



**NEPO513 - REGIONAL LEGAL SERVICES FRAMEWORK (P-006231/C-011462)**

**ITT Schedule 2 – FRAMEWORK AGREEMENT (THE CONTRACT)**

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**FRAMEWORK AGREEMENT FOR SERVICES**

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## **CONTENTS**

1	DEFINITIONS AND INTERPRETATION
2	TERM OF FRAMEWORK AGREEMENT
3	SCOPE OF FRAMEWORK AGREEMENT
4	PROVIDER'S APPOINTMENT AND WARRANTIES
5	NON-EXCLUSIVITY
6	AWARD PROCEDURES
7	CALL-OFF CONTRACT PERFORMANCE
8	CONTRACT REBATE
9	TERMINATION BY THE LEAD AUTHORITY
10	CONSEQUENCES OF TERMINATION AND EXPIRY
11	SUB-CONTRACTING AND ASSIGNMENT
12	DATA PROTECTION
13	FREEDOM OF INFORMATION
14	TUPE AND RE-TENDERING
15	VARIATIONS TO THE FRAMEWORK AGREEMENT
16	LAW AND JURISDICTION
17	ENTIRE AGREEMENT

### **SCHEDULE 1: CALL-OFF TERMS AND CONDITIONS**

## **BACKGROUND**

- (1) The Lead Authority placed a contract notice 2019/S 101-244606 in the Official Journal of the European Union seeking expressions of interest from potential service providers for the provision of Services to itself and the Participating Authorities identified in the contract notice under a Framework Agreement.

- (2) On the basis of the Provider's tender, the Lead Authority selected the Provider to enter a Framework Agreement to provide services to those Participating Authorities who place Orders for Services in accordance with this Framework Agreement.
- (3) This Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of the Services, and the obligations of the Provider under this Framework Agreement.
- (4) There will be no obligation on the Lead Authority or any other Participating Authority to place any Order or Orders under this Framework Agreement during its Term.

**IT IS AGREED** as follows: -

## **1. DEFINITIONS AND INTERPRETATION**

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

"Authorised Officer"	The person duly appointed by the relevant Lead Authority, to act as it's representative for the purpose of the Framework Agreement as notified to the Provider in writing from time to time.
"Award Criteria"	The award criteria as set out in the Invitation to Tender,
"Call-Off Award Criteria"	The award criteria to be used for call-off contracts as set out in the Invitation to Tender.
"Call-Off Contract"	<p>The legally binding agreement (made pursuant to the provisions of this Framework Agreement) for the provision of Services made between a Participating Authority and the Provider comprising:</p> <ul style="list-style-type: none"> <li>(i) the Order Form;</li> <li>(ii) the Contract Particulars;</li> <li>(iii) the Call-Off Terms and Conditions;</li> <li>(iv) any Special Terms and Conditions; and</li> <li>(v) the Tender</li> </ul>
"Call-Off Terms and Conditions"	The terms and conditions, including any Special Terms and Conditions, at Schedule 1.

"Commencement Date"	The date set out in the Framework Agreement Particulars.
"Confidential Information"	means any information of either Party, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including Personal Data, intellectual property rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out this agreement and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.
"Data"	Has the meaning given in the Data Protection Legislation.
"Data Controller"	Has the meaning given in the Data Protection Legislation.
"Data Loss Event"	Any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
"Data Processing Schedule"	The schedule from the tender detailing the data processing requirements.
"Data Processor"	has the meaning set out in the Data Protection Legislation.
"Data Protection Impact Assessment"	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
"Data Protection Legislation"	Means (i) unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
"Data Sharing Agreement"	A formal agreement that documents what data is being shared and how the data can be used between the Parties.

“Data Sharing Code of Practice”	The code of practice issued by the Information Commissioner in respect to the sharing of personal data.
“Data Subject Request”	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Data Subject”	Has the meaning given in the Data Protection Legislation.
“EIR”	The Environmental Information Regulations 2004.
“FOIA”	The Freedom of Information Act 2000.
“Framework”	Means the overarching arrangement whereby the Lead Authority seeks to appoint one or more Providers as a potential supplier of the Services as described in the Invitation to Tender.
"Framework Agreement"	Means the agreement between the Lead Authority and each Provider which sets out the terms governing contracts to be awarded during the Term and which incorporates, this agreement; all Schedules to this agreement; the Invitation to Tender; and The Tender.
“Framework Agreement Particulars”	The document detailing the specific core terms of the Framework Agreement which shall include but not be limited to the Pricing Schedule, Authorised Officer, Contract Manager, Key Personnel, and the Specification (all as defined in the Call-Off Terms and Conditions) and relevant contract specific details of the Tender included in the document.
“GDPR”	Means the General Data Protection Regulation ((EU) 2016/679)
"Guidance"	Any guidance issued or updated by the UK Government from time to time in relation to the Regulations;
“Invitation to Tender”	The Lead Authority’s invitation to tender for the Services including all the Schedules thereto;
“Joint Data Controller”	Has the meaning set out in the Data Protection Legislation

"Law"	Any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, statutory guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body;
"Lead Authority"	The Lead Authority named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Lead Authority (whether in part or totally) or which is controlled by or is under common control with the Lead Authority (and the expression "control" shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
"LED"	Law Enforcement Directive (Directive (EU) 2016/680)
"Liabilities"	All costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
"Lot(s)"	Means the Services where applicable that are divided into distinct lots as referred to in the OJEU Notice and set out in the Invitation to Tender.
"Order"	An order for Services served by the Participating Authorities on a Provider in accordance with the Ordering Procedures.
"Order Form"	A document setting out details of an Order in a form to be specified by the Participating Authority.
"Ordering Procedures"	The ordering and award procedures specified in Clause 6 of this Agreement.
"Participating Authority"	Any public body identified in the OJEU notice (if applicable) and/or the Invitation to Tender entitled to use this Framework Agreement and enter into a Call-Off Contract, either individually or collectively as the context allows
"Party"	The Lead Authority or the Provider together referred to as the Parties;

“Personal Data” and “Personal Data Breach”	Has the meaning as set out in the Data Protection Legislation.
“Prohibited Act”	<p>The following constitute Prohibited Acts:</p> <p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Framework Agreement;</p> <p>(c) committing any offence:</p> <p>(i) under the Bribery Act 2010;</p> <p>(ii) under legislation creating offences concerning fraudulent acts;</p> <p>(iii) at common law concerning fraudulent acts relating to this Framework Agreement or any other contract with the Authority; or</p> <p>(d) defrauding, attempting to defraud or conspiring to defraud the Authority.</p>
“Provider(s)”	The Provider(s) who have been appointed under the Framework Agreement and where applicable this shall include the Provider's Employees, sub-Providers, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.
“Regulations”	The Public Contracts Regulations 2015 (SI 2015/102).
“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 this Framework Agreement or any other affairs of the Authority.

“Replacement Provider”	Any company, organisation or person who replaces the Provider following termination or expiry of all or part of the Call-Off Contract.
“Services”	The services described in the Invitation to Tender, to be supplied by the Provider in accordance with the Framework Agreement.
“Special Terms and Conditions”	The additional terms and conditions attached which were set out in the Invitation to Tender.
“Subcontract”	Any contract between the Provider and a third party pursuant to which the Provider agrees to source the provision of any of the Services from that third party.
“SubProvider”	The Providers or service providers that enter into a Subcontract with the Provider.
“Sub-processor”	Any third Party appointed to process Personal Data on behalf of the Provider related to this Contract
“Tender”	the Provider’s tender for the Services in response to the Lead Authorities Invitation to Tender.
"Term"	the period commencing on the Commencement Date and ending on the date shown in the Framework Agreement Particulars or on earlier termination of this Framework Agreement.
“Termination Date”	Means the date of expiry or termination of this Framework Agreement.
“Transferring Employees”	Those employees employed wholly or mainly by the Provider in providing the Services and who will transfer to a Replacement Provider or the Lead Authority (as the case may be) under the provisions of TUPE.
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended.

1.2 The interpretation and construction of this Framework Agreement shall be subject to the following provisions: -

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;



- 1.2.4 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 assigns or transferees;
- 1.2.5 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;
- 1.2.6 headings are included in this Framework Agreement for ease of reference only and shall not affect the interpretation or construction of this Framework Agreement;
- 1.2.7 in the event and to the extent only of any conflict between the provisions of the Call-Off Terms and Conditions, Special Conditions of Contract and the Framework Agreement (excluding the Schedule) then, the application of the Clauses shall prevail in the following order:
  - i. Special Terms and Conditions of Contract
  - ii. Call-Off Terms and Conditions
  - iii. Framework Agreement

## **2. TERM OF FRAMEWORK AGREEMENT**

- 2.1 The Framework Agreement shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Framework Agreement or it is otherwise lawfully terminated) shall terminate at the end of the Term.
- 2.2 If the Framework Agreement Particulars includes an option to extend the Framework Agreement and the Lead Authority intends to take up the option, the Provider shall be notified in writing within the period stated in the Framework Agreement Particulars prior to the commencement of the extension. If no such notification is issued the Framework Agreement shall automatically expire after the initial Contract Period.
- 2.3 Clause 2.1 and 2.2 shall not apply to any Call-Off Contract made under this Framework Agreement which is due to expire after the end of the Term which shall expire in accordance with the terms of that Call-Off Contract.

## **3. SCOPE OF FRAMEWORK AGREEMENT**

- 3.1 This Framework Agreement governs the relationship between the Lead Authority, Participating Authorities and the Provider in respect of the provision of the Services by the Provider to the Participating Authorities and where applicable and where the Provider has been appointed to more than one Lot, this Framework Agreement shall apply to each Lot.

