that the risk in any goods rejected by the Authority shall revert to the Contractor immediately upon notice being given by the Authority of such rejection.

- 11.3 The Goods and its title shall remain the property of the Authority throughout the Contract Period in which the Goods is in the possession or control of the Contractor. While the Goods are in the possession or control of the Contractor, the Goods shall be at the risk of the Contractor.
- 11.4 The Contractor will insure the Goods, at its own expense, for the entire Contract Period or otherwise agreed, by reason of the Agreement, the Goods are at the Contractor's risk. The insurance will be on all risks terms. The Contractor will submit the insurance policy for approval by the Authority in advance of the conclusion of the contract of insurance, and the said approval may be given by a third party acting as agent for the Authority for this purpose. The said approval shall be a condition precedent of the Authority's obligation to pay the price or rate specified. The Authority shall be named as co-insured under the said insurance policy. The Contractor hereby declares and constitutes itself trustee for the Authority of all sums due under the policy and of any claim against the insurer, and undertakes to take all measures necessary for the said trust to be effectuated.
- 11.5 During the time that title in the Goods remain in the Authority, the Contractor must store or otherwise keep them in such a way as to indicate clearly at all times that they are owned by the Authority, and must not remove, obscure or delete any mark placed on them by the Contractor that may enable them to be identified.
- 11.6 Without prejudice to any other rights or remedies arising out of any breach of contract by the Contractor, the Authority may repossess all or any of the Goods and take possession of all or any goods incorporating them if any of the events giving the Authority the right to terminate this Agreement happens during the time that title in the Goods remain with the Authority. For this purposes the Authority or his Representative may enter upon any relevant land or buildings with such transport as may be necessary. All costs incurred by the Authority or his Representative in any such repossession are to be borne by the Contractor.
- 11.7 Without prejudice to the generality of the foregoing the Contractor accepts the risk of deterioration of the Goods which is necessarily incidental to the course of transit.

12 CHARGES

- 12.1 In consideration of the provision of Goods in accordance with the terms of this Agreement, the Authority shall pay the Charges in accordance with the invoicing procedure as referred to in Clause 10 (Delivery Notes, Invoices and Payment).
- 12.2 The Charges shall be increased only by agreement of both parties. Any such increase agreed shall in any event be linked to increases in line with the retail price index.

12.3 The Charges are exclusive of value added tax. The Authority shall pay the value added tax on the charges at the rate and in the manner prescribed by law, from time to time.

12.4 In the event that the Contractor, in accordance with the terms of this Agreement, enters into a supply contract or a Sub-Contract in connection with this Agreement, the Contractor shall ensure that a term is included in the supply contract or a Sub-Contract which requires the Contractor to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or Sub-Contract (as appropriate).

13 THE AUTHORITY'S RESPONSIBILITIES

13.1 The Authority shall perform the Authority's Responsibilities in accordance with the provisions set out in this Agreement.

14 LEGISLATIVE CHANGE

14.1 The Contractor shall bear the cost of complying with all such statutes, enactments, orders, regulations or other similar instruments as are referenced in this Agreement and any amendments thereto except that where any such amendment necessitates a change to the performance of this Agreement and provided that such amendment could not have reasonably been foreseen by the Contractor at the date hereof the parties shall enter good faith negotiations to make such adjustments to the charges as may be necessary to compensate the Contractor for such additional costs as are both reasonably and necessarily incurred by the Contractor in accommodating such amendments.

15 WARRANTIES

15.1 The Contractor warrants that:

15.1.1 the Contractor has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised Representative of the Contractor.

15.1.2 the Goods or Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence.

15.1.3 the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry

practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

16 LIMITATION OF LIABILITY

16.1 Neither party excludes or limits liability to the other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

16.2 Subject always to Clause 16.1, and notwithstanding any other provision contained herein, the total liability of the Contractor (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.

16.3 Subject always to Clause 16.2, in no event shall either party be liable to the other for:-

16.3.1 indirect or consequential loss or damage; and/or

16.3.2 loss of profits, business, revenue, goodwill or anticipated savings.

