

## AGREEMENT

relating to the provision of  
services

**<Enter Contract Name>**

**<Enter Contract Reference  
(see Corporate Procurement)>**

**<Enter Supplier Name>**

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**THIS AGREEMENT** is made on *[date in manuscript]*

**BETWEEN**

- (1) [ ] of [ ] or, where the context requires, any administration of the States (the “Authority”); and
- (2) **[CONTRACTOR] LIMITED** (company registered number [ ]) whose registered office is at [ ] (the “Contractor”).

**RECITALS:**

- (A) The Authority [recite summary Ministerial Decision, as appropriate]
- (B) The Authority and the Contractor have agreed that the Contractor shall provide and the Authority shall co-operate with it in providing the Goods in the manner and upon the terms hereinafter set out.

## **Part 1 - Preliminary**

### **1. Definitions and Interpretations**

**1.1.** In the Agreement unless the context otherwise requires the following terms shall have the meanings given to them below:

“Agreement” means this agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, the Invitation to Tender, the Contractor’s Tender and any other documents (or parts thereof) specified by the Authority.

“Approval” and “Approved” means the written consent of the Contract Manager.

“Authority Property” means any property, other than real property, issued or made available to the Contractor by the Authority in connection with the Agreement.

“Commencement Date” means the date of the Agreement [            ] 200[    ].

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:

(a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection (Jersey) Law 2005 (as amended or replaced) and the Commercially Sensitive Information.

“Contract Manager” means the person for the time being appointed by the Authority as being authorised to administer the Agreement on behalf of the Authority or such person as may be nominated by the Contract Manager to act on its behalf.

“Contractor’s Representative” means the individual authorised to act on behalf of the Contractor for the purposes of the Agreement.

“Default” means any breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the Contractor’s equipment, plant, materials, and such other items supplied and used by the Contractor in the performance of its obligations under the Agreement.

“Extension” means the extension of the duration of the Agreement agreed in accordance with clause 48.

“FOIL” means the Freedom of Information (Jersey) Law 2011 and any subordinate legislation made under this Law from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services.

“Information” has the meaning given under Article 1 of the Freedom of Information (Jersey) Law 2011.

“Initial Term” means the period from the Commencement Date to the expiry date or such earlier date of termination or partial termination of the agreement in accordance with clause 2.1 of the Agreement.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations

whether registrable or not in any country (including but not limited to the Channel Islands or the United Kingdom) and the right to sue for passing off.

“Invitation to Tender” means an invitation for Contractors to bid for the Services required by the Authority.

“Key Personnel” means those persons named in the Specification as being key personnel.

“Law” means any applicable enactment, sub-ordinate legislation within the meaning of Article 10 of the Interpretation (Jersey) Law 1954 passed by the States and confirmed by Her Majesty in Council and any provision of any regulations, Order, rules, scheme or other instrument passed or made in Jersey under the authority or any Order in Council or under any such Law as aforesaid, bye-laws, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any Regulatory Body of which the Contractor is bound to comply or the equivalent enactment in England where the context otherwise requires.

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Named Employee” has the meaning given to it in clause 32.1

“Party” means a party to the Agreement and “Parties” shall be construed accordingly.

“Premises” means the location where the Services are to be performed, as specified in the Specification.

“Price” means the price exclusive of any applicable Tax, payable to the Contractor by the Authority under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Agreement but before taking into account the effect of any adjustment of price in accordance with clause 22.

“Pricing Schedule” means the Schedule containing details of the Price.

“Quality Standards” means the quality standards published by the British Standards Institute, the International Organisation for Standardisation or any other equivalent body, that a skilled and experienced operator engaged in the same type of industry or business as the Contractor would reasonably and ordinarily be expected to comply as supplemented by the Specification.

“Regulatory Bodies” means those government departments and regulatory statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party Contractor appointed by the Authority from time to time, to provide any services which are substantially similar to any of the Services, and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Agreement, whether those services are provided by the Authority internally and/or by any third party.

“Requests for Information” shall have the meaning set out in FOIL or any apparent request for information under the FOIL.

“Schedule” means a schedule attached to the Agreement.

“Services” means the services to be provided as specified in the Specification.

“Specification” means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Authority, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services.

“Staff” means all persons employed by the Contractor to perform the Agreement together with the Contractor’s servants, agents and sub-contractors used in the performance of the Agreement.

“Tax” means Value Added Tax (VAT) / Goods and Services Tax (GST) to the extent that either is applicable.

“Tender” means the Contractor’s response to the Invitation to Tender (as subsequently clarified in [•]).

“Term” means the period of duration of the Agreement in accordance with clause 2.1.



“Users” means a reasonably representative sample of those users who consume or benefit from the Services.

“Variation” has the meaning given to it in 43.1.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for domestic business in Jersey.

**1.2.** In the Agreement except where the context otherwise requires:

- (a) the terms and expressions set out in clause 1.1 shall have the meanings ascribed therein; words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;
- (f) references to the Supplier or Contractor shall be a reference to the Contractor and vice versa and shall have the same meaning as Contractor;
- (g) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
- (h) headings are included in the Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

**2. Term**

**2.1.** The Agreement shall take effect on the Commencement Date and shall expire automatically on [the date specified in the Specification] [..... 20--], unless it is otherwise terminated in accordance with the Agreement, or otherwise lawfully terminated.

**2.2.** The Authority may seek to extend the duration of the Agreement in accordance with clause 48. During the Extension, the obligations under the Agreement shall continue (subject to any Variation) until the expiry of the period specified in accordance with clause 48.

### **3. Contractor's Status (Principal)**

**3.1.** In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Authority.

**3.2.** Accordingly:

- (a) the Contractor shall not (and shall procure that the Staff do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Authority; and
- (b) nothing in the Agreement shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Agreement or by negligence on the part of the Authority, the Authority's employees, servants or agents.

### **4. Authority's Obligations**

**4.1.** Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Agreement (howsoever arising) on the part of the Authority to the Contractor.

### **5. Entire Agreement**

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

**5.2.** In the event of and only to the extent of any conflict between the body of the Agreement, Specification, Invitation to Tender, Contractor's Tender and other documents referred to or attached to the Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (1) the body of the Agreement shall prevail over;
- (2) the Schedules;

- (3) the Invitation to Tender;
- (4) the Contractor's Tender
- (5) any other document referred to in the Agreement.

Unless expressly agreed, a document varied pursuant to clause 43 shall not take higher precedence than specified here.

**5.3.** The Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## **6. Scope of Agreement**

**6.1.** Nothing in the Agreement shall be construed as creating a partnership or a contract of employment between the Authority and the Contractor.

## **7. Notices**

**7.1.** Except as otherwise expressly provided within the Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless made in writing by or on behalf of the Party concerned.

**7.2.** Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or four hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

**7.3.** For the purposes of clause 7.2, the address of each Party shall be:

(a) For the Authority:

[ ]

[Address: ]

[ ]



**10.1.** The Contractor shall take all reasonable steps, in accordance with good industry practice, to prevent any fraudulent activity by the Staff, the Contractor (including its shareholders, members, directors) and/or any of the Contractor's suppliers, in connection with the receipt of monies from the Authority. The Contractor shall notify the Authority immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

## **Part 2 – The Provision of the Services**

### **11. The Services**

**11.1.** The Contractor shall provide the Services during the Term in accordance with the Authority's requirements as set out in the Specification and the terms of the Agreement. The Authority shall have the power to inspect and examine the performance of the Services at the Authority's Premises at any reasonable time or, provided that the Authority gives reasonable notice to the Contractor, at any other premises where any part of the Services is being performed.

**11.2.** The Contractor shall at all times deliver the Services in accordance with the Law.

**11.3.** If the Authority informs the Contractor that the Authority considers that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default or negligence on the part of the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Agreement within such reasonable time as may be specified by the Authority.

**11.4.** Subject to the Authority providing Approval in accordance with clause 12.2, timely provision of the Services shall be of the essence of the Agreement, including in relation to commencing the provision of the Services within the time agreed or on a specified date.

**11.5.** Without prejudice to any other rights and remedies the Authority may have pursuant to the Agreement, the Contractor shall reimburse the Authority for all reasonable costs incurred by the Authority which have arisen as a consequence of the Contractor's delay in the performance of its obligations under the Agreement and which delay the Contractor has failed to remedy following reasonable notice from the Authority. For the avoidance of doubt, the Contractor's obligation to reimburse the Authority under this clause does not arise to the extent that the delay was caused by a delay or failure by the Authority to provide Approval under clause 12.2.