- 3.2 Any Participating Authority may at their absolute discretion and from time to time order Services from the Provider in accordance with the Ordering Procedure during the Term.
- 3.3 The Provider acknowledges that there is no obligation for the Lead Authority or a Participating Authority to purchase any Services from the Provider during the Term.
- 3.4 No undertaking or any form of statement, promise, representation or obligation shall be deemed to have been made by the Lead Authority or a Participating Authority in respect of the total quantities or values of the Services to be ordered by them pursuant to this Framework Agreement and the Provider acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.5 The Lead Authority shall not in any circumstances be liable to the Provider or any other Participating Authority for payment or otherwise in respect of any Services provided by the Provider to any other Participating Authority.

#### **4. PROVIDER'S APPOINTMENT AND WARRANTIES**

- 4.1 The Lead Authority appoints the Provider as a potential supplier of the Services referred to in the Invitation to Tender and the Provider shall be eligible to be considered for the award of Orders for such Services by a Participating Authority during the Term.
- 4.2 The Parties agree that the Provider is an independent Provider and not an agent, employee or partner of the Lead Authority and therefore not eligible to participate in any benefit programmes of the Lead Authority. The Provider will be responsible for payment of his/her own Income Tax and National Insurance Payments or similar contributions in respect of its workforce and hereby indemnifies the Lead Authority against any claims that may be made against the Lead Authority for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Provider.
- 4.3 The Lead Authority reserves the right in relation to the Provider to carry out H.M. Revenue and Customs' ("HMRC") PAYE status test and, in accordance with HMRC Guidance, to deduct from the Price and pay to HMRC such sums in respect of tax and National Insurance as it may be required to deduct and pay in accordance with that guidance.
- 4.4 The Provider warrants and represents to the Lead Authority and to each of the Participating Authorities that:
- 4.4.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Framework Agreement;
  - 4.4.2 this Framework Agreement is executed by a duly authorised representative of the Provider;

- 4.4.3 in entering into this Framework Agreement or any Contract it has not committed any Prohibited Act;
- 4.4.4 as at the Commencement Date, all information, statements and representations contained in the tender and the SQ Response are true, accurate and not misleading save as may have been specifically disclosed in writing to the Lead Authority before the execution of this Framework Agreement and it will promptly advise the Lead Authority of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- 4.4.5 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its ability to perform its obligations under this Framework Agreement and any Contract which may be entered into with the Lead Authority or Participating Authorities;
- 4.4.6 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Framework Agreement and any Contract; and
- 4.4.7 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

#### **Prevention of Bribery**

- 4.5 The Provider:
  - 4.5.1 shall not, and shall procure that the Staff and all Sub-Provider personnel shall not, in connection with this Framework Agreement and any Contract made under it commit a Prohibited Act; and
  - 4.5.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Lead Authority, or that an agreement has been reached to that effect, in connection with the execution of this Framework Agreement, excluding any arrangement of which full details have been disclosed in writing to the Lead Authority before execution of this Framework Agreement.
- 4.6 The Provider shall:
  - 4.6.1 if requested, provide the Lead Authority with any reasonable assistance, at the Lead Authority's reasonable cost, to enable the Lead Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

- 4.6.2 within 30 Working Days of the Lead Authority's request, certify to the Lead Authority in writing (such certification to be signed by an officer of the Provider) compliance with Clauses 4.5 to 4.14 by the Provider and all persons associated with it or other persons who are supplying goods or services in connection with this Framework Agreement. The Provider shall provide such supporting evidence of compliance as the Lead Authority may reasonably request.
- 4.7 The Provider shall have an anti-bribery policy (which, if requested, shall be disclosed to the Lead Authority) to prevent any Staff or Sub-Providers from committing a Prohibited Act and shall enforce it where appropriate.
- 4.8 If any breach of Clause 4.5 is suspected or known, the Provider must notify the Lead Authority immediately.
- 4.9 If the Provider notifies the Lead Authority that it suspects or knows that there may be a breach of Clauses 4.5 to 4.14, the Provider must respond promptly to the Lead Authority's enquiries, co-operate with any investigation, and allow the Lead Authority to audit books, records and any other relevant documents.
- 4.10 The Lead Authority may terminate this Framework Agreement by written notice with immediate effect if the Provider, its Staff or Sub-Providers (in all cases whether or not acting with the Provider's knowledge) breaches Clause 4.5. In determining whether to exercise the right of termination under this Clause 4.10, the Lead Authority shall give all due consideration, where appropriate, to action other than termination of this Framework Agreement unless the Prohibited Act is committed by the Provider or a senior officer of the Provider or by an employee, Sub-Provider or supplier not acting independently of the Provider. The expression "not acting independently of" (when used in relation to the Provider or a Sub-Provider) means and shall be construed as acting:
- 4.10.1 with the authority or with the actual knowledge of any one or more of the directors of the Provider or the Sub-Provider (as the case may be); or
- 4.10.2 in circumstances where any one or more of the directors of the Provider ought reasonably to have had such knowledge.
- 4.11 Any notice of termination under Clause 4.10 must specify:
- 4.11.1 the nature of the Prohibited Act;
- 4.11.2 the identity of the party whom the Lead Authority believes has committed the Prohibited Act; and
- 4.11.3 the date on which this Framework Agreement will terminate.
- 4.12 Any dispute relating to:
- 4.12.1 the interpretation of Clauses 4.5 to 4.14; or

- 4.12.2 the amount or value of any gift, consideration or commission,
- 4.13 shall be determined by the Lead Authority and its decision shall be final and conclusive.
- 4.14 Any termination under Clauses 4.10 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Lead Authority.

## 5. **NON-EXCLUSIVITY**

The Provider acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the Lead Authority for Services from the Provider and that the Lead Authority and a Participating Authority is at all times entitled to enter into other contracts and agreements with other Provider for the provision of any of the Services.

## 6. **AWARD PROCEDURES**

### **Awards under the Framework Agreement**

#### **Direct Awards (without re-opening competition)**

- 6.1 Where the Invitation to Tender allows for a Participating Authority to award without re-opening competition a Participating Authority shall, when ordering Services: -
- 6.1.1 identify the relevant Services;
- 6.1.2 (where there is more than one Provider) select the Provider in accordance with the method stated in the Invitation to Tender, or where the Invitation to Tender does not specify a selection method, identify the Provider who offers best value for money for those Services on the basis of the price(s) submitted by the Provider in its tender and who is able to fulfil the Order within the time specified;
- 6.1.3 (subject to 6.2 below) place an Order with the successful Provider which: -
- (a) states the requirements;
  - (b) identifies the Services;
  - (c) states the price payable in accordance with the tender submitted by the successful Provider; and
  - (d) incorporates the Call-Off Terms and Conditions.

### **Mini Competition**

- 6.2 Where there is more than one Provider appointed under the Framework Agreement (or the relevant Lot) and the Invitation to Tender so specifies, a Participating Authority shall, prior to placing an Order:
- 6.2.1 identify the Providers capable of performing the Call-Off Contract for the Participating Authority's requirements;
  - 6.2.2 supplement and refine the Call-Off Terms and Conditions only to the extent permitted by and in accordance with the requirements of the Regulations and Guidance where applicable;
  - 6.2.3 invite tenders by conducting a further competition for its requirements in accordance with the Invitation to Tender, the Regulations and Guidance where applicable and in particular:
    - (a) confirm prior to the further competition whether or not the Participating Authority intends to follow this with an electronic auction or use the further competition alone. Should this be the case the Participating Authority shall provide all Providers with full details prior to the e-auction including but not limited to how the e-auction is to be conducted and the outcome of the further competition;
    - (b) consult in writing all the Providers capable of performing the Call-Off Contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
    - (c) set a time limit for the receipt by it of the tenders; and
    - (d) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders.
  - 6.2.4 apply the Call-Off Award Criteria, including where relevant in any pricing the consideration of any and all additional cost(s) to the Participating Authority, to the Providers' compliant tenders submitted through the further competition as the basis of its decision to award a Call-Off Contract for its requirements.
- 6.3 The Provider agrees that all tenders submitted by the Provider in relation to a further competition held pursuant to Clause 6.2 shall remain open for acceptance for ninety (90) days (or such other period specified in the invitation issued by a Participating Authority in accordance with the Ordering Procedure).
- 6.4 Notwithstanding the fact that a Participating Authority has followed the procedure set out above in this Clause 6, it shall be entitled at all times to cancel, postpone, delay or end the procedure without placing an Order for Services or awarding a Call-Off Contract. Nothing in this Framework Agreement shall oblige the Lead Authority or any Participating Authority to place any Order.

## **Responsibility for awards**

- 6.5 The Provider acknowledges that each Participating Authority is independently responsible for the conduct of its award of Contracts under the Framework Agreement and that the Lead Authority is not responsible or accountable for and shall have no liability whatsoever in relation to:
- 6.5.1 the conduct of Other Contracting Bodies in relation to the Framework Agreement; or
  - 6.5.2 the performance or non-performance of any Contracts between the Provider and other Participating Authorities entered into pursuant to the Framework Agreement.

## **Form of Order**

- 6.6 Subject to Clause 6 above, a Participating Authority may place an Order with the Provider by serving an Order Form in writing in such form agreed with the Provider including systems of ordering involving facsimile, electronic mail or other on-line solutions.
- 6.7 The Order constitutes an “invitation to treat” by a Participating Authority in relation to the Services subject to the Call-Off Terms and Conditions.

## **Accepting and Declining Orders**

- 6.8 Following receipt of an Order, the Provider shall promptly, and in any event within a reasonable period determined by the Participating Authority and notified to the Provider in writing at the same time as the submission of the Order (which in any event shall not exceed three (3) Working Days), acknowledge receipt of the Order and either: -
- 6.8.1 notify the Participating Authority in writing that it declines to accept the Order; or
  - 6.8.2 notify the Participating Authority in writing that it accepts the Order by signing and returning the Order Form.
- 6.9 If the Provider: -
- 6.9.1 notifies the Participating Authority that it declines to accept an Order; or
  - 6.9.2 the time-limit referred to in Clause 6.8 has expired;

then the offer from the Participating Authority to the Provider shall lapse and the Participating Authority may offer that Order to the Provider that submitted the next most economically advantageous tender in accordance with the relevant Award Criteria or, if there is only one Provider appointed under the Framework Agreement, or there is no other capable Provider, the Participating Authority may make alternative arrangements for the provision of the Services.