16.4 The provisions of Clause 16.2 shall not be taken as limiting the right of either party to claim from the other party for:-

16.4.1 additional operational and administrative costs and expenses;

and/or

16.4.2 any costs or expenses rendered worthless

resulting directly from the default of the other party.

16.5 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

17 CONFIDENTIALITY

17.1 Each Party:-

17.1.1 shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and

- 17.1.2 shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.
- 17.2 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:-
- 17.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- 17.2.2 is treated as confidential and not disclosed (without prior Approval) or used by any staff or such professional advisors or consultants' otherwise than for the purposes of the Agreement.
- 17.3 Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the performance of this Agreement.
- 17.4 The Contractor shall not use any Confidential Information received otherwise than for the purposes of this Agreement.
- 17.5 The provisions of Clauses 17.1 to 17.4 shall not apply to any Confidential Information received by one Party from the other:-
- 17.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause);
- 17.5.2 which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- 17.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 17.5.4 is independently developed without access to the Confidential Information; or
- 17.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, or the Environmental Information Regulations or

17.5.6 where the receiving Party is the Authority and the Confidential Information is or is related to an item of business at a meeting of the Authority or of any committee, sub-committee or joint committee of the Authority or is or is related to an executive decision and it is not reasonably practicable for that item of business to be transacted or for that executive decision to be made without reference to the Confidential Information PROVIDED THAT where the Confidential Information is exempt information within the meaning of section 10I of the Local Government Act 1972 (as amended) the Authority shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in so doing shall give due weight to the interests of the Contractor and where reasonably practicable shall consider any representations made by the Contractor

17.6 Nothing in this Clause shall prevent the Authority disclosing any Confidential Information for the purpose of:-

17.6.1 the auditing examination and certification of the Authority's accounts; or

17.6.2 disclosing any Confidential Information obtained from the Contractor:-

17.6.2.1 to any department, office or agency of the Crown or to any regulatory authority or body; or

17.6.2.2 to any person engaged in providing any Services to the Authority for any purpose relating to or ancillary to the performance of this Agreement;

17.6.3 provided that in disclosing information under sub-paragraph 17.6.2.1 or 17.6.2.2 the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence .

17.7 Nothing in this Clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

17.8 In the event that the Contractor fails to comply with this Clause 17, the Authority reserves the right to terminate this Agreement by notice in writing with immediate effect.

- 17.9 The Contractor acknowledges that the Authority is subject to the requirements of the Code of recommended practice for local authorities on data transparency and shall assist and cooperate with the Authority to enable the Authority to comply with information disclosure requirements (if necessary).
- 17.10 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 Agreement, and any Schedules to this Agreement, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the Act following consultation with the Contractor and having taken its views into account.
- 17.11 Notwithstanding any other term of this Agreement, the Contractor hereby gives its consent for the Authority to publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Authority decides but the publication will be communicated to the Contractor.
- 17.12 Contractor notes that Authority has agreed to comply with the Government request to provide financial transparency by publishing spending information over £500 via the internet. Contractor has no objection to such publication regarding this Agreement provided it is in accordance with such information published for other contracts as at the date of this Agreement.

18 TERMINATION

- 18.1 The Authority may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:-
- 18.1.1 any of the circumstances detailed in Clause 27.2 (Anti-Bribery) or Clause 28.5 (Contractor's Personnel) arise; or
- 18.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company provided that the Authority shall only be permitted to exercise its rights pursuant to this Clause 18.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Authority has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or
- 18.1.3 the Contractor, being a company, passes a resolution, or the Court makes an order that the Contractor or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the

Contractor or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Contractor or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123, 1(a) and is for an amount of not less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction; or

