

# General Terms & Conditions of Trading

## **Basic Contract Information Section**

### **1. Definition & Interpretations**

In these conditions:

- 1.1. **“Account Manager”** means a person designated as such by the Contractor from time to time as notified in writing to the Authority to act as the duly authorised representative of the Contractor for all purposes connected with the Contract, including any authorised representative of such person;
- 1.2. **"The Authority"** means King's College London.
- 1.3. **"Authority Contract Manager"** means a person designated as such by the Authority from time to time as notified in writing to the Contractor to act as the representative of the Authority for all purposes connected with the Contract, including any authorised representative of such person;
- 1.4. **"The Authority's Premises"** means lands and buildings which make up King's Estate.
- 1.5. **“The Authority's Policy”** refers to the various policies which may be accessed from the following website:  
<https://www.kcl.ac.uk/governancezone/index.aspx>
- 1.6. **“The Authority's Personnel”** means any person employed (either on a permanent, temporary or fixed-term basis) by the Authority when any relevant Personal Injury or Loss of Property occurred, even if the person has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and, where such person has ceased to be an employee by reason of death, includes their personal representative.
- 1.7. **"The Commencement Date"** means the date on which the Contract shall take effect, as notified by the Authority to the Contractor.
- 1.8. **"Conditions"** means the entire contents of the headed paragraphs in these terms and conditions.
- 1.9. **"The Contract"** means the agreement concluded between the Authority and the Contractor including these Conditions, the invitation to tender documents, the Contractors tender documents, any subsequent clarifications and any other documents which are relevant to the Contract and specified. In the case of any discrepancy among these documents these Conditions shall prevail.

- 1.10. **"The Contractor"** means the organisation who undertakes to provide the Services/Goods for the Authority as stated in the Contract. Any reference to the Contractor, shall also include its Sub-contractors.
- 1.11. **"The Contract Period"** means the period of duration of the Contract in accordance with Condition 3.
- 1.12. **"The Contract Price"** means the price stated in the Contract exclusive of Value Added Tax, payable to the Contractor by the Authority under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract.
- 1.13. **"Contractor's Personnel"** means any person, commissioned and paid by the Contractor or its Sub-contractors to either perform any part of this Contract or to provide Services/Goods to the Contractor to facilitate performance of the Contract.
- 1.14. **"Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer"** take the meaning given in the GDPR.
- 1.15. **"Data Loss Event"** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
- 1.16. **"Default"** means any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: (a) in the case of the Authority, of its Authority Personnel, servants, agents; or (b) in the case of the Contractor, of its Sub-contractors or any Contractor's Personnel; in connection with or in relation to the subject matter of this Contract and in respect of which such Party is liable to the other
- 1.17. **"Data Protection Legislation"** means (i) the GDPR and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018<sup>1</sup> to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
- 1.18. **"GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);
- 1.19. **"Government Provision"** means any statutory provision, warrant, order, scheme, regulations or conditions of service applicable to Authority's Personnel providing for continuance of pay or the payment of sick pay, or any allowance to or for the benefit of Authority's Personnel, or their families or

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<sup>1</sup> Subject to Royal Assent on or before 25 May 2018.

dependants, during or in respect of sickness, injury or disablement suffered by such Personnel.

- 1.20. “**Information**” refers to data, documents, records and other recorded information derived or obtained in the course of the Contract, or received from the Authority prior to the Commencement Date.
- 1.21. “**Intellectual Property Rights**” or “**IPRs**” means patents, inventions, trademarks, service marks, logos, design rights (whether registerable 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 registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.
- 1.22. “**Law**” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;
- 1.23. “**Loss**” includes destruction and financial loss arising from any advice given or omitted to be given by the Contractor.
- 1.24. “**Loss of Property**” includes damage to property, loss of profits, loss of use, compromise to the integrity of the Authority’s IT network.
- 1.25. “**Month**” means calendar month unless otherwise defined.
- 1.26. “**Network Access Agreement**” means the agreement provided by the Authority’s Digital Service as a condition precedent for the Contractor gaining access to the Authority’s IT network covering the Authority’s estate.
- 1.27. “**Personal Injury**” includes sickness and death.
- 1.28. “**Protective Measures**” means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
- 1.29. “**Representative of the Authority**” in any provision of the Contract means the person duly authorised by the Authority to act for the purposes of the provision.

- 1.30. "The Services/Goods" means all tasks/supplies which the Contractor is required to carry out/deliver under the Contract.
- 1.31. "Sub-Contractor" means any individual (other than Personnel of the Contractor), firm or company who enters into an agreement with the Contractor to perform work or provide professional services and/or supply goods in connection with the Contract and includes any other individual or individuals taken as a partner or director by such individual, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.
- 1.32. "Statement of Requirements" means a contractual document which includes a description, specification, requirements and details of the goods or services to be provided by the Contractor for the duration of the contract.
- 1.33. "Working Days" means any day other than a Saturday, Sunday or public holiday in England and Wales.
- 1.34. The masculine includes the feminine.
- 1.35. The singular includes the plural and vice versa.
- 1.36. Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 1.37. Reference to a Condition is a reference to the whole of that Condition unless stated otherwise.
- 1.38. Reference to a Clause is a reference to a paragraph within a Condition unless stated otherwise.
- 1.39. The headings of these Conditions shall not affect the interpretation thereof.
- 1.40. Any notice or other communication which is to be given by either party to the other shall be given by letter, (sent by hand or post or by registered post or by the recorded delivery service) or transmitted by electronic mail or facsimile transmission. Such notices or communications shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.
- 1.41. All communication between the parties, letters, documentation, specifications, reports etc. shall be in the English language.

## 2. Entire Agreement

- 2.1. 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 Condition shall not exclude liability in respect of any fraudulent misrepresentation.

### **3. Duration of the Contract**

- 3.1. The Services and/or Goods (as the case may be) shall be provided for a period as stated in the Statement of Requirements and/or the PO, by the Contractor, subject to the Authority's rights of earlier termination under these Conditions.
- 3.2. The Authority reserves the right (at its sole discretion) to extend the provision of Services and/or Goods under this Contract for the duration set out in the Statement of Requirements. Any such, extensions to the Contract will be subject to satisfactory performance and shall require the written consent of the Authority. The Authority shall give reasonable notice of its decision concerning contract extensions.

### **4. Governing Law**

- 4.1. This Contract shall be governed by and interpreted in accordance with the Law of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.
- 4.2. The Contractor will keep abreast of all legal issues and changes to legislation that may affect the performance of the Contract and will take the necessary steps to ensure that all laws are adhered to and any new laws coming into force during the Contract will be recognised and their Personnel will have the appropriate training to comply.

### **5. Contractor's Status**

- 5.1. Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Authority and the Contractor.

### **6. Severability**

- 6.1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

### **7. Contract Price and Payment**

- 7.1. Subject to Clause 7.2 below the Contract Price shall remain fixed for the Contract Period.
- 7.2. In the event that the Contract Price is increased or decreased as a result of any new legislation or regulation being made after the Commencement Date, the amount of any such increase or decrease shall be treated as a variation to the

Contract and will be assessed on an individual basis. Such variations will not be allowed where new legislation or regulations are enacted after the Commencement Date, but were made public prior to the commencement of the Contract. Any such variations to price which can be foreseen by the Contractor prior to Commencement Date will be deemed to have been included in the Contract Price.

