**SHROPSHIRE AND WREKIN**

**FIRE AUTHORITY**

**SHROPSHIRE FIRE AND**

**RESCUE SERVICE**

**GENERAL TERMS AND CONDITIONS**

**FOR THE SUPPLY OF**

**GOODS SERVICES AND WORKS**

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These General Terms and Conditions are incorporated in contracts **of all values** **and types** made between Shropshire and Wrekin Fire Authority and a Contractor for the supply of Goods and Services (as defined below).

**In the event of a conflict between these clauses and those in specific contract documentation, the specific contract documentation shall apply.**

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| **1.** | **DEFINITIONS** |
| 1.1 | In this document the following words shall have the following meanings: |

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| **'Agreement'** | means the Agreement between the Authority and the Contractor consisting of the Purchase Order or Form of Agreement, these General Terms and Conditions and any other documents (or parts thereof) specified in the Purchase Order or Form of Agreement. |
| **“Authority Data”** | the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:(a) supplied to the Contractor by or on behalf of the Authority; or which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Authority is the Data Controller. |
| **"Authority Software"** | software which is owned by or licensed to the Authority, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software. |
| **"Authority System"** | the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with this Agreement which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services. |
| **“Authority Representative”** | the representative appointed by the Authority. |
| **"Authority"** | means Shropshire and Wrekin Fire Authority. |
| **“Commercially Sensitive Information”** | comprises the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to the Authority in writing that, if disclosed by the Authority, would cause the Contractor significant commercial disadvantage or material financial loss. |
| **“Confidential Information”** | any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Authority or the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") . |
| **"Contractor"** | means the person, firm or company or any other organisation specified in the Agreement contracting with the Authority.  |
| **"Contractor Equipment"**  | the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub contractors (but not hired, leased or loaned from the Authority) for the provision of the Services. |
| **"Contractor Software"** | software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services. |
| **"Contractor System"** | the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System). |
| **"Contractor Personnel"** | all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor. |
| **"Data Controller"** | shall have the same meaning as set out in the Data Protection Act 1998. |
| **"Data Processor"**  | shall have the same meaning as set out in the Data Protection Act 1998. |
| **"Data Protection Legislation"** | the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner. |
| **"Data Subject"** | shall have the same meaning as set out in the Data Protection Act 1998. |
| **“EIR”** | means the Environmental Information Regulations 2004 (as may be amended from time to time). |
| “**Exempt Information”** | means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreementwhich potentially falls within an exemption to FOIA (as set out therein). |
| **“FOIA”** | means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause. |
| **“FOIA notice”** | means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner. |
| **“Form of Agreement”** | means the contract document (other than a Purchase Order) to which these General Terms and Conditions are attached or referred to. |
| “**Goods”** | means all goods specified in the Agreement. |
| **“Hazardous Goods”** | means any solid, liquid, or gas that can cause harm to humans and other living organisms due to being radioactive, flammable or explosive, irritating or damaging the skin or lungs, interfering with oxygen intake and apsorption (asphyxiants), or causing allergic reactions (allergens). |
| **“Information”** | has the meaning given under section 84 of the Freedom of Information Act 2000. |
| **"Intellectual Property Rights"** | means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable. |
| **“Law”** | any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body. |
| **“Malicious Software”** | any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence. |
| **“Packages”** | includes bags, cases, cylinders, drums, pallets and other containers. |
| **"Personal Data"** | shall have the same meaning as set out in the Data Protection Act 1998. |
| **“Price”** | means the price of the Goods and/or charge for the Services or Works being provided by the Contractor. |
| **“Public body”** | as defined in the FOIA 2000. |
| **'Purchase Order'** | means the Authority's official order which encompasses orders written or electronically generated via any of the Authority’s ordering systems and to which these General Terms and Conditions are attached or referred to. |
| **“Receiving Party”** | means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response. |
| **“Regulatory Bodies”** | those government departments and regulatory, statutory and other entities, committees 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 Agreement or any other affairs of the Authority and "Regulatory Body" shall be construed accordingly. |
| **“Request for Information”** | means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA. |
| **"Security Policy"** | the Authority's security policy as updated from time to time. |
| **“Services”** | means any and all of the services to be provided by the Contractor under this Agreement including those set out in any schedules or service descriptions. |
| **"Software"** | Specially Written Software, Contractor Software and Third Party Software. |