6.10 If the Provider modifies or imposes conditions on the fulfilment of an Order, then the Participating Authority may either:

6.10.1 reissue the Order incorporating the modifications or conditions; or

6.10.2 treat the Provider's response as notification of its inability to fulfil the Order and the provisions of Clause 6.9 shall apply.

6.11 The Provider's acceptance of such an Order (or such similar or analogous form agreed with the Provider) pursuant to Clause 6.8 above shall constitute its offer to the Participating Authority. The Participating Authority shall notify its acceptance of the Provider's offer and on such notification of acceptance a Call-Off Contract shall be formed on the basis of the Call-Off Terms and Conditions.

## **7. CALL-OFF CONTRACT PERFORMANCE AND PRECEDENCE OF DOCUMENTS**

7.1 The Provider shall perform all Call-Off Contracts entered into with a Participating Authority in accordance with: -

7.1.1 the requirements of this Framework Agreement; and

7.1.2 the Call-Off Terms and Conditions, including any Special Terms and Conditions of the respective Call-Off Contracts.

7.1.3 In the event of, and only to the extent of, any conflict between the terms and conditions of this Framework Agreement (excluding the Schedule), the Call-Off Terms and Conditions, and any Special Terms and Conditions, the application of the Clauses shall prevail in the following order:

i. Special Terms and Conditions

ii. Call-Off Terms and Conditions

iii. Framework Agreement.

## **8. FRAMEWORK AGREEMENT REBATE**

8.1 The Provider will pay the Lead Authority a Framework Agreement rebate for all business received against all Call-off Contracts placed by any Participating Authorities under this Framework Agreement where the level of this rebate and the method of payment are set out in the Framework Agreement Particulars.

## **9. TERMINATION OR SUSPENSION OF APPOINTMENT BY THE LEAD AUTHORITY**

TERMINATION



- 9.1 The Lead Authority shall have the right to terminate this Framework Agreement, or to terminate the provision of any part of the Framework Agreement at any time by giving one month's written notice to the Provider.
- 9.2 The Lead Authority may suspend or terminate the Framework Agreement with immediate effect by notice in writing to the Provider on or at any time if:
- 9.2.1 the Provider becomes bankrupt, insolvent, makes any composition with its creditors, has a Deputy appointed under the Mental Capacity Act 2005 or dies; or
  - 9.2.2 the Provider is convicted of a criminal offence; or
  - 9.2.3 the Provider ceases or threatens to cease to carry on its business; or
  - 9.2.4 the Provider has a change in Control which the Lead Authority believes will have a substantial impact on the performance of any Call-Off Contracts; or
  - 9.2.5 there is a risk or a genuine belief that reputational damage to the Lead Authority will occur as a result of the Framework Agreement with the Provider continuing; or
  - 9.2.6 the Provider is in material or substantial breach of any of its obligations under one or more Call-Off Contracts that is incapable of remedy, or if capable of remedy has not been remedied to the satisfaction of the Lead Authority within 14 days, or such other reasonable period as may be specified by the Lead Authority after issue of a written notice specifying the breach and requesting it to be remedied; or
  - 9.2.7 the Provider commits persistent minor breaches under one or more Call-Off Contracts whether remedied or not.
  - 9.2.8 where any Participating Authority terminates a Contract awarded to the Provider under this Framework Agreement as a consequence of a material breach by the Provider;
  - 9.2.9 if any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply.

#### SUSPENSION OF PROVIDER'S APPOINTMENT

- 9.3 Without prejudice to the Lead Authority's rights to terminate the Framework Agreement in this Clause 9 above, if a right to terminate this Framework Agreement arises in accordance with Clause 9, the Lead Authority may suspend the Provider's right to receive Orders from Participating Authorities in any or all Lots by giving notice in writing to the Provider. If the Lead Authority provides notice to suspend the Provider in accordance with this Clause 9, the Provider's appointment shall be suspended for the period set out in the notice or such other period notified to the Provider by the Lead Authority in writing from time to time.

## **10. CONSEQUENCES OF TERMINATION AND EXPIRY**

- 10.1 Notwithstanding the service of a notice to terminate the Framework Agreement under clause 9, the Provider shall continue to fulfil its obligations under the Framework Agreement until the date of expiry or termination of the Framework Agreement or such other date as required under this Clause 10.
- 10.2 Termination or expiry of the Framework Agreement shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 10.3 Termination or expiry of this Framework Agreement shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Framework Agreement prior to termination or expiry.
- 10.4 Within 30 Working Days of the date of termination or expiry of the Framework Agreement, the Provider shall return or destroy at the request of the Participating Authorities any data, personal information relating to the Lead Authority or its personnel or Confidential Information belonging to the Lead Authority in the Provider's possession, power or control, either in its then current format or in a format nominated by the Lead Authority (in which event the Lead Authority will reimburse the Provider's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Lead Authority, save that it may keep one copy of any such data or information for a period of up to 12 Months to comply with its obligations under the Framework Agreement, or such period as is necessary for such compliance.

## **11. SUB-CONTRACTING AND ASSIGNMENT**

- 11.1 The Framework Agreement is personal to the Provider and the Provider shall not assign, novate or otherwise dispose of the Framework Agreement or any part thereof without the previous consent in writing of the Lead Authority. The Provider shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement.
- 11.2 The Lead Authority shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under the Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Lead Authority provided that such assignment, novation or disposal shall not increase the burden of the Provider's obligations under the Framework Agreement.
- 11.3 Provided that the Lead Authority has given prior written consent and the Provider accepts the Lead Authority's terms, the Provider shall be entitled to novate the agreement where:

- 11.3.1 (a) the specific change in Provider was provided for in the procurement process for the award of this agreement; and / or
- 11.3.2 (b) there has been a universal or partial succession into the position of the Provider, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this agreement and such novation complies with the requirements of Regulation 72(1)(d) of the Regulations.

## 12. DATA PROTECTION

- 12.1 The Provider shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
- 12.2 In particular and without prejudice to the generality of clause 12.1 above, if the Provider is acting as Data Controller within the meaning of the Data Protection Legislation for any data provided to the Provider by the Lead Authority or vice versa under this contract then the following provisions shall apply:
- 12.2.1 The Provider and the Lead Authority shall comply with the Data Sharing Code of Practice and as amended from time to time
- 12.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonable and without good reason refuse to enter into a Data Sharing Agreement.
- 12.3 In particular and without prejudice to the generality of clause 12.1 above, if the Provider and the Lead Authority are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Contract then the following provisions shall apply:
- 12.3.1 The Parties shall designate between them a contact point for Data Subjects in relation to any Personal Data under the joint control of the parties.
- 12.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment
- 12.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:
- (a) nature of the data to be protected;

- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

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

12.3.5 Each Party shall notify the other immediately if it:

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

12.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation

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

12.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

12.4 In particular and without prejudice to the generality of clause 12.1 above, if the Provider is acting as Data Processor on behalf of the Lead Authority

within the meaning of the Data Protection Legislation for any data provided to it by the Lead Authority under this contract then the following provisions shall apply:

- 12.4.1 The Data Processing Schedule shall apply and the only processing that the Provider is authorised to do is listed in the Data Processing Schedule (as may be amended by the Lead Authority) and may not be determined by the Provider.
- 12.4.2 The Provider shall notify the Lead Authority immediately if it considers that any of the Lead Authority's instructions infringe the Data Protection Legislation.
- 12.4.3 The Provider shall provide all reasonable assistance to the Lead Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Lead Authority, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 12.4.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - (a) Process that Personal Data only in accordance with the Data Processing Schedule unless the Provider is required to do otherwise by Law. If it is so required, the Provider shall promptly notify the Lead Authority before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Lead Authority may reasonably reject (but failure to reject shall not amount to approval by the Lead Authority of the adequacy of the Protective Measures), having taken account of the:
    - (i) nature of the data to be protected;
    - (ii) harm that might result from a Data Loss Event;
    - (iii) state of technological development; and

- (iv) cost of implementing any measures;
- (c) ensure that the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
- (d) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Provider's duties under this clause;
  - (ii) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Lead Authority or as otherwise permitted by this Agreement; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the EU unless the prior written consent of the Lead Authority has been obtained and the following conditions are fulfilled:
  - (i) the Lead Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Lead Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Lead Authority in meeting its obligations); and
  - (iv) the Provider complies with any reasonable instructions notified to it in advance by the Lead Authority with respect to the processing of the Personal Data;

12.4.5 At the written direction of the Lead Authority, delete or return Personal Data (and any copies of it) to the Lead Authority on

termination of the Contract unless the Provider is required by Law to retain the Personal Data.

12.4.6 The Provider shall notify the Lead Authority immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

12.4.7 The Provider's obligation to notify under clause 12.4.6 shall include the provision of further information to the Lead Authority in phases as details become available.

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

- (a) the Lead Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Lead Authority to enable the Lead Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Lead Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Lead Authority following any Data Loss Event;
- (e) assistance as requested by the Lead Authority with respect to any request from the Information Commissioner's Office,

or any consultation by the Lead Authority with the Information Commissioner's Office.

12.4.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 12.4

12.4.10 The Provider shall allow for audits of its Data Processing activity by the Lead Authority or the Lead Authority's designated auditor.

12.4.11 The Provider shall designate a data protection officer if required by the Data Protection Legislation.

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

- (a) notify the Lead Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Lead Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 12.4 such that they apply to the Sub-processor; and
- (d) provide the Lead Authority with such information regarding the Sub-processor as the Lead Authority may reasonably require.