- 7.3. The Contract Price shall be strictly net of Value Added Tax (VAT). VAT, where applicable, shall be shown separately on all invoices as a strictly net extra charge. The Authority shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the Services/Goods provided in accordance with the Contract.
- 7.4. Unless otherwise stated in the Contract, the Contractor shall submit invoices to the Authority's budget holder monthly in arrears.
- 7.5. Payment of undisputed invoices shall be made within 30 days of receipt and agreement of invoices. The Representative of the Authority will have the final say as to whether an invoice is valid. Payments will normally be made by BACS and the date of payment by electronic transmission shall be the date the transmission is effected. Exceptionally payments may be made by cheque when payment shall be deemed to have been made on the date of posting
- 7.6. The invoice must:
  - a) be a true and accurate reflection of the work undertaken and associated Contract Price;
  - b) be referred with all appropriate Contract references and titles and **must contain a PO number**;
  - c) include a detailed breakdown of Services/Goods provided, taking account of any due deductions, with any supporting invoices or other necessary documentation to substantiate the claim as required by the Authority.
- 7.7. Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, that sum may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under the Contract or under any other contract with the Authority.

## **8. Variations**

- 8.1. The provisions of the Contract may only be amended or added to by formal amendments issued in writing in accordance with the change control procedure detailed in Appendix 1 to these Conditions. The Contractor shall not unreasonably withhold their agreement to such amendments requested by the Authority.
- 8.2. No oral agreement or written amendment, other than in accordance with the change control procedure detailed in Appendix 1, shall be binding on either of the parties to the Contract.
- 8.3. The provisions of this Condition also apply to itself.

- 8.4. Should the Contractor become aware that the scope of the Contract has been changed, or a problem has been identified which needs a variation to take account of a change to the cost and/or duration of the Contract they must notify the Authority immediately otherwise any additional work/costs claimed at a later date will not be met.
- 8.5. Without prejudice to any other clause in this Contract, the Authority may terminate the Contract, where substantial modifications have been identified and these modifications are outside the scope of those allowable by Regulation 72 of the Public Contracts Regulations 2015;
- 8.6. Where the Contract may be modified in accordance with Regulation 72(1)(a) Public Contracts Regulations 2015, the relevant review clause may be found in the initial procurement documents.

## **9. Dispute Resolution**

- 9.1. If any dispute arises in connection with this Contract, a Director (or other senior representatives of the parties with authority to settle the dispute) will, within 14 Working Days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.
- 9.2. If the dispute is not wholly resolved at that meeting, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, within 14 Working Days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (“ADR Notice”) to the other party[ies] to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.
- 9.3. If there is any point on the logistical arrangements of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 14 Working Days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties, having consulted with them.
- 9.4. Unless otherwise agreed, the mediation will start not later than 28 Working Days after the date of the ADR Notice. The commencement of mediation will not prevent the parties commencing or continuing court proceedings or arbitration.

## **9A. Authority Contract Manager**

- 9A.1 Any notice, information or communication given to or made by the Authority’s Contract Manager shall be deemed to have been given or made by the Authority.
- 9A.2 Only the Authority Contract Manager(s) and/or a senior Director of the Authority notified to the Contractor in writing or as set out in the Statement



of Requirements or letter of award shall be able to authorise additional, or amendments to the Services and/or Goods.

### **Contract Operation Section**

#### **10. Contractor's Personnel**

- 10.1. Any notice, information, instruction or other communication given or made to the Account Manager shall be deemed to have been given or made to the Contractor.
- 10.2. The Contractor shall forthwith give notice in writing to the Authority's Contract Manager of the identity of the person appointed as Account Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given, the Authority shall be entitled to treat as Account Manager the person last notified to the Authority's Contract Manager as being the Account Manager.
- 10.3. The Contractor shall ensure that the Account Manager, or a competent deputy who is duly authorised to act on its behalf, is available to the Authority at all times when any Contractor Personnel is on duty for the provision of the specified Services and/or provision of Goods.
- 10.4. The Contractor shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Account Manager before the start of that period.
- 10.5. The Account Manager or his deputy shall consult with the Authority's Contract Manager and such other of the Authority's own supervisory staff as may from time to time be specified by the Authority Contract Manager as often as may reasonably be necessary for the efficient provision of the Services and/or Goods (as the case may be) in accordance with the Contract.
- 10.6. The Contractor undertakes to perform the Contract efficiently with all due skill, care and diligence including but not limited to good industry practice.
- 10.7. All Personnel engaged in the Contractor's performance of the Contract must have appropriate qualifications and competence and in all respects be acceptable to the Authority. Where so required, full particulars of all Personnel to be so engaged shall be forwarded in advance to the Authority for confirmation of acceptability.
- 10.8. The key Personnel offered by the Contractor and accepted by the Authority to work on the Contract are as stated in the Contract.
- 10.9. If instructed by the Authority the Contractor shall provide the Authority with full details of all persons who are or may be at any time concerned with the delivery of the Contract or any part of them, including any supporting evidence as the Authority may reasonably require.
- 10.10. The Contractor shall not make changes to the Personnel assigned to and accepted for the work under the Contract except when such changes are unavoidable or of a temporary nature caused by sickness etc. The Contractor

shall give at least one Month's notice to the Authority of proposals to change key Personnel and Clauses 10.1 and 10.2 shall apply to the replacement Personnel.

- 10.11. The Contractor shall comply with any requirements to prevent unauthorised persons being admitted by the Contractor to the Authority's Premises. If the Authority gives the Contractor notice that any person is not to be admitted to or is to be removed from its Premises or is not to become involved in (or is to be removed from) the Contract, the Contractor shall take all reasonable steps to comply with such notice and shall return any security pass that has been issued.
- 10.12. The Authority will have the final say as to whether any person is to be admitted or removed from involvement in the Contract or as to the designation or approval of key Personnel and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
- 10.13. The Contractor shall bear the cost of any notice, instruction or decision of the Authority under this Condition.
- 10.14. The Contractor shall ensure that it maintains a large enough pool of appropriate security cleared Personnel to carry out its obligations under this Contract.
- 10.15. The Contractor will bear all costs relating to the employment of Personnel in connection with the Contract
- 10.16. The Authority is accredited by Citizens UK (CUK) as London Living Wage Employers. As a condition to this Contract, the Contractor and Sub-contractors providing services to the Authority shall pay to all Personnel assigned to this Contract, as a minimum the London Living Wage where they have Dedicated Personnel working on the Authority's Estate.
- 10.17. "Dedicated Personnel" means the Contractor's Personnel (other than an apprentice or intern) who provides a service to or on behalf of the Authority involving 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.
- 10.18. The Contractor shall pay to all Dedicated Personnel any increase in respect of the London Living Wage rates for the duration of the contract without incurring additional cost to the Authority. The Contractor agrees to include the Living Wage rate increases in the total Contract Price.
- 10.19. The Contractor is required to provide evidence, information and/or records on a regular basis to demonstrate that the working conditions of Personnel are such as to ensure the welfare of the workforce and the maintenance of stable and skilled teams. This will include the salaries paid to each member of Personnel (which should be at least the London Living Wage rate to this Contract) and evidence that this is sufficient to maintain such a workforce, training and other workforce matters.

## **11. Provision of Services and Equipment**

- 11.1. The Contractor shall provide the Services during the Contract Period in accordance with the Statement of Requirements and the provisions of this Contract in consideration for the payment of the contact price. The Authority may inspect and examine the manner in which the Contractor provides the Services during normal business hours on reasonable notice.
- 11.2. Subject to the Authority providing approval in accordance with clause 11.8, time in relation to the provision of the Services shall be of the essence, including in relation to commencing the provision of the Services within the time agreed or on a specified date.
- 11.3. The Contractor shall ensure that the Services are fully compatible with all equipment used by the Authority from time to time including any Authority's equipment specified in the Statement of Requirements.
- 11.4. The Contractor agrees that the Authority relies on the skill and judgment of the Contractor in the provision of the Services and the performance of its obligations under the Contract.
- 11.5. The Contractor shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Services must be provided has not been specified in the Contract, the Contractor shall agree the relevant standard for the provision of the Services with the Authority prior to the provision of the Services commencing and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 11.6. The Contractor shall ensure that all Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 11.7. Unless otherwise stated in the Statement of Requirements, the Contractor shall provide all the Equipment necessary for the provision of the Services.
- 11.8. The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining approval from the Authority.
- 11.9. All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Contractor is able to demonstrate that such loss or damage was caused by or contributed to by the Authority's Default. The Contractor shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Authority and in each case at the Contractor's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Premises will remain the property of the Contractor.