| **"Specially Written Software"**  | any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement. |
| **"Third Party Software"** | software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services. |
| **“Working Day”** | any day other than a Saturday, Sunday or public holiday in England and Wales. |
| **“Works”** | means all civil engineering and building works of whatever nature to be provided by the Contractor to the Authority. |
| **‘Writing’** | includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received. |

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| 2. | **GENERAL** |
| 2.1 | When requested, the Contractor shall specify the Goods, Services or Works to be provided at the price payable.  |
| 2.2 | No variation of these General Terms and Conditions shall be binding unless agreed expressly in Writing by both the Authority and the Contractor. |
| 2.3 | These General Terms and Conditions shall apply to the exclusion of any other terms or conditions submitted, proposed or stipulated by the Contractor, whether in Writing or orally, and any such other term or condition is hereby expressly excluded or waived. |
| 2.4 | The Contractor shall complete the Works or Services or supply the Goods within the agreed times but time shall not be of the essence in the performance of any services unless expressly stated in Writing by the Authority. |
| **3.0** | **SPECIFICATION AND QUALITY OF THE GOODS, SERVICES AND WORKS** |
| 3.1 | The quantity, quality and description of the Goods or Services shall comply in all respects with any quoted British Standards and the specification or illustration contained in any product pamphlet or other sales or marketing literature of the Contractor or drawings, samples and patterns specified in the Agreement or any modifications thereof that may be agreed by the Authority in Writing.  |
| 3.2 | All Goods will be of good construction, sound materials, and of adequate strength, shall be free of defects in design materials and workmanship, and shall comply with the requirements of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, as applicable to this Agreement and as amended by any related statutes, and any statutory re-enactment(s) or modification(s) thereof. |
| **4.** | **ALTERATIONS TO THE SPECIFICATION OF GOODS AND SERVICES** |
| 4.1 | The parties may at any time mutually agree upon and execute alterations in the scope of Goods, Works or Services to be provided under this Agreement. |
| 4.2 | On receipt of a request from the Authority for alterations the Contractor shall, within 5 working days or such other period as may be agreed between the parties, advise the Authority by notice in Writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties. |
| 4.3 | Where the Contractor gives written notice to the Authority agreeing to perform any alterations on terms different to those already agreed between the parties, the Authority shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Contractor by notice in Writing whether or not it wishes the alterations to proceed thereafter the Contractor shall perform this Agreement upon the basis of such amended terms. |
| **5.** | **PRICE AND PAYMENT** |
| 5.1 | The price for the supply of Goods and Services are as set out in the Agreement and the Contractor shall invoice the Authority at the time the Goods are despatched or the Services are provided. |
| 5.2 | The Price, which shall include all charges for delivery to the Authority, packaging, insurance and carriage, shall be exclusive of VAT and shall be a fixed price for the duration of the Agreement and shall not be varied without prior written consent of the Authority. |
| 5.3 | The Authority reserves the right to set off against the price of the Goods or Services any sums owed or becoming due to the Authority from the Contractor. |
| 5.4 | Provided that a nominated employee or authorised signatory has signed for Goods or Services the Authority will make payment to the Contractor within 45 days following of receipt of the relevant undisputed invoice or acceptance of the relevant Goods or Services. |
| 5.5 | VAT, where applicable, shall be shown separately on all invoices as a strictly net extra, the Invoice must comply with VAT rules and regulations. The correct Purchase Order number must be quoted on all invoices, and the Authority will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers. |
| 5.6 | The Authority reserves the right to refuse payment of sums invoiced in excess of the prices stated in the Agreement. |
| 5.7 | Unless otherwise agreed in Writing by the Authority the Contractor will pay any of its appointed sub-contractors within 30 days from receipt of an undisputed invoice. |
| **6.** | **DELIVERY** |
| 6.1 | The Agreement will specify the quantity of Goods and the nature of the Services required and the date or dates and place of delivery of the Goods or provision of the Service or Services. The Contractor shall provide such programmes of manufacture and delivery as the Authority may require. Each delivery or consignment shall have a packing note quoting the reference number of the Purchase Order (where applicable) prominently displayed, and the Authority may reject quantities delivered in excess of those stated on the Agreement. |
| 6.2 | If Goods are in any respect incorrectly delivered the Contractor shall immediately affect correct delivery and shall be responsible for any additional costs or expenses incurred by both parties in so doing. |
| 6.3 | If Services are provided by the Contractor otherwise than in accordance with the terms of the Agreement, the Contractor shall immediately affect correct provision of the Services and shall be responsible for any additional costs or expenses incurred by the Authority or the Contractor in so doing. |
| 6.4 | The Authority may reject any Goods which are not in accordance with the Agreement and the Authority shall not be treated as having accepted any Goods until the Authority has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after a latent defect in the Goods has become apparent. |