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

12.4.14 The Lead Authority may, at any time on not less than 30 Working Days' notice, revise any part of this clause 12.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

12.4.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Lead Authority may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

12.4.16 Where the Parties include two or more Joint Controllers as identified in the Service Specification in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses 12.1 to 12.14 for the Personal Data under Joint Control.

## 13. FREEDOM OF INFORMATION



- 13.1 The Participating Authorities are subject to the FOIA and the EIR (“the Acts”). As part of the Participating Authority's duties under the Acts, it may be required to disclose information forming part of the Call-Off Contract to anyone who makes a reasonable request. The Lead Authority has absolute discretion to apply or not to apply any exemptions under the Acts.
- 13.2 The Provider shall assist and cooperate with the Lead Authority (at the Provider’s expense) to enable the Lead Authority to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Lead Authority.
- 13.3 If the Provider considers that any of the information provided by the Provider under the Contract or as part of the procurement process is commercially sensitive (meaning it could reasonably cause prejudice to the organisation if disclosed to a third party) then it shall notify the Lead Authority and provide valid reasons in support of the information being exempt from disclosure under the Act and the EIR.
- 13.4 The Lead Authority will have regard to any such notification and reasons given by the Provider before it releases any information to a third party under the Act or the EIR. However, the Lead Authority shall be entitled to determine in its absolute discretion whether any information is exempt from the Act and/or the EIR or is to be disclosed in response to a request of information. The Lead Authority must make its decision on disclosure in accordance with the provisions of the Act or the EIR and can only withhold information if it is covered by an exemption from disclosure under the Act or the EIR.
- 13.5 The Lead Authority will not be held liable for any loss or prejudice caused by the disclosure of information that:
- 13.5.1 has not been notified to the Lead Authority as being commercially sensitive with supporting reasons (referring to the relevant category of exemption under the Act or EIR where possible); or
  - 13.5.2 does not fall into a category of information that is exempt from disclosure under the Act or EIR (for example, a trade secret or would be likely to prejudice the commercial interests of any person); or
  - 13.5.3 in cases where there is no absolute statutory duty to withhold information, then notwithstanding the previous clauses, in circumstances where it is in the public interest to disclose any such information.

#### 14. **TUPE AND RE-TENDERING**

- 14.1 In the event of expiry or termination of this Framework Agreement or whenever reasonably requested by the Lead Authority in preparation for tendering arrangements the Provider will provide the Lead Authority with such assistance as the Lead Authority may require and provide at no cost to the Lead Authority any information the Lead Authority (whether on its own account or on behalf of any potential or confirmed Replacement Provider)

may request in relation to the Employees. The required information is set out below but is not necessarily restricted to the following:

- 14.1.1 The total number of Employees whose employment with the Provider in respect of the Services is likely to be terminated at the expiry of this Framework Agreement but for any operation of law;
  - 14.1.2 In respect of each Employee their age and gender, details of their salary and payment settlements which relate to future dates, but which have already been agreed and their redundancy entitlements (the names of individual employees do not have to be given); and
  - 14.1.3 Full information about the other terms and conditions under which the Employees are employed (including but not limited to their working arrangements) or about where that information can be found; and
  - 14.1.4 Details of pension entitlements, if any; and
  - 14.1.5 Job titles of the Employees affected, and the qualifications required for each position; and
  - 14.1.6 Disciplinary procedures taken against any Employees and any grievance procedures taken out by any Employees within the previous two years; and
  - 14.1.7 Details of any court or tribunal case, claim or action brought by any Employees against the Provider within the previous two years; and
  - 14.1.8 Details of any court or tribunal case claim or action, which the Provider has reasonable grounds to believe that any of the Employees may bring against the Provider or a Replacement Provider arising out of the Employee's employment.
- 14.2 The Provider shall permit the Lead Authority to use the information for the purposes of TUPE and for re-tendering. The Lead Authority shall be able to disclose this information to any prospective tenderer or Replacement Provider without requiring the Lead Authority to enter in to a confidentiality agreement or otherwise imposing any conditions upon the disclosure of the information. The Provider will secure all necessary consents from relevant Employees in order to release the information.
- 14.3 The Provider will co-operate with the re-tendering of the Service by allowing the Replacement Provider to communicate with and meet with the Employees and/or their representative(s).
- 14.4 In the event that the information provided by the Provider in accordance with Clause 14.1 becomes inaccurate, whether due to changes to the employment and personnel details of the Employees made subsequent to the original provision of such information or by reason of the Provider becoming aware that the information originally given was inaccurate the Provider shall

notify the Lead Authority of the inaccuracies and provide the amended information.

14.5 The Provider will keep the Lead Authority and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Lead Authority pursuant to an indemnity provided to the Replacement Provider in connection with:

14.5.1 The employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);

14.5.2 Any act, omission or default of the Provider in respect of the employment of the Employees;

14.5.3 The Provider's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Lead Authority or the Replacement Provider to give the Provider the information required from the Lead Authority or the Replacement Provider to enable the Provider to comply with its obligations under TUPE; and

14.5.4 The Provider's failure to provide the employee liability information under Regulation 11 of TUPE;

14.5.5 Any claim by an Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Lead Authority or the Replacement Provider is not participating, or pursuant to the Employee's terms and conditions of employment;

14.5.6 The Provider's failure to comply with its obligations under Clause 14.6 below;

14.6 The Lead Authority shall be entitled to assign the benefit of the indemnity at Clause 14.5 to any Replacement Provider.

14.7 In the event of notice of termination of this Contract, or from a date of 12 months before expiry of the Contract Period, the Provider will not, without the prior consent of the Lead Authority (not to be unreasonably withheld or delayed) and not otherwise than in the ordinary course of business carry out any of the following acts:

14.7.1 materially increase or decrease the number of employees employed in connection with the Contract;

14.7.2 vary or purport or promise to vary the terms and conditions of any Employees;

14.7.3 terminate the employment of any of the Employees assigned to the provision of the Services for any reason whatsoever save where termination is lawful; or

14.7.4 assign or redeploy any Employee employed in connection with the Services to other duties unconnected with the Contract.

## 15. **VARIATIONS TO THE FRAMEWORK AGREEMENT**

15.1 Any variations to the Framework Agreement must be made in writing and agreed by the Lead Authority and all Providers on the Framework.

15.2 Any variation to the Framework Agreement must not amount to a material change in the Framework Agreement or the Services.

## 16. **LAW AND JURISDICTION**

The Parties accept the exclusive jurisdiction of the English courts and agree that the Framework Agreement is to be governed by and construed according to English law.

## 17. **ENTIRE AGREEMENT**

17.1 This Framework Agreement including all Schedules constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

17.2 Each of the Parties acknowledges and agrees that in entering into this Framework Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Framework Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Framework Agreement.

17.3 Nothing in this Clause 17 shall operate to exclude Fraud or fraudulent misrepresentation

**SCHEDULE 1  
NEPO 513 – LEGAL SERVICES FRAMEWORK  
CALL OFF TERMS AND CONDITIONS**

# STANDARD CALL OFF TERMS AND CONDITIONS

## CONTENTS

### **PART A - OPERATIVE PROVISIONS**

- A1 DEFINITIONS
- A2 HEADINGS
- A3 NOTICES
- A4 ENTIRE AGREEMENT

### **PART B - PROVISION OF SERVICES**

- B1 CONTRACT PERIOD
- B2 PERFORMANCE
- B3 CONTRACT MANAGER
- B4 ORDERING PROCESS
- B5 RISK IN AND TITLE TO GOODS
- B6 WARRANTY
- B7 PROVIDER'S EMPLOYEES
- B8 INDEPENDENT PROVIDER
- B9 MEETINGS AND PROGRESS REPORTS
- B10 LICENCE TO OCCUPY PREMISES

### **PART C - PRICE AND PAYMENT**

- C1 PRICE AND PAYMENT
- C2 CONTRACT REBATE
- C3 PRICE VARIATION

### **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

- D1 TERMINATION
- D2 CONSEQUENCES OF TERMINATION
- D3 DISPUTE RESOLUTION PROCEDURE
- D4 SURVIVAL

### **PART E - INSURANCE AND LIABILITIES**

- E1 INSURANCE
- E2 INDEMNITY AND LIABILITY

### **PART F - PROTECTION OF INFORMATION**

- F1 INTELLECTUAL PROPERTY
- F2 CONFIDENTIALITY AND PUBLICITY
- F3 DATA PROTECTION
- F4 FREEDOM OF INFORMATION
- F5 RECORD KEEPING AND MONITORING

### **PART G - STATUTORY OBLIGATIONS**

- G1 HEALTH AND SAFETY

- G2 CORPORATE REQUIREMENTS
- G3 LAW AND CHANGE IN LAW
- G4 TUPE AND RE-TENDERING
- G5 TUPE INDEMNITY
- G6 POST-CONTRACT MONITORING
- G7 COMMUNITY SAFETY
- G8 BUSINESS CONTINUITY PLANNING
- G9 SUSTAINABILITY
- G10 WHISTLEBLOWING OBLIGATIONS

**PART H - GENERAL PROVISIONS**

- H1 CONTRACT VARIATION
- H2 THIRD PARTY RIGHTS
- H3 NO WAIVER
- H4 SEVERANCE
- H5 ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY
- H6 FORCE MAJEURE
- H7 INDUCEMENTS
- H8 COSTS AND EXPENSES
- H9 NO AGENCY OR PARTNERSHIP
- H10 NON SOLICITATION AND OFFERS OF EMPLOYMENT
- H11 INSPECTION OF PROVIDER'S PREMISES
- H12 LAW AND JURISDICTION

**PART A - OPERATIVE PROVISIONS**

**DEFINITIONS**

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

“Authorised Officer” the person duly appointed by the Lead Authority and notified in writing to the Provider to act as the representative of the Lead Authority for the purpose of the Contract in the Contract Particulars or as amended from time to time and in default of such notification the Lead Authority’s head of procurement or similar responsible officer.