- 11.10. The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 11.11. The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:
- a) remove from the Premises any Equipment which in the reasonable opinion of the Authority is either hazardous, noxious or not in accordance with the Contract; and
  - b) replace such item with a suitable substitute item of Equipment.
- 11.12. Upon termination or expiry of the Contract, the Contractor shall remove the Equipment together with any other materials used by the Contractor to provide the Services and shall leave the Premises in a clean, safe and tidy condition. Any damage to the Premises or any objects contained thereon which was caused by Personnel working on behalf of the Contractor or its Sub-contractors shall be repaired by the Authority at the expense of the Contractor.
- 11.13. Any equipment provided by the Authority for the purpose of the Contract shall remain the property of the Authority and shall only be used for the purpose of carrying out the Contract; to be returned promptly to the Authority on expiry or termination of the Contract. The Contractor will reimburse the Authority for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of Contractor's Personnel. Equipment supplied by the Authority shall be deemed to be in good condition when received by or on behalf of the Contractor, unless the Authority is notified otherwise in writing within seven days of such receipt.

## **12. Use of Authority's Premises**

- 12.1. Any land or premises (including temporary accommodation) made available to the Contractor by the Authority in connection with the Contract shall be made available to the Contractor free of charge (unless stated elsewhere in the Contract) and shall be used by the Contractor solely for the purpose of performing the Contract.
- 12.2. The Contractor undertakes to exercise all reasonable precautions to protect the Authority's Premises, its assets and all those on the site from any harm that may arise from their being on site.

## **13. Security**

- 13.1. Subject to Condition 29, where as part of the Contractor's obligations under the Contract, the Contractor requires access to the Authority's IT network – the Contractor shall adhere to and undertakes that its Contractor Personnel (and Sub-contractor) will adhere to the Authority's Network Access Agreement.

- 13.2. Whilst on the Authority's Premises, the Contractor's Personnel shall comply with all security measures implemented by the Authority and their security Contractors.

**14. Assignment, Novation & Sub-Contracting**

- 14.1. The Contractor shall not assign or sub-contract any portion of the Contract nor Novate the Contract, to a Sub-contractor, without the prior written consent of the Authority, with the sole exception that the Contractor may assign the debt arising under the Contract to a factor or invoice discounter without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any obligation or duty attributable to the Contractor under the Contract or these Conditions.
- 14.2. Where the Authority has consented to the placing of sub-contracts the Contractor shall, if requested by the Authority, provide the Authority with copies of the sub-contract.
- 14.3. The Authority is entitled to assign any or all of its rights under the Contract to any contracting authority as defined in Regulation 2(1) of the Public Contracts Regulations 2015, provided that such assignment shall not materially increase the burden of the Contractor's obligations under the Contract.
- 14.4. The Contractor shall be responsible for the acts and omissions of his Sub-Contractors as though they were his own.
- 14.5. The Contractor shall not use the services of self-employed individuals without prior approval.
- 14.6. Where the Contractor enters into a sub-contract for the purpose of performing the Contract, or part thereof, the said sub-contract shall include a term which requires payment to be made to the Sub-Contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice, as defined by the sub-contract requirement.
- 14.7. The parties agree that the Authority's rights and obligations under the Contract may in the future be transferred to a third party. If required by the Authority, the Contractor shall execute any document reasonably required to novate the Contract. Any costs and expenses incurred by the Contractor and arising from any such novation shall be borne by the Contractor.

**Exclusion of Sub-contractors**

- 14.8 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015 then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Contractor shall replace or shall not appoint the Sub-contractor;

- (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Contractor to replace or not to appoint the Sub-contractor and the Contractor shall comply with such a requirement.

**15. Soliciting Work and/or Personnel / Recommending Additional Work**

- 15.1. To the extent the Contractor is performing an advisory service to the Authority, under the Contract, it shall be forbidden to solicit work for any part of the Contractor's organisation, including partners, associate or parent companies, or to make recommendations or tender advice that directly leads to additional work with the Authority for the Contractor either as a variation or extension to this Contract or by the award of a separate non-competitive contract.
- 15.2. The Authority and the Contractor agree not to offer employment to or solicit the other's personnel who within 6 months of such action has been involved directly in the Services or otherwise connected to this Contract (except where an individual responds directly to a general recruitment campaign) nor use the services of any such personnel, either independently or via a third party, for a period of 6 months from the date that the individual concerned ceases to be permanently involved with the Services.
- 15.3. Where the Contractor or Contractor's Personnel, Sub-Contractors, suppliers or agents or anyone acting on the Contractor's behalf acts in a manner which constitutes a breach of Condition 15.2 in relation to this or any other contract with the Authority, the Authority has the right to:
- a) terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination; and/or
  - b) recover from the Contractor any loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.

**Liability, Indemnity & Insurance Section**

**16. Liability for Personal Injury & Loss of Property and/or Data Loss**

- 16.1. The Contractor shall compensate the Authority for any Loss of Property and/or Data Loss Event suffered by the Authority and any Personal Injury suffered by an Authority Personnel arising in any way from the performance or purported performance of the Contract by the Contractor.
- 16.2. If the Contractor shows that any such Personal Injury or Loss of Property and/or Data Loss Event was neither caused nor contributed to by its neglect or wrongful act or by that of its employees, agents or Sub-Contractors or that it arose from circumstances outside its control, there shall be under no liability under this Condition.
- 16.3. If the Contractor shows that the neglect or wrongful act of any person (not being its employee, agent or Sub-Contractor) was in part responsible for the Personal Injury or Loss of Property and/or Data Loss Event, the Contractor's

liability under this Condition shall not extend to the share in the responsibility attributed to the neglect or wrongful act of that person.

- 16.4. Subject to the following provisions of this Condition, the Authority shall compensate the Contractor for any Loss of Property suffered by the Contractor and any Personal Injury suffered by a Contractor Personnel arising as a result of the performance or purported performance of the Contract by the Authority.
- 16.5. If the Authority shows that any such Personal Injury or Loss of Property was neither caused nor contributed to by its neglect or wrongful act or by that of any Authority Personnel or that it arose from circumstances outside the Authority's control, the Authority shall be under no liability under this Condition.
- 16.6. If the Authority shows that the neglect or wrongful act of any person (not being its employee) was in part responsible for the Personal Injury or Loss of Property, the Authority's liability under this Condition shall not extend to the share in the responsibility attributed to the neglect or wrongful act of that person.

## **17. Indemnity for Claims by Third Parties**

- 17.1. Subject to the following provisions of this Condition, the Contractor shall indemnify and keep indemnified the Authority against:
- a) all proceedings, actions or claims brought against the Authority or any Authority's Personnel; and
  - b) all payments, costs and expenses incurred by the Authority or any Authority's Personnel in respect of any Loss of Property, Data Loss Event, Personal Injury or other Loss suffered by a person other than the Contractor or the Contractor's Personnel (but including that suffered by an agent of the Contractor or by a Sub-Contractor)

arising in any way from the performance or purported performance of the Contract.

- 17.2. The indemnity shall not apply to the extent that the Contractor is able to show that such Personal Injury or Loss or damage was not caused or contributed to by its negligence or wrongful act or omission or that of its Personnel or agents or Sub-Contractors or by any circumstances within its or their control.
- 17.3. Without prejudice to the generality of Clause 17.1, the Contractor's obligation under that Clause includes indemnifying the Authority for any payment made under any Government Provision in connection with any Personal Injury suffered by any Authority's Personnel.

## **18. Insurance**

- 18.1. The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of the Contract and in respect of the liability outlined in Conditions 16 and 17. Such policies shall include cover in respect

of any financial loss arising from any advice given or omitted to be given by the Contractor.

