

*Text highlighted in Blue is instructions to the Procuring Officer and should be deleted from the final document.*

*Text highlighted in Yellow is sections which need to be completed by the Procuring Officer. Highlighting and background text should be removed from the final document.*

*Text highlighted in Green is instructions to the Supplier completing this questionnaire.*

# Highway Services Dynamic Purchasing System (DPS)

## Invitation to Tender

### VOLUME 4

### CONTRACT CONDITIONS

**[Contract Title]**

**[Contract Number]**

THIS IS THE FORM OF AGREEMENT THE SUCCESSFUL SUPPLIER WILL BE REQUIRED TO SIGN AT CALL OFF STAGE

IT IS INCLUDED HERE FOR INFORMATION

YOU DO NOT NEED TO RETURN TO JOIN THE DPS

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DPS - Volume 4  
Contract Conditions (for Lots 2-4)

DATED

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**framework agreement**

between

**NY Highways Limited**

and

**Party 2**

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This agreement is dated [DATE]

## Parties

- (1) NY Highways Limited incorporated and registered in England and Wales with company number 12220433 whose registered office is at County Hall, Northallerton, North Yorkshire DL7 8AD (Client)
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier)

## BACKGROUND

- (A) The Supplier is in the business of providing the Available Services.
- (B) The Client wishes to obtain and the Supplier wishes to provide the Available Services on the terms set out in this agreement.

## Agreed terms

### 1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

#### 1.1 Definitions:

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time.

**Applicable Data Protection Laws:** means:

- a) To the extent UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
- b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

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<b>Applicable Laws:</b>	all applicable laws, statutes, regulations [and codes] from time to time in force.
<b>Available Services:</b>	the Goods, Services and/or Works as set out in Schedule 1 Service Specification and as amended by the Supplier's response in Schedule 2 Supplier's Response and Clarifications.
<b>Business Day:</b>	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
<b>Business Hours:</b>	the period from 9.00 am to 5.00 pm on any Business Day.
<b>Change Order:</b>	has the meaning given in clause 16.1.
<b>Control:</b>	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and <b>controls, controlled</b> and the expression <b>change of Control</b> shall be construed accordingly.
<b>Client's Equipment:</b>	any equipment, including tools, systems, cabling or facilities, provided by the Client, its agents, sub-contractors or consultants which is used directly or indirectly in the supply of the Available Services including any such items specified in a Purchase Order.
<b>Client's Manager:</b>	the individual (if any) identified as such in a Purchase Order, as appointed pursuant to clause 14.1(ii).
<b>Client Materials:</b>	all documents, information, items and materials in any form (whether owned by the Client or a third party), which are provided by the Client to the Supplier in connection with the Available Services including the items provided pursuant to clause 14.1(iv).
<b>Client Personal Data:</b>	any personal data which the Supplier processes in connection with this agreement,

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in the capacity of a processor on behalf of the Client.

**Commencement Date:**

being [add date]

**Deliverables:**

any outputs of the Goods, Services and/or Works to be provided by the Supplier to the Client as specified in a Purchase Order and any other documents, products and materials provided by the Supplier to the Client in relation to the Available Services (excluding the Supplier's Equipment).

**EU GDPR:**

means the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law.

**Goods:**

Means any such goods as are to be supplied to the Client by the Supplier (or by any of the Supplier's sub-contractors) pursuant to, or in connection with this agreement.

**Intellectual Property Rights:**

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Key Personnel:**

the Supplier's Manager and the individuals that may be identified as key personnel in a Purchase Order, or any replacement individuals appointed by the Supplier pursuant to clause 13.2(iv) or clause 13.2(v).

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<b>Mandatory Policies:</b>	the Client's business policies listed in Schedule 5 Mandatory Policies, as amended by notification to the Supplier from time to time.
<b>Milestones:</b>	a date by which a part or all of the Works is to be completed, as set out in a Purchase Order.
<b>PO Charges:</b>	the sums payable for the Available Services as set out in a Purchase Order.
<b>Premises:</b>	means the locations owned by the Client, or any Client site located within the area of North Yorkshire where Works are being carried out.
<b>Purchase Order:</b>	the detailed plan, agreed in accordance with clause 3 (Purchase Order), describing the services to be provided by the Supplier, the timetable for their performance and any supplemental matters.
<b>Rectification Plan:</b>	the plan agreed in accordance with clause 18 for the resolution of a Service Failure.
<b>Reference Charges:</b>	the standard charges for the Available Services or the framework for calculating them as set out in Schedule 4 Reference Charges and Payment Terms.
<b>Services:</b>	means the services provided as specified in this agreement including (but not restricted to) installation of goods and shall, where the context so admits, include any materials, articles and goods to be supplied in connection with any such services.
<b>Service Credits:</b>	the sum attributable to a Service Failure as set out in the Specification.
<b>Service Failure:</b>	a failure by the Supplier to deliver any part of the Goods, Services or Works in accordance with the Service Levels.
<b>Service Levels:</b>	those levels of delivery and performance set out in the Goods, Services or Works

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Specification or any service level agreement attached to the agreement.