- 18.1.4 the Contractor, being an individual, or where the Contractor is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction.
- 18.1.5 the Contractor's financial position deteriorates to such an extent that in the Authority's reasonable opinion the Contractor's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;
- 18.1.6 the Agreement has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the Public Contracts Regulations 2015 ('**PCR 2015**')
- 18.1.7 The Contractor has, at the time of contract award, been in one of the situations referred to in regulation 57(1) of PCR 2015, including as a result of the application of regulation 57(2) of PCR 2015, and should therefore have been excluded from the procurement procedure;
- 18.1.8 the Agreement should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
- 18.1.9 the Contractor, being an individual, or where the Contractor is a firm, any

partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time be convicted of any of the following offences:

- (a) fraud, where the offence relates to fraud affecting the financial interests of the Authority, within the meaning of –
 - (i) the offence of cheating the Revenue;
 - (ii) the offence of conspiracy to defraud;
 - (iii) fraud or theft within the meaning of the Theft Act 1968, the Theft Act 1978 and the Social Security Administration Act 1992;
 - (iv) fraudulent trading within the meaning of section 993 of the Companies Act 2006;
 - (v) defrauding the Customs within the meaning of the Customs and Excise Management Act 1979 and the Value Added Tax Act 1994;
 - (vi) an offence in connection with taxation in the European Community within the meaning of section 71 of the Criminal Justice Act 1993; or
 - (vii) destroying, defacing or concealing of documents or procuring the extension of a valuable security within the meaning of section 20 of the Theft Act 1968;
- (b) money laundering within the meaning of the Money Laundering Regulations 2003; or
- (c) any other offence within the meaning of Article 45(1) of the Public Sector Directive as defined by the national law of any relevant State.

18.2 Without prejudice to Clause 18.1, the Authority may at any time by notice in writing terminate this Agreement forthwith, if the Contractor is in material default of any obligation under this Agreement and:-

18.2.1 the material default is capable of remedy and the Contractor shall have failed to remedy the material default within thirty (30) days of written notice to the Contractor specifying the material default and requiring its remedy; or

18.2.2 the material default is not capable of remedy.

18.3 The Authority may at any time by notice in writing terminate a Purchase Order or this Agreement as from the date of service of such notice if any of the circumstances detailed in Clause 27.2 or Clause 28.5 arise.

19 CONSEQUENCES OF TERMINATION

- 19.1 The termination or expiry of this Agreement or a Purchase Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 19.2 In the event of any termination of this Agreement pursuant to Clause 18.1 or Clause 18.2 the Authority shall, in respect of any non-discharged Orders, be entitled without prejudice to the Authority's other rights and remedies, to:-
- 19.2.1 obtain a refund of any charges paid by the Authority in respect of any Goods or Services which have not been performed by the Contractor in accordance with the terms of the non-discharged Order.
- 19.3 In the event of the termination of this Agreement by the Authority, the provisions of this Clause and Clauses 1, 16, 17, 19, 20, 24, 27, 38 and 51 shall survive the termination of this Agreement.
- 19.4 In the event of the termination of this Agreement by the Contractor the provisions of this Clause and Clauses 1, 16, 17, 19, 20, 24, 27, 38 and 51 shall survive the termination of this Agreement.
- 19.5 In the event of any termination of an Purchase Order pursuant to Clause 18.3 the Authority shall be entitled, without prejudice to the Authority's other rights and remedies, to:-
- 19.5.1 obtain a refund of any Charges paid by the Authority in respect of any Goods or Services which have not been performed by the Contractor in accordance with the terms of the Order.

20 RECOVERY OF SUMS DUE

- 20.1 If any sum of money shall be due from the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or any agreement with the Authority.

21 PROGRESS REPORTS

- 21.1 Where a progress report, or other information pertaining to the progress of the performance of either party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either party under this Agreement.

22. FINANCIAL STANDING OF THE CONTRACTOR

- 22.1 The Authority may from time to time during the Contract Period assess the financial standing of the Contractor including an assessment of:

22.1.1 credit ratings as published by a credit rating agency appointed by the Authority; and

22.1.2 the Contractor's corporate performance monitoring information and approved corporate plans.