### **12. Manner of Carrying Out the Services**

- 12.1.** The Contractor shall provide and, unless otherwise agreed, install all the Equipment necessary for the provision of the Services.
- 12.2.** The Contractor shall make no delivery of Equipment nor commence any work on the Authority's Premises without obtaining the Authority's prior Approval.
- 12.3.** All Equipment brought onto the Authority's Premises shall be at the Contractor's own risk. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Authority's Premises will remain the property of the Contractor.
- 12.4.** The Contractor shall maintain all items of Equipment within the Authority's Premises in a safe, serviceable and clean condition.
- 12.5.** All Equipment shall be at the risk of the Contractor and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the Authority.
- 12.6.** The Authority shall have the power at any time during the performance of the Services to order in writing that the Contractor:
- (a) remove from the Authority's Premises any Equipment which in the opinion of the Authority is either hazardous, noxious or not in accordance with the Agreement; and
  - (b) if the Authority has ordered the Contractor to remove any item of Equipment in accordance with clause 12.6 (a) above, to replace such item with a suitable substitute item of Equipment.
- 12.7.** On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the services in order to leave the Authority's Premises in a clean, safe and tidy condition. For the avoidance of doubt the Contractor is solely responsible for making good any damage to the Authority's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors.
- 12.8.** Access to the Authority's Premises shall not be exclusive to the Contractor but shall be limited to such Staff and the Contractor's suppliers as are necessary to perform of the Services concurrently with the execution of work by others. The Contractor shall co-operate free of charge with such others on the Authority's Premises as the Authority may reasonably require.

### **13. Standard of Work**

- 13.1.** The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent the standard of Services has not been specified in the Agreement, the Contractor shall agree the relevant standard of Services with the Contract Manager prior to execution, and shall execute the Agreement with reasonable care and skill and in accordance with good industry practice.
- 13.2.** The Contractor warrants and represents that all Staff assigned to the performance of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper performance of the Services.
- 13.3.** The introduction of new methods or systems which impinge on the provision of the Services shall be subject to prior Approval.
- 13.4.** The signing by the Contract Manager (or his representative) of time sheets or other similar documents shall not be construed as implying the Contractor's compliance with the Agreement.

#### **14. Customer Satisfaction Survey**

- 14.1.** The Contractor shall undertake (or procure the undertaking of) a customer satisfaction survey ("Customer Satisfaction Survey") the purpose of which shall include (but not limited to) assessing the level of satisfaction among users of Services (including the way in which the Services are provided, performed and delivered) and, in particular, with the quality, efficiency and effectiveness of the Services.
- 14.2.** The Customer Satisfaction Survey shall be undertaken by means of distributing to users of the Services a questionnaire (or other survey method as agreed between the Parties) in a form to be agreed with the Authority (acting reasonably).
- 14.3.** The content of the questionnaire (or other material to be used for any other survey method) referred to in clause 14.2 and the method of undertaking the Customer Satisfaction Survey shall comply with all Law.
- 14.4.** The Authority shall provide reasonable assistance and information to the Contractor to enable the Contractor to undertake the Customer Satisfaction Survey.
- 14.5.** Within one month of each Customer Satisfaction Survey, the Contractor shall prepare a summary of the results of the Customer Satisfaction Survey in such form as the Authority shall reasonably require and promptly upon a written request from the Authority provide such further details (including copies of all returned questionnaires and/or any other survey material used by the Contractor) as the Authority shall reasonably require.

## **15. Key Personnel**

- 15.1.** Key Personnel shall not be released from providing the Services without the agreement of the Authority, except by reason of long-term sickness, termination of employment and other extenuating circumstances.
- 15.2.** Any replacements to the Key Personnel shall be subject to the agreement of the Authority. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 15.3.** The Authority shall not unreasonably withhold its agreement under clause 15.1 or clause 15.2. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Agreement which could be caused by a change in Key Personnel.

## **16. Contractor's Staff**

- 16.1.** The Authority reserves the right under the Agreement to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Authority:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by a sub-contractor, agent or servant of the Contractor
- whose admission or continued presence would be, in the reasonable opinion of the Authority, undesirable.
- 16.2.** If and when directed by the Authority, the Contractor shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the Agreement to any premises occupied by or on behalf of the Authority, specifying the capacities in which they are concerned with the Agreement and giving such other particulars as the Authority may reasonably desire.
- 16.3.** The Contractor's Staff, engaged within the boundaries of any of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
- 16.4.** The decision of the Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Authority shall be final and conclusive.



**16.5.** The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this clause.

## **17. Jersey Living Wage**

**17.1** The Contractor will ensure that all Relevant Staff employed or engaged by the Contractor are paid an Equivalent Hourly Wage which is equal to or exceeds the Jersey Living Wage.

**17.2** The Contractor will ensure all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the Jersey Living Wage.

**17.3** The Contractor will provide to the Authority such information concerning the Jersey Living Wage and the performance of its obligations under this Clause 17 as the Authority may reasonably require and within the deadlines it reasonably imposes.

## **18. Inspection of Premises**

**18.1.** Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Agreement to be carried out and be satisfied in relation to all matters connected with the performance of the Agreement.

**18.2.** The Authority shall, at the request of the Contractor, grant such access as may be reasonable for the purpose referred to in clause 18.1.

## **19. Licence to occupy Authority's Premises**

**19.1.** Any land or Premises (including temporary buildings) made available to the Contractor by the Authority in connection with the Agreement, shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Agreement. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Agreement.

**19.2.** The Contractor shall not use the Authority's Premises for any purpose or activity other than the provision of the Services.

- 19.3.** Should the Contractor require modifications to the Authority's Premises, such modifications shall be subject to prior Approval and shall be carried out by the Authority at the Contractor's expense. The Authority shall undertake Approved modification work without undue delay. Ownership of such modifications shall rest with the Authority.
- 19.4.** The Contractor shall (and shall ensure that their employees, servants, agents, suppliers or sub-contractors) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Authority, and the Contractor shall pay for the cost of making good any damage caused by the Contractor, his employees, servants, agents, suppliers or sub-contractors other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 19.5.** The Parties agree that there is no intention on the part of the Authority to create a tenancy of whatsoever nature in favour of the Contractor or its employees, servants, agents, suppliers or sub-contractors and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Agreement, the Authority retains the right at any time to use in any manner the Authority sees fit any premises owned or occupied by it.

## **20. Authority Property**

- 20.1.** Where the Authority for the purpose of the Agreement issues Authority Property free of charge to the Contractor such property shall be and remain the property of the Authority. The Contractor shall not in any circumstances have a lien on the Authority Property and the Contractor shall take all reasonable steps to ensure that the title of the Authority to such Authority Property and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the Agreement.
- 20.2.** Any Authority Property made available or otherwise received by the Contractor shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.
- 20.3.** The Contractor shall maintain all Authority Property in good order and condition, excluding fair wear and tear, and shall use Authority Property solely in connection with the Agreement and for no other purpose without prior Approval.
- 20.4.** The Contractor shall notify the Contract Manager of any surplus Authority Property remaining after the expiry, termination and/or partial termination (as appropriate) of the Agreement and shall dispose of it as the Authority may direct. Waste of such Authority Property arising from bad workmanship or negligence of the Contractor or any of the Contractor's employees, servants, agents, suppliers or sub-contractors shall be made good at the Contractor's

expense. Without prejudice to any other rights of the Authority, the Contractor shall deliver up Authority Property whether processed or not to the Authority on demand.

**20.5.** The Contractor shall ensure the security of all Authority Property, whilst in the Contractor's possession, either on its premises or elsewhere during the performance of the Agreement, in accordance with the Authority's reasonable security requirements as required from time to time.

**20.6.** The Contractor shall be liable for any and all loss of or damage (excluding fair wear and tear) to any Authority Property, unless the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of the Authority. The Contractor's liability set out in this clause shall be reduced to the extent that such loss or damage was contributed to by the negligence or default of the Authority. The Contractor shall inform the Contract Manager within 2 Working Days of becoming aware of any defects appearing in or losses or damage occurring to Authority Property made available for the purposes of the Agreement.

## **21. Sub-Contracting for the delivery of the Services**

**21.1.** Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, it shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

## **22. Offers of Employment**

**22.1.** For the duration of the Agreement and for a period of 12 months thereafter the Contractor shall not employ or offer employment to any of the Authority's staff who have been associated with the procurement and/or the contract management of the Services without the Authority's prior Approval.

## **Part 3 – Payment and Price**

### **23. Price**

- 23.1.** In consideration of the performance of the Contractor's obligations under the Agreement by the Contractor, the Authority shall pay the Price in accordance with clause 23.
- 23.2.** In the event that the cost to the Contractor of performing its obligations under the Agreement increases or decreases as a result of a change of Law, the provisions of clause 28 shall apply.
- 23.3.** The parties agree that Value Added Tax shall not be chargeable and that any additional tax liability (in respect of any other jurisdiction) shall be met by the Contractor.

