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AUDIT COMMITTEE REPORT

Subject: Terms and Conditions for the purchase of goods and services – Borders College	**Purpose:** **For Approval** ☐ **For Discussion** ☐ **For Information** ☒
Prepared by: Hazel Robertson, Vice Principal – Finance and Corporate Services	**Date:** 6 May 2020

Purpose:
To advise the Committee on the College's revised Terms and Conditions for the purchase of goods and services.

Linked to Strategic Goal 5: Build Sustainability.

Executive Summary:

The College's Terms and Conditions for the purchase of goods and services were due for review and have now been updated in line with best practice elsewhere in the sector. These have also undergone a review by our Procurement Officer along with support from our APUC representative. Our standard practice is to require suppliers to comply with our terms and conditions although by exception we will consider agreeing to supplier T&Cs.

The College does not have in house legal advice so having a standardised set of Terms and Conditions is much easier to handle, more efficient and effective, and risk based.

Recommendation:
That the Committee note the updated Terms and Conditions.

Previous Committee Approvals: n/a

For publication ☒	**For publication with redactions** ☐	**Not for publication** ☐

BORDERS COLLEGE TERMS AND CONDITIONS

CONDITIONS OF CONTRACT FOR THE PURCHASE OF GOODS AND SERVICES

These Conditions may only be varied with the written agreement of the Purchaser. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract unless specifically agreed in writing by the Purchaser.

1. INTERPRETATION

1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:-

Definitions

In these Conditions:

"Account Manager"	means the representative of the Contractor appointed pursuant to Clause 15.1;
"Assigned Employees"	means the employees of the Contractor or any Sub-contractor who are from time to time part of an organised grouping of employees which has as its principal purpose the performance of the Services;
"Bidding Misrepresentation"	means any discovery by the Purchaser that the non-collusive tendering certificate submitted by the Contractor to the Purchaser or any other communication, document or other information in whatever form provided by the Contractor to the Purchaser is erroneous, false, misleading or untrue in any material respect;
"Change"	means any proposed amendment or variation to the Contract;
"Charges"	means the amounts payable for the Goods and/ or Services to be provided by the Contractor;

“Commencement Date”	means the date detailed in the Contract for the commencement of the performance of the Services or the delivery of Goods;
“Conditions”	means these terms and conditions;
“Confidential Information”	has the meaning given to it in Clause 25;
"Construction Operations"	has the meaning given to it in section 105 of the Housing Grants, Construction and Regeneration Act 1996;
“Contract”	means a legally binding agreement for the provision of Goods and/or Services made between the Institution and the Contractor comprising a Purchase Order, the applicable Specification and the Conditions;
“Contract Award Letter”	means the letter issued by the Purchaser to the Contractor notifying the Contractor of its award of the Contract and listing the documentation which, together with these conditions, form part of and constitutes the Contract;
“Contract Period”	means the period of the Contract as detailed in the Contract;
“Contract Year”	means the period of 12 months from the Commencement Date, and each subsequent period of 12 months;
“Contractor Party”	means the Contractor and any Sub-Contractor;
“Contract Worker”	means an officer, servant, employee or agent of a Contractor Party, and any person on or at the Premises in connection with the Contract at the express or implied invitation of the Contractor or any other Contract Worker;
“Data Controller”, “Data Processor”, “Personal Data”, “Special Category Data”, “Data Subject”, “Data Subject Request”	have the meanings given in data protection laws.
“Data Protection Legislation”	means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory

	modification or re-enactment thereof and the General Data Protection Regulation (2016/679) EU (GDPR.)
"Default"	means non-compliance with or default against any obligation under the Contract by the Contractor;
"Deliverable"	means any advice and tasks and outputs deriving from the provision of Professional Services pursuant to the Contract including all report(s), financial model(s) and workshops outputs, other than any communication or document stated to be draft, subject to further work, incomplete or not in final form;
"Disclosure Certificate"	means a basic disclosure certificate from the Scottish Criminal Record Office (or any successor organisation) or such certificate as may replace the basic disclosure certificate;
"Discrimination Legislation"	means the Equality Act 2010 and all applicable European Directives and legislation relation to discrimination;
"Dispute"	means any dispute or difference between the Purchaser or the Contractor arising from or in connection with the Contract;
"Dispute Resolution Procedure"	means the procedure set out in Clause 39;
"Employees"	means the employees (if any) of the Purchaser and/or any preceding Contractor who, immediately before the Commencement Date, are part of an organised grouping of employees which has as its principal purpose the carrying out of services which are materially similar to the Services;
"Employee Charges"	means all liabilities, costs, expenses and outgoings in relation to each Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments;
"Employee Liabilities"	means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of

	contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay;
"Force Majeure"	means any event or circumstance materially and adversely affecting the performance by a party of its obligations arising beyond its reasonable control including without limitation fires, floods, acts of war, acts of terrorism and natural disasters but excluding default of suppliers or third parties (unless caused by events which would constitute Force Majeure applying the definitions and exclusions in the Contract), events or circumstances attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees or any inability to pay sums of money, or which is attributable to the adoption of a new currency in the United Kingdom or Scotland;
"Good Industry Practice"	means in relation to any undertaking and any circumstances, the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances;
"Goods"	means the goods to be supplied by the Contractor to the Purchaser as set out in the Specification, and includes any materials, goods or equipment to be provided by the Contractor in the delivery of Services;
"Illegal Term"	shall have the meaning given in Clause 34;
"Information Legislation"	means the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004;
"Institution"	means the Purchaser;
"Intellectual Property Rights"	means patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including the United Kingdom);
"Issued Property"	means anything issued or otherwise made available to the Contractor for any purpose by or

	on behalf of the Purchaser including working papers and other written materials;
"Key Personnel"	shall have the meaning given in Clause 15.2;
"Law"	means all applicable laws, consents and approvals, including legislative provisions, sub-ordinate legislation, legally binding codes of practice and the common law;
"Milestone"	means the completion of any event or task of a material nature by a particular date, such as the delivery of a Deliverable or completion of certain Services, identified as a milestone in the applicable Specification and/ or Purchase Order;
"New Contractor"	means any successor to the Contractor in the provision of services similar to the Services (or part thereof) to the Purchaser;
"Purchase Order"	means a document issued under, and making reference to an agreement including setting out the Purchaser's requirements for Goods and/or Services to be called off under the Contract;
"Parent Company"	means, if the Contractor is a "company", any "company" which is a "holding company" of the Contractor, as such terms are defined in section 1159 of the Companies Act 2006;
"Preceding Contractor"	means any person who provides to the Purchaser services which are materially similar to the Services, immediately prior to the Commencement Date;
"Premises"	means any premises of the Purchaser being a location where Goods are to be delivered or Services are to be provided;
"Processing"	means the processing of personal data for the purposes of the Data Protection Legislation;
"Procurement Officer"	means any member of staff who is formally authorised to procure goods, services and works.
"Professional Services"	means consultancy services and any services relating to the provision of legal, financial or other specialist advice;
"Purchaser"	means the Institution submitting the Purchase Order to the Contractor;

"Records"	means any files, documents or other records which relate to delivery of the Contract or the management, administration, organisation or planning of them whether in writing or on magnetic or other media;
"Re-transfer Date"	means the date or dates on which the contracts of employment of the Re-transferring Employees transfer from the Contractor or any Sub-Contractor to the Purchaser or a New Contractor pursuant to the TUPE Regulations upon the cessation or partial cessation of provision of the Services by the Contractor or any Sub-Contractor;
"Re-transferring Employee Charges"	means all liabilities, costs, expenses and outgoings in relation to each Re-transferring Employee including, but not limited to salaries, wages, bonus (even if not due and payable at that time), accrued holiday pay, National Insurance Contributions, pension contributions, PAYE remittances and payments in respect of any other emoluments;
"Re-transferring Employee Liabilities"	means any costs, claims, liabilities and expenses (including legal expenses) relating to or arising out of the employment of the Re-transferring Employees including negligence claims, unfair dismissal, redundancy, unlawful discrimination, breach of contract, claims in relation to pension entitlement, unlawful deduction of wages and equal pay;
"Re-transferring Employees"	means those employees of the Contractor or any Sub-contractor who are part of an organised grouping of employees which has as its principal purpose the carrying out of the Services (or part thereof) immediately prior to the relevant Re-transfer Date;
"Service Credits"	means the service credits payable by the Contractor to the Purchaser in the event the Service Levels are not met as set out in the Specification;
"Service Levels"	means the service levels identified as such in the Specification;
"Services"	means the services to be provided by the Contractor to the Purchaser as set out in the Specification (including any Professional Services

	so specified);
“Specification”	means the specification agreed between the parties to reflect the specific Goods and Services required by the Purchaser;
“Sub-Contract”	means any contract or proposed contract between the Contractor and any third party in respect of the performance of the Contract (or any part thereof). The terms “Sub-Contractor” and “Sub-Contracting” shall be similarly construed;
“Transfer Assistance Period”	means the period (or periods) commencing on the earlier of (i) the date falling nine months before expiry of the Contract or (ii) the date when the Contractor becomes aware that it is to cease providing the Services (in whole or in part) and ending, in either case, on the relevant Re-transfer Date;
“TUPE Regulations”	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended from time to time; and
"Warranty Period"	has the meaning given in Clause 5.1.

1.2 In these Conditions a reference to a "notice" is to a letter or other document sent by one party to the other which has a specific effect with reference to the Contract. Examples include notices which are given when there are changes to the Contract, or breaches of the Contract. Notices must be sent in accordance with Clause 33.

1.3 In these Conditions, unless the context otherwise requires:

1.3.1 a reference to the parties is to the Purchaser and the Contractor;
1.3.2 a reference to a person includes natural persons, companies, partnerships, bodies corporate and other legal entities;
1.3.3 a reference to one gender includes references to all other genders;
1.3.4 the singular includes the plural and vice versa;
1.3.5 any 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, replaced, consolidated or re-enacted by any subsequent statute, enactment, order, regulation or instrument;
1.3.6 any reference to a document shall include any variation, amendment, or supplement to such document;
1.3.7 headings are included for ease of reference only and shall not affect the interpretation or construction of these Conditions;
1.3.8 references to numbered Clauses and Schedules are, unless otherwise provided, references to Clauses and Schedules of these Conditions;

1.3.9 references to Sections are to the sections into which these Conditions are sub-divided;
1.3.10 the meaning of general words is not to be restricted by any particular examples preceding or following those general words;
1.3.11 an obligation to do something includes an obligation to procure it to be done;
1.3.12 an obligation not to do something includes an obligation not to wilfully allow it to be done;
1.3.13 the word “including” means “including without limitation”;
1.3.14 a reference to “approval” or “consent” shall mean consent in writing; and
1.3.15 If more than one person is detailed in the Contract as the Contractor, references in this Contract to the “Contractor” shall be interpreted and construed as each such person on a joint and several basis.