“Assigned Employees” In respect of Clause G4 an individual employed by the Provider wholly or mainly in the performance of the Services.

“Bribery Act”	the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
“Business Day”	any day other than a Saturday or Sunday or a public or bank holiday in England.
“Change in Law”	the coming into effect or repeal (without reenactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.
“Commencement Date”	the commencement date stated in the Contract Particulars.
“Commercially Sensitive Information”	the information used in the Contract Particulars comprising the information of a commercially sensitive nature relating to the Provider, its Intellectual Property Rights or its business or which the Provider has indicated to the Lead Authority that, if disclosed by the Lead Authority, would cause the Provider significant commercial disadvantage or material financial loss.
“Confidential Information”	any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA).
“Contract”	the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of



priority:

1. the Contract Particulars;
2. the Special Terms and Conditions;
3. the Standard Terms and Conditions;
4. the tender except to the extent that any element of the Tender has been included in the Contract Particulars.

“Provider”

the Provider and where applicable this shall include the Provider’s Employees, sub-Providers, agents, representatives, and permitted assigns and, if the Provider is a consortium or consortium leader, the consortium members.

“Contract Manager”

the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.

“Contract Particulars”

the document detailing the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document.

“Contract Period”

the period of the contract as stated in the Contract Particulars (and any extension in accordance with clause B1).

“Control”

control as defined by section 450, 451 and 707 of the Corporation Tax Act 2010.

“Data Controller”

has the meaning set out in the Data Protection Legislation.

“Data Loss Event”

any event that results, or may result, in unauthorised access to Personal Data

	held by the Provider under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract
“Data Processing Schedule”	the schedule from the Tender detailing the data processing requirements.
“Data Processor”	has the meaning set out in the Data Protection Legislation.
“Data Protection Impact Assessment”	an assessment by the controller of the impact of the envisaged processing on the protection of Personal Data.
“Data Protection Legislation”	the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party
“Data Sharing Agreement”	a formal agreement that documents what data is being shared and how the data can be used between the Parties.
“Data Sharing Code of Practice”	the code of practice issued by the Information Commissioner in respect to the sharing of personal data.
“Data Subject Access Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
“Data Subject”	has the meaning set out in the Data Protection Legislation.
“Delivery Instructions”	the instructions provided in the Contract Particulars and any other information that the Lead Authority considers appropriate to the provision of the Services.

“Employee”	any person employed by the Provider to perform the Contract which will also include the Provider's servants, agents, voluntary and unpaid workers and subProviders and representatives or, in respect of clause G4 (TUPE and Re-Tendering) and any other TUPE obligation, an individual employed by the Provider in the performance of the Services.
“EIR”	The Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
“FOIA”	The Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
“Force Majeure”	any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, industrial action (subject to clause H6.3), protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies.
“Good Industry Practice”	the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced Provider engaged in the supply of services similar to the Services under the same or similar circumstances as those applicable to the Contract.
“HRA”	The Human Rights Act 1998.
“Intellectual Property Rights”	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for

	any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
“Invitation to Tender”	the Lead Authority’s invitation to tender for the Contract.
“Joint Data Controller”	has the meaning set out in the Data Protection Legislation.
“Key Personnel”	those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Provider is bound to comply.
“Lead Authority”	the Lead Authority named in the Contract Particulars and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Lead Authority (whether in part or totally) or which is controlled by or is under common control with the Lead Authority (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).
“LED”	Law Enforcement Directive (Regulation (EU) 2016/679).

“Liabilities”	all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.
“Order”	an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.
“Participating Authority	Any public body identified in the OJEU notice (if applicable) and/or the Invitation to Tender entitled to use this Framework Agreement and enter into a Call-Off Contract, either individually or collectively as the context allows
“PCR”	the Public Contracts Regulations 2015
“Personal Data”	has the meaning set out in the Data Protection Legislation.
“Price”	the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.
“Pricing Schedule”	the schedule from the tender detailing the pricing as detailed in the Contract Particulars.
“Replacement Provider”	any company, organisation or person who replaces the Provider following termination or expiry of all or part of this Contract
“Services”	the services described in the Specification to be supplied by the Provider in accordance with the Contract together with all equipment required and any associated goods provided by the Provider in relation to those services.
“Special Terms and Conditions”	the additional terms and conditions attached which were set out in the Invitation to Tender.

“Specification”	the specification included in the Contract Particulars setting out the Participating Authority's detailed requirements in relation to the Services.
“Standard Terms and Conditions”	the terms and conditions set out in this document.
“Tender”	the Provider's tender for the Services in response to the Participating Authority's Invitation to Tender.
“TFEU”	Treaty on the Functioning Of The European Union
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended.

Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.

A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

## **HEADINGS**

The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.

## **NOTICES**

Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address, fax number or email address notified to each other as set out in the Contract Particulars.

Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 hours after it was posted; any notice sent by fax will be deemed to have been served 24 hours after it was despatched and any notice sent by email before 5 p.m. will be deemed to have been served on the day of despatch and otherwise on the following day save where the deemed date of service

falls on a day other than a Business Day in which case the date of service will be the following Business Day.

## **ENTIRE AGREEMENT**

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

## **PART B - PROVISION OF SERVICES**

### **B1. CONTRACT PERIOD**

B1.1 The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.

B1.2 If the Contract Period includes an option to extend and the Lead Authority intends to take up the option, the Provider shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

### **B2. PERFORMANCE**

B2.1 The Services shall be provided by the Provider in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.

B2.2 The time of the delivery of the Services is of essence to the Contract.

B2.3 The Lead Authority will have the right to observe the Provider's performance of the Services if the Services are not being performed on the Lead Authority's premises.

B2.4 If the Provider at any time becomes aware of any act or omission, or proposed act or omission by the Lead Authority which prevents or hinders or may prevent or hinder the Provider from performing the Services in accordance with the Contract, the Provider shall inform the Lead Authority and the Lead Authority may, at its absolute discretion, extend the period of the Contract accordingly.

B2.5 If the Provider at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Provider shall inform the Lead Authority immediately.

B2.6 If the Provider has a change in Control, the Provider shall inform the Lead Authority as soon as reasonably practicable.

B2.7 The Lead Authority retains the Provider for the performance of the Services on a nonexclusive basis.

**B3. CONTRACT MANAGER**

B3.1 The Provider shall employ a competent and authorised Contract Manager empowered to act on behalf of the Provider for all purposes connected with the Contract.

B3.2 The Provider shall forthwith give notice in writing to the Lead Authority of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Provider shall give maximum possible notice to the Lead Authority before changing its Contract Manager.

**B4. ORDERING PROCESS**

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

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

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

**B5. RISK IN AND TITLE TO GOODS**

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

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

**B6. WARRANTY**

B6.1 The Provider warrants to the Participating Authorities that the Services will be provided:

B1.1.1 in a proper, skilful and workmanlike manner;

B1.1.2 by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice;



- B1.1.3 in accordance with the Contract and any descriptions provided by the Provider;
  - B1.1.4 to the reasonable satisfaction of the Authorised Officer;
  - B1.1.5 by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Participating Authority, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Participating Authority, or the element of the Services in respect of which the individual was engaged has been completed to the Participating Authority's satisfaction or other extenuating circumstances explained to the Participating Authority. Any replacements for the Key Personnel shall be subject to the agreement of the Participating Authority and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Provider; and
  - B1.1.6 in a way that the Provider takes every reasonable precaution to safeguard the Participating Authority's property entrusted to the care of the Provider.
- B1.2 The Provider warrants to the Participating Authority that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
- B1.2.1 be free from defects in design, material and workmanship; and
  - B1.2.2 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- B1.3 Without prejudice to the Participating Authority's rights to terminate under clause D1 (Termination), if any of the Services supplied are not in accordance with the Contract, the Participating Authority shall be entitled to:
- B1.3.1 require the Provider to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
  - B1.3.2 subject to clause E2 (Indemnity and Liability) require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Lead Authority in obtaining replacement Services.

## **B2. PROVIDER'S EMPLOYEES**

B2.1 The Lead Authority reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Lead Authority:

B2.1.1 any member of the Provider's Employees; and/or

B2.1.2 any person employed or engaged by a sub-Provider, agent or servant of the Provider

whose admission or continued presence would be, in the reasonable opinion of the Lead Authority, undesirable.

B2.2 When directed by the Participating Authority, the Provider shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Participating Authority, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Participating Authority may reasonably desire.

B2.3 The Provider's Employees, engaged within the boundaries of any of the Participating 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.

B2.4 The decision of the Participating Authority as to whether any person is to be refused access to any premises occupied by or on behalf of the Participating Authority shall be final and conclusive.

B2.5 The Provider shall replace any of the Provider's Employees who the Participating Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Provider's Employees for any reason, the Provider shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.

B2.6 The Provider shall bear the cost of or costs arising from any notice, instruction or decision of the Participating Authority under this clause.

## **B8 INDEPENDENT PROVIDER**

B8.1 The Parties agree that the Provider is an independent Provider and not an agent, employee or partner of the Participating Authority and therefore not eligible to participate in any benefit programmes of the Participating Authority. The Provider will be responsible for payment of his/her own Income Tax and National Insurance Payments or similar contributions in respect of his/her fees and the Provider hereby indemnifies the Participating Authority against any claims that may be made against the Participating Authority for Income Tax or National Insurance or similar contributions relating to the provision of the Services by the Provider. The Provider shall

in addition be responsible for any loss of benefits paid under his previous contact of employment, or additional tax liability incurred, by reason of his accepting a contract with the Participating Authority as a consultant which commences immediately after the termination of his employment with the Participating Authority and the Provider shall indemnify the Participating Authority in respect of any additional tax liability, loss or demand that the Participating Authority may thereby occasion.