In the event that the Authority considers that the financial status of the Contractor represents a substantial risk to the Contractor's ability to perform its obligations under this Agreement the Authority will discuss that risk with the Contractor.

22.2 Following such discussions, if the Authority concludes that the financial status of the Contractor remains a substantial risk, the Authority may by notice in writing either:

22.2.1 require (if such is not already provided under this Agreement) a performance guarantee, performance bond or such other financial protection on such terms as reasonably required by the Authority; or

22.2.2 terminate this Agreement in accordance with clause 18.1.5.

23 HEALTH AND SAFETY HAZARDS

23.1 The Contractor shall notify the Authority of any health and safety hazards which may arise in connection with the performance of this Agreement.

23.2 The Authority shall notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of its employees and Sub-Contractors or any persons engaged by the Contractor in the performance of this Agreement at the Premises.

23.3 The Contractor shall inform all persons engaged in the performance of this Agreement at the Premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

24 PROTECTION OF PERSONAL DATA

24.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do [is listed in Schedule [X]][are those as identified] by the Authority and may not be determined by the Contractor.

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

- 24.3 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 provision of Goods and/or 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.
- 24.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- 24.4.1 process that Personal Data only [in accordance with Schedule [X]] [those as identified by the Authority], 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;
 - 24.4.2 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:
 - (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;
 - 24.4.3 ensure that :
 - (a) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule X);
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor 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 Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - 24.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

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

24.4.5 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.

- 24.5 Subject to clause 24.6, the Contractor 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 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.

24.6 The Contractor's obligation to notify under clause 24.5 shall include the provision of further information to the Authority in phases, as details become available.

- 24.7 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 clause 1.5 (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.
- 24.8 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.
- 24.9 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 24.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 24.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor 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 24 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.
- 24.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.
- 24.13 The Contractor 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).
- 24.14 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.

25 PUBLICITY

- 25.1 Except with the written consent of the other party, such consent not to be unreasonably withheld or delayed, neither party shall make any press announcements or publicise this Agreement in any way.
- 25.2 Both parties shall take all reasonable steps to ensure the observance of the provisions of Clause 25.1 by all their servants, employees, agents and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Clause 25.1 by its Sub-Contractors.
- 25.3 Notwithstanding the provisions of Clause 25.1, the Authority shall be entitled to publicise this Agreement in accordance with any legal obligation upon the Authority, including any examination of this Agreement by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

26 FRAUD

- 26.1 The Contractor must take all reasonable steps including all preliminary enquiries and investigations to prevent the risk of fraud to the Authority. Where such preliminary actions suggest the possibility of fraud or other irregularity affecting the resources of the Authority the Contractor shall immediately inform the Authority.

27 ANTI- BRIBERY

- 27.1 The Contractor warrants and undertakes to the Authority that:

- 27.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Anti-Bribery Law**");
- 27.1.2. it will comply with the Authority's anti-bribery policy as may be amended from time to time, a copy of which will be provided to the Contractor on written request;
- 27.1.3. it will procure that any person who performs or has performed services for or on its behalf in connection with this Agreement complies with this clause 27.
- 27.1.4. it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;
- 27.1.5. from time to time, at the reasonable request of the Authority, it will confirm in writing that it has complied with its undertakings under clauses 27.1.1 - 27.1.4 and will provide any information reasonably requested by the Authority in support of such compliance;

27.1.6. it shall notify the Authority as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

27.2. Breach of any of the undertakings in this clause shall be deemed to be a material breach of the Agreement and the Authority may summarily terminate this Agreement or the relevant Purchase Order by notice in writing to the Contractor in accordance with clause 18.1.1 or clause 18.3 (as appropriate) provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority and provided always that the Authority may recover from the Contractor the amount or value of bribes.

27.3 The decision of the Authority shall be final and conclusive in any dispute, difference or question arising in respect of:-

27.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the Contractor under Clause 27.2 in respect of any loss resulting from such termination of this Agreement); or

27.3.2 the right of the Authority under this Clause 27 to terminate this Agreement; or

27.3.3 the amount or value of bribes.