2. GOODS

2.1 To the extent that any Goods are to be supplied in accordance with the Contract:

2.1.1 the Goods must be to the reasonable satisfaction of the Purchaser;
2.1.2 the Goods must conform in all respects with the requirements of the Contract, and shall be of sound materials, workmanship and design;
2.1.3 the Goods shall conform in all respects with all relevant Laws; and
2.1.4 the Goods shall be fit for the purpose for which such goods are ordinarily used, and shall be fit for any particular purpose made known to the Contractor.

2.2 The Contractor shall comply with all relevant Laws in relation to the packaging of the Goods.

2.3 The Contractor shall:

2.3.1 use only the minimum adequate amount of packaging material to prevent contamination of or damage to the Goods;
2.3.2 ensure packaging material used is designed and produced in such a way as to facilitate its re-use or recycling; and
2.3.3 avoid or minimise the use of any hazardous substance in the packaging material.

2.4 Unless expressly provided to the contrary in the Contract, all pallets, containers, cases and other transit or packaging materials which are not removed by the Contractor immediately after delivery of the Goods will be considered non-returnable to the Contractor.

2.5 Without prejudice to Clause 2.4, within 5 days of a demand by the Purchaser, the Contractor will uplift all pallets, containers, cases and other transit or packaging materials used in relation to the Goods. If the contractor fails to so uplift such materials then, without prejudice to the Purchaser’s other rights and remedies, the Purchaser may destroy, re-cycle, dispose of or re-use them.

2.6 Where samples have been submitted or equipment has been demonstrated (whether before or after the award of the Contract) the Goods shall conform with

and be of the exact kind, model, type or variety as the samples or demonstration equipment.

2.7 All containers of hazardous goods shall bear internationally recognised danger symbols and in addition, in English:

2.7.1 prominent and adequate warnings;
2.7.2 a full description of the Goods;
2.7.3 a full description of the hazardous nature of the Goods;
2.7.4 procedures to be followed in the event of an emergency.

2.8 Where samples have been submitted or equipment has been demonstrated (whether before or after the award of the Contract) the Goods shall conform with and be of the exact kind, model, type or variety as the samples or demonstration equipment.

3. DELIVERY

3.1 Delivery shall be made at such times and to such locations as the Contract specifies.

3.2 The time and date of delivery is of the essence.

3.3 If the Contractor does not deliver the Goods at the time specified in the Contract the Purchaser may, without prejudice to the Purchaser's other rights and remedies:

3.3.1 refuse any delivery and shall not be under any obligation to accept nor to pay for the Goods; or
3.3.2 terminate the Contract either in whole or as regards those Goods only.

3.4 If for any reason the Purchaser is unable to take delivery of the Goods at the time specified in the Contract, the Contractor shall store the Goods safely and securely on behalf of the Purchaser until instructed to make delivery. The Purchaser shall reimburse the Contractor for any reasonable and proper storage costs actually incurred by the Contractor.

3.5 Unless the Contract provides expressly to the contrary, delivery shall be free of charge to the Purchaser.

3.6 With each delivery of Goods, the Contractor will provide a delivery note providing particulars of the quantities, weights (on a package by package basis), batch codes and descriptions of the Goods delivered, and such other information reasonably specified by the Purchaser in advance of delivery.

3.7 The signature or acceptance of a delivery note will not constitute evidence of acceptance of the Goods.

3.8 All Goods of a kind that customarily or in accordance with Good Industry Practice bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, or other device intact.

3.9 The batch codes disclosed on delivery notes must tally with information recorded by the Contractor about its manufacturing, purchasing or Sub-Contracting processes to allow rapid checks to be made by the Purchaser on its stocks of Goods in the event of a series of complaints about the Goods or a product recall.

3.10 The Contractor must not issue, deliver, or supply in any manner any Goods to the Purchaser on an unsolicited basis or otherwise than in accordance with the Contract.

4. INSPECTION AND REJECTION

4.1 The Purchaser may, by written notice to the Contractor at any time within 30 days of delivery, reject all or any of the Goods which fail to meet the requirements of the Contract, or Goods in a consignment which is deficient in weight, quantity or measure.

4.2 If the Purchaser rejects any of the Goods pursuant to Clause 4.1, the Purchaser shall be entitled, at its option:

4.2.1 to have the rejected Goods repaired by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, so as to meet in all respects the requirements of the Contract; or

4.2.2 to have the rejected Goods replaced by the Contractor at the Contractor's expense, without delay and in any event within 7 days of the rejection notice, with Goods which comply in all respects with the requirements of the Contract; or

4.2.3 to obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.

4.3 The rights of the Purchaser in Clause 4.2 shall apply:

4.3.1 without prejudice to its other rights and remedies; and

4.3.2 to Goods as originally delivered, and to Goods repaired or replaced pursuant to that Clause.

4.4 Unless the Purchaser elects for rejected Goods to be repaired, and agrees to that repair taking place at the Premises, any rejected Goods shall be removed by (and at the expense of) the Contractor within 7 days of the rejection notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.

4.5 The Purchaser's rights and remedies as regards Goods which fail to meet the requirements of the Contract or Goods in a consignment which is deficient in weight, quantity or measure shall be unaffected if the loss or damage occurred in the transit of the Goods.

5. WARRANTIES AND REPRESENTATIONS

5.1 The Goods shall be guaranteed by the Contractor for the period of 12 months from the putting into service of the Goods, or 18 months from the delivery of the Goods, whichever shall be shorter (the "Warranty Period").

5.2 If at any time before the date falling 60 days after the end of the Warranty Period the Purchaser gives notice in writing to the Contractor of any defect in any of the Goods arising during the Warranty Period under proper and normal use of the Goods, the Contractor shall, without delay, remedy such defects without cost to the Purchaser. The Purchaser may elect whether the defect should be remedied by repair or replacement.

5.3 The rights of the Purchaser under Clause 5.2 shall be without prejudice to any other rights and remedies of the Purchaser.

5.4 For the purposes of Clause 4.1, Goods repaired or replaced pursuant to Clause 4.2 shall be deemed to be delivered and put into service on the date of repair or replacement, and accordingly shall be guaranteed for a further Warranty Period.

5.5 The Contractor warrants and represents that:

5.5.1 the Contractor has full capacity 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 the Contract;

5.5.2 to the best of its knowledge there is no inhibition, restriction or prohibition which in any way affects the capacity of the Contractor to enter into and perform the Contract;

5.5.3 the Contractor shall discharge its obligations under the Contract in accordance with Good Industry Practice;

5.5.4 as at the Commencement Date, all information, statements and representations contained in the Tender Response are true accurate and not misleading and it will promptly advise the Purchaser of any fact, matter or circumstance of which it may become aware during the Contract that would render any such information, statement or representation to be false or misleading;

5.5.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under the Contract; and

5.5.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue.

5.6 To the extent that any Services are to be provided in accordance with the Contract they shall be provided by the Contractor in accordance with the Contract with all reasonable skill, care and diligence.

5.7 The Contractor shall comply with all Laws which are relevant to the Contract.

6. PROPERTY AND RISK

6.1 Property to and risk in the Goods shall pass to the Purchaser when the Goods have been delivered to the Purchaser in accordance with Clause 3.

6.2 The transfer of property to and risk in the Goods shall be without prejudice to any rights of the Purchaser in relation to the Goods, including its right to reject Goods pursuant to this Contract.

7. SCHEDULING

7.1 Where the Contract provides for the Services to:

7.1.1 commence on a certain date;
7.1.2 be completed by a certain date; or
7.1.3 be provided for a certain period,

the Contractor will comply with such requirements.

7.2 If Services are to be provided in distinct elements, the Contractor will comply with any reasonable request of the Purchaser as to the order in which the Services will be provided.

7.3 The Contractor will provide, at the reasonable request of and in such form as the Purchaser may require, reports showing the progress of the provision of the Services, the costs to the Purchaser of the Services provided during the period covered by the report, and a review of any factors likely to affect the satisfactory completion of the Services in accordance with the Contract.

7.4 The Contractor agrees to immediately notify the Purchaser if it believes that it may be unable to achieve any particular Milestone. If the Contractor fails to achieve any Milestone on or by the relevant date other than due to a delay caused by the Purchaser that has been notified in writing by the Contractor to the Purchaser as soon as reasonably practicable, a Force Majeure event or where an extension of time is agreed by the parties, then the Purchaser will have the right (without prejudice to all other rights and remedies available to it under these conditions or otherwise), at its discretion, to deduct by way of liquidated damages (and as a genuine pre-estimate and not by way of penalty) from any amounts payable to the Contractor, the amount set out in the particular Order Form (which shall be calculated in accordance with the anticipated cost to the Purchaser of such failure) for each week or part of a week that the achievement of the Milestone is overdue.

8. CONFLICT OF INTEREST

8.1 If no Professional Services are to be supplied in accordance with the Contract, the following provisions of this Clause 8 will not apply.

8.2 Where the Contract is one for the provision of Professional Services, the Contractor shall ensure that it has no conflict of interest such as may be likely to prejudice its independence and objectivity in performing the Contract, and:

8.2.1 where the Contractor becomes aware of any conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) it shall immediately notify

the Purchaser in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Purchaser may reasonably require;

8.2.2 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 8.2 is not capable of being avoided or removed the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.

8.2.3 where the Purchaser is of the opinion that the conflict of interest notified to it under Clause 8.2 is capable of being avoided or removed the Purchaser may require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

8.2.3.1 if the Contractor fails to comply the Purchaser's requirements in this respect, or

8.2.3.2 if, in the opinion of the Purchaser, compliance does not avoid or remove the conflict,

the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor; and

8.2.4 if the Contract is terminated pursuant to Clause 8.2 and in the Purchaser's reasonable opinion the relevant conflict of interest existed at the time of the award of the Contract and could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed in the Tender Document, then notwithstanding Clause 22 (Consequences of Termination), no payment shall be due for any Services provided by the Contractor.

9. SUPPLY OF SERVICES, SERVICE LEVELS AND SERVICE CREDITS

9.1 The Contractor shall perform the Services and provide any Deliverables to meet or exceed the Service Levels set out in the Contract.