**Specification:**

means the description or specification for Goods, Services, or Works that is set out by the Client to the Supplier.

**Supplier's Equipment:**

any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, sub-contractors or consultants to the Client and used directly or indirectly in the supply of the Works, including any such items which may be specified in a Purchase Order.

**Supplier's Manager:**

the individual (if any) identified as such in a Purchase Order, or any replacement individual appointed by the Supplier pursuant to clause 13.2(iv) or clause 13.2(v), being the person responsible for managing the Available Services on behalf of the Supplier.

**Supplier Personal Data:**

any personal data which the Supplier processes in connection with this agreement, in the capacity of a controller.

**Termination Date:**

[add date] being the date on which this agreement will end unless extended in accordance with clause 2.4 or terminated earlier in accordance with Clause 28.

**UK GDPR:**

has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

**Works:**

means the execution of, and any activity in connection with, building, and/or civil engineering, installation and building completion, design and planning, and any ancillary services.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

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- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 This agreement shall be binding on, and ensure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.9 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.11 A reference to **writing** or **written** includes email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to **this agreement** or to any other agreement or document is a reference to this agreement or such other agreement or document, in each case as varied or novated from time to time.
- 1.14 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Commencement and duration

- 2.1 This agreement shall commence on the Commencement Date and shall continue until the Termination Date **with the option for the Client to extend for a further [twenty-four months]**. This agreement can be terminated earlier in accordance with

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clause 28 (Termination). Any Purchase Orders entered into prior to the Termination Date shall still be completed by the Supplier and this agreement shall continue to have effect until all Purchase Orders have been completed.

- 2.2 If there are no uncompleted Purchase Orders as at the Termination Date then this agreement shall terminate with immediate effect.
- 2.3 The Client shall not issue any further Purchase Orders after the Termination Date.
- 2.4 The Client shall have the option to extend this agreement in accordance with clause 2.1 by serving notice in writing to the Supplier of the wish to extend. Such notice must be served prior to the Termination Date. If notice is given to extend, then all terms of this agreement shall continue until such time as the Supplier has fulfilled all its obligations or commitments under each and every Purchase Order raised during the extension period.
- 2.5 The Supplier acknowledges that, in entering this agreement, no form of exclusivity or volume guarantee has been granted by the Client for the Available Services from the Supplier and that the Client is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Available Services.
- 2.6 The Client may procure any of the Available Services by sending a Purchase Order to the Supplier pursuant to clause 3 (Purchase Orders).
- 2.7 The Supplier shall provide the Available Services from the date specified in the relevant Purchase Order.

### 3. Purchase Orders

- 3.1 Each Purchase Order shall be agreed in the following manner:
- (i) the Client shall ask the Supplier to provide Goods, Services or Works from amongst the Available Services required by the Client by sending the Supplier a Purchase Order;
  - (ii) within [one] Business Day of the Client's request, the Supplier shall notify the Client of any additional information it reasonably requires in order to comply with the Available Services set out in the Purchase Order;
  - (iii) within [one] Business Day of receipt of the required information from the Client, the Supplier shall give written confirmation of acceptance of the Purchase Order and Available Services required, or if they are declining to provide the Available Services. If the Supplier fails to respond within the timeframe specified, the Client shall be entitled to award the Purchase Order to an alternate Supplier without further notice;

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- (iv) If the Supplier confirms acceptance of the Purchase Order in accordance with clause 3.1(iii) above, the terms of the Purchase Order shall be binding on the Parties thereafter.
- 3.2 Unless otherwise agreed, the PO Charges shall be calculated in accordance with the Reference Charges.
- 3.3 Once a Purchase Order has been agreed in accordance with clause 3.1(iv), no amendment shall be made to it except in accordance with clause 16 (Change control) or clause 33 (Variation).
- 3.4 Each Purchase Order shall be part of this agreement and shall not form a separate contract to it. By accepting a Purchase Order from the Client, the Supplier agrees to be bound by all terms of this agreement unless the Purchase Order specifically states that they do not apply.