| 6.5 | The Contractor shall comply with all applicable regulations or other legal requirements as regards the manufacture, packaging, labelling, and delivery of the Goods. The Contractor shall deliver the Goods properly and securely packed and supply the Services during the Authority’s usual business hours (8:45 to 17:00 Monday to Thursday and 8:45 to 16:00 Friday) or in accordance with the instructions shown on the Agreement.  |
| 6.6 | Where Goods are delivered by road vehicle, available empty Packages may be returned by the same vehicle. |
| 6.7 | Where the Authority has an option to return Packages and does so, the Authority will return such Packages empty and in good order and condition (consigned 'carriage paid' unless otherwise agreed) to the Contractor's supplying works or depot indicated by the Contractor, and will advise the Contractor of the date of despatch.  |
| 6.8 | Packages and containers of all kinds are supplied free by the Contractor and are non-returnable unless otherwise clearly stated, in the first instance, on quotations and subsequently on all Packages, advice notes and delivery notes. |
| **7.** | **LOSS OR DAMAGE IN TRANSIT** |
| 7.1 | The Contractor shall promptly make good, free of charge to the Authority, any loss in transit of the Goods if notified within 21 days of delivery or any damage to or defect in the Goods if notified within 10 days of delivery. |
| **8.** | **INSPECTION** |
| 8.1 | The Contractor shall be responsible for the inspection and testing of the Goods and shall ensure that they comply with the Agreement prior to delivery to the Authority. The Authority shall have the right to inspect the Goods at the Contractor's works and those of its Sub-Contractors at all reasonable times and to reject any part thereof that does not comply with the terms of the Agreement.  |
| 8.2 | The Contractor shall ensure that rights of access, inspection and rejection at premises of any sub-Contractor of the Contractor are given to the Authority in sub-agreements between the Contractor and the Contractor’s Sub-Contractors. Any inspection, checking, approval or acceptance given on behalf of the Authority shall not relieve the Contractor or its Sub-Contractors from any obligations or liabilities set forth in this Agreement. |
| **9.** | **REJECTION** |
| 9.1 | The Authority shall have the right to reject any Goods or Services which do not comply with the Agreement, and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for the purpose for which they are required or non-compliant with a description or specification or sample, and the Authority may return such rejected Goods to the Contractor at the Contractor’s cost and expense.  |
| 9.2 | If the Contractor is unable to supply acceptable replacement Goods or Services within the time specified in the Agreement, or within any extension of such time as the Authority may grant, the Authority will be entitled to purchase elsewhere other Goods or Services, as near as is practicable to the same Agreement specifications as circumstances shall permit, but without prejudice to any other right which the Authority may have against the Contractor including, but not limited to, payment by the Contractor of any excess costs incurred by the Authority in doing so.  |
| 9.3 | The making of such payment shall not prejudice the Authority's right of rejection and the Contractor shall immediately reimburse the Authority with an amount equal to that paid by the Authority in respect of the Goods or Services and any applicable taxes. Before exercising the said right elsewhere the Authority shall give the Contractor reasonable opportunity to replace rejected Goods or Services with Goods or Services that conform to the Agreement. |
| 9.4 | The Authority is under no obligation to test or inspect the Goods before or on delivery. |
| **10.** | **TITLE - PASSING PROPERTY** |
| 10.1 | Property and risk in the Goods will remain with the Contractor until the Goods are delivered to the place specified in the Agreement and a nominated employee of the Authority has signed a delivery note for them, whereupon title will pass to the Authority, without any limitation, constraint or encumbrance. |
| 10.2 | If payment for the Goods is made prior to delivery, property in the Goods shall pass to the Authority once payment has been made and the Goods have been unconditionally appropriated by the Authority. |
| 10.3 | In these circumstances the Contractor will set aside the Goods and store them separately from similar Goods held at the Contractors premises specified in the Agreement and ensure that they are securely, clearly and visibly marked with the wording “Property of Shropshire and Wrekin Fire Authority” so as to identify those Goods as having been unconditionally appropriated by the Authority to whose order they are held. |
| 10.4 | The Contractor will allow a named representative of the Authority reasonable accompanied access to its premises specified in the Agreement to verify compliance with clause 10.3 herein and will immediately rectify any non-compliance as identified by the Authority’s named representative. |
| 10.5 | The Contractor will indemnity the Authority for any loss of or damage to the Goods until delivered on-site. |
| 10.6 | Without prejudice to this indemnity the Contractor will have appropriate and adequate insurance cover against any such loss or damage with a reputable insurer from the time that title in the materials or Goods passes to the Authority until they are delivered on-site and the Contractor shall provide the Authority with certified copies of the relevant policy upon request. |
| 10.7 | The Contractor agrees that the Authority has the right to enter the Contractor’s premises specified in the Agreement where Goods are being held in order to recover the said materials or Goods in the event of the Contractors’ insolvency. |
| 11. | **THE AUTHORITY’S OBLIGATIONS** |
| 11.1 | To enable the Contractor to perform its obligations under this Agreement the Authority shall: |