9.2 Without prejudice to the Purchaser’s other rights and remedies (including the right to claim contractual damages, or to terminate the Contract under Clause 21) if at any time the Contractor fails to meet the Service Levels then:

9.2.1 Service Credits will be applied in accordance with the mechanism set out in the Order Form and shall automatically be deducted by the Contractor from the Charges owing by the Purchaser to the Contractor, and clearly indicated on any invoice submitted by the Contractor in accordance with Clause 10; and

9.2.2 the Contractor shall undertake a comprehensive analysis of the reason for such failure to perform the Services (or any element thereof) to meet or exceed the Service Levels and shall arrange all such additional resources as are reasonably necessary depending on the criticality of the failure to ensure that such failure does not recur and shall provide a detailed report to the Purchaser describing the results of such analysis and the action it has taken at no additional charge to the Purchaser; and

9.2.3 the Contractor shall re-perform or complete any non-conforming element of the Services at no additional charge to the Purchaser as soon as reasonably practicable.

9.3 To the extent any Professional Services are to be supplied in accordance with the Contract:

9.3.1 the Purchaser shall be entitled to rely upon the Deliverables;
9.3.2 the Contractor may issue Deliverables in draft form, but if requested to do so the Contractor may not unreasonably refuse to issue a draft Deliverable in final form, nor unreasonably delay that issue; and
9.3.3 the Contractor acknowledges that it shall have no right to be identified as the author of any Deliverable, and hereby waives any such rights conferred by law.

10. PAYMENT

10.1 The Purchaser shall pay to the Contractor the Charges in consideration of the performance of the Contractor's obligations under the Contract.

10.2 The Purchaser shall pay the Contractor within 30 days of the date of receipt of a valid invoice from the Contractor.

10.3 All Charges are exclusive of Value Added Tax. If any Value Added Tax is payable, the Contractor will show this separately on its invoice.

10.4 All Charges are stated in pounds sterling, and all invoices must be presented and demanded in pounds Sterling.

10.5 The Charges represent the entire amount payable by the Purchaser to the Contractor in respect of the performance of the Contractor's obligations under the Contract, and except as otherwise expressly stated to the contrary in the Contract, the Purchaser shall not be liable to the Contractor for any of its costs, expenses or liabilities.

10.6 The Contractor will comply with all reasonable requests of the Purchaser in respect of invoicing, including the formatting of invoices and the consolidation or splitting of invoices to reflect different parts of the performance of the obligations of the Contract (including delivery to different locations and/or performance for the ultimate benefit of different persons).

10.7 The Contractor shall include a provision in each Sub-Contract requiring the Contractor to pay the relevant Sub-Contractor not more than 30 days after the receipt of a valid and payable invoice.

10.8 If the Contractor assigns the right to receive payment of the Charges or any part thereof (whether pursuant to Clause 32.2 or otherwise) to any other person (a "**Payment Assignee**"):

10.8.1 the Purchaser will comply with any reasonable request of the Contractor in relation to the payment of the Charges or the handling of invoices, notified

to the Purchaser at least 30 days in advance of the date for the relevant payment or the receipt of the relevant invoice;

10.8.2 any payment by the Purchaser to a Payment Assignee will discharge the obligation of the Purchaser to make that payment, as if it had been paid to the Contractor; and

10.8.3 the Contractor will procure that the Payment Assignee complies with the reasonable requests of the Purchaser made pursuant to Clause 10.6.

10.9 The parties will pay interest on any amount payable under the Contract not paid on the due date, for the period from that date to the date of payment at a rate equal to 8% above the base rate set from time to time by the Bank of England.

11. READINESS FOR CHANGE

11.1 Each party shall notify the other without delay if it considers that any changes to its technology or business processes may impact on the other party in relation to the Contract.

11.2 The Contractor shall notify the Purchaser without delay if it considers that any of the technology used in the Goods or in the provision of the Services is in danger of becoming obsolete as a result of market changes or technology advantages or obsolescence.

11.3 The Contractor shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services.

12. ACCESS TO PREMISES

12.1 If the Contract requires the Contractor to take access to or occupation of any Premises in connection with the Contract, such access or occupation shall be made available to the Contractor free of charge.

12.2 The Contractor will not deliver any Goods, materials, plant or equipment, and will not commence any work at the Premises, until it has obtained the Purchaser’s prior consent to the date and time of access, and, where appropriate, as to the proposed method of working or delivery (to the extent that such access details are not included within the Contract).

12.3 The Premises shall be used by the Contractor solely for the purpose of performing the Contract.

12.4 The Contractor shall have access to or occupation of the Premises as non-exclusive licensee only and shall vacate the Premises when no longer required for the purpose of performing the Contract and upon the termination or expiry of the Contract.

12.5 All tools, equipment and materials of the Contractor required in the performance of the Contractor's obligations under the Contract shall be and remain at the sole risk of the Contractor, whether or not they are situated at any Premises.

12.6 If requested the Contractor shall provide a list of the names and addresses of all Contract Workers who may require admission to the Premises in connection with the performance of the Contract, containing such other particulars as the Purchaser may reasonably require.

12.7 The Purchaser may refuse to admit to the Premises any Contract Worker whose admission would be, in the opinion of the Purchaser, undesirable.

12.8 The Contractor shall comply with (and procure that all Contract Workers comply with) all reasonable instructions given by the Purchaser in relation to the access to and use of the Premises including security and health and safety requirements and occupation and cooperation with other users of the Premises.

12.9 If the Purchaser so directs, the Contractor will submit a basic Disclosure Certificate obtained from Disclosure Scotland in respect of any Contract Workers who requires access to any Premises, prior to such access being taken.

13. ISSUED PROPERTY

13.1 All Issued Property shall remain the property of the Purchaser and shall be used by the Contractor only for the purposes of the Contract.

13.2 The Contractor shall notify the Purchaser without delay if any Issued Property is not in good condition when received by or on behalf of the Contractor.

13.3 The Contractor undertakes to keep safe custody of Issued Property and to return all Issued Property to the Contractor, with the exception of any Issued Property consumed or incorporated for the purposes of the Contract.

13.4 The Contractor shall indemnify the Purchaser in respect of all losses of or damage to Issued Property (including waste of Issued Property) arising from bad workmanship or negligence of the Contractor) save for any losses or damage resulting from the normal and proper use of Issued Property for the purposes of the Contract.

13.5 The Contractor will return all Issued Property on demand, at any time, and within 7 days of the termination or expiry of the Contract. To the extent that Issued Property includes working papers or other written materials, at the same time as the Contractor returns such Issued Property it shall also return copies it has made of such Issued Property and any other materials of whatsoever nature prepared by the Contractor using the information in such Issued Property.

13.6 Neither the Contractor nor any other party shall have a lien on any Issued Property and the Contractor shall take all reasonable steps to ensure that the title of the Purchaser to and the exclusion of any such lien in respect of Issued Property are brought to the notice of all persons dealing with any Issued Property.

14. CONTRACT WORKERS

14.1 The Contractor shall engage, employ, and train suitably experienced and qualified staff for carrying out the Contractor's duties and obligations under the Contract.

14.2 If the Purchaser requests, the Contractor will provide the Purchaser with the names of all people whom the Contractor proposes will have a role in the performance of the Contract together with a description of the part each person will play in performing the Contract, and details of their qualifications, experience and previous employment.

14.3 The Purchaser may require the Contractor to produce documentary or other evidence to establish that the Contract Workers are suitably qualified and experienced to perform their respective duties under the Contract.

14.4 If the Purchaser gives the Contractor notice that any Contract Worker intended for or concerned with the performance of the Contract is not to become or remain involved in the performance of the Contract, the Contractor will take all reasonable steps to comply with such notice without delay, at the cost of the Contractor.

14.5 Nothing in the Contract shall have the effect of making any Contract Worker an employee of the Purchaser.

15. KEY PERSONNEL

15.1 The Contractor shall appoint an Account Manager to be the representative of the Contractor for all purposes connected with the delivery of the Contract, and who shall be authorised by the Contractor to fulfil that role.

15.2 The Purchaser may at any time by notice to the Contractor designate any person concerned with the performance of the Contract as “Key Personnel”. Any person referred to in the Contract or the Contractor’s response to the Invitation to Tender as to be concerned with the delivery of the Contract and the Account Manager will be deemed so designated.

15.3 The Contractor will ensure that the Key Personnel are made available in performance of the Contract, unless the Purchaser agrees otherwise. The Purchaser will act reasonably in considering requests for replacements to the Key Personnel where the need for the replacement has arisen due to circumstances beyond the control of the Contractor. If the Contractor proposes a replacement for any person designated as Key Personnel, the Purchaser reserves the right to interview any such person before considering agreeing to the replacement.

15.4 If the Purchaser refuses its consent for any replacement Key Personnel the Contractor will propose an alternative, without undue delay.

16. LIABILITY AND INDEMNITY

16.1 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with anything done or omitted to be done in connection with the Contract by the negligence or other wrongful act or omission of any Contractor Party.

16.2 Subject always to Clause 16.3, the liability of each party to the other under the Contract shall be subject to the following cumulative limits, each to the extent permitted by law:

16.2.1 the aggregate liability of a party in respect of loss or damage caused by its negligence to any tangible property of the other party shall not exceed £1,000,000 or otherwise specified; and

16.2.2 the aggregate liability of a party in respect of any claim made by the other party under the Contract flowing from any one event or a series of connected events (other than in respect of claims for loss or damage caused by the party's negligence to any tangible property of the other party) shall not exceed [the greater of: (a) the aggregate Charges paid or payable to the Contractor under this Agreement in any period of twelve months; or (b) the sum of £1,000,000 or otherwise specified however that liability arises including breach of contract, delict, misrepresentation (except fraudulent misrepresentation) or breach of statutory duty; and

16.2.3 neither party shall be liable to the other for loss of profits, business, revenue, goodwill or anticipated savings or other indirect or consequential loss or damage (but such limitation shall not limit the Contractor's liability to the Purchaser for any additional operational and administrative costs and expenses and/or any expenditure or charges rendered necessary as a result of any Default by the Contractor).

16.3 The limitations in Clause 16.2 will not apply to:

16.3.1 the liability of a party resulting from any fraudulent act by it, or any liability for personal injury or death; or

16.3.2 the indemnity given at clause 26.6 (Data Protection).

17. INSURANCE

17.1 The Contractor shall maintain in force with reputable insurers employer's liability insurance and public liability insurance in the sum of not less than [£5,000,000] in respect of any one incident and unlimited as to numbers of claims, and adequate insurances covering all the Contractor's other liabilities in terms of the Contract.

17.2 Where the Contract relates to Professional Services, the Contractor shall maintain in force with reputable insurers professional liability insurance in the sum of not less than [£2,000,000] in respect of any one incident and unlimited as to numbers of claims.

17.3 On the request of the Purchaser, the Contractor shall exhibit satisfactory evidence of the insurance policies referred to in this Clause 17, together with satisfactory evidence of payment of the premium.

18. INTELLECTUAL PROPERTY RIGHTS

18.1 The Contractor must not infringe any Intellectual Property Right of any third party in the performance of the Contract.