#### 4. TUPE

- 4.1 The Client does not believe that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') applies on the formation of this agreement nor to the Available Services supplied pursuant to the work covered by this contract but it is for the Supplier to take appropriate legal and/or professional advice on the potential implications of TUPE.
- 4.2 The Client does not offer any indemnity to the Supplier nor any person against costs that may be incurred should the provisions of TUPE apply.

##### **TUPE on exit**

- 4.3 If TUPE is applicable when a Purchase Order comes to an end (either by expiry or termination), the provisions of Schedule 7 TUPE on exit shall apply.

#### 5. The Goods

- 5.1 The Goods shall:
- (i) be new (unless otherwise specified on the Purchase Order) and be free from defects in design, material and workmanship, correspond with their description and any applicable Specification.
  - (ii) conform with the Deliverables set out in the Specification and be fit for any purpose expressly or impliedly made known to the Supplier by the Client;
  - (iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Client expressly or by implication, and in this respect the Client relies on the Supplier's skill and judgement; and

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- (iv) comply with all applicable Laws.
- 5.2 The Supplier warrants to the Client that the Goods will be provided:
- (i) in a proper, skilful and workmanlike manner;
  - (ii) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with best practice in the Supplier's industry, profession or trade; and
  - (iii) in accordance with the agreement.
- 5.3 The Supplier warrants that to the extent that associated services are performed, they shall be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with best practice in the Supplier's industry, profession or trade.
- 5.4 The Supplier will to the extent it is legally able to do so, hold on trust for the sole benefit of the Client, all warranties and indemnities provided by third parties or any sub-contractor in respect of any Goods and, where any warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Client may notify from time to time to the Supplier.
- 5.5 The Supplier will, unless it is unable to do so, assign to the Client on the Client's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in clause 5.4 above.
- 5.6 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the agreement or in the delivery of the Goods.
- 5.7 Repairs or replacements necessary due to any breaches of this clause 5 will themselves be covered by this agreement for a period of 12 months from acceptance of such repairs or replacements by the Client, including in accordance with clause 13.
- 5.8 The Supplier shall at its expense provide any programmes for the delivery of Goods that the Client may reasonably require, such programmes will be agreed with the Client.
- 5.9 The Supplier shall notify the Client, in writing, without delay if manufacturing or production progress falls behind or may fall behind any of these programmes. The Client reserves the right to check progress at the Supplier's manufacturing facilities or offices or those of the Supplier's sub-contractors at all reasonable times to inspect and reject any Goods that do not comply with the agreement.

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- 5.10 The Supplier shall make available to the Client, or any nominated third-party maintenance provider, on request, with reasonable dispatch and reasonable prices, all spares and replacement parts for the Goods as the Client shall require. The Supplier shall:
- (i) if required by the Client, maintain a supply of such spares and replacement parts for a period as agreed with the Client from the date of delivery or acceptance of the Goods, whichever is the latest;
  - (ii) provide such spares or replacement parts shall be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items;
  - (iii) notify the Client immediately if during the period set out in clause 5.10(i) the Supplier or the Supplier's subcontractor intends to discontinue manufacture of spares or replacement parts for the Goods. In such an event the Supplier shall, where possible, supply to the Client at no extra cost a perpetual, royalty free, worldwide non-exclusive licence to use all of the relevant Intellectual Property Rights in all designs, tools, drawings or other items necessary for the Client to procure replacement spares from a third party.

## 6. Delivery of the Goods and title

6.1 The Supplier shall ensure that:

- (i) the Goods are properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed. The Client will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that the Supplier requires returning will be done so at the Supplier's cost and risk;
- (ii) each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Client's Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (iii) if the Supplier requires the Client to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

6.2 The Supplier shall deliver the Goods:

- (i) on the delivery date or, if no such date is specified, within the timescale agreed in the Purchase Order;