- 18.2. The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. The Contractor shall maintain a minimum insurance cover of an adequate level of cover in respect of all risks which may be incurred.
- 18.3. The Contractor shall ensure that his Sub-Contractors and agents effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Sub-Contractor, arising out of his involvement in the performance of the Contract.
- 18.4. The Contractor shall produce to the Representative of the Authority, on request, copies of all insurance policies referred to in this Condition or other evidence confirming the existence and extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 18.5. The Contractor shall notify the Authority promptly of any change of the insurance covers mentioned in this Condition and evidence of the new cover in order to satisfy the Authority that it meets the requirements of this Condition.

#### **19. Handling of Claims**

- 19.1. The Authority shall notify the Contractor as soon as reasonably practicable of any claim or proceedings for which the Contractor may be liable under Condition 16 or 17.
- 19.2. Where the Contractor is or may be liable to indemnify the Authority in respect of any claim or proceeding he or, if he so wishes, his insurers, shall, subject to the rest of this Condition be responsible for dealing with or settling that claim or proceeding.
- 19.3. The Authority shall in any event deal with any such claim which involves a Government Provision or which is made by or against an Authority Personnel, and Clause 19.2 shall not apply to any such claim.
- 19.4. Where any claim or proceeding in respect of which Conditions 16 or 17 applies is settled otherwise than by the Contractor or his insurers, the Contractor shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.
- 19.5. If, when the Contractor or his insurers are dealing with any claim or proceeding to which Conditions 16 or 17 applies, any matter or issue arises which involves, or may involve, any privilege or special right of the Authority (including a matter relating to the discovery or production of documents) the Contractor or his insurers shall consult the Authority before taking any further action on the matter and shall act in relation thereto as may be required by



the Authority; and if either the Contractor or his insurers fail to comply with this Condition, Condition 19.2 shall cease to apply.

## **Remedies Section**

### **20. The Authority's Remedies in the Event of Unsatisfactory Performance**

- 20.1. If the Authority is of the opinion that there has been a Default by the Contractor or the Contractor's Personnel, then, if the Default or other failure is capable of remedy, the Authority shall send to the Contractor a written notice specifying the Default and stating the time within which the Contractor must remedy the Default and put right any damage resulting from it.
- 20.2. The Authority may take any of the actions set out in Clause 20.3. in the event that:
- a) the Contractor fails to comply with a notice sent under Clause 20.1;
  - b) the Authority is of the opinion that there has been a Default of the Contract by the Contractor which is not capable of remedy; or
  - c) the Authority is of the opinion that there has been a material breach of the Contract by the Contractor
- 20.3. The actions set out in this Clause are:
- a) The Authority may deduct from any payment due to be made to the Contractor an amount which the Authority reasonably considers to reflect the sums which have been paid to the Contractor, or the sums which would otherwise be payable to the Contractor, in respect of such of the Services/Goods as the Contractor has failed to provide.
  - b) The Authority may, without terminating the Contract, itself provide or procure the provision of part of the Services/Goods until such time as the Contractor demonstrates to the reasonable satisfaction of the Authority that the Contractor will once more be able to provide such part of the Services/Goods in accordance with the Contract, and in the meantime the Authority shall be entitled to exclude the Contractor, its Personnel, agents and Sub-Contractors from the Authority's Premises.
  - c) The Authority may, without terminating the whole of the Contract, terminate the Contract in respect of part of the Services/Goods only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself provide or procure a third party to provide such part of the Services/Goods.
  - d) The Authority may terminate the whole of the Contract.
- 20.4. Where, pursuant to Clause 20.3 the Authority itself provides or procures the provision of part of the Services/Goods, it may charge to the Contractor any cost reasonably incurred by it and any reasonable administration costs in respect of the provision of any part of the Services/Goods to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services/Goods.

- 20.5. Where, pursuant to Clause 20.3, the Authority terminates the Contract, or terminates any part of the Contract, and then makes other arrangements for the provision of Services/Goods, the Authority shall be entitled to recover from the Contractor the reasonable costs of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. Where the whole Contract is terminated, no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.
- 20.6. In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable in the reasonable opinion of the Authority, the Contractor shall be liable for the necessary repairs and the costs of providing a replacement that is acceptable to the Authority.
- 20.7. The remedies of the Authority under this Condition may be exercised successively in respect of any one or more failures by the Contractor and shall survive the expiry or termination of the Contract.

## **21. The Contractor's Remedies for Non Payment**

- 21.1. If the Authority fails to pay the whole or part of the Contract Price when it falls due, the Contractor shall give the Authority 90 days notice specifying the breach and requiring its remedy. In the event that the Authority fails to comply with such notice, the Contractor may terminate the Contract. The Contractor's right of termination under this Clause shall not apply to non payment of the charges where such non-payment is due to the Authority exercising its rights under Clause 7.7.

## **22. Remedies Cumulative**

- 22.1. Except as otherwise expressly provided by the Contract, all remedies available to either the Authority or the Contractor for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **23. Waiver**

- 23.1. The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 23.2. No waiver shall be effective unless it is communicated to the other party in writing.
- 23.3. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

## **Contract Expiry / Termination Section**

### **24. Break**

- 24.1. The Authority shall have the right to terminate the Contract, or to terminate the provision of any part of the Contract at any time by giving a minimum of 30 days written notice to the Contractor. The Authority may extend the period of notice at any time before it expires.
- 24.2. Without prejudice to Clause 24.1, where the Authority terminates the Contract under this Condition, the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and cost list, with supporting evidence, of such losses reasonably and actually incurred by the Contractor as a result of termination under this Condition.
- 24.3. The Authority shall not be liable under this Condition to pay any sum:
- a) which was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
  - b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the initial Contract Period; or
  - c) when the Contract has expired, except where the sum has already been expressly agreed prior to the expiry date.

### **25. Termination on Change of Control or Bankruptcy**

- 25.1. The Contractor shall notify the Authority immediately when any change of control occurs and the Authority reserves a right to terminate the Contract in the event of such an occurrence.
- 25.2. The Contractor shall notify the Authority in writing immediately upon the occurrence of any of the following events and the Authority reserves a right to terminate the Contract upon such an occurrence:
- a) where the Contractor undergoes a change of control, within the meaning of sections 450, 451 and 1124 of the Corporation Tax Act 2010; or
  - b) where the Contractor is an individual or a firm and a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor's or firm's affairs; or

- c) where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver, manager or supervisor is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a fixed or floating charge; or
  - d) where the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.
- 25.3. The Authority may only exercise its right under Clauses 25.1 and 25.2 (a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs.

## **26. Recovery Upon Termination & Transition of Services**

- 26.1. Termination or expiry of the Contract shall be without prejudice to any other rights or remedies a party may be entitled to under the Contract or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such termination or expiry and in particular (but without limitation) the following clauses shall continue in full force and effect: 4, 7.7, 9, 10.10, 13.3 to 13.5, 15, 16, 17, 18, 19, 24.2, 24.3, 27, 28, 29, 31, 36, 37, 37.2 and 37.3
- 26.2. At the end of the Contract Period (and howsoever arising) the Contractor shall, upon request, transfer all paper and electronic files, records, documents, drawings, information and other materials relating to the Contract that are in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-Contractors, howsoever generated, to the Authority or person or persons designated by the Authority.
- 26.3. The Contractor shall be responsible for ensuring that any computerised filing, recording, and documenting data utilised under this Contract is transferred free of any charges to the Authority or person or persons designated by the Authority in a usable format to facilitate a smooth hand-over of work at expiration or termination of the Contract.
- 26.4. In the event of the Contractor's failure to comply with Conditions 26.2 & 26.3, the Authority may nevertheless recover possession of any materials covered by this Condition and the Contractor grants licence to the Authority or its appointed agents to execute recovery from any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.
- 26.5. The Contractor shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on

- request afford the Authority or the Authority's Representatives such access to those records as may be required by the Authority in connection with the Contract.
- 26.6. At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall co-operate free of charge with the Authority and any new contractor appointed by the Authority to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress and reduce to a minimum any interruption to the provision of the Services/Goods.
- 26.7. At the discretion of the Authority, the Contractor shall be reimbursed for any reasonable cost incurred during the transition to the new contract.
- 26.8. The provisions of this Condition shall survive the continuance of this Contract and indefinitely after its termination.