28 CONTRACTOR'S PERSONNEL

28.1 The Authority reserves the right under this Agreement to refuse to admit to any premises occupied by or on behalf of the Authority any person employed or engaged by the Contractor, or by a Sub-Contractor, whose admission would be, in the opinion of the Authority, undesirable.

28.2 If and when directed by the Authority, the Contractor shall provide a list of the names of all persons who it is expected may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Authority may reasonably require.

28.3 The Contractor's representatives, engaged within the boundaries of any Authority establishment, 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.

28.4 The decision of the Authority as to whether any person is to be refused admission to any premises occupied by or on behalf of the Authority and as to

whether the Contractor has failed to comply with Clause 28.2 shall be final and conclusive.

28.5 If the Contractor shall fail to comply with Clause 28.2 or if the Contractor does not comply with the provisions of Clause 28.2 within a reasonable time of written notice so to do then the Authority may terminate this Agreement in accordance with Clause 18.1.1 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

29 DISCRIMINATION AND EQUALITY

29.1 The Contractor shall not, and shall procure that the Contractor personnel and Sub-Contractors do not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010 or any statutory modification or re-enactment thereof or any other law relating to discrimination in employment.

29.2 The Contractor shall, and shall procure that the Contractor personnel and its Sub-Contractors shall, operate in a manner and co-operate with the Authority so as to allow the Authority to comply with its statutory public sector equality duties which means any legislation in relation to the promotion of equality on the grounds of labour laws (including contracts of employment), pay and benefits, sex, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, ethnic or national origin, disability, religion or belief or age.

29.3 The Contractor shall and shall procure that the Contractor personnel and its Sub-Contractors, comply with the Authority's equality and diversity policy as may be amended from time to time, copies of which will be provided by the Authority to the Contractor at the Contractor's written request.

29.4 Without limiting the generality of the foregoing, the Contractor shall from time to time provides the Authority any information cooperation or assistance reasonably requested in support of such compliance under clause 29.

29.5 For the avoidance of doubt, any breach in this clause may be deemed to be a material breach of the Agreement and the Authority may summarily terminate this Agreement or the relevant Purchase Order by notice in writing to the Contractor in accordance with clause 18 provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Authority.

30 FORCE MAJEURE

30.1 For the purposes of this Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable

control including (but without limiting the generality thereof) governmental regulations, fire, flood, cyber attack or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

30.2 For the avoidance of doubt, both parties agree that any acts, events, omissions, happenings or non-happenings resulting from the adoption of the Euro by the United Kingdom government shall not be considered to constitute Force Majeure under this Agreement.

30.3 Neither party shall in any circumstances be liable to the other for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations hereunder for the duration of such Force Majeure event.

30.4 If either of the parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

30.5 It is expressly agreed that any failure by the Contractor to perform or any delay by the Contractor in performing its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of Force Majeure.

30.6 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

31 TRANSFER AND SUB-CONTRACTING

31.1 This Agreement is personal to the Contractor. The Contractor shall not assign, novate, Sub-Contract or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of the Authority such consent not to be unreasonably withheld, delayed or conditioned.