**B9 MEETINGS AND PROGRESS REPORTS**

- B9.1 The Provider's Contract Manager shall attend any meetings, including site meetings, as may reasonably be requested by the Lead Authority and Participating Authority. The Provider shall make all arrangements for sub-Providers and suppliers to be present as required by the Lead Authority and Participating Authority.
- B9.2 The Provider shall submit written reports to the Participating Authority and Lead Authority in connection with any material changes to the tender submitted by the Provider.

**B10 LICENCE TO OCCUPY PARTICIPATING AUTHORITY'S PREMISES**

"Premises" means any land or premises (including temporary buildings) made available to the Provider by the Participating Authority in connection with the Contract.

- B10.1 Any Premises shall be made available to the Provider free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the non-exclusive use of such Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B10.2 The Provider shall not use the Premises for any purpose or activity other than the provision of the Contract.
- B10.3 Should the Provider require modifications to the Premises, such modifications shall be subject to prior approval and shall be carried out by the Participating Authority at the Provider's expense. The Participating Authority shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Participating Authority.
- B10.4 The Provider shall (and shall ensure that their employees, servants, agents, suppliers or sub-Providers) 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 Participating Authority, and the Provider shall pay the cost of making good any damage caused by the Provider, his Employees, servants, agents, suppliers or sub-Providers 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.

B10.5 The parties agree that there is no intention on the part of the Participating Authority to create a tenancy in respect of the Premises of whatsoever nature in favour of the Provider or its Employees, servants, agents, suppliers or sub-Providers and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Participating Authority retains the right at any time to use in any manner the Purchasing Authority sees fit any premises owned or occupied by it.

## **PART C - PRICE AND PAYMENT**

### **C1. PRICE AND PAYMENT**

C1.1 The Participating Authority shall pay the Price for the Services to the Provider.

C1.2 The Provider shall submit a single VAT invoice to the Participating Authority no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.

C1.3 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the Participating Authority.

C1.4 The Participating Authority reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Provider has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Participating Authority's satisfaction.

C1.5 Any overdue sums will bear interest from the due date until payment is made at 4% per annum over the Bank of England base rate from time to time. The Provider is not entitled to suspend provision of the Services as a result of any overdue sums.

C1.6 The Participating Authority will be entitled but not obliged at any time or times without notice to the Provider to set off any liability of the Participating Authority to the Provider against any liability of the Provider to the Participating Authority (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Provider into any other currency or currencies in which the obligations of the Participating Authority are payable under this Contract. The Participating Authority's rights under this clause will be without prejudice to any other rights or remedies available to the Participating Authority under this Contract or otherwise.

C1.7 Further details of payment, if any, are set out in the Pricing Schedule.

C1.8 The Provider must comply with the sub-Provider payment and contracting requirements as set out in clause H5.7

## **C2 CONTRACT REBATE**

C2.1 The Provider will pay the Lead Authority a contract rebate for all business received against this Contract where the level of such rebate and the method of payment are set out in the Contract Particulars.

## **C3 PRICE VARIATION**

C3.1 The Provider shall have the ability to propose to vary the Price of the Call-off Contract, only if it is indicated in the Contract Particulars as being variable, by giving the Participating Authority not less than 3 months' written notice in advance of such variation effective at the end of the initial period specified in the Contract Particulars or annually and thereafter providing that:

C3.1.1 such variation shall not exceed the annual Retail Price Index all items excluding mortgage interest payments (RPIX) ruling at the time of the increase and should not preclude the possibility of any reductions in charges; and

C3.1.2 any notice of variation under this clause C3 will be limited to one request in any twelve (12) month period.

C3.2 Changes to the Price will only become effective when agreed and accepted in writing by the Participating Authority's Authorised Officer.

## **PART D - TERMINATION AND CONSEQUENCES OF TERMINATION**

### **D1. TERMINATION**

D1.1 Subject to the provisions of clause H6 (Force Majeure) the Participating Authority may terminate the Call-off Contract with immediate effect by notice in writing to the Provider on or at any time if:

D1.1.1 the Provider becomes bankrupt, insolvent, makes any composition with its creditors, has a Property and Affairs Deputy appointed under the Mental Capacity Act 2005 or dies; or

D1.1.2 the Provider is convicted of a criminal offence; or

D1.1.3 the Provider ceases or threatens to cease to carry on its business; or

D1.1.4 the Provider has a change in Control which the Participating Authority believes will have a substantial impact on the performance of the Contract; or

- D1.1.5 there is a risk or a genuine belief that reputational damage to the Participating Authority will occur as a result of the Contract continuing; or
- D1.1.6 the Provider is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Participating Authority within 14 days, or such other reasonable period as may be specified by the Participating Authority after issue of a written notice specifying the breach and requesting it to be remedied; or
- D1.1.7 there is a material or substantial breach by the Provider of any of its obligations under this Contract which is incapable of remedy; or
- D1.1.8 the Provider commits persistent minor breaches of this Contract whether remedied or not; or
- D1.1.9 the Provider uses personnel other than the Key Personnel as set out to perform the Services; or
- D1.1.10 a County Court Judgment is recorded against the Provider.
- D1.2 The Participating Authority reserves the right to terminate the Contract in part in the case of termination under clauses D1.1.6, D1.1.7 and D1.1.8.
- D1.3 Where this Contract is subject to Orders as specified in the Contract Particulars the Lead Authority has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
- D1.4 The Participating Authority reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.
- D1.5 The Lead Authority reserves the right to terminate the contract where:
  - D1.5.1 the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR; or
  - D1.5.2 the Provider has, at the time of contract award, been in one of the situations referred to in regulation 57(1) PCR, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
  - D1.5.3 the contract should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

## **D2. CONSEQUENCES OF TERMINATION**

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

D2.1.1 be liable to pay to the Provider only such elements of the Price, if any, that have properly accrued in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or

D2.1.2 except for termination under clauses D1.4 and D1.5.1, be entitled to deduct from any sum or sums which would have been due from the Lead Authority to the Provider under this Contract or any other contract and to recover the same from the Provider as a debt any sum in respect of any loss or damage to the Lead Authority resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Lead Authority of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or

D2.1.3 where termination arises under clause D1.4 or D1.5.1, pay to the Provider any reasonable, direct and quantifiable costs reasonably incurred by the Provider due to early termination subject to the maximum liability provision in clause E2.4; and/or

D2.1.4 in the event that any sum of money owed by the Provider to the Lead Authority (the Provider's debt) exceeds any sum of money owed by the Lead Authority to the Provider (the Lead Authority's debt) under this Contract then the Lead Authority shall, at its sole discretion, be entitled to deduct the Provider's debt from any future Lead Authority's debt or to recover the Provider's debt as a civil debt.

D2.2 Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.

## **D3. DISPUTE RESOLUTION PROCEDURE**

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

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

D3.3 Provided that both parties consent, a dispute not resolved in accordance with clauses D3.1 and D3.2, shall next be referred at the request of either party to a mediator appointed by agreement between the parties within 14 days of one party requesting mediation with the costs of mediation determined by the mediator. The Lead Authority needs to be notified of any dispute that can't be resolved as set out in D3.2.

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

#### **D4. SURVIVAL**

D4.1 The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause E2 (Indemnity and Liability), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause G4 (TUPE and Re-Tendering), Clause G5 (TUPE Indemnity), Clause G6 (Post-Contract Monitoring), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment) and Clause H12 (Law and Jurisdiction).

### **PART E - INSURANCE AND LIABILITIES**

#### **E1. INSURANCE**

E1.1 The Provider shall maintain insurance necessary to cover any liability arising under the Contract as set out in the Contract Particulars.

E1.2 The Provider shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request provide evidence that all premiums relating to such insurances have been paid.

E1.3 If the Provider does not maintain the necessary insurances under the Contract the Lead Authority may insure against any risk in respect of the default and may charge the Provider, the cost of such insurance together with a reasonable administration charge.

#### **E2. INDEMNITY AND LIABILITY**

E2.1 Either Party ("the Indemnifying Party") shall fully indemnify the other Parties ("the Indemnifying Parties) in full without limit of liability for any losses arising from the Indemnifying Party's breach of their obligations under this Contract, or the reckless, negligent or wilful default of the Indemnifying Party or their appointed agents, representatives or sub-Providers in the provision of the Services. For the avoidance of doubt, this indemnity shall include claims for damage or injury to the personal property of any third party (including any infringement of Intellectual Property Rights) which results in Liabilities awarded against or costs incurred by the Indemnified parties.



E2.2 Neither party seeks to exclude or limit its liability for:

E2.2.1 death or personal injury caused by its negligence (but will not be liable for death or personal injury caused by the other party's negligence);

E2.2.2 fraudulent misrepresentation; or

E2.2.3 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

E2.3 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

## **PART F - PROTECTION OF INFORMATION**

### **F1. INTELLECTUAL PROPERTY**

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

F1.1.1 provided to the Provider by the Lead Authority shall remain the property of the Lead Authority;

F1.1.2 prepared by or for the Provider specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Lead Authority subject to any exceptions set out in the Contract Particulars.

F1.2 The Provider shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third-party Intellectual Property Rights. The Provider shall procure that the owner of the Intellectual Property Rights grant to the Lead Authority a non-exclusive licence, or if the Provider is itself a licensee of those rights, the Provider shall grant to the Lead Authority an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-license, transfer, novate or assign to other Lead Authority's, the replacement Provider or to any other third-party providing services to the Lead Authority, and shall be granted at no cost to the Lead Authority.

F1.3 It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Provider shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Lead Authority against all Liabilities which the Lead Authority may suffer or incur as a result of or in connection with any

breach of this clause, except where any such claim relates to the act or omission of the Lead Authority.