### **Disclosure & Confidentiality Section**

#### **27. Use & Disclosure of Documents, Information etc**

- 27.1. Except with the prior consent in writing of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person engaged by the Contractor for the provision of the Services/Goods or any other person concerned with the same. Such disclosure shall be made in confidence and extend only so far as may be necessary for the purposes of the Contract.
- 27.2. The Contractor undertakes to treat any information derived from or obtained in the course of the Contract, or received from the Authority prior to the Commencement Date as confidential and to take all necessary precautions to ensure that their Personnel, agents and Sub-Contractors and their Personnel treat any information as confidential and in doing so keep secret and not disclose information obtained by them by reason of performing the Contract.
- 27.3. The Contractor, its Personnel, Sub-Contractor(s), agents, suppliers and consultants and their respective Personnel, shall refrain from making any public statement relating to the existence or performance of the Contract unless the statement is approved in writing by the Authority. This includes the issue of publicity material or press announcement relating to the Contract.
- 27.4. The Contractor shall ensure that any information, will be managed in accordance with the Authority's Information and Records Management Policy.
- 27.5. The Contractor shall ensure that hard copy information will be destroyed in line with the Authority's Authorised Records Disposal Practice, either by shredding and disposal in confidential waste or by returning the information to the Authority for secure disposal.
- 27.6. The Contractor shall ensure that electronic information will be destroyed in line with the Authority's Authorised Records Disposal Practice, whether held

on hard disks of PCs, laptops, and tablets; external storage, such as USB drives, CDs, or external hard drives; or network and back-up systems. The destruction will be at no cost to the Authority.

- 27.7. The Contractor shall supply the Authority with confirmation that all information has been destroyed by the Contractor in line with the Authority's Authorised Records Disposal Practice, including filenames, the date[s] disposed of, destruction certificates, etcetera.
- 27.8. The Contractor shall notify the Authority of any loss or accidental disclosure of information derived or obtained in the course of the Contract, or received from the Authority prior to the Commencement Date as soon as such loss or disclosure becomes known to the Contractor.

## **28. Freedom of Information**

- 28.1. The Authority reserves the right to disclose details of contractual documentation, processes, prices, performances and outcomes to meet legal and regulatory requirements.
- 28.2. The Authority is a public authority within the meaning of the Freedom of Information Act 2000 ('FOIA') and, as such, the Contractor should be aware that all information received by the Authority may be subject to a future request under the FOIA and will be dealt with accordingly.
- 28.3. When considering a request under the FOIA, the Authority will carefully consider releasing any information they hold or is held by a Contractor on their behalf, giving due protection to confidential information and any other relevant exemptions. Where the Contractor sends information it regards as confidential it must clearly identify the confidential element(s) and explain why it considers each element to be of a confidential nature. Routine marking of the documents as being confidential will not be accepted and the Contractor will always be required to provide justification for non-disclosure. The Contractor should also be aware that receipt by the Authority of information marked as confidential, or marked in any other way, does not imply that they accept any duty of confidence by virtue of that marking nor any obligation not to disclose that information when required by the FOIA.
- 28.4. Primary responsibility for decisions to disclose in response to a request under the FOIA will rest with the Authority. However, the Contractor must also be aware that decisions on disclosure under the Act are subject to the jurisdiction of the Information Commissioner, the Information Tribunal and ultimately the Courts.

## **29. Data Protection Legislation**

- 29.1 Each Party shall comply with all applicable requirements of the Data Protection Legislation which arise in connection with this Contract. This *Condition 29* is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- 29.2 The Contractor shall only use information which is given or made available to it by the Authority under the Contract in accordance with the provisions of the Data Protection Legislation and for no other purpose whatsoever.
- 29.3 Where, as part of the Contractor's obligations under the Contract, the Contractor processes Personal Data as a Processor on behalf of the Authority, the Contractor shall in addition comply with the provisions set out in **Appendix 3**.

### **30. Accounts and Disclosure**

- 30.1. In carrying out the Contract, including Site visits and/or field work, the Contractor's Personnel and Subcontractors shall complete timesheets and identify the activities and time spent on each activity.
- 30.2. The Contractor shall keep accurate and systematic records and accounts in respect of the services provided in connection with the Contract, which will clearly identify all charges.
- 30.3. The Authority reserves the right to audit, or to nominate a reputable accounting firm to audit, the Contractor's records relating to amounts claimed under the Contract.
- 30.4. The Authority may request disclosure of information from the Contractor relating to the Contract at any time in order to ensure and demonstrate contract compliance and to meet internal and external governance requirements.

### **Statutory Requirements Section**

#### **31. Industrial Actions & the Transfer of Undertakings (Protection of Employment)**

- 31.1. In the event that TUPE applies to the Contract the Contractor will provide, 3 months prior to the expiry of the contract, or any extension, directly employed Personnel liability information required under TUPE (including but not limited to details of the grades, length of service, weekly hours spent on this work and salaries of those involved) for inclusion in tender documentation and any such information required to ensure that the Authority complies with its obligations under the EU Procurement Directives. Contractors will comply with their obligations under the Regulations to ensure a smooth transfer, including obligations to consult with and inform Personnel and their representatives
- 31.2. The Contractor will not make any changes to the permanent Personnel establishment or terms and conditions of employment within 3 months of the expiry of the Contract without the written permission of the Authority.
- 31.3. The Contractor will respond within 5 Working Days to any questions or requests for supplementary information required during the tender process unless such requests are commercially sensitive.

- 31.4. The inclusion of these terms does not indicate that the Authority is making any declaration about the application of TUPE and Contractor should take their own legal advice.
- 31.5. In the event of any change of Contractor any discussions with regards to the application of TUPE will be between Contractors. The Authority will only become involved if there is any breach, or potential breach, of the tendering or contract terms and conditions.
- 31.6. If a Contractor fails to perform under the Contract terms, or withdraws from the Contract before it expires, the Authority will instruct another Contractor to provide the Services/Goods and will recover from the defaulting Contractor any additional costs including any ongoing excess charges, even if these costs exceed the original Contract price.

## **32. Modern Slavery, Discrimination, Human Rights & Safeguarding**

- 32.1. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of or made under the Equality Act 2010 or any other legislation relating to discrimination in employment or in the provision of Services/Goods in relation to this Contract or any other contract to which the Employer is a party.
- 32.2. The Contractor recognises the obligations imposed upon the Authority by the Human Rights Act 1998 and shall not do anything, when performing the Contract, which may cause the Authority to be in breach of that Act.
- 32.3.a. The Contractor will work with the Authority to identify and mitigate the risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain.
- 32.3.b. The Contractor will, within 90 days of commencing the Contract, provide the Authority with a Modern Slavery in the Supply Chain Due Diligence Report, identifying the main risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain highlighting the main products and countries involved and the steps to be taken to mitigate the risks in the short, medium and long term.
- 32.3.c. The Contractor will update the Modern Slavery in the Supply Chain Due Diligence Report annually or sooner if risks of modern slavery, human trafficking, forced and bonded labour and human rights violations in its supply chain come to its attention
- 32.3.d. The Contractor agrees to work with the Authority to produce a Modern Slavery in the Supply Chain Action plan.
- 32.3.e. The Contractor agrees to share its Modern Slavery in the Supply Chain Transparency Statement with the Authority if required by law to produce one and if not so required shall consider producing one voluntarily.
- 32.3. The Contractor shall take all reasonable steps to secure the observance of these provisions by the Contractor's Personnel employed in the execution of the Contract. Failure to comply with any part of this Condition may constitute a material breach of the Contract and the Authority may exercise its rights under Condition 20.