|  | a) | co-operate with the Contractor; |
|  | b) | provide the Contractor with any information reasonably required by the Contractor; |
|  | c) | obtain all necessary permissions and consents which may be required before the commencement of the Services or the supply of Goods; and |
|  | d) | comply with such other requirements as may be otherwise agreed between the parties. |
| 11.2 | Without prejudice to any other rights to which the Contractor may be entitled, in the event that the Authority unlawfully terminates or cancels the Goods or Services agreed to in the Agreement the Authority shall be required to pay to the Contractor as agreed damages and not as a penalty the full amount of any third party costs to which the Contractor has reasonably committed and in respect of cancellations on less than five working days’ written notice the full amount of the Goods and Services. |
| **12.** | **WARRANTIES** |
| 12.1 | The Contractor warrants that as from the date of delivery for a minimum period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. Where certain Goods carry warranties for longer periods the Contractor will notify the Authority of these from time to time as appropriate. |
| 12.2 | The Contractor warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices. |
| **13.** | **INDEMNIFICATION** |
| 13.1 | The Authority shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from the Authority’s breach of any of its obligations under this Agreement. |
| 13.2 | The Contractor shall indemnify the Authority against all reasonable damage, liability, costs, claims, actions and proceedings arising out of the performance, defective performance or otherwise of this Agreement by the Contractor, its employees, servants or agents. |
| **14.** | **TERMINATION AND CANCELLATION** |
| 14.1 | The Authority upon giving the Contractor notice in Writing may cancel any Agreement at any time. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to, and/or performed for the Authority and is accepted as described in Clauses 6 to 9 herein. The Authority’s liability is strictly limited to work in progress and no further loss or liability will accrue. |
| 14.2 | Either party may terminate this Agreement forthwith by notice in Writing to the other if. |
|  | a) | the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in Writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement. |
|  | b) | the other party commits a material breach of this Agreement which cannot be remedied under any circumstances. |
|  | c) | the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect. |
|  | d) | the other party ceases to carry on its business or substantially the whole of its business; or. |
|  | e) | the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets. |
| **15.** | **ANTI-BRIBERY AND CORRUPTION**  |
| 15.1 | The Authority may cancel the Agreement by way of a written notice with immediate effect and recover from the Contractor the amount of any loss resulting from the cancellation if at any time it becomes known to the Authority that the Contractor or any person employed by the Contractor or acting on his behalf whether with or without the knowledge of the Contractor has: |
|  | a) | offered, paid or given or agreed to give directly or indirectly any gift in money or any other form or any financial or other advantage to any member employee or agent of the Authority as an inducement or reward in relation to the obtaining or execution of the Agreement or any other Agreement with the Authority; or |
|  | b) | favoured or discriminated against any person in relation to this or any other Agreement with the Authority; or |
|  | c) | committed an offence in relation to any Agreement with the Authority under the Prevention of Corruption Acts 1906 to 1916 or the Bribery Act 2010 or Section 117(2) Local Government Act 1972 (as amended). |
| **16.** | **INTELLECTUAL PROPERTY RIGHTS** |
| 16.1 | Any specification, drawing, sample and pattern supplied by the Authority to the Contractor, or specifically produced by the Contractor for the Authority in connection with this Agreement, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of the Authority. On payment of the price and for no further consideration the Contractor assigns to the Authority with full title guarantee all such copyright, design and other intellectual property rights. |
| 16.2 | The Contractor shall not disclose to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) or provide any such specification, drawing, sample or pattern to any third party or use the same except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as is required for the purposes of the Agreement.  |
| 16.3 | This provision shall survive the expiration or termination of the Agreement. |
| **17.** | **INDEPENDENT CONTRACTORS** |
| 17.1 | The Contractor and the Authority are independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in Writing by both parties.  |
| **18.** | **SEVERABILITY** |
| 18.1 | If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated. |
| **19.** | **ASSIGNING** **AND SUB-CONTRACTING** |
| 19.1 | The Contractor will not, without the written consent of the Authority, assign or sub-contract its right or duties under this Agreement nor allow Services to be provided other than through his own employees and using his own equipment. |
| 19.2 | In the event that the Authority has consented to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the Contractor to the Authority immediately it is issued. |
| 19.3 | Notwithstanding the Contractor's right to sub-contract pursuant to this clause 19, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing. |
| **20** | **WAIVER** |
| 20.1 | The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement. |
| **21.** | **HAZARDOUS GOODS** |
| 21.1 | Hazardous Goods must be marked by the Contractor with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Contractor shall observe the requirements of UK and international laws, regulations and agreements relating to the packing, labelling and carriage of hazardous Goods. |