- 31.2 Notwithstanding any Sub-Contracting permitted hereunder, the Contractor shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
- 31.3 The Authority reserves the right to require the Contractor to remove or replace any Sub-Contractor or partner in the provision of the Goods or Services to this Agreement. Such right shall not be exercised unreasonably, frivolously or vexatiously.
- 31.4 In the event that the Authority exercises its right pursuant to Clause 31.3 the Contractor shall use reasonable endeavours to maintain the provision of the Goods or Services and the Authority and the Contractor shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Agreement.
- 31.5 The use of Sub-Contractors and any failure by the Authority to exercise its right pursuant to Clause 31.3 shall not in any way constitute any form of recommendation by the Authority of the Sub-Contractor, whether implied or otherwise.
- 31.6 Subject to Clause 31.8, the Authority shall be entitled to:
- 31.6.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any contracting authority (as defined in Regulation 4(2) of the Public Contracts (Work, Services and Supply) (Amendment) Regulations 2000) (a "Contracting Authority"); or
 - 31.6.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; provided that where such assignment, novation or other disposal increases the burden of the Contractor's obligations pursuant to this Agreement, the Contractor shall be entitled to such additional Charges as may be agreed between the parties to compensate for such additional burdens.
- 31.7 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to Clause 31.8, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Authority.
- 31.8 If this Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 31.6.2 or if a successor body which is not a Contracting Authority becomes the Authority pursuant to Clause 31.7 (in the remainder of this Clause both such bodies are referred to as the "Transferee"):
- 31.8.1 the rights of termination of the Authority in Clause 18.1.2, Clause 18.1.3 and 18.2 shall be available, mutatis mutandis, to the Contractor in the event of the bankruptcy, insolvency or default of the Transferee

31.8.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof with the previous consent in writing of the Contractor

31.8.3 the rights of the Authority under Clause 28 shall cease; and

31.9 The Authority shall be entitled to disclose to any transferee any confidential information of the Contractor which relates to the performance of this Agreement by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such confidential information only for purposes relating to the performance of this Agreement and for no other purposes and, for the avoidance of doubt, the Transferee shall be bound by the confidentiality undertaking contained herein in relation to such confidential information.

32 AMENDMENTS TO THIS AGREEMENT

32.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the Authority on behalf of the Authority and by a duly authorised Representative of the Contractor on behalf of the Contractor.

32.2 Purchase Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised Representative of the Authority on behalf of the Authority and by a duly authorised Representative of the Contractor on behalf of the Contractor.

32.3 The control of change under this Agreement shall be in accordance with any change control procedure that may be agreed between the parties. The control of change under any Purchase Order shall be in accordance with the agreed change control procedures.

33 NOTICE

33.1 Any notice whatsoever which either party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by letter, delivered by hand or by post, or by facsimile transmission confirmed by post, or e-mail addressed to the other party in the manner referred to in Clause 33.2 below and if that letter is not returned as being undelivered that notice shall be deemed for the purposes of this Agreement to have been given or made upon delivery to the addressee, for a letter delivered by hand, after two days for a letter delivered by post or four hours for a facsimile transmission or e-mail.

33.2 For the purposes of Clause 33.1 above the address of each party shall be:

- (i) For the Authority: South Yorkshire Fire and Rescue, 18 Regent Street, Barnsley, S70 2HG (South Yorkshire Joint Secretariat)

- (ii) For the Contractor: unless otherwise specified, their registered address.

Either party may change its address for service by notice as provided in this Clause 33.

34 SEVERABILITY

- 34.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any

reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Authority and the Contractor shall immediately commence good faith negotiations to remedy such invalidity.

35 WAIVER

- 35.1 The failure of either party to insist upon strict performance of any provision of this Agreement, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 35.2 Waiver of any default shall not constitute a waiver of any subsequent default.
- 35.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of Clause 33.

36 ACCESS TO PREMISES

- 36.1 Unless otherwise agreed any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with this Agreement shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing this Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Authority may determine.
- 36.2 The Authority shall be responsible for maintaining the security of such land or Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents and Sub-Contractors shall likewise comply with such requirements. Where relevant the

Authority shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

37 RIGHTS OF THIRD PARTIES

37.1 This Agreement shall not create any rights that shall be enforceable by anyone other than the parties to this Agreement.

38 DISPUTE RESOLUTION PROCEDURE

38.1 The parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days, and failing which, unless the parties agree another period of time, any such dispute may, upon agreement of the parties be dealt with as set out in sub clause 38.2.

38.2 If the dispute cannot be resolved by the parties representatives nominated under Clause 38.1 the dispute may be referred to effective dispute resolution (“EDR”) under the supervision of the Centre for Effective Dispute Resolution of the International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1 EU (“CEDR”). EDR shall commence by either party serving on the other written notice (“EDR Notice”) setting out in summary the issues in dispute and calling upon that other party to join in an approach to CEDR for the appointment of the Neutral.