### **24. Payment and Tax**

- 24.1.** The Authority shall pay the undisputed sums due to the Contractor in cleared funds within 30 days of receipt and agreement of valid invoices, submitted monthly in arrears, for work completed to the satisfaction of the Authority.
- 24.2.** Each invoice shall contain a purchase order number, all appropriate references and a detailed breakdown of the Services and shall be supported by any other documentation reasonably required by the Contract Manager to substantiate the invoice. The Authority reserves the right not to pay if the purchase order is not on the invoice.
- 24.3.** Tax, where applicable, shall be shown separately on valid Tax invoices as a strictly net extra charge.
- 24.4.** The Authority may reduce payment in respect of any Services which the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of the Authority.
- 24.5.** The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Agreement under clause 55.3 for failure to pay undisputed charges.

### **25. Recovery of Sums Due**

- 25.1.** Wherever under the Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Agreement), the Authority may unilaterally deduct that sum from any sum then

due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Authority.

**25.2.** Any overpayment by the Authority to the Contractor, whether of the Price or of tax, shall be a sum of money recoverable by the Authority from the Contractor.

**25.3.** The Contractor shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

## **26. Price adjustment on Extension**

**26.1.** Subject to clause 24.4 the price shall remain fixed for the Initial Term.

**26.2.** In the event of a possible Extension, the Authority reserves the right to review any charges payable to the Contractor for the provision of services beyond the Initial Term.

**26.3.** If the Authority approaches the Contractor in accordance with clause 49 concerning an Extension, the Authority must agree the charges to be payable to the Contractor for the provision of any services during the Extension, at least 3 months prior to the end of the Initial Term.

**26.4.** Any claim for an increase in the charges during an Extension will only be considered if the increase does not exceed the percentage change in the Jersey Retail Price Index (RPI) (or another such index as notified to the Contractor in writing) between the Commencement Date and the date 3 months before the end of the Initial Term.

## **27. Euro**

**27.1.** Any legislative requirement to account for the services in euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.

**27.2.** The Authority shall provide all reasonable assistance to facilitate compliance by the Contractor under clause 27.1.

## **28. Change of Law**

**28.1.** The Contractor shall neither be relieved of its obligations to perform the Services in accordance with the terms of the Agreement nor be entitled to an increase in the Price and/or any charges payable by the Contractor as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Goods is known at the Commencement Date.

**28.2.** If a Specific Change in Law occurs or will occur during the Term (other than those referred to in clause 28.1) or during any extension agreed pursuant to clause 26, the Contractor shall notify the Authority of the likely effects of that change, including:

- (a) whether any change is required to the Services, the Price or the Agreement; and
- (b) whether any relief from compliance with the Contractor's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

**28.3.** As soon as practicable after any notification in accordance with clause 28.2 the Parties shall discuss and agree the matters referred to in that clause and any ways in which the Contractor can mitigate the effect of the Specific Change of Law, including:

- (a) providing evidence that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its subcontractors;
- (b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it occurred;
- (c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and
- (d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Price.

**28.4.** Any increase in the Price or relief from the Contractor's obligations agreed by the Parties pursuant to this clause 28 shall be implemented in accordance with clause 44.

## **Part 4 - Statutory Obligations, Codes of Practice and Regulations**

### **29. Prevention of Corruption**

**29.1.** The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or any other contract with the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916 and the Corruption (Jersey) Law 2006.

**29.2.** The Contractor warrants that it has not paid commission or has agreed to pay any commission to any employee or representative of the Authority by the Contractor or on the Contractor's behalf.

**29.3.** Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses 29.1 or 29.2 in relation to this or any other contract with the Authority, the Authority has the right to:

- (a) terminate the Agreement and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination; or
- (b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause, whether or not the Agreement has been terminated.

### **30. Discrimination**

**30.1.** The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Equal Pay Acts 1970 and 1983, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Human Rights Act 1998, Human Rights (Jersey) Law 2000 or other relevant legislation, or any statutory modification or re-enactment thereof.

**30.2.** The Contractor shall take all reasonable steps to secure the observance of clause 30.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

### **31. Rights of Third Parties**

**31.1.** No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Authority or the Contractor) shall have any right to enforce any term of the Agreement, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both Parties, which agreement should specifically refer to this clause 31. This clause does not affect any right or remedy of any person which exists or is available otherwise.

### **32. Health and Safety**

**32.1.** The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of the Agreement. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the performance of the Agreement.

**32.2.** While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working on those Premises.

**32.3.** The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of the Agreement on the Authority's Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

**32.4.** The Contractor shall comply with the requirements of the Health and Safety at Work (Jersey) Law 1989 and to the extent applicable, the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of the Agreement.

**32.5.** The Contractor shall ensure that its health and safety policy statement (if applicable) is made available to the Authority on request.

### **33. Criminal Records Check**

**33.1.** The Contractor shall procure that in respect of all potential Staff or persons performing any of the Services (each a "Named Employee") before a Named Employee begins to attend any Authority premises to perform any of the Services:

(a) each Named Employee is questioned as to whether he or she has any convictions; and



- (b) the results are obtained of a check of the most extensive available kind made pursuant to Part V of the Police Act 1997 in respect of each Named Employee. The check for each Named Employee shall include:
- a. a search of the list held pursuant to the Safeguarding of Vulnerable Groups Act 2006 where the performance of the Services may involve contact with children; and/or
  - b. a search of the list held pursuant to Part VII of the Care Standards Act 2000 where the performance of the Services may involve contact with vulnerable adults (as defined in the Care Standards Act).; and
- (c) a copy of the results of such check are notified to the Authority.

**33.2.** The Contractor shall procure that no person who discloses any convictions, or who is found to have any convictions following the results of a check, is employed or engaged by the Contractor or on the Contractor's behalf without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

**33.3.** The Contractor shall procure that the Authority is kept advised at all times of any member of Staff who, subsequent to his/her commencement of employment as a member of Staff, receives a conviction or whose previous convictions become known to the Contractor (or any employee of a sub-contractor involved in the provision of the Services).

## **Part 5 - Protection of Information**

### **34. Data Protection**

**34.1.** The Parties shall (and shall procure that any of its Staff involved in the provision of this Agreement) comply with the Data Protection (Jersey) Law 2005 (as amended or replaced) or any applicable equivalent legislation in the contractors jurisdiction (if outside Jersey) and Schedule 6 of this Agreement.

**34.2.** The provisions of this clause and Schedule 6 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

### **35. Cyber Essentials Scheme / Information Security Management System**

**35.1.** The Contractor acknowledges that the Authority is required to reduce the levels of cyber security risk in its supply chain and seeks compliance where appropriate to Cyber Essentials Security/Information Security System model.

**35.2.** If requested to do so by the Authority, before entering into this Contract the Contractor will, within 15 Working Days of the date of this Contract, develop (and obtain the Authority's written approval of) a Security Management Plan and an Information Security Management System. After

Authority approval the Security Management Plan and Information Security Management System will apply during the Term of this Contract. Both plans will comply with the Authority's security policy and protect all aspects and processes associated with the delivery of the Services .

**35.3.** The Contractor will use software and the most up-to-date antivirus definitions available from an industry-accepted antivirus software seller to minimise the impact of Malicious Software.

If Malicious Software causes loss of operational efficiency or loss or corruption of Service Data, the Contractor will help the Authority to mitigate any losses and restore the Services to operating efficiency as soon as possible.

Responsibility for costs will be at the:

**35.4.** Contractor's expense if the Malicious Software originates from the Contractor software or the Service Data while the Service Data was under the control of the Contractor, unless the Contractor can demonstrate that it was already present, not quarantined or identified by the Authority when provided

**35.5.** Authority's expense if the Malicious Software originates from the Authority software or the Service Data, while the Service Data was under the Authority's control

## **36. Confidentiality**

**36.1.** Each Party:-

- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
- (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of the Agreement.

**36.2.** The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from the Authority under or in connection with the Agreement:

- (a) is given only to such of the Staff and professional advisors or Contractors engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;
- (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or Contractors otherwise than for the purposes of the Agreement.

**36.3.** Where it is considered necessary in the opinion of the Authority, the Contractor shall ensure that Staff or such professional advisors or Contractors sign a confidentiality undertaking before commencing work in connection with the Agreement. The Contractor shall ensure that Staff or its professional advisors or Contractors are aware of the Contractor's confidentiality obligations under the Agreement.

**36.4.** The Contractor shall not use any Confidential Information it receives from the Authority otherwise than for the purposes of the Agreement.

**36.5.** The provisions of clauses 36.1 to 36.4 shall not apply to any Confidential Information received by one Party from the other:

- (a) which is or becomes public knowledge (otherwise than by breach of this clause);
- (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIL pursuant to clause 36.