| 21.2 | All information known, held by, or reasonably available to, the Contractor regarding any potential hazards known or believed to exist in transport, handling or use of the Goods supplied shall be promptly communicated to the Authority. |
| **22.** | **NOTICES** |
| 22.1 | Unless otherwise communicated to the party in Writing any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if the Authority, the Shirehall, Abbey Foregate, Shrewsbury. SY2 6ND. |
| 22.2 | A Notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, Notice sent by fax shall be deemed to be served on receipt of an error free transmission report, Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged. |
| **23** | **CONFIDENTIALITY**  |
| 23.1 | All plans, drawings, designs or specifications supplied by the Authority to the Contractor shall remain the exclusive property of, and shall be returned to the Authority on completion of the Agreement and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Agreement. |
| 23.2 | No photographs of any of the Authority's equipment, installations or property shall be taken without the Authority's prior consent in Writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by the Authority in connection with the Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement. |
| 23.3 | The Contractor shall not mention the Authority's name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communication to third parties without the Authority's prior consent in Writing. |
| 23.4 | The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Agreement. |
| 23.5 | Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall: |
|  | 23.5.1 | treat the other party's Confidential Information as confidential; and  |
|  | 23.5.2 | not disclose the other party's Confidential Information to any other person without the owner's prior written consent. |
| 23.6 | Clause 23.5 shall not apply to the extent that:  |
|  | 23.6.1 | such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information; |
|  | 23.6.2 | such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; |
|  | 23.6.3 | such information was obtained from a third party without obligation of confidentiality; |
|  | 23.6.4 | such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or |
|  | 23.6.5 | it is independently developed without access to the other party's Confidential Information. |
| 23.7 | The Contractor may only disclose the Authority's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality. |
| 23.8 | The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Agreement. |
| 23.9 | Nothing in this Agreement shall prevent the Authority from disclosing the Contractor's Confidential Information: |
|  | 23.9.1 | to any consultant, contractor or other person engaged by the Authority; |
|  | 23.9.2 | for the purpose of the examination and certification of the Authority's accounts or any other form of audit of the Authority; |
| 23.10 | The Authority shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Agreement is made aware of the Authority's obligations of confidentiality. |
| 23.11 | Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights. |
| 23.12 | The provisions of this Clause shall survive the expiration or termination of this Agreement. |
| **23A** | **AGREEMENT STATUS AND TRANSPARENCY**  |
| 23A.1 | The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA. |
| 23A.2 | Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Authority to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to the Agreement, to the general public. |
| 23A.3 | The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion. |
| 23A.4 | The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement and the Tender Submission. |
| **24.** | **AUTHORITY DATA**  |
| 24.1 | The Contractor shall not delete or remove any copyright or proprietary notices contained within or relating to the Authority Data. |
| 24.2 | The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority and in particular the Contractor shall not store any Authority Data, which the Authority has notified the Contractor requires storage in an encrypted format, on any portable device or media unless that device is encrypted. |
| 24.3 | To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority in any format specified in this Agreement or if none specified in any format reasonably requested by the Authority. |
| 24.4 | The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data and shall take such back up copies of the Authority Data at regular intervals appropriate to the frequency of the revision of the Authority Data. |
| 24.5 | The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy to include, but not limited to, the following requirements in the Security Policy: |
|  | a) | Access to the system is restricted to Contractor Personnel with a legitimate need to access the Authority Data; and |
|  | b) | The system is kept up to date with the latest versions of operating system and anti-virus updates; and |
|  | c) | Transfer of data to and from the system is conducted in a secure manner. |
| 24.6 | If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may: |
|  | 24.6.1 | require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data as soon as practicable; and/or |
|  | 24.6.2 | itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so including the restoration of the Authority. |
| 24.7 | If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority via the Authority’s ICT Helpdesk immediately and inform the Authority of the remedial action the Contractor proposes to take. |
| 24.8 | The Contractor shall check for and delete Malicious Software and if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency. |
| 24.9 | Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause .8 above shall be borne by the parties as follows: |
|  | 24.9.1 | by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and |