- 32.4. The Contractor (and Contractor's Personnel and Sub-Contractors) must comply with the Authority's policy on Safeguarding Children and Vulnerable Adults (as required under the Protection of Freedoms Act 2012). The policy may be accessed from the following website:  
<https://www.kcl.ac.uk/governancezone/index.aspx>

### **33. Environmental Requirements**

- 33.1. The Contractor shall perform the Contract in accordance with the Authority's environmental policy which can be accessed from the following website: <https://www.kcl.ac.uk/governancezone/index.aspx>. Failure to comply may constitute a material breach of the Contract and the Authority may exercise its rights under Condition 20.

### **34. Health & Safety**

- 34.1. The Contractor shall promptly notify the Authority of any health and safety hazards that may arise in connection with the provision of the Services/Goods.
- 34.2. The Authority shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Authority's Premises and which may affect the Contractor in the provision of the Services/Goods.
- 34.3. Whilst on the Authority's Premises, the Contractor's Personnel shall comply with all health and safety legislation and any measures implemented by the Authority.
- 34.4. The Contractor shall notify the Representative of the Authority immediately in the event of any incident occurring in the provision of the Services/Goods on the Authority's Premises where that incident causes any Personal Injury or any damage to property.
- 34.5. The Contractor shall ensure compliance with all Health and Safety Law and specific requirements agreed in this Contract. Without prejudice to any other clauses in this Contract, should the Contractor or the Contractor's Personnel fail to comply, the Authority reserves the right to:
- a) suspend the Contract with immediate effect and withhold payments until the issue is resolved by the Contractor, who will carry out the necessary health and safety work at its own expenses in order to resume the main contractual duties;
  - b) be exempt of any liability arising in connection with the Contractor's or the Contractor's Personnel failure to comply with any health and safety Law or any agreed requirement in this Contract.
  - c) deduct payment or claim compensation from the Contractor, where the health and safety breach or failure is not rectified by the Contractor or it is incapable of being remedied, and/or the Authority has to intervene either by carrying out the necessary work or hiring another Contractor to do it as a matter of emergency;
  - d) Terminate the Contract with immediate effect.

- 34.6. The Contractor's and sub-Contractor's Personnel shall be trained to recognise situations which involve an actual or potential hazard including but not exclusive to:
- a. danger of personal injury to any person on the Authority's premises and
    - i. where possible, without personal risk, make safe any such situation; or
    - ii. report any such situation immediately to the Authority representative;
  - b. fire risks and fire precautions and procedures including drills in accordance with the Authority's policies; the Authority shall provide fire training which is mandatory to all personnel working on our premises;
  - c. security;
  - d. major incident;
  - e. any other that has been identified at risk assessment stage.
- 34.7. The Contractor must familiarise itself with the Authority's health and safety policy may be accessed from the following website:  
<https://www.kcl.ac.uk/governancezone/index.aspx>

### **35. Intellectual Property Rights**

- 35.1. It shall be a condition of the Contract that, except to the extent that materials may incorporate designs furnished by the Authority, the Contractor will not infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and it shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of, or in connection with, any breach of this Condition.
- 35.2. All intellectual property rights in any specifications, instructions or other material:
- a) Furnished to or made available to the Contractor by the Authority shall remain the property of the Authority.
  - b) Prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract shall belong to the Authority.
- 35.2.1 The Contractor assigns to the Authority with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Goods). Where, the Contractor is not the legal owner of the IPRs in the products of the Services and/or Goods, it shall procure an irrevocable, non-exclusive licence in favour of the Authority for the provision of the Services/goods.
- 35.3. At the termination of the Contract the Contractor shall immediately return to the Authority all Information held, including any back up media.

### **36. Patents**

- 36.1. All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Contract Price. The Contractor shall indemnify the Authority from and against all demands, actions, claims and proceedings, which may be made or brought against the Authority, and any damages, cost and expenses incurred by the Authority in respect of such supply or use.

### **37. Bribery and Prevention of Corruption**

- 37.1. The Contractor shall not, in relation to this contract or any other contract with the Authority, request, offer, promise, agree to receive, accept or give a financial or other advantage to any person intended to induce that person to perform a function or activity improperly or to reward any person for the improper performance of a function or activity, or where it is known that the acceptance of the advantage would itself constitute the improper performance of a function or activity. The attention of the Contractor is drawn to the criminal offences under the Bribery Act 2010.

- 37.2. The Contractor shall not enter into this or any other contract with the Authority in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless, before any such contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to the Authority.

- 37.3. The Authority may –
- a) terminate the contract and recover from the contractor the amount of any loss resulting from the termination;
  - b) recover from the contractor the amount of value of any such gift, consideration or commission etc; and
  - c) recover from the Contractor any other loss sustained in consequence of any breach of their Condition, whether or not the Contract has been terminated.

If,

- d) reasonably satisfied that the Contractor or anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) is in breach of this Condition in relation to this or any other contract with the Authority; or
- e) the Contractor or anyone employed by him or acting on his behalf is convicted of any offence under the Bribery Act 2010 in relation to this Contract or any other contract with the Authority; or
- f) it becomes known to the Authority that, at the time of contract award or thereafter, the Contractor or its representatives have been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015; or

- g) the Contract should not have been awarded to the contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.
- 37.4. If the Contractor is approached by a member of the Authority's Personnel or someone representing themselves as acting on behalf of the Authority who seeks to persuade the contractor to take any steps that would constitute a breach of this Condition or of the Bribery Act 2010, the Contractor must immediately contact the Director of Finance at the Authority.
- 37.5. The Contractor shall take all reasonable steps to prevent malpractice or impropriety and notify immediately the Director of Finance of the relevant Authority of any known occurrence in accordance with the Authority's policy on Disclosing Malpractice or Impropriety ("Whistleblowing"), Allegations of Dishonesty at Work and Crisis of Conscience. The policy may be accessed from the following website:  
<https://www.kcl.ac.uk/governancezone/index.aspx>
- 37.6. Where the Contractor or Contractor's Personnel, Sub-Contractors, suppliers or agents or anyone acting on the Contractor's behalf acts in a manner which constitutes a breach of Condition 37.1 in relation to this or any other contract with the Authority, the Authority has the right to exercise any or all of the following actions:
- a) terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination;
  - b) recover from the Contractor the amount of value of any such gift, consideration or commission; and
  - c) recover from the Contractor any other loss sustained in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- 37.7. In exercising its rights or remedies under this Condition, the Authority shall:
- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of and the identity of the person performing the prohibited act;
  - b) give all due consideration, where appropriate, to action other than termination of the Contract.
- 37.8. Each party represents and warrants that it is familiar with, has read and understands, and will comply in all respects with its obligations under, the Bribery Act 2010.

### **38. Enquiries Relating to Tax Arrangements**

- 38.1. Where the Contractor is liable to be taxed in the UK in respect of consideration received under this Contract, it shall at all times comply with

- the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 38.2. Where the Contractor is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all statutes and regulations relating to NICs in respect of that consideration.
- 38.3. The Authority may at any time during the term of this contract request the Contractor to provide Information which demonstrates how the Contractor complies with clause 38.1 and 38.2 above or why those clauses do not apply to it.
- 38.4. A request under clause 38.3 above may specify the information which the Contractor must provide and the period within which that information must be provided.
- 38.5. The Authority may terminate the Contract if –
- a) in the case of a request mentioned in clause 38.3 above –
    - i. the Contractor fails to provide information in response to the request within a reasonable time, or
    - ii. the Contractor provides information which is inadequate to demonstrate either how the Contractor complies with clauses 38.1 and 38.2 above or why those clauses do not apply to it;
  - b) in the case of a request mentioned in clause 38.4 above, the Contractor fails to provide the specified information within the specified period, or
  - c) it receives information which demonstrates that, at any time when clauses 38.1 and 38.2 apply to the Contractor, the Contractor is not complying with those clauses.
- 38.6. The Authority may supply any information which it receives under clause 38.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.
- 38.7. Any termination under Clause 38.5 shall be effective immediately without notice and the Authority will have no liability to pay any further remuneration, compensation or damages to the Contractor.