**36.6.** Nothing in this clause shall prevent the Authority:

- (a) disclosing any Confidential Information for the purpose of:
  - a. the examination and certification of the Authority's accounts; or
  - b. any examination pursuant to Article 36 of the Public Finances (Jersey) Law 2005 of the economy, efficiency and effectiveness with which the Authority has used its resources;or
- (b) disclosing any Confidential Information obtained from the Contractor:
  - a. to any States department or any administration of the States. All States departments or any administration of the States receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other States departments or any administration of the States on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any States department or any administration of the States; or
  - b. to any person engaged in providing any services to the Authority for any purpose relating to or ancillary to the Agreement;

provided that in disclosing information under sub-paragraph (b) the Authority discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

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

### **37. Freedom of Information**

**37.1.** The Contractor acknowledges that the Authority is subject to the requirements of the FOIL and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with information disclosure requirements (if necessary).

**37.2.** The Contractor shall and shall procure that its sub-contractors shall:

- (a) transfer the Request for Information to the Authority as soon as practicable after receipt and in any event within two Working Days of receiving a Request for Information;
- (b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority requesting that Information; and
- (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information within the time for compliance set out in Article 13 of the FOIL or any subordinate legislation made under the Law.

**37.3.** The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:

- (a) is exempt from disclosure in accordance with the provisions of the FOIL;
- (b) is to be disclosed in response to a Request for Information; and

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

**37.4.** The Contractor acknowledges that the Authority may, acting in accordance with the FOIL be obliged under FOIL to disclose Information:

- (a) without consulting with the Contractor, or
- (b) following consultation with the Contractor and having taken its views into account.

**37.5.** The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure for the term of this Agreement or as otherwise agreed and shall permit the Authority to inspect such records (including but not limited to audit records of disposed information) as requested from time to time.

**37.6.** The Contractor acknowledges that any lists or Schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 37.4.

### **38. Security of Confidential Information**

**38.1.** In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Agreement, the Contractor undertakes to maintain security systems approved by the Authority. Where necessary to prevent such access, the Authority may require the Contractor to alter any security systems at any time during the Term at the Contractor's expense.

**38.2.** The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under clause 35. The Contractor will co-operate with the Authority in any investigation that the Authority considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

### **39. Publicity, Media and Official Enquiries**

**39.1.** Without prejudice to the Authority's obligations under the FOIL, neither Party shall make any press announcements or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party.

**39.2.** Both Parties shall take all reasonable steps to ensure the observance of the provisions of clause 39.1 by all their servants, employees, agents, professional advisors and Contractors. The Contractor shall take all reasonable steps to ensure the observance of the provisions of clause 39.1 by its sub-contractors.

**39.3.** The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

#### **40. Security**

**40.1.** The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of the Authority while on the Premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

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

#### **41. Intellectual Property Rights**

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

- (a) furnished to or made available to the Contractor by the Authority shall remain the property of the Authority;
- (b) prepared by or for the Contractor for use, or intended use, in relation to the performance of the Agreement shall belong to the Authority and the Contractor shall not, and shall procure that the Contractor's employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Agreement) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Contractor may obtain in performing the Agreement except information which is in the public domain.

**41.2.** The Contractor shall obtain Approval before using any material, in relation to the performance of the Agreement which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the rights grants to the Authority a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party providing services to the Authority, and shall be granted at no cost to the Authority.

**41.3.** It is a condition of the Agreement that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Term on written demand indemnify and keep indemnified the Authority against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to:

- (a) designs furnished by the Authority;
- (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Agreement.

**41.4.** The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Authority; and
- (c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).

**41.5.** The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Agreement and shall be repaid all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in clause 41.3(a) and (b),

**41.6.** The Authority shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Authority or the Contractor in connection with the performance of the Agreement.

**41.7.** If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Agreement or in the reasonable opinion of the

Contractor is likely to be made, the Contractor may at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed) either:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- (b) procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

**41.8.** At the termination of the Agreement the Contractor shall immediately return to the Authority all materials, work or records held, including any back-up media.

**41.9.** The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

## **42. Audit**

**42.1.** The Contractor shall keep and maintain until twelve years after the Agreement has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services provided under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records as may be required by the Authority in connection with the Agreement, shall co-operate fully with the Authority or the Authority's representatives in respect of any reasonable requests and shall respond in a timely manner to any questions raised. Part 6 – Control of the Contract

## **43. Assignment and Sub-Contracting**

**43.1.** The Contractor shall not assign, sub-contract or in any other way dispose of the Agreement or any part of it without prior Approval. Sub-contracting any part of the Agreement shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Agreement.

**43.2.** The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

**43.3.** Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Contractor to the Authority within 2 Working Days of issue.



**43.4.** The Contractor shall not use the services of self-employed individuals without prior Approval.

#### **44. Waiver**

**44.1.** The failure of either Party to insist upon strict performance of any provision of the Agreement or the failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Agreement.

**44.2.** No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of clause 7.

**44.3.** A waiver of any right or remedy arising from a breach of the Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

#### **45. Variation of the Services**

**45.1.** The Authority reserves the right on giving reasonable written notice from time to time to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called "a Variation".

**45.2.** Any such Variation shall be communicated in writing by the Contract Manager to the Contractor's Representative in accordance with the notice provisions of clause 7. All Variations shall be in the form of an addendum to the Agreement.

**45.3.** In the event of a Variation the Price may also be varied. Such Variation in the Price shall be calculated by the Authority and agreed in writing with the Contractor and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances. Failing agreement the matter shall be determined by negotiation or mediation in accordance with the provisions of clause 61.

**45.4.** The Contractor shall provide such information as may be reasonably required to enable such varied price to be calculated.

#### **46. Severability**

**46.1.** If any provision of the Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Agreement shall continue in full force and effect as if the Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

**46.2.** In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

#### **47. Remedies in the event of inadequate performance**

**47.1.** Where a complaint is received or a problem indicated in any Customer Satisfaction Survey about the standard of Services or about the way any Services have been delivered or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Agreement, then the Contract Manager shall take all reasonable steps to ascertain whether the complaint is valid. If the Contract Manager so decides, he may uphold the complaint, or take further action in accordance with the provisions of clause 54 of the Agreement.

**47.2.** In the event that the Authority is of the reasonable opinion that there has been a material breach of the Agreement by the Contractor, or the Contractor's performance of its obligations under the Agreement has failed to meet the requirement set out in the Specification Schedule, then the Authority may, without prejudice to its rights under clause 55 of the Agreement, do any of the following:

- (a) make such deduction from the Price to be paid to the Contractor as the Authority shall reasonably determine to reflect sums paid or sums which would otherwise be payable in respect of such of the Services as the Contractor shall have failed to provide or performed inadequately;
- (b) without terminating the Agreement, itself provide or procure the provision of part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will be able to perform such part of the Services in accordance with the Agreement;
- (c) without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself provide or procure a third party to provide such part of the relevant Services; and/or
- (d) terminate, in accordance with clause 55, the whole of the Agreement.

**47.3.** The Authority may charge to the Contractor any cost reasonably incurred by the Authority and any reasonable administration costs in respect of the provision of such part of the relevant Services by the Authority or by a third party to the extent that such costs exceed the Price which would otherwise have been payable to the Contractor for such part of the relevant Services.

**47.4.** If the Contractor fails to perform any of the Services to the reasonable satisfaction of the Authority and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Authority may direct.

**47.5.** In the event that:

- (a) the Contractor fails to comply with clause 47.4 above and the failure, is materially adverse to the commercial interests of the Authority or prevent the Authority from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause 47.4 above,

the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

**47.6.** The remedies of the Authority under this clause may be exercised successively in respect of any one or more failures by the Contractor.

## **48. Remedies Cumulative**

**48.1.** Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **49. Monitoring of Performance**

**49.1.** The Contractor shall comply with the monitoring arrangements set out in Monitoring Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Agreement.

## **50. Possible Extension of Term**

**50.1.** Subject to satisfactory performance by the Contractor during the Initial Term, the Authority may wish to extend the Agreement for a further period of up to [ ] year(s). The Authority may approach the Contractor if it wishes to do so before the end of the Initial Term. The clauses in the Agreement will apply throughout any such extended period unless otherwise stated to the contrary.

## **51. Novation**

**51.1.** The Authority shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Contracting Authority, private sector body or any other body established under statute provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under this Agreement.

**51.2.** The Authority shall be entitled to disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Agreement by the Contractor. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Agreement and for no other purposes and shall take all reasonable steps to ensure that the Transferee accepts an obligation of confidence.