18.2 The Contractor will indemnify and keep indemnified the Purchaser against all actions, claims, demands, costs and expenses incurred by or made against the Purchaser which arise in connection with any breach by the Contractor of Clause 18.1.

18.3 All rights (including ownership and Intellectual Property Rights) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing, or on magnetic or other media or distributed electronically:

18.3.1 forming Issued Property or otherwise made available to the Contractor by the Purchaser shall remain vested in the Purchaser; or

18.3.2 prepared by or for the Contractor for use, or intended use, in relation to the performance of the Contract are hereby assigned to and shall vest in the Purchaser.

19. CORPORATE SOCIAL RESPONSIBILITY ISSUES

19.1 Health & Safety

19.1.1 The Contractor shall be responsible for the observance by itself and all Contract Workers of all safety precautions necessary for the protection of all Contract Workers including all precautions relating to manual handling and all precautions required to be taken by or under Laws relating to health and safety.

19.1.2 The Contractor shall promptly notify the Purchaser of any health and safety hazards which may arise in connection with the performance of the Contract.

19.1.3 The Purchaser shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor or any Contract Worker. The Contractor shall draw these hazards to the attention of all Contract Workers and shall instruct such persons in connection with any necessary associated safety measures.

19.2 Non-Discrimination

19.2.1 The Contractor shall comply with the Discrimination Legislation and shall not unlawfully discriminate within the meaning and scope of the Discrimination Legislation.

19.2.2 The Contractor shall notify the Purchaser immediately of any investigation of or proceedings against the Contractor under the Discrimination Legislation and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

19.2.3 The Contractor must at all times comply with any relevant codes of practice relating to the subject matter of the Discrimination Legislation.

19.3 Environmental Considerations

19.3.1 The Contractor will ensure that:

19.3.1.1 no Goods or Services are supplied which will endanger the health and safety of the end users of the Goods or Services (in each case assuming that such persons act reasonably);

19.3.1.2 no Goods are supplied which will cause significant damage to the environment during manufacture, use, or disposal, which consume a disproportionate amount of energy during manufacture, use, or disposal, which cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.

19.3.2 The Contractor will comply in all material respects with applicable Laws relating to environmental matters which are relevant to the Contract. Where the provisions of any such Laws are implemented by the use of voluntary agreements or codes of practice, the Contractor shall comply with such voluntary agreements or codes of practice.

20. DEFAULT

20.1 If the Contractor is in Default then without prejudice to any of its other rights and remedies the Purchaser may require the Contractor within 14 days (or such other period as the Purchaser may specify, acting reasonably) to produce a draft remedial plan to remedy the Default for the approval of the Purchaser, such approval not to be unreasonably withheld or delayed.

20.2 The Contractor will implement the remedial plan approved by the Purchaser pursuant to Clause 20.1.

20.3 At any time while the Contractor is in Default the Purchaser may without prejudice to any of its other rights and remedies seek to remedy the effects of the Default by carrying out the activities necessary to perform the Services, obtain goods similar to the Goods or otherwise meet the objectives of the Contract, or contract with a third party to do any of the same, and:

20.3.1 the Contractor will use all reasonable endeavours to co-operate with the Purchaser and any third party to mitigate the effects of the Default; and

20.3.2 the Contractor will indemnify the Purchaser in respect of the reasonable costs and expenses incurred by the Purchaser in remedying or seeking to remedy the effects of the Default.

20.4 If the Contractor is in Default the Purchaser may withhold a proportion of any sum which is payable by the Purchaser to the Contractor until the Default has been remedied, such proportion to be reasonable and commensurate with regard to:

20.4.1 the extent to which the Default has caused or will cause a diminution in the extent or quality, including delay, of the Contractor's performance of the Contract; and

20.4.2 the amount of any loss or any additional costs which the Purchaser has incurred or may incur in consequence of the Default.

20.5 If any sum of money shall be due from the Contractor to the Purchaser, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other contract or Contract with the Purchaser.

21. TERMINATION

21.1 The Purchaser may at any time by notice in writing terminate the Contact with immediate effect where:

21.1.1 a Bidding Misrepresentation has occurred;

21.1.2 any of the following events occur in relation to the Contractor:

21.1.2.1 the Contractor or any Parent Company passes a resolution for winding-up or the court makes a winding-up order, other than for the purpose of a genuine and good faith reconstruction or amalgamation which the Purchaser has consented to in advance;

21.1.2.2 the Contractor or any Parent Company passes a resolution for administration or an administrator, administrative receiver, receiver or manager is appointed to the Contractor or any Parent Company by a creditor or by the court, or possession is taken of any of the Contractor's or any Parent Company's property under the terms of a floating charge;

21.1.2.3 the Contractor or any Parent Company is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the reference in section 123(1)(a) to £750 was to £10,000);

21.1.2.4 where the Contractor is an individual, a petition is presented for the Contractor's bankruptcy or the sequestration of the Contractor's estate;

21.1.2.5 where the Contractor is an individual, a criminal bankruptcy order is made against the Contractor;

21.1.2.6 where the Contractor is an individual, the Contractor makes any composition or arrangement with or for the benefit of the Contractor's creditors, or makes any conveyance or assignation for the benefit of the Contractor's creditors, or an administrator is appointed to the Contractor's affairs;

21.1.2.7 where the Contractor is an individual, the Contractor becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985; or

21.1.2.8 where the Contractor is a partnership or firm, an event listed in Clauses 21.1.2.1 to 21.1.2.4 occurs in respect of any partner in the partnership or firm or any of those persons;

21.1.2.9 if applicable, a petition is presented for the Contractor to be wound up as an unregistered company; or

21.1.2.10 any similar event to those listed above occurs under the law of any other jurisdiction.

21.1.3 the Contractor has failed to achieve the Service Levels to a degree that the Purchaser has been entitled to Service Credits amounting to 25% or more of the applicable monthly Charges for two calendar months in any period of six months;

21.1.4 a Default has occurred which is incapable of remedy; or

21.1.5 a Default has occurred which is capable of remedy and the Contractor has failed to remedy such Default within 30 days of receipt of a written notice from the Purchaser specifying the Default and requiring its remedy (unless a remedial plan produced in respect of that Default and approved by the Purchaser pursuant to Clause 20.1 is being implemented by the Contractor to the reasonable satisfaction of the Purchaser).

21.2 The Purchaser shall be entitled to terminate the Contract by giving not less than 30 days' notice to the Contractor. In the event of any such termination, the Contractor shall be entitled to payment in respect of all Goods and Services supplied up to the effective date of termination.

21.3 The Contract shall expire and terminate automatically at the end of the Contract Period.

21.4 The Contractor shall be entitled to terminate the Contract where any Charges which have been properly invoiced under the Contract and which are not the subject of any bona fide query or dispute remain outstanding for a period of more than 30 days following the last due date for payment, provided that the Contractor has given at least seven days' prior written notice of the overdue amount and its intention to terminate the Contract in the event payment is not made on or by expiry of such 30-day period.

22. CONSEQUENCES OF TERMINATION

22.1 The termination or expiry of the Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

22.2 Termination of the Contract will not affect the continued operation of those Clauses which are stated to apply after its termination or any other of the provisions of the Contract which, having regard to their terms, are intended to apply on or to survive termination or expiry.

22.3 If on the termination or expiry of the Contract any Intellectual Property Rights in connection with the Contract owned by a Contractor Party are required by the Purchaser for the efficient conduct of its business or the orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor's obligations under the Contract to the Purchaser or a third party, the Purchaser may acquire from the Contractor at the then fair market rate a non-exclusive licence to use any such Intellectual Property Rights which licence shall:

22.3.1 be subject to a single, one-off payment;
22.3.2 be perpetual and irrevocable;

22.3.3 afford the Purchaser the right to make such modifications, adaptations and enhancements as it sees fit to products in relation to which the Intellectual Property Rights arise;

22.3.4 permit the Purchaser to engage a third party to use, modify, adapt or enhance any such products, provided that such third party shall have entered into a confidentiality agreement with the Purchaser in a form to the reasonable satisfaction of the Contractor; and

22.3.5 carry the right to grant sub-licences,

22.4 and the Contractor will procure that such a licence is granted by any Contractor Party.

22.5 If fair market value cannot be agreed pursuant to Clause 39.2, the matter will be referred to the Dispute Resolution Procedure.

22.6 On the termination of the Contract pursuant to Clause 21.1, Clause 4.3.2 (rejection of Goods), Clause 8.2 (conflict of interest) or 28.2 (corruption), the Contractor will indemnify the Purchaser in respect of:-

22.6.1 any additional operational and administrative costs and expenses suffered or incurred by the Purchaser as a result of such termination;

22.6.2 the costs and expenses suffered or incurred by the Purchaser in providing (or procuring that another party provides) goods or services similar to the Goods or Services on a temporary basis until the completion of a tendering or reappointment process carried out by the Purchaser to find a successor to the Contractor, but only to the extent that such costs and expenses exceed the Charges that would have been payable (or a reasonable estimate of such charges, to the extent uncertain) had the Contract not been terminated; and

22.6.3 the costs and expenses suffered or incurred by the Purchaser in carrying out the tendering or reappointment process referred to in Clause 22.6.2.

22.7 The costs and expenses of the Purchaser referred to in Clause 22.6.2 shall include reasonable charges to reflect the application of the Purchaser's internal resources, evidenced by records of time spent and other resources applied.

22.8 Upon the expiry or termination of the Contract, for any reason whatsoever, the Contractor shall cooperate with the Purchaser to such extent as the Purchaser may require for the period required by the Purchaser (of up to a maximum of 6 months after the date of such expiry or termination) to ensure an orderly and efficient transition, with minimum disruption to the Purchaser, of the performance of the Contractor’s obligations under the Contract to the Purchaser or a third party.

22.9 The Purchaser shall reimburse to the Contractor all reasonable costs and expenses incurred by the Contractor in satisfying the provisions of Clause 22.8.

22.10 The cooperation referred to in Clause 22.8 may include, if the Purchaser requires:

22.10.1 the making available of any Issued Property, the making available of relevant instruction and operating manuals and the provision of instruction in the use of any equipment or machinery forming part of the Issued Property; and/or

22.10.2 the continued provision of the Services, or part of them, or the continued performance of the Contractor's obligations under Contract.

23. VARIATIONS TO THE CONTRACT

23.1 The Contract shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of each of the parties, each having completed the following change control procedure:

23.1.1 Should either party wish to propose a Change, it shall submit to the other 2 copies of a change control notice (CCN) completed in so far as that party is able;

23.1.2 Each CCN shall contain:

23.1.2.1 the title of the Change;

23.1.2.2 the originator and date of the proposal of the Change;

23.1.2.3 the reason for the Change;

23.1.2.4 full details of the Change including any specifications;

23.1.2.5 the price, if any, of the Change;

23.1.2.6 a timetable for implementation of the Change; and

23.1.2.7 details of the likely impact, if any, of the Change on other aspects of the Contract.