## Appendix 1 - T&C's Change Control Following the Award of Contract

### 1. Change Control Introduction

- 1.1. Where the Authority or the Contractor see a need to change either the Services/Goods or the Conditions of the Contract, the Authority may at any time request, and the Contractor may at any time recommend, such change only in accordance with the Change Control Procedure below.
- 1.2. Until such time as a change is made in accordance with the Change Control Procedures, the Contractor shall, unless otherwise agreed in writing, continue to provide the Services/Goods as if the request or recommendation had not been made.
- 1.3. Any discussions which may take place between the Authority and the Contractor in connection with a request for change shall be without prejudice to the rights of either party.
- 1.4. In the event of any variation of the Contract, the Contract Price shall be subject to fair and reasonable adjustment to be agreed between the Authority and the Contractor.
- 1.5. Any work undertaken by the Contractor's Personnel which has not been authorised in advance by a change to the Contract or otherwise agreed according to Clause 1.1 shall be undertaken entirely at the expense and liability of the Contractor.

### 2. Procedure

- 2.1. Where a request for an amendment is received from the Authority, the Contractor shall, unless otherwise agreed, submit to the Authority two copies of a Change Control Note (CCN) signed by the Contractor within three weeks of the date of the request.
- 2.2. If the Contractor considers that the preparation of a CCN requested by the Authority would necessitate significant additional allocation of resources, the Contractor will notify the Authority accordingly and, on agreement by the Authority, the Contractor will make a proposal for a paid study of the cost and implications of producing the required CCN. Pending the Authority's acceptance of that proposal the Contractor will be relieved of the obligation to produce the CCN.
- 2.3. A request to amend by the Contractor shall be submitted direct to the Authority in the form of two copies of a CCN signed by the Contractor at the time of such recommendation.
- 2.4. The CCN must include:
  - a) Provision for a CCN number
  - b) The title of the change
  - c) The originator and date of the request for the change
  - d) The reason for the change
  - e) Full details of the change including any specifications
  - f) The price, if any, of the change

- g) A timetable for implementation
- h) A schedule of payments if appropriate
- i) Details of the likely impact, if any, of the change on other aspects of the existing contract, including but not limited to:
  - (i) The term of this contract
  - (ii) The personnel to be provided
  - (iii) The charges
  - (iv) The payment profile
  - (v) The documentation to be provided
  - (vi) The training to be provided
  - (vii) Service Levels
  - (viii) Working arrangements
  - (ix) Other contractual issues
- j) The date of expiry of the validity of the CCN, which shall usually be at least 10 Working Days from the date of submission;
- k) Provision for signature by the Authority and the Contractor

2.5. For each CCN submitted the Authority shall allocate a sequential number to the CCN, evaluate the CCN, requesting further information if necessary, and before the expiry of the CCN shall either:

- a) Arrange for two copies of the CCN to be signed by or on behalf of the Authority and return one of the copies to the Contractor; or
- b) Notify the Contractor of the rejection of the CCN.

2.6. A CCN signed by both parties shall constitute an amendment to the Contract.

## **Appendix 2 - The Supply of Goods**

### **THE GOODS**

#### **1 The Statement of Requirement**

- 1.1 The Contractor shall supply and, where relevant, install the Goods in accordance with the State of Requirements.
- 1.2 "Goods", defined as a commodity or a physical, tangible item as specified in the Statement of Requirement by the Authority.

#### **2 The Goods**

- 2.1 If requested by the Authority, the Contractor shall supply the Authority with samples of Goods for evaluation and approval, at the Contractor's cost and expense.
- 2.2 The Contractor shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Statement of Requirement.
- 2.3 The Contractor acknowledges that the Authority relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under of the Contract.

#### **3 Delivery**

- 3.1 The Contractor shall deliver the Goods at the time(s) and date(s) specified in the Statement of Requirement.
- 3.2 Without prejudice to any other rights or obligations outlined in Condition 6 of this Appendix, where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Authority's premises. Where the Goods are collected by the Authority, the point of delivery shall be when the Goods are loaded on the Authority's vehicle.
- 3.4 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Contractor's Personnel or the Contractor's suppliers or carriers at such place as the Authority or duly authorised person shall reasonably direct.
- 3.5 Where access to the Authority's Premises is necessary in connection with delivery or installation of the Goods, the Contractor and its Personnel or suppliers shall at all times comply with the requirements of the Authority's security procedures.



- 3.6 Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time promised or specified in the Statement of Requirements, the Authority may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to other rights and remedies of the Authority.
- 3.7 The Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Authority elects not to accept such over-delivered Goods it shall give notice in writing to the Contractor to remove them within 5 Working Days and to refund to the Authority any expenses incurred by the Authority as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods) failing which the Authority may dispose of such Goods and charge the Contractor for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Contractor unless they are accepted in writing by the Authority.
- 3.8 The Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Statement of Requirement.
- 3.9 Unless expressly agreed to the contrary, the Authority shall not be obliged to accept delivery by instalments. If, however, the Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Authority, entitle the Authority to terminate the whole of any unfulfilled part of the Contract without further liability to the Authority.

#### **4 Risk and Ownership**

- 4.1 Subject to Clause 3.5, risk in the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under Condition 6 (Inspection, Rejection and Guarantee) pass to the Authority at the time of delivery.
- 4.2 Ownership of the Goods shall, without prejudice to any other rights or remedies of the Authority (including the Authority's rights and remedies under Condition 6 (Inspection, Rejection and Guarantee) pass to the Authority at the time of delivery (or payment, if earlier).

#### **5 Non-Delivery**

- 5.1 On dispatch of any consignment of the Goods the Contractor shall send to the Authority an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Authority on the due date of delivery, the Authority shall, (provided that the Authority has been advised in writing of the dispatch of the Goods), within 10 Working Days

of the notified delivery date, give notice to the Contractor that the Goods have not been delivered and may request the Contractor free of charge to deliver substitute Goods within the timescales specified by the Authority or terminate the Contract in accordance with Clause 3.5.

## **6 Inspection, Rejection and Guarantee**

6.1 The Authority or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours upon reasonable notice at the Contractor's premises and the Contractor shall provide all reasonable assistance in relation to such inspection or test free of charge. No failure to make complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by the Authority of any rights or remedies in respect of the Goods and, the Authority retains the right to reject the Goods in accordance with Clause 6.2.

6.2 Upon receiving the Goods in its final delivery point, the Authority may by written notice to the Contractor reject any of the Goods that fail to conform to the approved sample or fail to meet the Statement of Requirement. Such notice shall be given within a reasonable time after delivery to the Authority of such Goods. If the Authority shall reject any of the Goods pursuant to this Clause the Authority may (without prejudice to other rights and remedies) either:

(a) have the Goods concerned promptly, and in any event within 5 Working Days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Statement of Requirement and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

(b) treat the Contract as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Authority in obtaining other goods in replacement provided that the Authority uses its best endeavours to mitigate any additional expenditure in obtaining the replacement goods.

6.3 For avoidance of doubt, the Authority shall be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 6.2.

6.4 The issue by the Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quality or nature of those Goods, or the Authority's acceptance of them.

6.5 The Contractor hereby guarantees the Goods for the period from date of delivery to the date 12 Months thereafter against faulty materials or workmanship. If the Authority shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Contractor shall (without prejudice to any other rights and remedies which the Authority may have) promptly remedy such defects (whether by repair or replacement as the Authority shall elect) free of charge.