## **Part 7 - Liabilities**

### **52. Indemnity and Insurance**

**52.1.** Neither Party excludes or limits liability to the other Party for death or personal injury caused by its negligence or for any breach of any obligations implied by Article 21 of the Supply of Goods and Services (Jersey) Law 2009.

**52.2.** The Contractor shall indemnify and keep indemnified the Authority fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Agreement including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor. This clause shall not apply to the extent that the Contractor is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff or sub-contractors, or by any circumstances within its or their control.

**52.3.** Subject always to clause 52.1, the liability of either Party for Defaults shall be subject to the financial limits set out in this clause 52.3.

- (a) The aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Agreement shall in no event exceed Ten Million Pounds (£10,000,000).
- (b) The annual aggregate liability under the Agreement of either Party for all Defaults (other than a Default governed by clause 39.3 or clause 52.3(a)) shall in no event exceed the greater of Two Million pounds (£2,000,000) or One Hundred and Fifty per cent (150%) of the amount paid or payable by the Authority for the Services (as determined at the date on which the liability arises) to the Contractor for the Service performed in that Year.

**52.4.** Subject always to clause 52.1, in no event shall either Party be liable to the other for:

- (a) loss of profits, business, revenue or goodwill; and/ or
- (b) indirect or consequential loss or damage.

**52.5.** The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies

shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

**52.6.** The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement for the time being in force.

**52.7.** The Contractor shall produce to the Contract Manager, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

**52.8.** If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

**52.9.** The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Agreement. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 52.2.

### **53. Professional Indemnity**

**53.1.** The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional Contractors or sub-contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause 53.1, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or Contractor involved in the performance of Services has a limit of indemnity of not less than Five Million pounds (£5,000,000) for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Agreement.

### **54. Warranties and Representations**

**54.1.** The Contractor warrants and represents that:

- (a) the Contractor has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform the Agreement and that the Agreement is executed by a duly authorised representative of the Contractor;

- (b) the Contractor shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice;
- (c) all obligations of the Contractor pursuant to the Agreement shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) the Contractor is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under the Agreement.

## **Part 8 – Default, Disruption and Termination**

### **55. Termination on change of control and insolvency**

**55.1.** The Authority may terminate the Agreement by notice in writing with immediate effect where:

- (a) the Contractor undergoes a change of control, within the meaning of section Article 3A of the Income Tax (Jersey) Law 1961, which impacts adversely and materially on the performance of the Agreement; or
- (b) the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or
- (c) the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed, or the court makes a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
- (d) where the Contractor is unable to pay its debts within the meaning of the Bankruptcy (Désastre) (Jersey) Law 1990; or
- (e) any similar event occurs under the law of any other jurisdiction.

**55.2.** The Authority may only exercise its right under clause 55.1(a) within six months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

**55.3.** If the Contractor, being an individual, shall die or be adjudged incapable of managing his or her affairs within the meaning of the Mental Health (Jersey) Law 1969, the Authority shall be entitled to terminate the Agreement by notice to the Contractor or the Contractor's Representative with immediate effect.



## **56. Termination on Default**

**56.1.** The Authority may terminate the Agreement, or terminate the provision of any part of the Agreement by written notice to the Contractor or the Contractor's Representative with immediate effect if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Agreement.

**56.2.** In the event that through any Default of the Contractor, data transmitted or processed in connection with the Agreement is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall provide a full credit in respect of any charge levied for its transmission and shall reimburse the Authority for any costs charged in connection with such Default of the Contractor.

**56.3.** The Contractor may terminate the Agreement if the Authority is in material breach of its obligations to pay undisputed charges by giving the Authority 60 Working Days notice specifying the breach and requiring its remedy. The Contractor's right of termination under this clause 56.3 shall not apply to non payment of the charges or Price where such non payment is due to the Authority exercising its rights under clauses 25.1 and 47.2(a).

## **57. Break**

**57.1.** The Authority shall have the right to terminate the Agreement, or to terminate the provision of any part of the Agreement at any time by giving three Months' written notice to the Contractor.

## **58. Consequences of Termination**

**58.1.** Where the Authority terminates the Agreement under clause 57, or terminates the provision of any part of the Agreement under that clause, and then makes other arrangements for the provision of Services, the Authority shall be entitled to recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Initial Term or any Extension. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Agreement is terminated under clause 57, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

**58.2.** Where the Authority terminates the Agreement under clause 58, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Agreement, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under 58.

**58.3.** The Authority shall not be liable under clause 82 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Contractor under the Agreement, exceeds the total sum that would have been payable to the Contractor if the Agreement had not been terminated prior to the expiry of the Initial Term.

## **59. Disruption**

**59.1.** The Contractor shall take reasonable care to ensure that in the execution of the Agreement it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

**59.2.** The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Agreement.

**59.3.** In the event of industrial action by the Staff or the Contractor's suppliers the Contractor shall seek the Authority's Approval to its proposals for the continuance of the performance of the Services in accordance with its obligations under the Agreement.

**59.4.** If the Contractor's proposals referred to in clause 59.3 are considered insufficient or unacceptable by the Authority, then the Agreement may be terminated by the Authority by notice in writing with immediate effect.

**59.5.** If the Contractor is temporarily unable to fulfil the requirements of the Agreement owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any

additional expense incurred by the Contractor in fulfilling the provisions of the Agreement as a result of such disruption.

## **60. Recovery upon Termination**

**60.1.** Termination or expiry of the Agreement shall be without prejudice to any rights and remedies of the Contractor and the Authority accrued before such termination or expiration and nothing in the Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

**60.2.** At the end of the Term (and howsoever arising) the Contractor shall forthwith deliver to the Authority upon request all the Authority's Property (including but not limited to materials, documents, information, access keys) relating to the Agreement in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in default of compliance with this clause the Authority may recover possession thereof and the Contractor grants licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

**60.3.** At the end of the Term (howsoever arising) and/ or after the Term the Contractor shall provide assistance to the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Agreement in order to ensure an effective handover of all work then in progress. Where the end of Term arises due to the Contractor's default, the Contractor shall provide such assistance free of charge. Otherwise the Authority shall pay the Contractor's reasonable costs of providing the assistance, and the Contractor shall take all reasonable steps to mitigate such costs.

**60.4.** The provisions of this clause shall survive the continuance of the Agreement and indefinitely after its termination.

## **61. Force Majeure**

**61.1.** For the purpose of this clause, "Force Majeure" means any event or occurrence which is outside the reasonable control of the Party concerned, and which is not attributable to any act or failure to take preventative action by the Party concerned, including (but not limited to) governmental regulations, fire, flood, or any disaster. It does not include any industrial action occurring amongst the Contractor's Staff or any staff of any sub-contractor.

**61.2.** Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Agreement (other than a payment of money) if such delay or failure results

from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Agreement for a period in excess of 6 Months, either Party may terminate the Agreement by notice in writing with immediate effect.

**61.3.** Any failure or delay by the Contractor in performing its obligations under the Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

**61.4.** Clause 61 does not affect the Authority's rights under clause 60.4.

**61.5.** If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in clause 61.3 it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

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

## **Part 9 – Dispute and Law**

### **62. Governing Law**

**62.1.** The Agreement shall be governed by and interpreted in accordance with Jersey law and the Parties submit to the exclusive jurisdiction of the courts of Jersey.

### **63. Dispute Resolution**

**63.1.** The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement within 20 Working Days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

**63.2.** Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

**63.3.** If the dispute cannot be resolved by the Parties pursuant to clause 63.1 the dispute shall be referred to mediation pursuant to the procedure set out in clause 63.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

**63.4.** The performance of the Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Contractor (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Agreement at all times.

**63.5.** The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Agreement without the prior written consent of both Parties.
- (f) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

**IN WITNESS** whereof the Agreement has been signed and delivered as a deed on the date and year stated at the beginning of this deed.

MINISTER

)  
)  
)

[Authorised] Signatory / Ministerial Seal

THE COMMON SEAL of  
[CONTRACTOR] LIMITED was  
affixed in the presence of:

)  
)  
)

Director/Company Secretary

## **Schedule 1 – Particular Conditions**

**(Note: Relevant clause numbers are shown in brackets)**

- |   |  |
|---|--|
| <b>1</b> Public Liability insurance (clause 11 (c))       | £5,000,000 (five million pounds)   |
| <b>2</b> Professional indemnity insurance (clause 11 (c)) | £5,000,000 (five million pounds) save for claims in relation to specialist areas including, but not limited to, asbestos, pollution or contamination which shall be £2,000,000 (two million pounds) and may be subject to an annual aggregate limit. |
| <b>3</b> Parent company guarantee (clause XX)             | If required  |

**Schedule 2- Fee & Payment Information**



**Schedule 3 – Timelines / Project Plan**

**Schedule 4 - Key Personnel & Addresses for Notices**

**Schedule 5 - Invitation to tender & Contractors Response (incl. clarifications)**

## **Schedule 6 – Data Protection**

### **INTRODUCTION AND SCOPE**

(A) With effect from 25 May 2018 (“the Effective Date”) save where expressly stated in this Data Processing Schedule, the obligations set out in the Data Protection (Jersey) Law 2018 shall repeal and replace the Data Protection (Jersey) Law 2005.