23.1.3 The CCN will be completed by the other party and both parties will seek to agree the content of the CCN.

23.1.4 In the case of a Change proposed by the Purchaser, the parties will act reasonably in agreeing the content of the CCN and will execute a variation or amendment to the Contract to implement the agreed CCN, without delay.

23.1.5 In the case of a Change proposed by the Contractor, the Purchaser will act reasonably in considering the content of the CCN but the agreement or otherwise to the content of a CCN shall be at the Purchaser's sole discretion.

23.2 The Contract shall not be varied or amended by the use, notification, issue or receipt by a party of any document containing or incorporating any standard terms and conditions of either party.

23.3 The Contract constitutes the entire agreement between the parties at its date of execution in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of the Contract.

24. NON-SOLICITATION OF EMPLOYEES

24.1 Without in any way restricting the right of any person freely to accept employment and change employment, neither the Purchaser nor the Contractor shall, during the term of the Contract and for the period of 6 months thereafter, without the other party's written consent:

24.1.1 subject to Clause 24.2, employ any of the employees of the other party who have at any time been engaged in the performance of the

Contract to perform similar duties to those involved in the performance of the Contract; or

24.1.2 solicit to employment any such employees of the other party.

24.2 A party shall not be in breach of Clause 24.1 if a person (without having been previously approached directly or indirectly) responds to a general recruitment advertisement placed by or on behalf of the prospective new employer

24.3 If a party breaches Clause 24.1 it shall indemnify the other party in respect of that party's costs and expenses in replacing the employee employed by the other party including advertising and other recruitment costs and initial training (but not the cost of ongoing emoluments).

25. CONFIDENTIALITY

25.1 Subject to Clause 25.3, all information of a confidential nature obtained by the Contractor under or in connection with the Contract from the Purchaser ("Confidential Information") will be treated by the Contractor in confidence, and will not:

25.1.1 be used by the Contractor other than for the purposes of the Contract; or

25.1.2 be disclosed by the Contractor, other than to those Contract Workers who need to have access to that information for the purposes of the Contract and in accordance with Clause 25.5 without the prior written consent of the Purchaser.

25.2 Information will not be treated as "Confidential Information" for the purposes of Clause 25.1 if it was generally available to the public when it was received by the Contractor from the Purchaser and information will cease to be "Confidential Information" for the purposes of Clause 25.1 if it subsequently becomes generally available to the public other than as a result of a breach by the Contractor of this Clause.

25.3 Clause 25.1 does not prohibit the disclosure by the Contractor of any Confidential Information which:

25.3.1 was known to the Contractor prior to its disclosure to the Contractor by the Purchaser or which subsequently comes into the Contractor's possession from a third party which does not owe a duty of confidence to the Purchaser in respect of that information;

25.3.2 the Contractor is obliged by law to disclose; or

25.3.3 the Contractor requires to provide to its insurers or professional advisers to allow the Contractor to properly conduct its business.

25.4 The Contractor will take all technical and organisational measures and other precautions necessary to ensure that the Confidential Information is not used or disclosed other than as permitted by Clauses 25.1 and 25.3.

25.5 Without affecting the generality of Clause 25.4, the Contractor will put in place a written agreement with any Contract Worker to whom it wishes to disclose any of the Confidential Information pursuant to Clause 25.1.2, in terms of which such Contract Worker is bound by confidentiality obligations in respect of that Confidential Information at least as onerous as those set out in this Clause 25.

25.6 Upon the expiry or termination of the Contract, the Contractor will promptly, and in any event within 14 days of such expiry or termination, return to the Purchaser or destroy (at the absolute discretion of the Purchaser) any Confidential Information in its possession, and provide the Purchaser with a certificate, signed by a duly authorised officer, certifying that the Contractor has complied with its obligations under this Clause 25.6. The obligation to destroy any Confidential Information pursuant to this Clause 25.6 includes an obligation to permanently delete from any information technology systems owned and/or used by the Contractor, any copies of that Confidential Information held in electronic form.

25.7 Nothing in this Clause 25 will prevent the Contractor from using in the normal course of its business any techniques, ideas or know-how gained during the performance of the Contract to the extent that such use does not result in any unauthorised disclosure of any Confidential Information or an infringement of the Purchaser's (or anyone else's) Intellectual Property Rights.

25.8 The Contractor acknowledges that the Purchaser is subject to the requirements of the Information Legislation. The Contractor will provide such assistance and co-operation as the Purchaser may reasonably require to enable it to comply with its information disclosure obligations under the Information Legislation including (although not only) by providing the Purchaser with a copy of any information which it is holding on behalf of the Purchaser in the form that the Purchaser specifies within 7 days of a request from the Purchaser to that effect.

25.9 The Purchaser will be entitled to determine at its absolute discretion whether to disclose upon request or otherwise publish any information under the Information Legislation, including (although not only) any information provided to it by the Contractor or which relates in any way to the Contractor or the Contract. In particular the Purchaser will be entitled to determine at its absolute discretion whether it is required to disclose upon request or otherwise publish any information under the Information Legislation, or whether, even if it is not required to disclose upon request or otherwise publish that information under the Information Legislation, it would nevertheless be in the public interest to do so.

25.10 Without affecting Clause 25.9, the Purchaser will use reasonable endeavours to consult with the Contractor in accordance with the Scottish Ministers' code of practice on the discharge of functions by public bodies under any of the Information Legislation (and/or any subsequent guidance issued by the Scottish Ministers which amends or replaces that code of practice), before disclosing or otherwise publishing under the Information Legislation any information provided to it by the Contractor or which relates in any way to the Contractor or the Contract.

26. DATA PROTECTION

26.1 Compliance with the Data Protection Legislation

Each Party shall comply with its respective obligations under the provisions of the Data Protection Legislation. In particular, each party shall comply with its respective provisions set out in the GDPR. Without prejudice to the meaning afforded to each party under the GDPR, the intention of the parties is that in respect of the Purchaser Data and any personal data processed on behalf of the Purchaser by the Contractor, the Purchaser shall be the data controller and the Contractor shall be a data processor. As used in this Clause the terms "process", "processing", “personal data” and “data subjects” shall have the meanings ascribed to them in the Data Protection Legislation.

The Contractor acknowledges that Personal Data described in the scope of Schedule 1 (Data Protection) may be Processed in connection with the Services under this Contract.

26.2 Data Processor Obligations

The Contractor shall (and shall ensure that its Contract Workers and agents shall):

a) implement and maintain appropriate technical and organisational measures and safeguards for protection of personal data, to ensure the rights of data subjects are protected and to ensure that processing will meet the requirements of Data Protection Legislation;
b) ensure that all employees and subcontractors authorised to process personal data are subject to binding confidentiality obligations in respect of that personal data;
c) assist the Purchaser, using appropriate technical and organisational measures, to respond to requests from data subjects including requests for information, requests for deletion and amendments of information and requests for the transfer of data;
d) assist the Purchaser in ensuring compliance with its security, data breach notification, data protection impact assessments and prior consultation obligations under Data Protection Legislation, taking into account the nature of processing and information available to the data processor;
e) at the Purchaser’s election, delete or return all personal data and existing copies to the Purchaser (unless Data Protection Legislation requires the data processor to store that personal data);
f) make available to the Purchaser all information necessary, and allow for and contribute to audits and inspections conducted by the Purchaser or the Purchaser’s mandated auditor, to demonstrate the data processor’s compliance with its obligations under this agreement;
g) immediately inform the Purchaser if, in the data processor’s opinion, any instruction given by the Purchaser to the data processor infringes Data Protection Legislation;
h) maintain a written record of all processing activities under its responsibility and of all categories of processing activities carried out on behalf of the Purchaser, that satisfies the requirements of the Data Protection Legislation;
i) cooperate on request with any relevant European Union or member state supervisory authority;

j) notify the Purchaser without undue delay and in any event no later than 24 hours after becoming aware of a breach of personal data and notify the Purchaser immediately if it is asked to do something infringing the Data Protection Legislation;
k) take any further action and execute any further documents and amendments to this Contract as may, in the Purchaser's reasonable opinion, be required to comply with Data Protection Legislation;
l) only process personal data in accordance with the Purchaser's documented instructions consistent with and in the scope of this Contract (unless required to do so by applicable law, in which case the data processor shall inform the Purchaser of that legal requirement unless prohibited by law on important grounds of public interest);
m) only engage another processor (sub-contractor) to carry out specific processing activities with prior specific or general written authorisation of the Purchaser, and only where that other processor is subject to a written contract imposing on that other processor the same data protection obligations as are imposed on the data processor in this Contract;
n) not process or transfer personal data outside the European Economic Area except with the express prior written consent of the Purchaser; and
o) nothing within this Contract relieves the processor of its own direct responsibilities and liabilities under the GDPR.

26.3 The Contractor agrees that the technical and organisational measures referred to in Clause 26.3(a) above shall ensure a level of security appropriate to the risk, taking into account :-

a) the state of the art, the costs of implementation;
b) the nature, scope, context and purposes of processing and risks of varying likelihood; and
c) severity for the rights and freedoms of individuals.

26.4 The Contractor agrees that the technical and organisational measures to be implement by them and as referred to in Clause 26.3(a) above shall include, as appropriate:-

a) pseudonymisation and encryption of personal data;
b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

26.5 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Purchaser as a result of (1) any failure by the Contractor to comply with its obligations under the Data Protection Legislation, or (ii) any breach by the Contractor of this Clause 26.

27. PUBLICITY

The Contractor shall not make any public statement identifying the Purchaser as a client or customer of the Contractor or using the Purchaser's name and/or brand in any promotion or marketing without the prior written consent of the Purchaser.

28. ANTI-CORRUPTION

28.1 The Contractor shall not (and shall procure that no Contract Worker nor any other person acting on its behalf shall) offer or give or agree to offer or give any person any gift or consideration of any kind as an inducement or reward for:

28.1.1 showing or forbearing to show favour or disfavour to any person in relation to the Contract; or

28.1.2 doing or forbearing to do (or having done or forborne to do) any act in relation to the obtaining or performance of the Contract or any other agreement.

28.2 In the event of any breach of this Clause 28 or the commission of any offence by the Contractor or Contract Worker or person acting on behalf of the Contractor under the Prevention of Corruption Acts, 1889 to 1916, the Purchaser may terminate the Contract forthwith by notice in writing to the Contractor.

28.3 In exercising its rights or remedies under this Clause 28, the Purchaser shall:

28.3.1 act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of the person performing, the prohibited act;

28.3.2 give due consideration, where appropriate, to action other than termination of the Contract, including:

28.3.2.1 requiring the Contractor to procure the termination of a Sub-Contract where the prohibited act is that of a Sub-Contractor; or

28.3.2.2 requiring the Contractor to procure the dismissal of an employee of any Contractor Party where the prohibited act is that of such employee.

29. COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAW

29.1 In performing its obligations under the Contract, the Contractor shall:

29.1.1 comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of the Purchaser from time to time in force including the Modern Slavery Act 2015 and

29.1.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

29.1.3 include in its contracts with its subcontractors and suppliers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause.

29.2 The Contractor represents and warrants that at the date of the Contract:

29.2.1 neither the Contractor nor any of its officers, employees or other persons associated with it:

29.2.1.1 has been convicted of any offence involving slavery and human trafficking; and

29.2.1.2 having made reasonable enquiries, so far as it is aware has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

29.3 The Contractor shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

29.4 The Contractor shall notify the Purchaser as soon as it becomes aware of actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

29.5 The Contractor shall:

29.5.1 maintain a complete set of records to trace the supply chain of all Goods and Services provided to the Purchaser in connection with this Contract; and

29.5.2 permit the Purchaser and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of this clause, to have access to and take copies of the Contractor's records and any other information and to meet with the Contractor's personnel to audit the Contractor's compliance with its obligations under this clause.

29.6 The Contractor shall indemnify the Purchaser against any losses, liabilities, damages, costs (including [but not limited to] legal fees) and expenses incurred by or awarded against, the Purchaser as a result of any breach of Anti-slavery laws.

29.7 The Contractor represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery laws.

29.8 The Purchaser may terminate the Contract with immediate effect by giving written notice to the Contractor if the Contractor commits a breach of the provisions of this clause (Compliance with Anti-Slavery and Human Trafficking Laws).

30. Anti-facilitation of tax evasion

30.1 The Contractor shall:

30.1.1 not engage in any activity, practice or conduct which would constitute either:

30.1.1.1 a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or

30.1.1.2 a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;

30.1.2 have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Contractor) and to ensure compliance with this clause;

30.1.3 promptly report to the Purchaser any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of the Contract.

30.2 The Contractor shall ensure that any person associated with the Contractor who is performing services and/ or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause.

30.3 Breach of this clause shall be deemed a material breach of contract and shall allow the Purchaser to terminate by written notice with immediate effect.

31. FORCE MAJEURE

31.1 Subject to Clause 31.3, a party affected by Force Majeure shall not be liable to the other for any loss of any kind which is directly or indirectly caused by reason of any failure or delay in the performance of its obligations under this Contract which is due to Force Majeure.

31.2 Notwithstanding Clause 31.2, a party affected by Force Majeure shall:

31.2.1 notify the other party in writing within 5 days of the occurrence of the event constituting Force Majeure;

31.2.2 use its reasonable endeavours to continue to perform, or resume performance of, its obligations under this Contract hereunder for the duration of the event constituting Force Majeure; and

31.2.3 shall not be relieved from any obligation to pay any sum of money to the other party.

31.3 If either party becomes aware of circumstances of Force Majeure which are likely to give rise to a failure or delay on its part it shall forthwith notify the other as to the circumstances and the period for which it is estimated that such failure or delay is likely to continue.

31.4 If either party is prevented from performance of its obligations under the Contract for a continuous period in excess of 3 months by reason of Force Majeure, the other party may terminate the Contract immediately on service of written notice upon the party so prevented.

31.5 The only events which shall afford relief from liabilities under the Contract for failure or delay shall be any event constituting Force Majeure.

32. ASSIGNATION AND SUB-CONTRACTING

32.1 The Contractor shall not assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof without the previous consent in writing of the Purchaser.

32.2 The Purchaser hereby consents to the assignation by the Contractor of the right to receive payment of the Charges (or any part thereof) which are due and payable pursuant to the Contract, and the payment of any interest in respect of those Charges, subject to all the rights and remedies of the Purchaser in connection with the payment of the charges including the right to withhold sums pursuant to Clause 34.

32.3 The Contractor shall remain fully liable for the actions and defaults of all of its Sub-contractors. Sub-contracting will not relieve the Contractor of the obligations or duties attributable to the Contractor under the Contract. The Contractor will procure that its Sub-Contractors comply with all the relevant obligations of the Contract in the same way as the Contractor is bound to comply.

32.4 The Purchaser shall be entitled to assign, novate, sub-contract or otherwise transfer or dispose of its interest in the Contract or any part thereof:

32.4.1 to any person (including but not limited to any body in the private sector) which substantially performs any of the functions that previously had been performed by the Purchaser; or

32.4.2 with the previous consent in writing of the Purchaser (which will not be unreasonably withheld or delayed).

33. NOTICES

33.1 Each party shall from time to time notify the other of the communications protocols to be followed in connection with the Contract but subject to any such protocol, any notice or other communication shall be validly served if sent by letter to the address of the relevant party as detailed in the Contract (or, where the party is a company, that company's registered office).

33.2 A notice delivered or sent or transmitted to the correct address of a party shall be deemed to be effectively given on the day when in the ordinary course of the means of sending it would first be received by the addressee in normal business hours.

34. SEVERABILITY

34.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction (an "**Illegal Term**"), such provision shall be severed and subject to Clause 32.2, the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the relevant provision eliminated.

34.2 If an Illegal Term is so fundamental that its severance prevents the accomplishment of the purpose of the Contract, the parties shall immediately commence good faith negotiations to remedy such invalidity, but if the parties have not implemented that remedy within 2 weeks of the declaration of the provision as an Illegal Term, either party may terminate this agreement forthwith by notice in writing to the other.

35. WAIVER

35.1 The failure of either party to insist upon the performance or the strict performance of any provision of the Contract, or the failure of either party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver of that provision, right or remedy and shall not cause a diminution of the obligations established by the Contract.

35.2 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and notified in writing to the other party.

36. REMEDIES

36.1 Except as otherwise expressly provided in the Contract:

36.1.1 all remedies available to a party under the Contract are cumulative and may be exercised concurrently or separately; and

36.1.2 the exercise of any one remedy shall not exclude the exercise of any other remedy.

37. AUDIT ACCESS

37.1 The Contractor shall grant to the Purchaser, any auditors of the Purchaser (including internal auditors and Audit Scotland and any other organisation or body which may from time to time have cause to audit the accounts of the Purchaser) and any other person authorised by the Purchaser (together the "Auditors") access to all of the Records and shall provide reasonable assistance at all times to the Purchaser or the Auditors (including the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records, all for the purposes of enabling the Purchaser or the Auditors:

37.1.1 to carry out an audit of the Contractor's compliance with the Contract;

37.1.2 to carry out an audit of all activities carried out and security precautions taken in connection with the performance of the Contract;

37.1.3 to prepare, audit, examine and certify the accounts of the Purchaser; or

37.1.4 to conduct any audit or investigation by Audit Scotland or any other auditor.

37.2 The Contractor shall be repaid any reasonable expenses properly and necessarily incurred in giving such reasonable assistance.

37.3 Without prejudice to Clause 37.1, in the event of an investigation into suspected fraudulent activity or other impropriety by any Contractor Party or Contract Worker:

37.3.1 the Purchaser and/or the Auditors may without notice enter any premises of any Contractor Party and take access to the Records, which shall be made available to them (whether they are held at such premises or otherwise) by the Contractor or Contractor Party;

37.3.2 the Contractor shall render all necessary assistance to the conduct of such investigation (including the provision of office accommodation and the provision of such oral and written explanations as the Purchaser or the Auditors may require in relation to the Records or any other subject of investigation or enquiry by the Purchaser or the Auditors); and

37.3.3 the Contractor shall be paid any reasonable expenses properly and necessarily incurred in giving such necessary assistance in the event that the result of such investigation is that no fraudulent activity or other impropriety by a Contractor Party or a Contract Worker is found (but not otherwise).

37.4 The Purchaser shall ensure that any representative of the Purchaser given access to any premises or Records by the Contractor in accordance with Clause 37.3.1 causes the minimum amount of disruption to the business of the Contractor.

38. RELATIONSHIP

The Contract shall not have the effect of making any Contractor Party the agent of the Purchaser, and the Contractor will procure that no Contractor Party and no Contract Worker, by act or omission, purports to act as agent of the Purchaser, or leads any party to believe that such a relationship of agency exists.

39. DISPUTE RESOLUTION PROCEDURE

39.1 In the first instance the parties will seek to resolve any Dispute by its escalation to various levels within the organisational structures of the parties.

39.2 There shall be two levels of escalation, and at each level each party will make available for the purposes of the Dispute Resolution Procedure an appropriate representative most closely matching the description given below.

Level	Representative
First Level	person with day to day responsibility for the Contract.
Second Level	person with managerial responsibility for overseeing the Contract.

An individual representing a party at one level may not be made available by a party to represent it at a higher level.

39.3 If a Dispute is resolved at any level, the resolution shall be reduced to writing, without delay, and signed by both parties. Once signed by both parties, the resolution shall be binding on the parties.

39.4 Unless the resolution of a Dispute is reduced to writing signed by both parties, all discussions and negotiations connected with the Dispute shall be conducted without prejudice to the rights of the parties in any future legal or other proceedings, and no such discussions and negotiations may be produced or relied upon in evidence in any such proceedings.

39.5 A meeting of the representatives at the first level shall take place as soon as possible after any Dispute arises.

39.6 If a Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the first level, the Dispute shall be referred to the next level, and the representatives at that next level shall meet within 3 days of the reference to that level.

39.7 If a Dispute is referred to the second level, and that Dispute has not been resolved, reduced to writing and signed by both parties within seven days of the first meeting at the second level, either party may refer the dispute to a court of competent jurisdiction for a final, binding and enforceable resolution.

40. LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the law of Scotland and the Scottish Courts shall have exclusive jurisdiction to settle any disputes.

41. ANTI-BRIBERY

41.1 The Contractor shall:

41.1.1 Comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ('Relevant Requirements');

41.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

41.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them;

41.1.4 immediately notify the Purchaser if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this agreement);

41.1.5 ensure that all persons associated with the Contractor or other persons who are performing services in connection with this agreement comply with this Clause 41; and

41.1.6 on request by the College, certify to the Purchaser in writing signed by an officer of the Contractor, compliance with this Clause 41 for whom the Contractor is responsible under Clause 41.1.6. The Contractor shall provide such supporting evidence of compliance as the Purchaser may reasonably request.

41.2 For the purpose of this Clause 41, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this Clause 56 a person associated with the Contractor includes but is not limited to any subcontractor of the Contractor.