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- (ii) to the point of delivery stated in the Purchase Order, or as instructed by the Client prior to delivery; and
- (iii) during the Client 's normal business hours, or as instructed by the Client.
- 6.3 If the Supplier fails to perform its obligations under clause 6.2 and this failure is attributable to the sole default of the Supplier, then the Client can give the Supplier a written notice specifying the times or the date(s) by which the Goods must be delivered, such times and date(s) to be reasonable in all the circumstances and, for this purpose, time is of an essence. If the Supplier does not deliver the Goods within the times or on the date(s) set out in the notice, the Client shall have the right to refuse any further Goods and/or terminate the Purchase Order immediately without penalty to the Client. However, the Client shall not exercise its right of termination unreasonably or vexatiously. The Client shall also be entitled to purchase other goods of the same or similar description and will be entitled to recover from the Supplier the difference between the cost of the alternative Goods purchased (subject to any limit of liability clause as set out in the agreement) and the cost which would have been payable to the Supplier for the Goods which should have been provided by the Supplier. This shall be without prejudice to any other remedies set out in clause 13.1.
- 6.4 Where the Goods are delivered by the Supplier to the Client delivery shall occur when the Goods are removed from the transporting vehicle, delivered in accordance with the delivery instructions and upon the signature by a representative of the Client to whom the Supplier has been instructed to effect delivery. Where the Goods are collected by the Client, delivery shall occur when they are loaded onto the Client's vehicle and signed for by a representative of the Client.
- 6.5 The Supplier shall not deliver the Goods in instalments without the Client's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Client to the remedies set out in clause 13.1.
- 6.6 Except where otherwise provided in the Purchase Order, delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the Client may reasonably direct.
- 6.7 The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Client shall not be deemed to have accepted any Goods other than in accordance with clause 7.
- 6.8 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Client which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods in accordance with the agreement, the Supplier shall inform, in writing, the Client as soon as reasonably practicable.
- 6.9 Title and risk in the Goods shall pass to the Client on completion of delivery.

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**7. Acceptance**

- 7.1 The Client shall have the right to reject the Goods and Services in whole or in part whether paid for in full or in part within a reasonable time of delivery or performance (notwithstanding the commencement by the Client using the Goods or enjoying the benefit of the Services) if they do not conform to the requirements of the agreement.
- 7.2 Subject to clause 7.1, acceptance shall be deemed to have occurred after the reasonable time of delivery or performance referred to above unless the Client notifies the Supplier in writing of the rejection of the Goods or Services.

**8. Operating manuals and as-fitted drawings**

- 8.1 The Supplier shall supply to the Client all operating manuals and other documentation necessary for the satisfactory operation of the Goods. If after the acceptance date the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the Client of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions. The Supplier shall provide at no extra cost to the Client the operating manuals and other documentation in the media format in which they are available at the appropriate time.

**9. Attachment to the Goods**

- 9.1 The Client shall have the right to attach to or install into or onto the Goods any other items or goods (including but not limited to software) which the Client considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Client. If the Client attaches or installs such items or goods, then this shall not have the effect of degrading the performance of the Goods and shall not relieve the Supplier from meeting its obligations under the agreement provided that:
- (i) the goods attached or installed are not specified in any of the Supplier's and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Client's rights under the agreement; and
  - (ii) the Supplier has not otherwise notified the Client in writing that the attachment or installation of specific goods will degrade the standards of performance or invalidate the Client's rights under the agreement; and
  - (iii) the Goods have been attached or installed in accordance with the published instructions of the Supplier.
- 9.2 Subject to clause 9.1, in the event that the attachments and/or installation is made by the Client and the Supplier can prove that such attachment or installation is adversely affecting the standard of performance of the Goods then the Supplier shall be entitled to be reimbursed any associated direct costs which the Supplier can

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demonstrate as being reasonably and necessarily incurred in returning the Goods to the normal standards of performance in accordance with this agreement as a direct result of the attachment or installation made by the Client (other than where such attachment or installation has been with the approval of the Supplier).

**10. Hazardous goods and safety**

- 10.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the Client on or before delivery all data necessary to allow the Client to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all applicable Laws.
- 10.2 All hazardous Goods must be clearly marked and display the name of the material in English and be delivered in such manner as is appropriate in view of the nature of the hazardous Goods. Transport and other documents must include a declaration of the hazard and the name of the material in English. The Goods must be accompanied by emergency information in English.
- 10.3 Without prejudice to the generality of clause 10.1, unless specifically required under the agreement, there shall be no asbestos content in the Goods.
- 10.4 If the Services contain any element which is notifiable for the purposes of the CDM Regulations then the Supplier shall be the Principal Contractor under the CDM Regulations in respect of those Services and shall perform all the functions and obligations required to be performed by the Principal Contractor under the CDM Regulations.
- 10.5 The Supplier shall promptly notify the Client of any health and safety hazards, which may arise in connection with the performance of the contract. The Client shall promptly notify the Supplier of any health and safety hazards that may exist or arise at the Premises and that may affect the Supplier in the performance of the agreement.
- 10.6 While on the Premises, the Supplier shall comply with any health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's Premises from time to time and that have been communicated to it under clause 14.1(vi) and attached at Schedule 3 Key Contacts. The Client reserves the right to refuse any of the Supplier's personnel involved in the provision of the Available Services access to the Client's Premises, which shall only be given to the extent necessary for the performance of the Available Services.
- 10.7 The Supplier shall notify the Client immediately in the event of any incident occurring in the performance of the agreement on the Premises where that incident causes any personal injury or damage to property or the creation of a risk that could give rise to personal injury.
- 10.8 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating

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to health and safety, which may apply to employees, sub-contractors and agents of the Supplier and other persons working on the Premises in the performance of the agreement.

- 10.9 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Client on request.

## 11. Supply of Services and Works

- 11.1 The Supplier shall from the Commencement Date and for the duration of this agreement provide the Services or Works to the Client in accordance with the terms of this agreement.
- 11.2 The Supplier shall provide the Services or Works and Deliverables including any performance dates for the Services or Works in accordance with the Purchase Order or notified to the Supplier by the Client.
- 11.3 In providing the Services or Works, the Supplier shall:
- (i) co-operate with the Client in all matters relating to the Services or Works, and comply with all reasonable instructions of the Client;
  - (ii) perform the Services or Works with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - (iii) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this agreement;
  - (iv) replace promptly any of its employees who, the Client shall have reasonably decided have failed to carry out their duties with reasonable skill and care with another person with the necessary training and skills to meet the requirements of the agreement;
  - (v) ensure the Services or Works and the Deliverables will conform with all descriptions and specifications set out in the Specification and shall be fit for any purpose expressly or impliedly made known to the Supplier by the Client;
  - (vi) provide all equipment, tools and vehicles and such other items as are required to provide the Services or Works;
  - (vii) use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or Works or transferred to the Client will be free from defects in workmanship, installation and design;

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- (viii) obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;
- (ix) hold all materials, equipment and tools, drawings, specifications and data supplied by the Client to the Supplier ("the Client's Materials") in safe custody at its own risk, maintain the Client's Materials in good condition until returned to the Client and not dispose of or use the Client's Materials other than in accordance with the Client's written instructions or authorisation;
- (x) not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Client may rely or act on the Services or Works;
- (xi) take good care of any Client's Equipment provided by the Client pursuant to clause 14.1(v);
- (xii) notify the Client in writing immediately upon the occurrence of a change of Control of the Supplier;
- (xiii) follow any site safety procedures provided by the Client and not do anything to breach any other policy and procedure held by the Client; and
- (xiv) comply with any additional obligations imposed on it as set out in a Purchase Order

11.4 The Supplier shall provide general advice free of charge, in so far as telephone or e-mail can provide this quickly and easily. If detailed consideration is required then an additional charge may be agreed with the Client.

11.5 The Supplier shall, at its expense provide any programmes for the provision and delivery of Services or Works as the Client may reasonably require. Any such programmes will be agreed with the Client.

11.6 The Supplier shall co-operate with the Client in all matters relating to the Services or Works and comply with the Client's instructions.

11.7 The Supplier shall provide the Client with proof of performance of the Deliverables prior to the submission of an invoice for those Deliverables.

## 12. Work on the Premises

12.1 If the agreement involves any Goods, Services or Works which the Supplier delivers or performs on the Premises then the following clauses shall apply:

- (i) the Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to all applicable Laws;

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- (ii) the Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other person associated with the Supplier will comply with any reasonable regulations or Client's policies that the Client may notify to the Supplier in writing including any health and safety policies and security arrangements; and
  - (iii) when required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements. The Client reserves the right to remove from the Premises anyone not complying with the Client's security arrangements or suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance.
- 12.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Client's prior written consent.
- 12.3 Access to the Premises shall not be exclusive to the Supplier only such as shall enable the performance of the agreement concurrently with the execution of work by others. The Supplier shall co- operate with such others as the Client may reasonably require.
- 12.4 The Client shall have the power at any time during the progress of the contract to order in writing:
- (i) the removal from the Premises of any materials which in the Client's reasonable opinion are either hazardous or not in accordance with or in breach of the agreement; and
  - (ii) the substitution of proper and suitable materials; and
  - (iii) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any Goods, Services or Works which, in respect of material or workmanship, is not in the Client's reasonable opinion in accordance with the agreement.
- 12.5 On completion or termination of the agreement the Supplier shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the agreement and leave the Premises in a neat and tidy condition within the timescales instructed to the Supplier by the Client and make good any damage caused to the reasonable satisfaction of the Client.
- 12.6 The Supplier shall ensure that their employees, sub-contractors and their employees and any other persons associated with Supplier shall be dressed appropriately where applicable, including to the Client's PPE Standard. The Client reserves the right to remove from the Premises anyone who is, in the Client's absolute discretion, not complying with this requirement.