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

## **F2. CONFIDENTIALITY AND PUBLICITY**

- F2.1 Any documents provided by the Lead Authority and information which the Provider may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Lead Authority and shall not be disclosed disposed of or used for any purpose without prior written consent from the Lead Authority.
- F2.2 All Confidential Information provided by the Lead Authority to the Provider shall be returned to the Lead Authority at the end of the Contract.
- F2.3 Without prejudice to the Lead Authority's obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
- F2.4 Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, Employees, sub-Providers, agents, professional advisors and consultants.

## **F3. DATA PROTECTION**

- F3.1 The Provider shall (and shall procure that any of its Employees involved in the provision of the Services) comply with any requirements under the Data Protection Legislation.
- F3.2 In particular and without prejudice to the generality of clause F3.1 above, if the Provider is acting as Data Controller within the meaning of the Data Protection Legislation for any data provided to the Provider by the Lead Authority or vice versa under this contract then the following provisions shall apply:
- F3.2.1 The Provider and the Lead Authority shall comply with the Data Sharing Code of Practice and as amended from time to time
- F3.2.2 In accordance with good practice, either Party may at any time require the other to enter into a Data Sharing Agreement. In considering a proposed Data Sharing Agreement, either Party cannot unreasonably and without good reason refuse to enter into a Data Sharing Agreement.

- F3.3 In particular and without prejudice to the generality of clause F3.1 above, if the Provider and the Lead Authority are acting as Joint Data Controllers within the meaning of the Data Protection Legislation for any data collected by or provided to either Party under this Contract then the following provisions shall apply:
- F3.3.1 The Parties shall designate between them a contact point for Data Subjects in relation to any Personal Data under the joint control of the parties.
- F3.3.2 Each Party shall provide all reasonable assistance to the other in relation to any complaint, communication or request made under the Data Protection Legislation and the preparation of any Data Protection Impact Assessment
- F3.3.3 Each Party shall ensure that it has in place Protective Measures as appropriate to protect the Personal Data having taken account of the:
- (a) nature of the data to be protected;
  - (b) harm that might result from a Data Loss Event;
  - (c) state of technological development; and
  - (d) cost of implementing any measures;
- F3.3.4 Each Party shall take all reasonable steps to ensure the reliability and integrity of any Employee or staff who have access to the Personal Data and ensure that they are aware of and comply with the Party's data protection obligations have undergone adequate training in the use, care, protection and handling of Personal Data; and
- F3.3.5 Each Party shall notify the other immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request) in relation to any data under the joint control of the Parties;
  - (b) receives a request to rectify, block or erase any Personal Data in relation to any data under the joint control of the Parties;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation in relation to any data under the joint control of the Parties;

- (d) receives any communication from the Information Commissioner or any other regulatory authority in relation to any data under the joint control of the Parties;
- (e) receives a request from any third Party for disclosure of Personal Data under the joint control of the Parties where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event in relation to any data under the joint control of the Parties.

F3.3.6 Each Party shall designate a data protection officer if required by the Data Protection Legislation

F3.3.7 The Parties agree to take account of any guidance issued by the Information Commissioner's Office.

F3.3.8 Each Party shall fully indemnify the other against any costs, claims, actions or otherwise brought against the other party arising as a result of the indemnifying party's breach of any of its data protection obligations.

F3.4 In particular and without prejudice to the generality of clause F3.1 above, if the Provider is acting as Data Processor on behalf of the Lead Authority within the meaning of the Data Protection Legislation for any data provided to it by the Lead Authority under this contract then the following provisions shall apply:

F3.4.1 The Data Processing Schedule shall apply and the only processing that the Provider is authorised to do is listed in the Data Processing Schedule (as may be amended by the Lead Authority) and may not be determined by the Provider.

F3.4.2 The Provider shall notify the Lead Authority immediately if it considers that any of the Lead Authority's instructions infringe the Data Protection Legislation.

F3.4.3 The Provider shall provide all reasonable assistance to the Lead Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Lead Authority, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and

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

F3.4.4 The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) Process that Personal Data only in accordance with the Data Processing Schedule unless the Provider is required to do otherwise by Law. If it is so required, the Provider shall promptly notify the Lead Authority before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Lead Authority may reasonably reject (but failure to reject shall not amount to approval by the Lead Authority of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that the Provider Personnel do not process Personal Data except in accordance with this Agreement (and in particular the Data Processing Schedule);
- (d) it takes all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that they:
  - (i) are aware of and comply with the Provider's duties under this clause;
  - (ii) are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Lead Authority or as otherwise permitted by this Agreement; and

- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the EU unless the prior written consent of the Lead Authority has been obtained and the following conditions are fulfilled:
  - (i) the Lead Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Lead Authority;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Lead Authority in meeting its obligations); and
  - (iv) the Provider complies with any reasonable instructions notified to it in advance by the Lead Authority with respect to the processing of the Personal Data;

F3.4.5 At the written direction of the Lead Authority, delete or return Personal Data (and any copies of it) to the Lead Authority on termination of the Contract unless the Provider is required by Law to retain the Personal Data.

F3.4.6 The Provider shall notify the Lead Authority immediately if it:

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

- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- F3.4.7 The Provider's obligation to notify under clause F3.4.6 shall include the provision of further information to the Lead Authority in phases as details become available.
- F3.4.8 Taking into account the nature of the processing, the Provider shall provide the Lead Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under such legislation (and insofar as possible within the timescales reasonably required by the Lead Authority) including by promptly providing:
- (a) the Lead Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Lead Authority to enable the Lead Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Lead Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Lead Authority following any Data Loss Event;
  - (e) assistance as requested by the Lead Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Lead Authority with the Information Commissioner's Office.
- F3.4.9 The Provider shall maintain complete and accurate records and information to demonstrate its compliance with this Clause F3.4
- F3.4.10 The Provider shall allow for audits of its Data Processing activity by the Lead Authority or the Lead Authority's designated auditor.
- F3.4.11 The Provider shall designate a data protection officer if required by the Data Protection Legislation.
- F3.4.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Provider must:

- (a) notify the Lead Authority in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of the Lead Authority;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause F3.4 such that they apply to the Sub-processor; and
- (d) provide the Lead Authority with such information regarding the Sub-processor as the Lead Authority may reasonably require.

F3.4.13 The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

F3.4.14 The Lead Authority may, at any time on not less than 30 Working Days' notice, revise any part of this clause F3.4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

F3.4.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Lead Authority may on not less than 30 Working Days' notice to the Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

F3.4.16 Where the Parties include two or more Joint Controllers as identified in the Service Specification in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses F3.1 to F3.14 for the Personal Data under Joint Control.

#### **F4. FREEDOM OF INFORMATION**

F4.1 The Participating Authorities is subject to the FOIA and the EIR ("the Acts"). As part of the Participating Authority's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Lead Authority has absolute discretion to apply or not to apply any exemptions under the Acts.

F4.2 The Provider shall assist and cooperate with the Lead Authority (at the Provider's expense) to enable the Lead Authority to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Lead Authority.

#### **F5. RECORD KEEPING AND MONITORING**



- F5.1 In order to assist the Lead Authority in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Provider shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Lead Authority, and all payments made by the Lead Authority. The Provider shall on request allow the Lead Authority or the Lead Authority's representatives such access to (and copies of) those records as may be required by the Lead Authority in connection with the Contract.
- F5.2 The Provider will at its own cost, provide any information that may be required by the Lead Authority to comply with the Lead Authority's procedures for monitoring of the Contract.

## **PART G - STATUTORY OBLIGATIONS**

### **G1. HEALTH AND SAFETY**

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

### **G2. CORPORATE REQUIREMENTS**

- G2.1 The Provider shall comply with all obligations under the HRA.
- G2.2 The Provider shall comply with all Lead Authority policies and rules, such as, but not limited to:
- G1.1.1 equality and diversity policies;
  - G1.1.2 sustainability;
  - G1.1.3 information security rules;
  - G1.1.4 whistleblowing and/or confidential reporting policies; and
  - G1.1.5 all site rules relevant to the fulfilment of the Provider's obligations in the performance of the Services.
- G1.2 The Provider shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- G1.3 The Provider shall comply with all relevant legislation relating to its Employees however employed including (but not limited to) the compliance in law of the ability of the Employees to work in the United Kingdom.

G1.4 If the Provider has a finding against it relating to its obligations under clause G2.4 it will provide the Lead Authority with:

G1.4.1 details of the finding; and

G1.4.2 the steps the Provider has taken to remedy the situation.

## G2. **LAW AND CHANGE IN LAW**

G2.1 The Provider shall comply at all times with the Law in its performance of the Contract.

G2.2 On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Provider notifying the Lead Authority of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Provider. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.

G2.3 Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Provider double recovery of any increase in costs.

## G4. **TUPE AND RE-TENDERING**

G4.1 In the event of expiry or termination of this Contract or whenever reasonably requested by the Lead Authority in preparation for tendering arrangements the Provider will provide the Lead Authority with such assistance as the Lead Authority may require and provide at no cost to the Lead Authority any information the Lead Authority (whether on its own account or on behalf of any potential or confirmed Replacement Provider) may request in relation to the Employees including but not limited to, providing employee liability information as required under Regulation 11 of TUPE.

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

G4.3 The Provider will keep the Lead Authority and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly in connection with any breach of this clause or inaccuracies in or omissions from the information provided.

## G5 **TUPE INDEMNITY**

For the purposes of this clause G5, the following definitions shall take effect: -

- “Current Employer” the employer of the Transferring Employees immediately before the Commencement Date;
- “Employment Costs” remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions and pensions contributions;
- “Prohibited Act” include any of the following (i) termination of employment of any Employees; or (ii) the alteration or change of terms or conditions of any Employees; or (iii) the recruitment of any employees; or (iv) relocation or assignment to new duties of any Employees,
- “Transferring Employees” those employees employed wholly or mainly by the Current Employer in providing the Services described in the Specification prior to the Commencement Date.