|  | 24.9.2 | by the Authority if the Malicious Software originates from the Authority Software or the Authority Data (whilst the Authority Data was under the control of the Authority). |
| 25. | **PROTECTION OF PERSONAL DATA** |
| 25.1 | With respect to the parties' rights and obligations under this Agreement, the parties agree that the Authority is the Data Controller and that the Contractor is the Data Processor. |
| 25.2 | The Contractor shall: |
|  | 25.2.1 | Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Authority to the Contractor during the term of this Agreement); |
|  | 25.2.2 | Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body; |
|  | 25.2.3 | implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected; |
|  | 25.2.4 | take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data; |
|  | 25.2.5 | obtain prior written consent from the Authority in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services; |
|  | 25.2.6 | ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause; |
|  | 25.2.7 | ensure that no Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority; |
|  | 25.2.8 | notify the Authority (within five Working Days) if it receives: |
|  |  | a) | a request from a Data Subject to have access to that person's Personal Data; or |
|  |  | b) | a complaint or request relating to the Authority's obligations under the Data Protection Legislation; |
|  | 25.2.9 | provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by: |
|  |  | a) | providing the Authority with full details of the complaint or request; |
|  |  | b) | complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Authority's instructions; |
|  |  | c) | providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and |
|  |  | d) | providing the Authority with any information requested by the Authority; |
|  | 25.2.10 | permit the Authority or the Authority Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the Audit clause, the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement; |
|  | 25.2.11 | provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Authority); and |
|  | 25.2.12 | not process Personal Data outside the United Kingdom without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with: |
|  |  | a) | the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and |
|  |  | b) | any reasonable instructions notified to it by the Authority |
|  | 25.2.13 | The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Legislation. |
|  | 25.2.14 | The Contractor shall ensure that its employees and agents are aware of and comply with this clause and shall indemnify the Authority against any loss or damage sustained or incurred as a result of any breach of this clause. |
| **26** | **AUTHORITY DATA AND PERSONAL INFORMATION AUDITS** |
| 26.1 | Except where an audit is imposed on the Authority by a Regulatory body, the Authority may, acting reasonably, conduct an audit for the following purposes:  |
|  | 26.1.1 | to review the integrity, confidentiality and security of the Authority Data; |
|  | 26.1.2 | to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services; |
| 26.2 | The Authority shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services. |
| 26.3 | Subject to the Authority's obligations of confidentiality, the Contractor shall on demand provide the Authority (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including: |
|  | 26.3.1 | all information requested by the Authority within the permitted scope of the audit; |
|  | 26.3.2 | reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services; |
|  | 26.3.3 | access to Contractor Personnel |
| 26.4 | The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services. |
| 26.5 | The Authority shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit. |
| 26.6 | The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause. |
| 26.7 | This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement. |
| **27** | **PUBLIC INTEREST DISCLOSURE (‘WHISTLE BLOWING’)**  |
| 27.1 | The Contractor will ensure that his employees and agents are made aware of the Authority’s policy and that the details of this policy are fully explained to them and shall provide the Authority with evidence of doing so upon request. |
| **28** | **INSURANCE** |
| 28.1 | The Contractor shall maintain a comprehensive policy of Public Liability and Employers Liability insurance. In respect of its liability such insurance cover to be maintained and provide for a minimum of £5,000,000 (FIVE MILLION POUNDS). Cover In respect of death or personal injury due to negligence will be unlimited. |
| 28.2 | If appropriate and requested in Writing, the Contractor may also be required to provide Product Liability insurance of at least £2,000,000 (TWO MILLION POUNDS) and Professional Indemnity insurance of at least £1,000,000 (ONE MILLION POUNDS) cover for any one claim and the Contractor shall provide the Authority with certified copies of the relevant policies upon request. |
| **29** | **EQUALITIES**  |
| 29.1 | The Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices. |
| 29.2 | Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.  |
| 29.3 | In addition, the Contractor and any Sub-Contractor employed by the Contractor in providing services to the Authority will comply with the following general duties imposed on local authorities by Section 71 of the Race Relations Act 1976 to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between persons of different racial groups; Section 49A of the Disability Discrimination Act 1995 to eliminate unlawful discrimination and harassment of disabled persons that is related to their disabilities; to promote equality of opportunity between disabled persons and other persons; to take steps to take account of disabled persons' disabilities, to promote positive attitudes towards disabled persons; and by Section 76A of the Sex Discrimination Act 1975 to eliminate unlawful discrimination and harassment and promote equality of opportunity between men and women. |