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- 12.7 Any Premises made available from time to time to the Supplier by the Client in connection with the contract shall be made available to the Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligation under the agreement. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the agreement.
- 12.8 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the agreement.
- 12.9 The Supplier agrees that there is no intention on the Client's part to create a tenancy of any nature whatsoever in favour of the Supplier or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the agreement, the Client retains the right at any time to use any Premises owned or occupied by the Client in any manner it sees fit.
- 12.10 The Client's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Client shall be final and conclusive and the Supplier shall replace promptly any such person to ensure that its requirements under the agreement are met.
- 12.11 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the Client under this clause.

### 13. Supplier's further responsibilities

- 13.1 Time is of the essence in relation to any key performance dates and Milestones for the Supplier. If the Supplier fails to meet the relevant deadlines, then (without prejudice to the Client's right to terminate this agreement and any other rights it may have), the Client may:
- (i) terminate or suspend the agreement in whole or part in accordance with clause 28;
  - (ii) reject the Goods in whole or part and require the Supplier to arrange collection of them at the Supplier's own risk and expense;
  - (iii) require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - (iv) require the Supplier to re-perform the Services;
  - (v) refuse to accept any subsequent performance of any of the Available Services under the relevant Purchase Order which the Supplier attempts to make;
  - (vi) purchase substitute Goods, Services or Works from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such Goods, Services or Works from a third party instead of the Supplier;

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- (vii) hold the Supplier accountable for any loss and additional costs incurred; and
- (viii) have any sums previously paid by the Client to the Supplier in respect of the affected Available Services refunded by the Supplier.

13.2 In relation to the Supplier's personnel, the Supplier shall:

- (i) use any named Key Personnel if specified in a Purchase Order in the provision of the Available Services;
- (ii) ensure that all personnel involved in the provision of the Available Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this agreement;
- (iii) ensure that the Supplier's Manager, if named in a Purchase Order, has authority to contractually bind the Supplier on all matters relating to the Available Services (including by signing Change Orders);
- (iv) promptly inform the Client of the absence (or the anticipated absence) of any of the Key Personnel, and if so required by the Client, provide a suitably qualified replacement for such individual; and
- (v) use its best endeavours not to make any changes to the Key Personnel throughout the term of the relevant Purchase Order and obtain the prior written approval of the Client (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.

#### 14. Client's obligations

14.1 The Client shall:

- (i) provide the Supplier with all necessary co-operation in all matters relating to the Available Services;
- (ii) ensure that the Client's Manager, if named in a Purchase Order, has authority to contractually bind the Client on all matters relating to the Available Services (including by signing Change Orders);
- (iii) provide access to the Client's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Client in writing in advance, for the purposes of the Available Services;
- (iv) provide to the Supplier all documents, information, items and materials required to complete or deliver the Available Services as detailed in the Purchase Order;

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- (v) provide the Client's Equipment to the Supplier by the dates specified and in the manner prescribed in a Purchase Order; and
- (vi) inform the Supplier of all health and safety and security requirements that apply at any of the Client's premises to which the Supplier will require access. Some of the Client's requirements in this regard are set out in Schedule 3 Key Contacts.

## 15. Default by the Client

- 15.1 A failure by the Client to comply with the terms of this agreement can only relieve the Supplier from complying with its obligations under this agreement with effect from the date on which the Supplier notifies the Client in writing and in reasonable detail of the Client's failure and its effect or anticipated effect on the Available Services.

## 16. Change control

- 16.1 Either party may propose changes to the scope or execution of the Available Services, but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be an amended Purchase Order which clearly sets out the proposed changes and the effect those changes will have on:
- (i) the Available Services;
  - (ii) the PO Charges;
  - (iii) the timetable for the Available Services; and
  - (iv) any of the other terms of the relevant Purchase Order.
- 16.2 If the Client wishes to make a change to the Available Services:
- (i) it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to consider the draft Change Order; and
  - (ii) the Supplier shall, within one Business Day of receiving the Client's request at clause 16.2(i), confirm in writing that the changes detailed in the Change Order are accepted.
- 16.3 If the Supplier wishes to make a change to the Available Services, it shall provide a draft Change Order to the Client.
- 16.4 If the Supplier submits a draft Change Order in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Available Services, the Client shall not unreasonably withhold or delay consent to it.