(B) Notwithstanding the terms of this Agreement, except where indicated otherwise, from the Effective Date, the obligations of the Data Protection (Jersey) Law 2018 shall apply to the relationship between the parties and these additional terms shall take precedence over the terms in the Agreement where they conflict.

### **1. DEFINITIONS AND INTERPRETATIONS**

1.1 The definitions in this Schedule are the same as set out in the Data Protection (Jersey) Law 2018 (the “DP18”) and in addition these following definitions shall apply:

“Privacy and Data Protection Requirements” all applicable laws and regulations relating to the processing of personal data and privacy in any relevant jurisdiction, including, if relevant, DP18, the GDPR, the Regulation of Investigatory Powers (Jersey) Law 2005, the Electronic Communications (Jersey) Law 2000, any amendment, consolidation or re-enactment thereof, any legislation of equivalent purpose or effect enacted in Jersey or the United Kingdom, and any orders, guidelines and instructions issued under any of the above by relevant national authorities, a judicial authority in Jersey, England and Wales or a European Union judicial authority.

### **2. GENERAL**

2.1 Both Parties warrant that they will comply with their respective obligations under the Privacy and Data Protection Requirements and the terms of this Schedule.

2.2 For the purpose of this Agreement, both Parties warrant to undertake the obligations relevant to them as Controller or Processor as defined under the DP18.

2.3 The Authority is the [Controller / Processor] and the Contractor is the [Controller / Processor].

2.4 Both Parties shall comply any registration requirements under the DP18 and will only process personal data as necessary to fulfil the terms of this Agreement and for the duration of this Agreement.

### **3. NATURE OF THE DATA**

3.1 The subject-matter of the processing of personal data covers the following types/categories of data:

- Name
- Address
- Contact information (e.g. phone number, email address)
- Bank details
- Insurance details
- Children
- Vulnerable adults
- Criminal Records or a person's criminal record or alleged criminal activity
- Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership
- Data revealing genetic or biometric data that is processed for the purpose of uniquely identifying a natural person
- Data concerning health
- Data concerning a natural person's sex life or sexual orientation
- \_\_\_\_\_

### 3.2 [Persons affected \(data subjects\)](#)

The data subjects whose personal data will be processed includes:

- Employees
- Contractors
- Members of the public

#### **4. CONTROLLER OBLIGATIONS**

4.1 The Controller warrants and represents that all instructions provided to the Processor in relation to the processing of personal data are lawful and shall as a minimum include:

- (a) The nature and purpose of the processing of the personal data;
- (b) The types of personal data to be processed; and
- (c) The categories of data subjects to whom the personal data relates.

4.2 The Controller shall only provide instructions to the Processor that are in accordance with the terms of the Agreement and this Schedule. Such instructions shall be limited to the subject matter of providing Services under the Agreement.

4.3 The Controller acknowledges it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to the Processor to process personal data for the purposes of Services as set out in the Agreement.

4.4 The Parties acknowledge and accept that processing of third country or other international organisation's resident personal data shall be lawful only if and to the extent that either:

- (a) an adequacy decision is in place under Article 45 of the GDPR;
- (b) there are appropriate safeguards in place that meet the requirements of Article 67 of DP18; or
- (c) the transfer falls within the exceptions set out in Schedule 3 DP18.

#### **5. PROCESSOR OBLIGATIONS**

5.1 The Processor shall:

(a) only carry out processing of personal data in accordance with the Controller's documented instructions, including where relevant for transfers of third country resident personal data or to an international organisation, in which case the Processor shall inform the Controller of that legal requirement (unless prohibited by law), and shall immediately inform the Controller if, in the Processor's opinion, any instruction given by the Controller to the Processor infringes Privacy and Data Protection Requirements;

(b) notify the Controller without undue delay of any requests received from a Data Subject exercising their rights under Privacy and Data Protection Requirements and, taking into account the nature of the processing, assist the Controller by taking appropriate technical and organisational measures, insofar as this is possible, with fulfilling its obligations in respect of Data

Subject rights under the Privacy and Data Protection Requirements, including responding to any subject access requests or requests from Data Subjects for access to, rectification, erasure or portability of personal data, or for restriction of processing or objections to processing of personal data;

(c) take all security measures required in accordance with the Privacy and Data Protection Requirements (including where relevant, Article 21 and 22 DP18), and at the request of the Controller provide a written description of, and rationale for, the technical and organisational measures implemented, or to be implemented, to protect the personal data against unauthorised or unlawful processing and accidental loss; and detect and report personal data breaches without undue delay;

(d) where relevant for the processing of third country or other international organisation's resident personal data and taking into account the nature of the processing and the information available to the Processor, use all measures to assist the Controller in ensuring compliance with the Controller's obligations to;

- i. keep personal data secure (Article 21 DP18);
- ii. notify personal data breaches to the Authority (Article 20 DP18);
- iii. advise data subjects when there has been a personal data breach (Article 20(6) DP18);
- iv. carry out data protection impact assessments (Article 16 DP18); and
- v. consult with the Authority where a data protection impact assessment indicates that there is an unmitigated high risk to the processing (Article 17 DP18).

(e) without undue delay, inform the Controller of becoming aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the personal data transmitted, stored or otherwise processed. The Processor accepts and acknowledges that the Controller shall direct in its sole discretion, any and all steps and measures taken to remedy a breach by the Processor under the Privacy and Data Protection Requirements, including but not limited to any communications with the Authority. The Processor agrees not to act in any way upon such disclosure without the prior written consent of the Controller;

(f) make available to the Controller all information necessary to demonstrate compliance with the obligations laid down in this Agreement and allow for and contribute to audits, including inspections, conducted by the Controller or another auditor mandated by the Controller as set out in paragraph 5 below; and

(g) in addition to the confidentiality obligations contained within the Agreement, ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

5.2 On expiry or termination of the Agreement, the Processor shall immediately cease to use personal data and shall arrange for its safe return or destruction as shall be required by the Controller (unless otherwise prescribed by law).

## **6. AUDIT RIGHTS**

6.1 Upon the Controller's reasonable request, the Processor agrees to provide the Controller with any documentation or records (which may be redacted to remove confidential commercial information not relevant to the requirements of this Agreement) which will enable it to verify and monitor the Processor's compliance with its data protection and security obligations under the terms of this Agreement, within 14 days of receipt of such request, and to notify the Controller of the person within the Processor's organisation who will act as the point of contact for provision of the information required by the Controller. For this purpose, the Processor may present up-to-date attestations, reports or extracts thereof from independent bodies (e.g. external auditors, internal audit, the data protection officer, the IT security department or quality auditors) or suitable certification by way of an IT security or data protection audit;

6.2 Where, in the reasonable opinion of the Controller, such documentation is not sufficient in order to meet the obligations of Article 21 DP18, the Controller will be entitled, upon reasonable prior written notice to the Processor and upon reasonable grounds, to conduct an on-site audit of the Processor's premises used (save for domestic premises), solely to confirm compliance with its data protection and security obligations under this Schedule

6.3 Any audit carried out by the Controller will be conducted in a manner that does not disrupt, delay or interfere with the Processor's performance of its business. The Controller shall ensure that the individuals carrying out the audit are under the same confidentiality obligations as set out in the Agreement.

6.4 The Processor shall be entitled to carry out an audit of the Controller on reciprocal terms as those set out in clauses 6.1, 6.2 and 6.3.

## **7. USE OF SUB-PROCESSORS**

7.1 The Processor will only engage a sub-processor with the prior consent of the Authority in writing and the Controller shall not reasonably withhold their consent. If the Controller has a reasonable basis to object to Processor's use of a sub-processor, the Controller shall notify the Processor promptly in writing within ten (10) days after receipt of the Processor's notice. Sub-processing does in particular not include



ancillary services, such as telecommunication services, postal / transport services, maintenance and user support services or the disposal of data carriers, as well as other measures to ensure the confidentiality, availability, integrity and resilience of the hardware and software of data processing equipment.