38.3 EDR shall be conducted using a sole mediator (“Neutral”) in or substantially in accordance with CEDR’s recommended agreement for the time being in use. The Neutral should be a CEDR accredited mediator agreed between the parties, or in default of agreement within 14 days of notice of either party calling upon the other to engage in EDR, appointed by CEDR.

38.4 The parties agree to co-operate fully and promptly and in good faith with CEDR or the Neutral in the performance of their obligations under this Clause. Both parties will afford the Neutral all necessary assistance which the Neutral requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the Goods or Services.

38.5 Unless agreed otherwise in the course of the procedure each party shall bear its own costs of EDR.

38.6 If and to the extent that after engaging in good faith in EDR the parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts.

38.7 In the event that the process of EDR does not succeed in finding a resolution to

the dispute within a period of 56 days, or such other time as the parties may agree, either party may take such action as is available to it under this Agreement or generally at law.

38.8 Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

39 LAW AND JURISDICTION

39.1 This Agreement shall be considered as a contract made in England and according to English Law and, subject to Clause 38, shall be subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.

39.2 This Agreement is binding on the Authority and its successors and assignees and the Contractor and the Contractor's successors and permitted assignees.

40 ENTIRE AGREEMENT

40.1 This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

41 AGENCY

41.1 The Contractor is not and shall not in any circumstances hold itself out as being the servant or agent of the Authority. The Contractor shall not hold itself out as being authorised to enter in any contract on behalf of the Authority or in any way bind the Authority to the performance, variation, release or discharge of any obligation to a third party. The employees of the Contractor shall not hold themselves out to be and shall not be held out by the Contractor as being servants or agents of the Authority.

42 QUALITY OF SERVICES

42.1 All Services to be carried out by or on behalf of the Contractor for the purpose of executing this Agreement shall be carried out with all necessary skill care and attention. The Authority shall have the power to reject any Services which it does not consider to have been carried out in accordance with this Agreement and the Authority may request that the Services rejected are carried out again forthwith. The Contractor shall not be entitled to receive any payment from the Authority for any such Services.

43 DAMAGE

43.1 Where the Contractor causes damage to anything in the performance of this

Agreement the Authority may direct the Contractor to make good the said damage forthwith at the Contractor's own risk and expense.

44 POWER OF THE AUTHORITY IN DEFAULT

44.1 Where the Authority re-let the Agreement or any part thereof pursuant to Clause 18 the Contractor shall make good to the Authority all loss damages and expenses they may incur or be liable to in consequence of such re-letting as aforesaid for the period for which this Agreement shall have been accepted by the Authority.

45 POWER OF "SET OFF"

45.1 The Authority shall have power to set off any sums due from the Contractor to the Authority against any sums due from the Authority to the Contractor under the Agreement.

46 HUMAN RIGHTS

46.1 The Contractor shall not do or permit or allow anything to be done which is incompatible with the rights contained within the European Convention on Human Rights.

46.2 The Contractor shall not do or permit or allow anything to be done which may result in the Authority acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

46.3 The Contractor shall indemnify the Authority against any loss claims and expenditure resulting from the Contractor's breach of this Clause 46.

47 EQUAL OPPORTUNITIES AND HEALTH AND SAFETY

47.1 The Contractor shall at all times carry out the provisions of this Agreement in accordance with the Authority's approved Equality, Diversity, Environmental Management and Health and Safety Policies.

48 SCRUTINY BOARD/EXECUTIVE BOARD ASSISTANCE

48.1 It is a condition of this Agreement that if required by the Authority to do so the Contractor shall throughout the Contract Period of this Agreement and for a period of six years after expiry of this Agreement give all reasonable assistance to the Authority including attending the Authority's Scrutiny and/or Executive Board in order to answer questions pertaining to this Agreement should the need arise.