6.6 Any Goods rejected or returned by the Authority as described in Clause 6.2 shall be returned to the Contractor at the Contractor's risk and expense.

## **7 Labelling and Packaging**

7.1 The Goods shall be packed and marked in a proper manner and in accordance with the Authority's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

## **8 Training**

8.1 Where indicated in the Statement of Requirement, the Contract Price shall include the cost of instruction of the Authority's personnel in the use of the Goods and such instruction shall be in accordance with the requirements detailed in the Statement of Requirement.

## **9 Contract Performance**

9.1 The Contractor shall perform its obligations under the Contract:

- (a) with appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- (b) in accordance with Good Industry Practice; and
- (c) in accordance with all applicable Laws.

9.2 The Contractor shall ensure that:

- (a) the Goods conform in all respects with the Statement of Requirement and; where applicable, with any sample approved by the Authority;
- (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the

Statement of Requirement and any particulars specified in the Contract;

- (c) the Goods conform in all respects with all applicable Laws; and
- (d) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for all purposes for which the Goods are ordinarily used and for any particular purpose made known to the Contractor by the Authority.

## **10 Manner of Carrying out the Installation Work**

- 10.1 The Contractor shall not deliver any materials or plant nor commence any work on the Authority premises without obtaining prior Approval. Notwithstanding the foregoing, the Contractor shall, at the Authority's written request, remove from the Premises any materials brought into the premises by the Contractor, which in the reasonable opinion of the Authority are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Contractor's expenses as soon as reasonably practicable.
- 10.2 Any access to, or occupation of, the Authority premises which the Authority may grant the Contractor from time to time shall be on a non-exclusive licence basis free of charge. The Contractor shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the premises to such Personnel as is necessary for that purpose. The Contractor shall co-operate (and ensure that its Personnel co-operate) with such other persons working concurrently on the premises as the Authority may reasonably request.
- 10.3 When the Contractor reasonably believes it has completed the Installation Works it shall notify the Authority in writing. Following receipt of such notice, the Authority shall inspect the Installation Works and shall, by giving written notice to the Contractor:
- (a) accept the Installation Works, or
  - (b) reject the Installation Works and provide reasons to the Contractor if, in the Authority's reasonable opinion, the Installation Works do not meet the requirements set out in the Statement of Requirement.
- 10.4 If the Authority rejects the Installation Works in accordance with Sub-Clause 10.3(b), the Contractor shall immediately rectify or remedy and defects and if, in the Authority's reasonable opinion, the Installation Works do not, within 5 Working Days, meet the requirements set out in the Statement of Requirement, the Authority may terminate the Contract with immediate effect by notice in writing.

- 10.5 The Installation Works shall be deemed to be completed when the Contractor receives a notice issued by the Authority in accordance with Sub-Clause 10.3(a). Notwithstanding acceptance of any Installation Works in accordance with that Sub-Clause, the Contractor shall remain solely responsible for ensuring that the Goods and Installation Works conform to the Statement of Requirement. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the Installation Works.
- 10.6 Throughout the Contract Period, the Contractor shall:
- a) have at all times all licences, approvals and consents necessary to enable the Contractor and Personnel to carry out the Installation Works;
  - b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for the completion of the Installation Works;
  - c) not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.
- 10.7 On completion of any Installation Works the Contractor shall remove the Contractor's plant, equipment and unused materials and shall leave the Authority premises in a neat and tidy condition. The Contractor is solely responsible for making good any damage to the premises or any objects contained therein, other than fair wear and tear, which is caused by the Contractor or any Personnel.

## **11 Property**

- 11.1 Where the Authority issues Property free of charge to the Contractor such Property shall be and remain the property of the Authority and the Contractor irrevocably licences the Authority and its agents to enter upon any premises of the Contractor during normal hours of business on reasonable notice to recover such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.
- 11.2 The Property made shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

- 11.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 11.4 The Contractor shall ensure the security of all the Property whilst in the Contractor's possession, either on the Authority premises or elsewhere during the supply of the Goods, in accordance with the Authority's reasonable security requirements as required from time to time.
- 11.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Authority's Default. The Contractor shall inform the Authority within 2 Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

### Appendix 3 – Schedule of Processing, Personal Data and Data Subjects

[Guidance for internal users] – This is the standard processing agreement used when King's are acting as a data controller and the supplier may be processing personal data on its behalf. Please do read the guidance on the [Governance and Compliance pages](#) to satisfy yourself that an alternative template is not more suitable for the agreement you are entering into. You should also read this guidance to decide whether other steps from a data compliance perspective should be taken before entering into the contract.

[Guidance for Suppliers] – To clarify, King's Standard Terms and Conditions of Trading in their current condition and entirety are legally binding. Any such change (if applicable) in Appendix 3 Data Processing Agreement will be mutually agreed between both parties.

- A. This Appendix applies where, as part of the Contractor's obligations under the Contract, the Contractor processes Personal Data as a Processor on behalf of the Authority.
- B. The Contractor shall comply with any further written instructions with respect to processing by the Authority.
- C. Any such further instructions shall be incorporated into this Appendix 3.

#### Definitions and Interpretation:

D. In this Appendix:

“DPA 2018” means the Data Protection Act 2018.

“Data Loss Event” means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

**Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

**Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer** take the meaning given in the GDPR.

“Data Protection Legislation” means (i) the GDPR and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018<sup>2</sup> to the

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<sup>2</sup> Subject to Royal Assent on or before 28 May 2018

extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**“Protective Measures”** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

**“Sub-Processor”** means any third party appointed to process Personal Data on behalf of the Contractor related to this Contract

## **DATA PROCESSING SERVICES CONDITIONS**

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Authority is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Table 1 below by the Authority and may not be determined by the Contractor.
- 1.2 The Contractor shall notify the Authority immediately if it considers that any of the Authority's instructions infringe the Data Protection Legislation.
- 1.3 The Contractor shall provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Authority, include:
  - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the 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.
- 1.4 The Contractor 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 article 32 of the GDPR and as set out in Table 1 below, unless the Contractor is required to do otherwise by Law. If it is so required the Contractor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;



- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Authority as appropriate to protect against a Data Loss Event having taken account of the:
    - (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:
    - (i) the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular Appendix 3);
    - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
      - (A) are aware of and comply with the Contractor's duties under this Appendix;
      - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
      - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Authority or as otherwise permitted by this Contract; and
      - (D) have undergone adequate training in the use, care, protection and handling of Personal Data.
  - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Authority has been obtained;
  - (e) at the written direction of the Authority, delete or return Personal Data (and any copies of it) to the Authority on termination of the Contract unless the Contractor is required by Law to retain the Personal Data.
- 1.5 The Contractor shall notify the Authority immediately if, in relation to any Personal Data processed in connection with the Contractor's obligations under this Contract, it:
- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this 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.
- 1.6 The Contractor's obligation to notify under condition 1.5 of this Appendix shall include the provision of further information to the Authority in phases, as details become available.
- 1.7 Taking into account the nature of the processing under this Contract, the Contractor shall provide the Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under condition 1.5 of this Appendix (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
  - (a) the Authority with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Authority following any Data Loss Event;
  - (e) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office.
- 1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with Article 30.1 and 30.2 of the GDPR and this Appendix. This requirement does not apply where the Contractor employs fewer than 250 staff, unless, as set out in Article 30.5 of the GDPR:
  - (a) the processing is not occasional;
  - (b) the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - (c) the Authority determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 1.9 The Contractor shall allow for audits of its Data Processing activity by the Authority or the Authority's designated auditor.
- 1.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:

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

1.12 The Contractor shall remain fully liable to the Authority for all acts or omissions of any Sub-processor.

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

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

**TABLE 1**

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students/ pupils, members of the public, users of a particular website etc]</i>

<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p><i>[Describe how long the data will be retained for, how it be returned or destroyed]</i></p>
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