41.3 In the event of any breach of this Clause 41 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor):

41.3.1 the Contractor shall immediately give the Purchaser full details of any such breach and shall co operate fully with the Purchaser in disclosing information and documents which the Purchaser may request; and/or

41.3.2 The Purchaser shall (without prejudice to any of its rights or remedies under this agreement or otherwise) be entitled by notice in writing to terminate this agreement immediately; and

41.3.3 the Contractor shall be liable for and shall indemnify and keep the Purchaser indemnified in respect of any and all loss resulting from such termination.

41.4 In any dispute, difference or question arising in respect of:

41.4.1 the interpretation of this Clause 41; or

41.4.2 the right of the Purchaser to terminate this agreement; or

41.4.3 the amount or value of any gift, consideration or commission the decision of the Purchaser shall be final and conclusive.

42. TRANSFER OF EMPLOYEES

42.1 The Contractor, and any New Contractor, shall use reasonable endeavours to organise its workforce so that there is not an organised grouping of employees whose principal purpose is to carry out the services on behalf of the Purchaser.

42.2 In the event the TUPE Regulations apply to this Contract:

42.2.1 the Purchaser and the Contractor agree that the TUPE Regulations will apply so that:

42.2.1.1 the contracts of employment between the Purchaser (or the

Preceding Contractor) and the Employees and any collective agreement between the Purchaser (or the Preceding Contractor) and any trade union recognised by the Purchaser (or the Preceding Contractor) in respect of any Employee shall have effect on and after the Commencement Date as if originally made between the Contractor or any Sub-Contractor and the Employees, or between the Contractor or such Sub-Contractor and the relevant trade union (as the case may be);

42.2.1.2 all Employee Charges shall be apportioned on a time basis so that the part of the Employee Charges accruing in the period up to close of business on the day before the Commencement Date shall be borne and discharged by the Purchaser and the part of the Employee Charges accruing in the period commencing on the Commencement Date shall be borne and discharged by the Contractor; and

42.2.1.3 the remainder of this Clause 41 will apply.

42.2.2 Subject to Clauses 42.2.5 and 42.2.6, the Purchaser will indemnify and keep indemnified the Contractor on demand from and against any Employee Liabilities suffered or incurred by the Contractor in relation to any Employee which relate to or arise out of any act or omission by the Purchaser or any other event or occurrence in each case before the Commencement Date for which the Contractor is or becomes liable by reason of the operation of the TUPE Regulations and/or any judicial decision interpreting the same. The indemnity in this Clause 42.2.2 will not apply:

42.2.2.1 to any Employee Liabilities in respect of any Employee who immediately prior to the Commencement Date was not an employee of the Purchaser;

42.2.2.2 in respect of the Contractor's obligation in terms of the TUPE Regulations to employ the Employees on the terms and conditions of employment on which they were employed immediately before the Commencement Date and to recognise the Employees' periods of continuous employment as at the Commencement Date.

42.2.3 The Purchaser will indemnify and keep indemnified the Contractor on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Contractor as a result of any failure by the Purchaser to comply with its obligations under Regulation 13(2) of the TUPE Regulations, except to the extent that such failure arises as a result of any failure on the part of the Contractor (or a Sub-contractor) to comply with its obligations under Regulation 13(4) of the TUPE Regulations.

42.2.4 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any Employee Liabilities suffered or incurred by the Purchaser in relation to any Employee or any representative of any Employee which relate to or arise out of any act or omission by the

Contractor or any other event or occurrence in each case on or after the Commencement Date.

42.2.5 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any Employee Liabilities suffered or incurred by the Purchaser in relation to any claim by any individual whose contract of employment would have had effect on and after the Commencement Date as if originally made between the Contractor or a Sub-contractor and who resigns or treats their employment as having been terminated in terms of Regulation 4(9) or 4(11) of the TUPE Regulations or makes an objection under Regulation 4(7) of the TUPE Regulations by reason of any act or omission or anticipatory act or omission by the Contractor at any time before the Commencement Date.

42.2.6 The Contractor will indemnify and keep indemnified the Purchaser on demand from and against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) suffered or incurred by the Purchaser as a result of any failure by the Contractor or a Sub-contractor to comply with its obligations under Regulation 13(4) of the TUPE Regulations.

42.3 In the event the TUPE Regulations will apply at the point that Services or part thereof (or services fundamentally the same as the Services or part thereof) will begin to be carried out by the Purchaser or by a New Contractor, following the cessation or partial cessation of the provision of the Services or part thereof by the Contractor the Purchaser and the Contractor agree that:

42.3.1 the contracts of employment between the Contractor or any relevant Sub-contractor and the Re-transferring Employees; and

42.3.2 any collective agreement between the Contractor or such any Sub-contractor and any trade union recognised by the Contractor or such Sub-contractor in respect of the Re-transferring Employees shall, pursuant to the TUPE Regulations, have effect after the Re-transfer Date as if originally made between the Purchaser or any New Contractor and such Re-transferring Employees or between the Purchaser or any New Contractor and the relevant trade union as the case may be.

42.4 In the event that (a) the TUPE Regulations apply; or (b) if the Purchaser considers that the TUPE Regulations may apply where it is anticipated that the Services or part thereof (or services similar to the Services or part thereof) will begin to be carried out by the Purchaser or by a New Contractor, following the cessation or partial cessation of the provision of the Services or part thereof by the Contractor, the Purchaser and the Contractor agree that the following Clause 42.5– 42.18 will apply.

42.5 In the event that (a) the TUPE Regulations apply or (b) during the Transfer Assistance Period, the Contractor shall, at its own expense, provide the Purchaser in writing with such information as the Purchaser (acting reasonably) may request relating to the Assigned Employees at the time of such request, within such reasonable period as may be specified by the Purchaser, including (but not restricted to):

42.5.1 the number of such Assigned Employees;

42.5.2 the salary or wages and other remuneration paid to each such Assigned Employee;

42.5.3 whether any such Assigned Employee was ever at any time employed by the Purchaser in the provision services analogous or materially similar to the Service or any part thereof;

42.5.4 the general terms and conditions of employment of each such Assigned Employee, whether contractual or otherwise (including all particulars of employment that an employer is obliged to give to an employee in terms of section 1 of the Employment Rights Act 1996);

42.5.5 the whole terms and conditions of any occupational pension scheme of which any such Assigned Employee is a member, together with the number of such Assigned Employees who are members of the scheme;

42.5.6 information relating to any legally enforceable obligations on the Contractor or any Sub-contractor, to increase or otherwise vary the remuneration, benefits and other rewards to which such Assigned Employees may be entitled;

42.5.7 information on any current or pending negotiations concerning terms and conditions of the employment of such Assigned Employees at the time of such request (including rates of remuneration);

42.5.8 the job title, role, length of service and age of such Assigned Employees;

42.5.9 details of any disciplinary procedure taken against any such Assigned Employee, or grievance procedure taken by any such Assigned Employee, within the two years before a request for such details, in circumstances where the Employment Act 2002 (Dispute Resolution) Regulations 2004 apply;

42.5.10 details of any court or tribunal case, claim or action which:

42.5.11 is outstanding between the Contractor or any Sub-contractor and any such Assigned Employee;

42.5.11.1 has been brought against the Contractor or any Sub-contractor by any employee who was at the time an Assigned Employee, within the two years before a request for such information; and

42.5.11.2 the Contractor or any Sub-contractor has reasonable grounds to believe that any such Assigned Employee may bring, arising out of such Assigned Employee's employment with the Contractor or any Sub-contractor; and

42.5.11.3 such other information as may reasonably be required by the Purchaser which is in the possession of the Contractor or any Sub-contractor at the time of the request or which can reasonably be obtained by the Contractor from any other third party.

42.6 The Contractor consents to the Purchaser using the information obtained under Clause 42.5 for its own costing purposes and disclosing it to prospective bidders for the provision to the Purchaser of services the same as or materially similar to the Services or any part thereof.

42.7 The Contractor shall ensure that the contracts of employment of Assigned Employees contain terms consenting to the disclosure of the information at Clause 42.5 to the Purchaser and to any prospective bidders for the provision to the Purchaser of services the same or materially similar to the Services or as any part thereof.

42.8 The information provided under Clause 42.5 will be anonymised or coded by the Contractor or the relevant Sub-Contractor in such a way so as to prevent the disclosure of "personal data" (as defined in the Data Protection Legislation). If the disclosure of personal data is unavoidable, the Purchaser undertakes that:-

42.8.1 it will only use the personal data for the purposes set out in Clause 42.6;

42.8.2 it will keep the personal data secure in accordance with the Data Protection Legislation;

42.8.3 it will seek to obtain from prospective bidders, to whom the personal data may be disclosed, undertakings:-

42.8.3.1 not to disclose such personal data;

42.8.3.2 that the personal data may only be used for the purposes of preparing a bid;

42.8.3.3 that the personal data must be kept secure;

42.8.3.4 To return or destroy the information constituting the personal data once a bid has been submitted or the Purchaser makes a decision not to proceed with a bid by the bidder granting the undertaking.

42.9 The Contractor will not and will ensure that no Sub-contractor will in the Transfer Assistance Period, without the prior written consent of the Purchaser:

42.9.1 materially vary the terms and conditions of any of the Assigned Employees (including rates of remuneration, benefits and other rewards) other than variations made in the normal course of business of the Contractor (or the relevant Sub-contractor) or except as required by law; or

42.9.2 materially increase or decrease the numbers of Assigned Employees; or

42.9.3 replace any of the Assigned Employees, save where the Contractor or the relevant Sub-contractor replaces any such individuals with individuals of equivalent or greater levels of skills and experience.

42.9.4 enter into any new recognition agreement or collective agreement with a trade union in relation to the Assigned Employees or do any act which might be construed as recognition.

42.10 At any time during the Transfer Assistance Period, the Contractor will allow, and will ensure that any relevant Sub-contractor will allow, the Purchaser or any New Contractor to meet the Assigned Employees and/or their appropriate representatives at their place of work within seven days of receiving a request by the Purchaser or any New Contractor.

42.11 Not later than 28 days, before the Re-transfer Date, the Contractor will supply in writing to the Purchaser or, on request by the Purchaser, a New Contractor:

42.11.1 the names of the individuals whom the Contractor expects at that time to be the Re-transferring Employees;

42.11.2 the information set out in Clause 42.5, in respect of the Re-transferring Employees instead of the Assigned Employees, updated as near as practicable to the Re-transfer Date.

Such information will not be anonymised or coded by the Contractor or any Sub-contractor unless that is required to ensure compliance with the Data Protection Legislation.

42.12 On or before the Re-transfer Date, the Contractor will deliver to the Purchaser or, on request by the Purchaser, a New Contractor:

42.12.1 any updates to the information provided under Clause 42.11 to reflect any subsequent changes to the Re-transferring Employees; and

42.12.2 complete personnel records relating to the Re-transferring Employees.

42.13 The Contractor undertakes to ensure that the information provided under Clauses 42.5, 42.11 and 42.12 is complete and accurate in all material respects.