48.2 In the event that the Authority requires the Contractors assistance after the expiry of this Agreement as referred to in Clause 48.1 the Authority shall pay

the reasonable expenses of the Contractor arising as a result of providing such assistance.

49 CONFLICT OF INTEREST

49.1 The Contractor shall notify the Authority promptly or within a reasonable period upon becoming aware of any possible conflict of interest which may arise between the interests of the Authority and any other Authority of the Contractor and the Contractor shall take all reasonable steps to remove or avoid the cause of any such conflict of interest to the satisfaction of the Authority.

50 FREEDOM OF INFORMATION ACT 2000

50.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these Information disclosure requirements.

50.2 The Contractor shall and shall procure that its sub-contractors shall:

transfer any Request for Information to the other Party as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

50.2.1 provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and

50.2.2 provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA.

50.3 The Authority shall be responsible for determining at its absolute discretion whether:-

50.3.1 the Information is exempt from disclosure under, the FOIA and the Environmental Information Regulations;

50.3.2 the Information is to be disclosed in response to a Request for Information, and

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

50.4 The Contractor acknowledges that the Authority may, acting in accordance with

the FOIA, the Local Government Act 1972 (as amended) the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) or the Environmental Information Regulations be obliged to disclose Information:-

50.4.1 without consulting with the Contractor, or

50.4.2 following consultation with the Contractor and having taken its views into account.

50.5 The Contractor shall ensure that all information produced in the course of this Agreement or relating to the Agreement is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

50.6 The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.

51 THIS CLAUSE INTENTIONALLY NOT USED

51. INDEMNITY

51.1 The Contractor shall keep the Authority indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered incurred by the Authority as a result of or in connection with:

51.1.1 any claim made against the Authority for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or Sub-Contractors;

51.1.2 any claim made against the Authority by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Contractor, its employees, agents or Sub-Contractors;

51.1.3 any claim made against the Authority by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or

delay in performance of the Agreement by the Contractor, its employees, agents or Sub-Contractors; and

51.2 Clause 51 shall survive the termination or expiry of this Agreement

52. TUPE

52.1 The Authority and the Contractor agree that the commencement of the provision of the Services by the Contractor under this Agreement will not be a "relevant transfer" to which TUPE will apply in relation to any employees of the Authority. In the circumstances, the Authority and the Contractor agree that no employees of the Authority will transfer to the Contractor by virtue of the operation of TUPE or the Acquired Rights Directive.

52.2 If any employee of the Authority claims or it is determined that his contract of employment has been transferred from the Authority to the Contractor pursuant to TUPE or the Acquired Rights Directive then:

52.2.1 The Contractor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Authority.

52.2.2 The Authority may offer employment to such person within twenty one (21) days of the notification by the Contractor or take such other steps as it considers appropriate to deal with the matter.

52.2.3 If such offer is accepted (or if the situation has otherwise been resolved by the Authority), the Contractor shall immediately release the person from his employment.

52.2.4 If after the twenty one (21) day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Contractor may within seven (7) days give notice to terminate the employment of such person.

52.2.5 Subject to Clause 52.3 and subject to the Contractor acting in this way or in such other way as may be agreed between the Authority and the Contractor, the Authority will indemnify the Contractor against all Employee Liabilities arising out of such termination.

52.2.6 If such person is neither re-employed by the Authority nor dismissed by the Contractor within the time scales set out in this clause 52.2 such person will be treated as having transferred to the Contractor by virtue of the operation of TUPE and the Contractor shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.

52.3 The indemnity in clause 52.2.5 shall only apply where the notification referred to in Clause 52.2.1 is made by the Contractor to the Authority within 6 calendar months of the commencement date.

53. OFFICIAL SECRETS ACTS

53.1 The Contractor shall take all reasonable steps to ensure that all people employed by the Contractor or its agents and Sub-Contractors in connection with this Agreement are aware of the Official Secrets Act 1989 and where appropriate, with the provisions of the Atomic Energy Act 1946, and that these Acts apply to them during the execution of this Agreement and after the expiry or termination of this Agreement.