7.2 Where the Processor uses a third party and where they are acting as a sub-processor in relation to the personal data the Processor shall:

- (a) in relation to third country or other international organisation's resident personal data, enter into a legally binding written agreement that places the equivalent data protection obligations as those set out in this Schedule to the extent applicable to the nature of the services provided by such sub-processor, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Privacy and Data Protection Requirements;
- (b) shall remain liable for any act or omission of a sub-processor that does not comply with the data protection obligations as set out in this Schedule; and
- (c) where required by law, the Processor shall inform the Controller of any intended changes concerning the addition or replacement of a sub-processor with access to personal data and give the Controller the opportunity to object to such changes.

**Schedule 7 – Cyber Essentials Scheme Requirements**

Information on Cyber Essentials Scheme can be found at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/526200/ppn\\_update\\_cyber\\_essentials\\_0914.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/526200/ppn_update_cyber_essentials_0914.pdf)

Any Cyber Essential system development by the Supplier should also comply with the government's '10 Steps to Cyber Security' guidance, available at <https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

Contract for Services

**Schedule 8 –Change Control Template**

<b>Title of Change</b> <b>Change Request No</b>
--

<b>Initiator Details</b> Name	Contact No	Date Raised
----------------------------------	------------	-------------

<b>Summary of Change Required (including benefits)</b>  Additional information may be supplied and attached to this form Attachments:
--

<b>Reason for Change</b> Type of Change	Priority (H, M, L)	Date Required
--	--------------------	---------------

<b>Technical Impact Analysis</b> Author	Contact No	Date
--	------------	------

<b>Assumptions</b>
--------------------

<b>Risks and likely effect of the change on the Authority resources and the provision of the Services</b>
---

<b>Title of Change</b>  <b>Attachments</b>
--

## Contract for Services

**Cost of changes**

**Impact on charges**

**Impact on service levels**

**Contract changes required**

**Timetable for implementation of change**

### **Authorisation for Implementation of Change**

**To be completed by authorised signatories of both parties**

Authority Name	Authority Title	Date
Signature		

Supplier Name	Supplier Title	Date
Signature		

**COMMERCIALLY SENSITIVE INFORMATION SCHEDULE**  
**[insert commercially sensitive information schedule as appropriate]**

## Maintenance Schedule

### Supplementary Maintenance Terms and Conditions

#### Recital

This Schedule 9 contains the supplementary maintenance terms and conditions that form part of this Contract, which apply to the Services to be provided by the Supplier.

#### **1 Additional definitions and interpretations**

1.1 In this Schedule 9 the following words shall have the following meanings unless the context requires otherwise:

1.1.1 “**PPM**” shall have the meaning set out in Clause 2.1.1 of this Schedule 9;

1.1.2 “**RM**” shall have the meaning set out in Clause 2.1.2 of this Schedule 9;

1.1.3 “**Equipment Inventory**” shall have the meaning set out in Clause 2.2.1 of this Schedule 9; and

1.1.4 “**Non-performed Services**” shall have the meaning set out in Clause 12.1 of this Schedule 9.

1.2 The definition of “**Specification and Tender Response Document**” shall be deemed to include any information provided to the Supplier on behalf of the Authority by a third party. The definition of “Specification and Tender Response Document” is:

- (a) Any written statements of the Authority’s requirements relating to the Services as provided by or on behalf of the Authority to the Supplier;
- (b) Any written statements of the Supplier provided to the Authority confirming how it will meet such requirements; and
- (c) The statement of the prices for the Services

Whether or not such Authority and Supplier statements are in a single document or separate documents and as amended and/or updated in accordance with this contract.

1.3 The Authority’s third party representative may provide and/or receive information or instructions on behalf of the Authority in connection with the operation of this Contract.

#### **2 General maintenance requirements**

2.1 The Supplier, in accordance with Good Industry Practice and the original equipment manufacture’s guidelines and recommendations, shall:

## Contract for Services

- 2.1.1 establish and provide effective planned preventive maintenance programmes (“**PPM**”) for all equipment as set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing; and
  - 2.1.2 provide appropriate remedial maintenance (“**RM**”) for all equipment to the extent this requirement is set out in the Specification and Tender Response Document and/or as otherwise agreed between the Parties in writing.
- 2.2 Without prejudice to any specific records keeping requirements set out in this Contract, including as part of the Specification and Tender Response Document, the Supplier shall:
- 2.2.1 maintain a record of all equipment that is covered by the Services (“**Equipment Inventory**”). For the avoidance of doubt, such Equipment Inventory shall form part of the Specification and Tender Response Document and may be in a single document or separate documents, as amended and/or updated in accordance with this Contract from time to time; and
  - 2.2.2 maintain records of all maintenance work carried out on any equipment in connection with this Contract.

### **3 Service visits**

- 3.1 The Supplier shall
- 3.1.1 liaise and co-operate fully with the Authority to ensure that the Authority is notified of all service visits to any Premises and Locations; and
  - 3.1.2 provide all required information to the Authority to demonstrate, to the Authority’s reasonable satisfaction, compliance with the PPM for all equipment and any RM carried out on any equipment.
- 3.2 Without limitation to the requirements of Clause 3.1.2 of this Schedule 9, the Supplier shall upload the service sheets and other required documentation (to include, without limitation, calibrations and certificates) completed during or subsequent to any service visits to any Premises and Locations to the Authority’s online service management system in accordance with any instructions as notified to the Supplier from time to time by the Authority and/or its representatives. Such service sheets shall be uploaded at the latest within seven (7) days following the relevant service visit.

### **4 Provision of information**

- 4.1 Without prejudice to any other audit or information requirements set out as part of this Contract, any records kept by the Supplier in connection with the Services, the Equipment Inventory and any service visits shall be made available by the Supplier for inspection by the Authority and/or its authorised representatives on request.

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- 4.2 The Supplier shall inform the Authority in writing as soon as it becomes aware that either of the following circumstances will, or are likely to, arise in connection with any equipment forming part of the Equipment Inventory:
- 4.2.1 the Supplier will no longer be able to maintain the item of equipment as any required third party support will no longer be available (including, without limitation, support from the original equipment manufacturer); or
- 4.2.2 the Supplier will no longer not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Services in relation to that item of equipment.
- 4.3 Where the Supplier provides information to the Authority under Clause 4.2 of this Schedule 9, it will inform the Authority in writing promptly upon becoming aware that this information has changed or may change.
- 4.4 Without prejudice to Clauses 4.2 and 4.3 of this Schedule 9, the Supplier shall at all times use its reasonable endeavors to give the Authority at least twelve (12) months notice that an item of equipment forming part of the Equipment Inventory will no longer be supported.

### **5 Loan equipment and replacement equipment**

- 5.1 Where the Supplier is unable to fix an item of equipment as part of the Services during a site visit, and the Specification and Tender Response Document provides for substitute equipment to be provided to the Authority in these circumstances on a loan and/or replacement basis, the Supplier shall provide the Authority with such substitute equipment in accordance with the relevant provisions and timescales, as set out in the Specification and Tender Response Document. Subject to the Authority's rights in accordance with Clause 8.1.3 of this Schedule 9, this Contract shall apply in full to such substitute equipment.

### **6 Additional warranties**

- 6.1 The Supplier warrants and undertakes that:
- 6.1.1 when providing the Services (including, without limitation, providing any loan or replacement equipment), it shall comply with all timescales and KPIs set out in the Specification and Tender Response Document associated with such requirements;
- 6.1.2 any replacement parts, consumable items, replacement equipment and/or loan equipment shall be of satisfactory quality, fit for their intended purpose, installed (where applicable) in accordance with Good Industry Practice and shall comply with the standards and requirements set out in this Contract;
- 6.1.3 it will ensure sufficient stock levels of any replacement parts, consumable items, replacement equipment and/or loan equipment to comply with its obligations under this Contract;



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- 6.1.4 it has and shall maintain a properly documented system of quality controls covering the supply of any replacement parts, consumable items, replacement equipment and/or loan equipment and shall at all times comply with such quality controls;
  - 6.1.5 any equipment it uses in the installation of any replacement parts, consumable items, replacement equipment and/or loan equipment shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
  - 6.1.6 receipt of any replacement parts, consumable items, replacement equipment and/or loan equipment by or on behalf of the Authority and use of such items or of any other related item or information supplied, or made available, to the Authority will not infringe any third party rights, to include without limitation, any Intellectual Property Rights;
  - 6.1.7 it will comply with all Law and Guidance in so far as it is relevant to the supply of any replacement parts, consumable items, replacement equipment and/or loan equipment to the Authority; and
  - 6.1.8 it will promptly notify the Authority of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the supply of any replacement parts, consumable items, replacement equipment and/or loan equipment and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards.
- 6.2 Where the supply of any replacement parts, consumable items, replacement equipment and/or loan equipment relates to medical devices (as defined under any relevant Law and Guidance), the Supplier warrants and undertakes that it will comply with any such Law and Guidance relating to such activities in relation to such medical devices. In particular, but without limitation, the Supplier warrants that at the point such replacement parts, consumable items, replacement equipment and/or loan equipment are supplied to the Authority, all such items which are medical devices shall have valid CE marking as required by Law and Guidance and that all relevant marking, authorisation, registration, approval and documentation requirements as required under Law and Guidance relating to the supply, manufacture, assembly, importation, storage, distribution, delivery, or installation of such items shall have been complied with. Without limitation to the foregoing provisions of this Clause 6.2 of this Schedule 9, the Supplier shall, upon written request from the Authority, make available to the Authority evidence of such valid CE marking, and evidence of any other authorisations, registrations, approvals or documentation required.
- 6.3 If the Supplier is in breach of Clause 6.2 of this Schedule 9 in relation to any items supplied to the Authority, then, without prejudice to any other right or remedy of the Authority, the Authority shall be entitled to reject and/or return such items and the Supplier shall indemnify and keep the Authority indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the Authority as a result of such breach.