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16.5 If the parties:

- (i) agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Purchase Order; or
- (ii) are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 43 (Multi-tiered dispute resolution procedure).

## 17. Service levels and service credits

17.1 The Supplier shall ensure that the Available Services meet or exceed the Service Levels at all times.

17.2 The Supplier shall provide the Client with a monthly report detailing its performance in respect of the Service Levels if requested by the Client.

17.3 If there is a Service Failure, the Supplier shall:

- (i) notify the Client immediately of the Service Failure;
- (ii) provide the Client with a Rectification Action Plan in accordance with clause 18, if requested by the Client;
- (iii) deploy all additional resources and take all remedial action that is necessary to rectify or prevent the Service Failure from recurring; and
- (iv) carry out the actions identified in the Rectification Action Plan in accordance with its terms.

17.4 The Supplier shall automatically credit the Client with the applicable Service Credits as set out in the Specification if any. Service Credits shall either be shown as a deduction from the amount due from the Client to the Supplier in the next invoice then due to be issued under this contract, or the Supplier shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by the Supplier as a debt within **[20]** Business Days of issue of the credit note. The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Client.

## 18. Rectification plan

18.1 If the Supplier commits a Service Failure, the Client may serve a rectification notice to the Supplier which shall specify the Service Failure in outline and the actions the Supplier needs to take with respect to remedying the Service Failure ("**Rectification Notice**").

18.2 The Client shall be under no obligation to initiate this rectification process if it has issued a notice of termination pursuant to clause 28.1, 28.2 or 28.3.

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- 18.3 Within the time frame specified in the Rectification Notice, the Supplier shall either:
- (i) submit a draft Rectification Plan, even if it disputes that it is responsible for the matters which are the subject of the Rectification Notice; or
  - (ii) inform the Client that it does not intend to submit a Rectification Plan, in which event the Client shall be entitled to terminate the agreement upon the expiry of a notice period specified in the termination notice served on the Supplier by the Client.
- 18.4 The Client shall either approve the draft Rectification Plan within 10 Business Days of its receipt or as soon as reasonably practicable, or it shall inform the Supplier why it cannot accept the draft Rectification Plan. In such circumstances, the Supplier shall address all such concerns in a revised Rectification Plan, which it shall submit to the Client within [5] Business Days of its receipt of the Client's comments or by such date as stipulated by the Client.
- 18.5 Once agreed, the Supplier shall immediately start work on the actions set out in the Rectification Plan.
- 18.6 If, despite the measures taken under clause 18.4, the revised Rectification Plan cannot be agreed within [10] Business Days or as soon as reasonably practicable then the Client may elect to end the Rectification Plan process set out above and terminate the agreement upon the expiry of a notice period specified in the termination notice served on the Supplier by the Client.
- 18.7 If a Rectification Plan is agreed between the Parties, but the Supplier fails to implement or successfully complete the Rectification Plan by the required Rectification Plan completion date, the Client may:
- (i) terminate the agreement upon the expiry of a notice period specified in the termination notice served on the Supplier by the Client; or
  - (ii) give the Supplier a further opportunity to resume full implementation of the Rectification Plan; or
  - (iii) escalate any issues arising out of the failure to implement the Rectification Plan under the dispute resolution procedure set out in clause 43.
- 18.8 If, despite the measures taken under clause 18.7(ii), the Supplier fails to implement the Rectification Plan in accordance with its terms, the Client may elect to end the rectification plan process and refer the matter for resolution by the dispute resolution procedure set out in clause 43 or terminate the agreement immediately or upon the expiry of a notice period specified in the termination notice.
- 18.9 The Client shall not be obliged to follow this rectification process if there is a repetition of substantially the same Service Failure as had previously been addressed in a Rectification Plan within a reasonable period following the conclusion

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of such previous Rectification Plan. In such event, the Client may terminate the agreement upon the expiry of a notice period specified in the termination notice served on the Supplier by the Client.

**19. Charges and payment**

19.1 In consideration of the provision of the Available Services by the Supplier, the Client shall pay the PO Charges which shall be in accordance with the terms set out in Schedule 4 Reference Charges and Payment Terms.