42.14 All Re-transferring Employee Charges shall be apportioned on a time basis so that the part of the Charges accruing in the period up to close of business on the day before the Re-transfer Date shall be borne and discharged by the Contractor and the part of the Charges accruing in the period commencing on the Re-transfer Date shall be borne and discharged by the Purchaser or the relevant New Contractor.

42.15 The Contractor will indemnify and keep indemnified the Purchaser (and/or on demand by the Purchaser, any New Contractor) on demand from and against any Re-transferring Employee Liabilities suffered or incurred by the Purchaser or any New Contractor in relation to any Re-transferring Employee which relate to or arise out of any act or omission by the Contractor or any other event or occurrence in each case before the Re-transfer Date for which the Purchaser and/or any New Contractor is or becomes liable by reason of the operation of the TUPE Regulations and/or any judicial decision interpreting the same. The indemnity in this Clause 40.15 will not apply in respect of the obligation of the Purchaser or a New Contractor in terms of the TUPE Regulations to employ the Re-transferring Employees on the terms and conditions of employment on which they were employed immediately before the Re-transfer Date (other than in relation to benefits for old age, invalidity or survivors provided under an occupational pension scheme) and to recognise Re-transferring Employees' periods of continuous employment as at the Re-transfer Date.

42.16 The Contractor will indemnify and keep indemnified the Purchaser (and/or on demand by the Purchaser any New Contractor) on demand from and against any costs, claims, liabilities and expenses (including legal expenses) suffered or incurred by the Purchaser or any New Contractor as a result of any failure by the Contractor or any Sub-contractor to comply with its obligations under Regulation 13(2) of the TUPE Regulations, except to the extent that such failure arises as a result of any failure on the part of the Purchaser to comply with its obligations under Regulation 13(4) of the TUPE Regulations.

42.17 The Purchaser will indemnify and keep indemnified the Contractor on demand from and against any Re-transferring Employee Liabilities suffered or incurred by the Contractor in relation to any Re-transferring Employee or any representative of any Re-transferring Employee which relate to or arise out of any act or omission by the Purchaser or any other event or occurrence in each case on or after the Re-transfer Date.

42.18 The Purchaser will indemnify and keep indemnified the Contractor on demand from and against any costs, claims, liabilities and expenses (including legal expenses) suffered or incurred by the Contractor as a result of any failure by the Purchaser to comply with its obligations under Regulations 13(4) of the TUPE Regulations.

42.19 The Contractor acknowledges and agrees that:

42.19.1 the Purchaser may grant an indemnity in favour of each and any New Contractor to the same extent that the Contractor is undertaking to indemnify the Purchaser in terms of this Clause 42 and;

42.19.2 that in the event of a claim on any indemnity in terms of this Clause 42 for loss incurred by the Purchaser, that loss shall include the amount, if any, which the Purchaser has paid or is required to pay to any New Contractor by virtue of any indemnity granted by the Purchaser in its favour in accordance with the provisions of this Clause 42.19.

43. TRANSITION AND ACCEPTANCE

43.1 In this Clause:

"**Transition Period**" means any period between the award of the Contract and the Commencement Date as set out in the Contract; and
"**Transition Plan**" means the Contractor's plan for the Lead-in Period forming part of the Contract.

43.2 During the Transition Period the Contractor will:

43.2.1 ensure that all Contract Workers have received the training necessary to allow the Contractor to perform the Contract from the Commencement Date;

43.2.2 prepare draft procedural instructions to be issued to all Contract Workers in connection with the Contract, and submit the draft to the Purchaser for approval (which will not be unreasonably withheld);

43.2.3 issue procedural instructions as approved by the Purchaser to all Contract Workers in advance of the Commencement Date; and

43.2.4 comply with its obligations pursuant to the Transition Plan.

43.3 During the Transition Period the Purchaser will use its reasonable endeavours to comply with its obligations pursuant to the Transition Plan.

43.4 The Conditions will apply to the Transition Period from the commencement of that period, notwithstanding that this is prior to the Commencement Date.

44. SYSTEM TRIALS DURING LEAD-IN PERIOD

44.1 During the Transition Period (as defined in Clause 43.1.), the Contractor shall, at its own expense, conduct system trials and testing in relation to the Goods and/or Services required for the performance of its obligations pursuant to the Contract in accordance with any reasonable instructions which the Purchaser may give including as to the time and location of the trials and tests. The Purchaser may attend and monitor the system trials and testing.

44.2 Within 7 days of each event of system trials and testing, the Contractor shall report to the Purchaser as to the results, in such form and containing such information as the Purchaser may reasonably require.

44.3 If the system trials and testing are not completed to the reasonable satisfaction of the Purchaser:

44.3.1 before the Commencement Date, the Contractor may carry out the system trials and testing on any number of occasions prior to the Commencement Date in accordance with the provisions of this Clause 44.3; and

44.3.2 by the Commencement Date, the Purchaser may (without prejudice to any other right or remedy which it may have):

44.3.2.1 notify the Contractor of a revised Commencement Date to allow the Contractor additional time to complete the system trials and testing to the reasonable satisfaction of the Purchaser; or

44.3.2.2 terminate the Contract with immediate effect by giving written notice of termination to the Contractor in which case the Purchaser shall have no liability in respect of any costs or expenses incurred by the Contractor arising out of or in connection with the Contract including the performance of the system trials or testing (and the termination will be deemed for the purposes of Clause 22.5 of this agreement to have been effected pursuant to Clause 21.1 of this agreement.

44.4 The Purchaser will notify the Contractor when the completion of the system trials and testing has been carried out to the reasonable satisfaction of the Purchaser, but such completion will not constitute evidence that any Goods have been accepted by the Purchaser nor that they are fit for purpose or otherwise in accordance with the requirements of the Contract.

44.5 After the completion of the system trials and testing to the reasonable satisfaction of the Purchaser, the Contractor may not use alternative Goods in the delivery of the Services (or provide alternative Goods) in performance of the Contract without the prior written consent of the Purchaser. In considering a request for consent, the Purchaser may ask for all reasonable information concerning the reason for the request and as regards the proposed alternatives, and may require system trials

and testing to be carried out in respect of the proposed alternatives, prior to making its decision as to whether to grant or withhold its consent.

45. ACCEPTANCE TESTS

45.1 This Clause applies when the Goods which are the subject matter of the Contract require formal acceptance testing.

45.1.1 In this Clause, "Acceptance Tests" means:

45.1.1.1 the procedures for acceptance testing the Goods as set out in the Contract; or

45.1.1.2 where no specific procedures for acceptance testing are set out in the Contract, those procedures published by the manufacturer of the relevant Goods; or

45.1.1.3 where no specific procedures for acceptance testing are set out in the Contract or published by the manufacturer of the relevant Goods, the procedures established by Good Industry Practice as required for the Purchaser to satisfy itself that the Goods have been delivered and/or installed such that they are in accordance with the requirements of the Contract, and includes Acceptance Tests carried out at any Re-Test.

45.2 In this Clause a "Re-Test" means the carrying out of Acceptance Tests on the second and any subsequent occasion.

45.3 The Contractor shall carry out the first Acceptance Tests on the date and at the time set out in the Contract. If no dates and times are set out in the Contract the Contractor shall carry out the first Acceptance Tests as soon as possible after delivery of the relevant Goods, on a date and at a time agreed between the Purchaser and the Contractor, each acting reasonably.

45.4 The Purchaser will not be entitled to give notice to the Contractor pursuant to Clause 4.1 that the Goods fail to meet the requirements of the Contract (unless the reason for the rejection is that the Goods were in a consignment which is deficient in weight, quantity or measure).

45.5 Unless otherwise specified in the Contract, it shall be for the Contractor to provide at its cost the equipment, labour and other requirements necessary to carry out all Acceptance Tests.

45.6 The Purchaser shall be entitled to be present at all Acceptance Tests.

45.7 If the Contractor fails to carry out any Acceptance Tests on the agreed date and at the agreed time, the Purchaser shall be entitled, at its option:

45.7.1 to itself carry out those Acceptance Tests, and the Contractor shall reimburse the Purchaser for the reasonable costs associated with such tests; or

45.7.2 to reject the Goods by notice in writing to the Seller and obtain from the Contractor, without delay, a full refund in respect of the Goods concerned

45.8 If the Goods pass the Acceptance Tests:

45.8.1 the Purchaser shall issue a notice in writing to the Contractor to that effect; and

45.8.2 for the purposes of Clause 5 (Warranties and Representations) of the Conditions the Warranty Period for the Goods shall be the period of 12 months from the putting into service of the Goods, or 18 months from the date the Goods pass the Acceptance Tests, whichever shall be the shorter.

45.9 If the Goods or any part of them fail to pass the first Acceptance Tests, or if the Purchaser has elected in accordance with Clause 45.11 that there should be any further Re-Test:

45.9.1 the Contractor shall within 7 days of the failure take such steps at its own cost as are required to ensure that the Goods will pass the Acceptance Tests (including repair, adjustment and/or replacement as the case may be); and

45.9.2 by not later than the end of the 7 day period shall Re-Test on a date and at a time agreed between the Purchaser and the Contractor, each acting reasonably.

45.10 If on any Re-Test the Goods pass the Acceptance Tests, Clause 3 will apply.

45.11 If on any Re-Test the Goods or any part of them fail to pass the Acceptance Tests, the Purchaser shall be entitled, at its option:

45.11.1 to elect that there should be a further Re-test in which case the Contractor shall comply with Clause 45.10; or

45.11.2 to reject the Goods by notice in writing to the Seller and obtain from the Contractor, without delay, a full refund in respect of the Goods concerned.

45.12 Any Goods rejected pursuant to Clause 45.7.2 or 45.11.2 shall be removed by (and at the expense of) the Contractor within 7 days of the rejection notice. If the Contractor fails to remove rejected Goods within such period, the Purchaser may return the rejected Goods or any of them at the Contractor's risk, and the Contractor will indemnify the Purchaser in respect of the cost of carriage and any other costs incurred in relation to such return.

45.13 The rights of the Purchaser in this Section shall apply:

45.13.1 without prejudice to its other rights and remedies; and

45.13.2 to Goods as originally delivered, and to Goods repaired, adjusted or replaced pursuant to this Section.

SCHEDULE 1 – DATA PROTECTION

Data Processing provision as required by Article 28(3) GDPR.

This Part includes certain details of the Processing of Personal Data in connection with the Services:

Subject matter and duration of the Processing of Personal Data

[include detail of subject matter and duration]

The nature and purpose of the Processing of Personal Data

[Include description here]

The types of Personal Data and, if applicable, Special Category Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of the Purchaser

The obligations and rights of the Purchaser as the Data Controller are set out in Clause 26 of the Contract.