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- 6.4 The Supplier agrees to use reasonable endeavours to assign to the Authority upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of any replacement parts, consumable items and/or replacement equipment in full or part.
- 6.5 The Supplier further warrants and undertakes to the Authority that it will inform the Authority in writing immediately upon becoming aware that any of the warranties set out in Clause 6 of this Schedule 9 have been breached or there is a risk that any warranties may be breached.

### **7 The Authority's right to add new or replacement items of equipment to the Equipment Inventory**

- 7.1 Where the Authority wishes to add an item of equipment to the Equipment Inventory, the following process shall apply:
- 7.1.1 by giving a minimum of seven (7) days written notice to the Supplier, the Authority may at any point during the Term propose that additional items of equipment are added to the Equipment Inventory;
- 7.1.2 within seven (7) days of an Authority proposal to add an item of equipment to the Equipment Inventory, the Supplier shall confirm in writing the Contract Price to be charged for the Services in relation to that item of equipment. The Contract Price quoted shall be consistent with the pricing terms and charges agreed as part of the Contract at its outset; and
- 7.1.3 once the Authority agrees the Contract Price for an item of equipment to be added to the Equipment Inventory, it will confirm this in writing to the Supplier and the relevant item of equipment will be added to the Equipment Inventory as proposed by the Authority. For the avoidance of doubt, where the Authority does not agree with any Contract Price proposed by the Supplier in relation to an item of equipment the Authority has proposed adding to the Equipment Inventory, it may withdraw such proposal.
- 7.2 Subject to Clauses 8 and 9 of this Schedule 9, any equipment added to the Equipment Inventory in accordance with Clause 7.1 of this Schedule 9 will be covered by the Services and this Contract shall apply in full to such equipment from the date it is added to the Equipment Inventory for the remainder of the Term.

### **8 The Authority's rights to remove items of equipment from the Equipment Inventory**

- 8.1 By giving a minimum of ninety (90) days written notice to the Supplier, the Authority may remove an item of equipment from the Equipment Inventory and discontinue the Services on that item of equipment in the following circumstances:
- 8.1.1 it decommissions an item of equipment for reasons other than as set out at Clause 8.2.1 of this Schedule 9;
- 8.1.2 it sells, transfers or otherwise disposes of the item of equipment; or

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- 8.1.3 the item of equipment is replaced by another item of equipment for reasons other than as set out at Clause 8.2 of this Schedule 9 and the replacement item of equipment is still under warranty.
- 8.2 By giving a minimum of thirty (30) days written notice to the Supplier, the Authority may remove an item of equipment from the Equipment Inventory and discontinue the Services on that item of equipment in the event that:
  - 8.2.1 it decommissions or replaces the item of equipment because that item of equipment needs to be retired urgently due to health and safety reasons and/or for reliability reasons; or
  - 8.2.2 the equipment is lost or stolen.

### **9 The Supplier's rights to remove items of equipment from the Equipment Inventory**

- 9.1 By giving a minimum of twelve (12) months written notice to the Authority, the Supplier may remove an item of equipment from the Equipment Inventory and discontinue the Services on that item of equipment in the following circumstances:
  - 9.1.1 the Supplier will no longer be able to maintain the item of equipment as any required third party support is no longer available (including, without limitation, support from the original equipment manufacturer); or
  - 9.1.2 the Supplier will permanently not be able to obtain from any third party (including, without limitation, the original equipment manufacturer) any required spare parts and/or consumable items required to provide the Services in relation to that item of equipment.
- 9.2 The Parties acknowledge that:
  - 9.2.1 at all times the Supplier shall be required to provide the Authority with information in accordance with Clauses 4.2, 4.3 and 4.4 of this **Error! Reference source not found.**9 notwithstanding the length of the Term of the Contract or the period of the Term still remaining; and
  - 9.2.2 Clause 9.1 of this Schedule 9 shall only apply where the Term of the Contract exceeds twelve (12) months.

### **10 Adjustment to the Contract Price where items of equipment are removed from the Equipment Inventory**

- 10.1 Following the removal of any items of equipment from the Equipment Inventory in accordance with Clauses 8.1, 8.2 or 9.1 of this Schedule 9, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for any period following the removal of such equipment. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective date of the removal of the relevant item of equipment from the Equipment Inventory and may be by credit note where the Supplier continues to provide other Services to the Authority.

**11 Additional termination provisions**

- 11.1 If the Authority removes equipment from the Equipment Inventory in accordance with Clauses 8.1 or 8.2 of this Schedule 9 and no equipment will remain part the Equipment Inventory following such removal, the Authority may terminate the Contract by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at the same time as it gives the notice of removal of the last remaining equipment in accordance with the Clauses 8.1 of 8.2 of this Schedule 9 or at anytime afterwards.
- 11.2 If the Supplier removes equipment from the Equipment Inventory in accordance with Clause 9.1 of this Schedule 9 and no equipment will remain part of the Equipment Inventory following such removal, the Authority may terminate the Contract by giving a minimum of thirty (30) days written notice to the Supplier. Such notice may be given by the Authority at any point after it receives the notice of removal of the last remaining equipment in accordance with Clause 9.1 of this Schedule 9 or at any time afterwards, but shall not take effect before the effective date of the removal of such equipment from the Equipment Inventory.
- 11.3 Following any termination of the Contract by the Authority in accordance with Clause 11.1 or Clause 11.2 of this Schedule 9, the Supplier shall make a full refund to the Authority in respect of the balance of the Contract Price paid in advance for the Services for any period following such termination to the extent such balance has not already been paid to the Authority in accordance with Clause 10.1 of this Schedule 9. Such refund shall be paid automatically by the Supplier to the Authority within thirty (30) days following the effective termination date of this Contact.

**12 Non-performance**

- 12.1 The Supplier acknowledges the critical importance that the Authority places on ensuring that all equipment used by the Authority is properly maintained in a timely manner so as to ensure the safety of its staff, patients and other service users. Therefore, without prejudice to any other provisions of the Contract, where the Supplier does not provide the Services in accordance with any time periods and/or other requirements set out in the Contract ("**Non-performed Services**"), without prejudice to its other right and remedies under this Contract, the Authority may elect to: (i) follow the remedial process; or (ii) the Authority may procure alternative services from a third party.
- 12.2 The Authority confirms that it will act reasonably at all times when electing to exercise its rights to procure alternative services from a third party under Clause 12.1 of this Schedule 9. In particular, the Authority will only elect to procure alternative services from a third party where the following circumstances apply:
- 12.2.1 the alternative services are required urgently due to health and safety reasons and/or to keep the relevant equipment operative;
- 12.2.2 the Supplier has been notified of the urgency of the requirement and its failure to provide the Services in accordance with the requirements of this Contract; and
- 12.2.3 the Supplier has been given a reasonable period of time (taking into account the urgency of the requirement) to perform the Non-performed

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Services itself. What is a “reasonable period of time” in the particular circumstances shall be determined at the Authority’s sole discretion taking into account its obligation under this Clause 12.2 of this Schedule 9 to act reasonably.

12.3 In the event that the Authority elects to procure alternative services from a third party in accordance with Clause 12.1 of this Schedule 9, the following provisions shall apply:

12.3.1 where the Supplier has been paid the Contract Price in advance for such Non-performed Services, the Supplier shall refund the Authority the full cost of such alternative services upon demand; and

12.3.2 where the Supplier has not yet been paid the Contract Price for such Non-performed Services, the Supplier shall: (i) forfeit the Contact Price for such Services; and (ii) pay to the Authority upon demand any additional charges that the Authority has incurred in connection with any alternative services additional to the Contact Price that would have been paid to the Supplier had the Supplier performed the Non-performed Services in accordance with any time periods and/or other requirements set out in the Contract.