| 29.4 | The Contractor and any Sub-Contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Commission for Racial Equality and the Disability Rights Commission, which give practical guidance to employers on the elimination of discrimination. |
| 29.5 | In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-Contractor employed by the Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Commission for Racial Equality, Equal Opportunities Commission or Disability Rights Commission over the same period, the Contractor shall inform the Authority of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination. |
| 29.6 | The Contractor and any Sub-Contractor employed by the Contractor will provide a copy of its policies to the Authority at any time upon request. In addition, the Authority may reasonably request other information from time to time for the purpose of assessing the Contractor’s compliance with the above conditions. |
| **30** | **HUMAN RIGHTS**  |
| 30.1 | The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it. |
| **31** | **HEALTH AND SAFETY AT WORK**  |
| 31.1 | The Contractor will at all times in providing Goods, Services or Works to the Authority comply with the provisions of the Health and Safety at work Act 1974 and provide evidence of doing so to the Authority at any time upon request.  |
| **32** | **FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR)**  |
| 32.1 | The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.  |
| 32.2 | The Contractor shall notify the Authority of any Commercially Sensitive Information provided to the Authority together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that the Authority may be obliged to disclose such information. |
| 32.3 | The Contractor shall and shall procure that its Sub-contractors shall: |
|  | 32.3.1 | transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information; |
|  | 32.3.2 | provide the Authority, at the Contractor’s expense, with a copy of all Information in its possession, or power in the form that the Authority requires within five Working Days (or such other period as the Authority may specify) of the Authority's request; and |
|  | 32.3.3 | provide, at the Contractor’s expense, all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations. |
| 32.4 | The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information the Authority may consult with the Contractor prior to making any decision or considering any exemption. |
| 32.5 | In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority. |
| 32.6 | The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) the Authority may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (“the Code”), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services: |
|  | 32.6.1 | in certain circumstances without consulting the Contractor; or |
|  | 32.6.2 | following consultation with the Contractor and having taken their views into account; provided always that where sub-clause 32.6.1 above applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.  |
| 32.7 | The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by Law or professional practice or in relation to the Agreement is retained for disclosure for at lease the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit the Authority to inspect such records as requested from time to time.  |
| 32.8 | The Authority shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party. |
| 32.9 | Where the Contractor is a Public Body the parties acknowledges that such obligations and duties of the Authority as set out above are reciprocal to the Contractor. The Authority and the Contractor acknowledge and agree that: |
|  | 32.9.1 | as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Agreement or otherwise relating to the other party; |
|  | 32.9.2 | they are required by law to consider each and every Request for Information made under FOIA; |
|  | 32.9.3 | that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party; |
|  | 32.9.4 | Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not: |
|  |  | a) | confirm or deny that information is held by the other party, or |
|  |  | b) | disclose information required to the extent that in the Receiving Party’s opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause |
|  | 32.9.5 | each party shall bear its own costs of: |
|  |  | a) | assessing the application of any exemption under FOIA and/or |
|  |  | b) | responding to any FOIA notice and/or |
|  |  | c) | lodging any appeal against a decision of the Information Commissioner in relation to disclosure |
|  | 32.9.6 | the Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party. |
|  | 32.9.7 | the other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA. |
| **33.** | **SAFEGUARDING**  |
| 33.1 | **Where the work being undertaken in this Agreement allows access to premises locations or activities where there is a likelihood of coming into contact with children or vulnerable adults the Contractor must ensure that it follows the guidance of the Independent Safeguarding Authority and the regulations relating to the Vetting and Barring Scheme to determine whether a Criminal Record Bureau check is required for employees or any person sub-contracted to carry out the work on behalf of the Contractor. If in any doubt the Contractor should discuss the matter further with the officer of the Authority awarding the Contract and raise any concerns arising from disclosures.**  |
| 33.2 | **Where the service requirement, specification or Purchase Order determines that a CRB check should be carried out the Contractor shall undertake CRB checks prior to the relevant employees or persons commencing work on the Services to be provided to the Authority.** |
| 34 | **SUSTAINABILITY** |
| 34.1 | Contractors should at all times demonstrate how they contribute to the achievement of the Authority’s Sustainability Policy. |
| **35** | **EXPIRY** |
| 35.1 | The Contractor will on the expiry or termination of the Agreement and, at its own cost, return (or at the request of the Authority destroy) all information obtained in undertaking the performance of the Agreement. |