G5.1 The Lead Authority and the Provider acknowledge that where as a result of TUPE the contracts of employment between the Current Employer and the Transferring Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of TUPE) transfer, they will have effect after the Commencement Date as if originally made between the Provider and the Transferring Employees.

G5.2 All Employment Costs in respect of the period:

G5.2.1 up to and including the Commencement Date in relation to the Transferring Employees (whether or not due for payment at that date) will be borne by the Current Employer;

G5.2.2 after the Commencement Date will be borne by the Provider;

and will if necessary be apportioned on a time basis between the Provider and the Current Employer.

G5.3 The Provider will keep the Lead Authority and any Replacement Provider indemnified in full against all Liabilities arising directly or indirectly and whether incurred by the Lead Authority pursuant to an indemnity provided to the Replacement Provider in connection with:

G5.3.1 the employment or termination of employment of any of the Employees (whether or not terminated by notice and, if so terminated, whenever that notice expires);

- G5.3.2 any act, omission or default of the Provider in respect of the employment of the Transferring Employees;
- G5.3.3 the Provider's failure to inform or consult as required under Regulation 13 of TUPE except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by the Lead Authority or the replacement Provider to give the Provider the information required from the Lead Authority or the Replacement Provider to enable the Provider to comply with its obligations under TUPE; and
- G5.3.4 the Provider's failure to provide the employee liability information under Regulation 11 of TUPE.
- G5.3.5 any claim by a Transferring Employee that such person is entitled for any reason to take early retirement benefits pursuant to the terms of any pension scheme in which the Lead Authority or the replacement Provider is not then participating, or pursuant to the Transferring Employee's terms and conditions of employment;
- G5.3.6 the Provider's failure to comply with its obligations under Clause G5.4 below.

G5.4 The Provider will not in the event of notice of termination of this Contract or from a date of (12) months before expiry of the Contract Period carry out a Prohibited Act.

## G6. **POST-CONTRACT MONITORING**

G6.1 The Provider is required to collaborate with the Lead Authority over the Contract Period to achieve continuous improvement in the quality and delivery of the Services in accordance with the Lead Authority's obligations under Part I of the Local Government Act 1999.

## G7. **COMMUNITY SAFETY**

G7.1 The Lead Authority has a statutory duty to ensure that it does all that it reasonably can to prevent crime and disorder in its area under the Crime and Disorder Act 1998. The Provider is requested to assist the Lead Authority in the provision of the Services, in order to enable the Lead Authority to comply with this obligation at no additional expense to the Lead Authority.

## G8. **BUSINESS CONTINUITY PLANNING**

"Business Continuity Plan" means the plan setting out the Provider's proposed methodology to ensure continuance of the Contract in the event of an emergency.

G8.1 The Civil Contingencies Act 2004 requires the Lead Authority to maintain plans to ensure it can continue to perform all of its ordinary functions in the

event of an emergency. Organisations providing services or goods which underpin the Lead Authority's service provision must be able to continue to provide in the event of an emergency. The Provider shall use its reasonable endeavours:

- G8.1.1 to prepare a robust Business Continuity Plan that ensures the continuation of this Contract; and
- G8.1.2 upon request, to disclose to the Lead Authority the contents of its Business Continuity Plan (including any revisions made to it from time to time); and
- G8.1.3 to allow the Lead Authority at its discretion from time to time to monitor the Provider's business continuity arrangements; and
- G8.1.4 to notify the Lead Authority if an incident occurs which activates the Provider's Business Continuity Plan (such notification to be given prior to the issue of any notification to the press or other media); and
- G8.1.5 to provide the Lead Authority with details of how the Provider managed any incident which resulted in the activation of the Provider's Business Continuity Plan and any consequential amendments made to the Provider's processes and/or procedures thereafter.

## G9. **SUSTAINABILITY**

- G9.1 The Provider shall perform the Contract in accordance with the Lead Authority's environmental and sustainable procurement policies which includes the requirement to conserve energy, water, wood, paper and other resources, reduce waste, increase levels of recycling and phase out the use of ozone depleting substances. The Provider shall also and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment ("Environmental Sustainability Requirements").
- G9.2 The Lead Authority reserves the right to require the Provider to provide evidence as to how it is ensuring compliance with the Environmental Sustainability Requirements and how the Contract is being performed in a sustainable manner.
- G9.3 The Provider shall perform the Contract in a manner which aims to continuously improve the social and economic well-being of Newcastle upon Tyne at every opportunity.

## **G10. WHISTLEBLOWING OBLIGATIONS**

G10.1 The Provider and/or its Employees shall report to the Lead Authority at no further cost to the Lead Authority any concerns which the Provider has in relation to any aspects of the Lead Authority's behaviour or conduct of its staff, members or anyone acting on the Lead Authority's behalf, such concerns include but are not limited to: -

- (a) conduct which is an offence or a breach of law; and/or
- (b) disclosures related to miscarriages of justice; and/or
- (c) health and safety risks, including risks to the public as well as other employees; and/or
- (d) damage to the environment; and/or
- (e) the unauthorised use of public funds; and/or
- (f) fraud and corruption; and/or
- (g) sexual or physical abuse of clients; and/or
- (h) any attempt to prevent disclosure of any of the above; and/or
- (i) other conduct which gives the Provider, and/or its employees cause for concern; and/or
- (j) any conduct which is against the Lead Authority's standing orders and policies; and/or
- (k) any conduct which falls below established standards of practice or amounts to improper conduct ("Relevant Concerns").

G10.2 The Provider and/or its Employees shall report any Relevant Concerns to the Lead Authority in accordance with the procedures detailed within its whistleblowing policy which is available at [www.newcastle.gov.uk](http://www.newcastle.gov.uk) .

## **PART H - GENERAL PROVISIONS**

### **H1. CONTRACT VARIATION**

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

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

### **H2. THIRD PARTY RIGHTS**

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

### H3. **NO WAIVER**

- H3.1 Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
- H3.2 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3 (Notices).

### H4. **SEVERANCE**

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

### H5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**

- H5.1 Subject to any express provision of this Contract, the Provider shall not without the prior written consent of the Lead Authority, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.
- H5.2 The Lead Authority shall be entitled to:
- H1.1.1 assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any Participating Authority (as defined in The Public Contracts Regulations 2015); or
  - H1.1.2 transfer, assign or novate its rights and obligations where required by Law.
- H1.2 The Provider shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-Providers, servants, agents and Employees as though they were its own.
- H5.4 The Provider shall identify each part of the Services that it intends to sub-contract and the proposed sub-Provider for each item identified prior to seeking the Lead Authority's consent to such sub-contracting.
- H5.5 The Lead Authority shall be entitled to impose conditions in relation to any consent to sub-contracting given including a requirement that a guarantee or other security be provided.

- H5.6 The Lead Authority requires as a condition precedent of consent the Provider to obtain collateral warranties from any sub-Provider or other member if part of a consortium arrangement in a form prescribed by the Lead Authority and duly executed in the presence of the Lead Authority.
- H5.7 The Provider shall ensure that any subcontract it awards relating to the Services contains suitable provisions to impose, as between the parties to the subcontract, the following requirements:
- H5.7.1 any payment due from the Provider to the sub-Provider under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
  - H5.7.2 that any invoices for payment submitted by the sub-Provider are considered and verified by the Provider in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed; and
  - H5.7.3 a requirement for the sub-Provider to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by these sub-paragraphs H5.7.1 and H5.7.2.

## H2. **FORCE MAJEURE**

- H2.1 Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
- H2.2 If the Lead Authority or the delivery location is affected by circumstance of Force Majeure, the Lead Authority shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Provider against the Lead Authority nor entitle the Provider to terminate the Contract.
- H2.3 Industrial action by, or illness or shortage of the Provider's Employees, agents or sub-Providers, failure or delay by any of the Provider's suppliers to supply goods, components, services or materials and breach of the Provider's warranties under clause B6 shall not be regarded as an event of Force Majeure.
- H2.4 If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
- H2.5 If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.



### **H3. INDUCEMENTS**

- H3.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Lead Authority any gift or consideration of any kind as an inducement or reward for doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Lead Authority, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract. The attention of the Provider is drawn to the criminal offences under the Bribery Act 2010.
- H3.2 The Provider warrants that it has not paid commission nor agreed to pay any commission to any Employee or representative of the Lead Authority by the Provider or on the Provider's behalf.
- H3.3 Where the Provider engages in conduct prohibited by clauses H7.1 and H7.2 in relation to this or any other contract with the Lead Authority, the Lead Authority has the right to:
- H3.3.1 terminate the Contract and recover from the Provider the amount of any loss suffered by the Lead Authority resulting from the termination, including the cost reasonably incurred by the Lead Authority of making other arrangements for the provision of the Services and any additional expenditure incurred by the Lead Authority throughout the remainder of the Contract Period; or
  - H3.3.2 recover in full from the Provider any other loss sustained by the Lead Authority in consequence of any breach of this clause whether or not the Contract has been terminated.

### **H4. COSTS AND EXPENSES**

- H4.1 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.

### **H5. NO AGENCY OR PARTNERSHIP**

- H5.1 Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

### **H6. NON SOLICITATION AND OFFERS OF EMPLOYMENT**

- H6.1 The Provider agrees that it will not, without the prior written consent of the Lead Authority, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, Employee, agent, consultant, partner or

otherwise during the Contract Period or for a period of 12 months following termination of this Contract:

H6.1.1 solicit or entice, or endeavour to solicit or entice, away from the Lead Authority, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Lead Authority at the date of the termination of this Contract or at any time during the period of one month immediately preceding the date of termination; or

H6.1.2 attempt, or knowingly assist or procure any other person to do the above.

#### **H7. INSPECTION OF PROVIDER'S PREMISES**

H7.1 The Provider shall permit the Lead Authority to make any inspections or tests which may reasonably be required in respect of the Provider's premises in relation to the Contract.

#### **H8. LAW AND JURISDICTION**

H8.1 This Contract shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English courts.