| **36** | **AUDIT AND MONITORING)**  |
| 36.1 | The Contractor will allow access for the Authority’s officers to all relevant information for the purposes of audit and the monitoring of the Agreement. |
| **37.** | **RIGHTS OF THIRD PARTIES**  |
| 37.1 | The parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Agreements (Rights of Third Parties) Act 1999. |
| **38.** | **ENTIRE AGREEMENT** |
| 38.1 | This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. |
| **39** | **FORCE MAJEURE**  |
| 39.1 | Neither the Authority nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (“Force Majeure Event”), provided that:- |
|  | 39.1.1 | any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and |
|  | 39.1.2 | staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay. |
| 39.2 | If the Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:- |
|  | 39.2.1 | it promptly notified the Authority in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and |
|  | 39.2.2 | it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possiblein which case the performance of that Party’s obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay. |
| 39.3 | Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):- |
|  | 39.3.1 | any costs arising from that delay will be borne by the Party incurring the same; and |
|  | 39.3.2 | either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination. |
| **40** | **GOVERNING LAW AND JURISDICTION**  |
| 40.1 | It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Agreement shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts. |
| **41** | **COMPLAINTS PROCEDURE**  |
| 41.1 | The Contactor shall operate a complaints procedure in respect of any goods, services or works provided under these terms & conditions, to the entire satisfaction of the Authority, and comply with the requirements of any regulatory body to which the Contractor is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards: |
|  | 41.1.1 | is easy to access and understand; |
|  | 41.1.2 | clearly sets out time limits for responding to complaints and keeping the complainant and the Authority informed of progress; |
|  | 41.1.3 | provides confidential record keeping to protect employees under this contract and the complainant; |
|  | 41.1.4 | provides information to management so that services can be improved; |
|  | 41.1.5 | provides effective and suitable remedies; |
|  | 41.1.6 | is regularly monitored and audited and which takes account of complainant and Authority feedback. |
| 41.2 | The Contactor shall ensure that: |
|  | 41.2.1 | under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint; |
|  | 41.2.2 | someone who is independent of the matter complained of carries out the investigation; |
|  | 41.2.3 | the complainant is made aware that they are entitled to have the complaint investigated by the Authority if they are not satisfied with either the process of investigation or finding of the Contactor’s investigations; |
|  | 41.2.4 | the Contactor will ensure that it responds to the complainant within a max of 10 days of receiving the complaint. |
| 41.3 | The Contactor will make its complaints procedure available on request. |
| 41.4 | The Contactor shall ensure that all its employees and persons employed under this contract are made aware of its complaints procedure and shall designate one employee (who shall be identified to the Authority) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint. |
| 41.5 | The Contactor shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to the Authority on request or at 12 monthly intervals in any event. |
| 41.6 | Where the Authority is investigating a complaint the Contactor is required to participate fully in all investigations within the timescales requested by the Authority. |
| 41.7 | The Contractor should note that if a complaint is made to the Authority by a third party relating to the goods, services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and the Authority requires the Contractor to fully to co-operate in such investigation. If the Authority is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify the Authority in respect of the costs arising from such maladministration or injustice. |

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| **42** | **DISPUTES** |
| 42.1 | If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:- |
|  | 42.1.1 | In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute; |
|  | 42.1.2 | If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve the Authority’s Chief Executive or the Contractor’s senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice. |

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| **Additional definitions for clauses 43 and 44** |
| **"Security Plan"** | the Contractor's security plan prepared pursuant **[***to paragraph 3 of schedule 2.5 (Security Requirements and Plan) an outline of which is set out in Appendix of schedule 2.5 (Security Requirements)***]**; |
| **"Staff Vetting Procedures"** | the Authority's procedures and policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures. |

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| **43** | **STAFFING SECURITY** |
| 43.1 | The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the commencement of this agreement were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures. |
| 43.2 | The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan. |
| **44** | **SECURITY REQUIREMENTS**  |
| 44.1 | The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.  |
| 44.2 | The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy. |
| 44.3 | If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a request for the Agreement to be varied in respect of any charges or fees payable under the Agreement. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. |
| 44.4 | Until and/or unless a change to the charges or costs is agreed by the Authority pursuant to this clause the Contractor shall continue to perform the Services in accordance with its existing obligations. |