19.2 Where the PO Charges are calculated on a time and materials basis:

- (i) the Supplier's daily fee rates for any individual person set out in Schedule 4 Reference Charges and Payment Terms are calculated on the basis of an eight-hour day, worked during Business Hours;
- (ii) the Supplier shall be entitled to charge on a pro rata basis for part days worked by the Supplier's team during Business Hours, provided it has the Client's prior written consent to do so;
- (iii) if the Client has agreed within the Purchase Order to the Supplier's personnel carrying out specific work outside Business Hours the Supplier may charge for the time so spent by such personnel at the rates set out in Schedule 4 Reference Charges and Payment Terms, pro-rated to reflect the hours worked. The Client may not charge for work done outside Business Hours unless otherwise agreed in writing with the Client; and
- (iv) the Supplier shall ensure that every individual whom it engages on the Available Services completes time sheets to record time spent on the Available Services, and the Supplier shall indicate the time spent per individual in its invoices.

19.3 Where the PO Charges are calculated on a fixed price basis, the amount of those charges shall be as set out in a Purchase Order.

19.4 The PO Charges shall exclude the following costs which shall be payable by the Client monthly in arrears, subject to submission of an appropriate invoice:

- (i) the cost to the Supplier of any materials or services procured by the Supplier from third parties for the provision of the Available Services as such items and their costs are specified in the Purchase Order or approved by the Client from time to time.
- (ii) Any disbursements incurred by the Supplier in carrying out the Available Services providing the disbursement has been approved in advance by the Client and they have confirmed in writing that they will reimburse the cost.

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- 19.5 The Supplier shall invoice the Client for the PO Charges at the intervals specified, or on the achievement of the Milestones indicated, in the Purchase Order. If no intervals are specified, the Supplier shall invoice the Client at the end of each month for Available Services performed during that month.
- 19.6 The Client shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 19.7 If the Client fails to make a payment due to the Supplier under this agreement by the due date then, without limiting the Supplier's remedies under clause 28 (Termination), the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%. The Supplier shall not suspend the supply of the Available Services required under any Purchase Order unless the Supplier is entitled to terminate the contract under clause 28 (Termination) for failure to pay undisputed sums of money.
- 19.8 If the Client disputes a payment in good faith, then the interest payable under clause 19.7 is only payable after the dispute is resolved, on sums found or agreed to be due, from 28 days after the dispute is resolved until payment.
- 19.9 The Client may, at any time, without notice to the Supplier, set off any liability of the Supplier to the Client against any liability of the Client to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, the Client may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Client of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.
- 20. Audit**
- 20.1 The Supplier shall allow the Client (or its professional advisers) to access the Supplier's premises, personnel, systems and relevant records to verify that the PO Charges and any other sums charged to the Client under this agreement are accurate.
- 20.2 Subject to the Supplier's confidentiality obligations, the Supplier shall provide the Client (and its professional advisers) with all reasonable co-operation, access and assistance in relation to each audit.
- 20.3 The Client shall provide at least 3 Business Days' notice of its intention to conduct an audit and any audit shall be conducted during Business Hours.
- 20.4 The Client and its professional advisers shall have the right to take copies of any records which they reasonably require and remove such copies and the Supplier shall provide the necessary facilities to assist in copying free of charge.

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**21. Intellectual property rights**

**21.1** In relation to the Client Materials:

- (i) the Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
- (ii) the Client grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this agreement for the purpose of providing the Available Services to the Client.

**21.2** In relation to the Deliverables:

- (i) the Supplier and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Client Materials;
- (ii) the Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding the Client Materials) for the purpose of receiving and using the Available Services and the Deliverables in its business; and
- (iii) the Client may sub-license the rights granted in clause 21.2(ii):
  - a. to its Affiliates and Clients; and
  - b. to third parties for the purpose of the Client's receipt of services similar to the Available Services.
- (iv) the Supplier assigns to the Client, with full title guarantee and free from all third-party rights, all Intellectual Property Rights in the Deliverables;
- (v) the Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction; and
- (vi) the Supplier shall, promptly at the Client's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Client may from time to time require for the purpose of securing for the Client all right, title and interest in and to the Intellectual Property Rights assigned to the Client in accordance with clause 21.2(iv).

**21.3** The Supplier:

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- (i) warrants that the receipt, use and onward supply of the Available Services and the Deliverables by the Client and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- (ii) shall indemnify the Client against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred or paid by the Client arising out of or in connection with any claim brought against the Client for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Available Services and the Deliverables.

21.4 If the Supplier is required to indemnify the Client under this clause 21, the Client shall:

- (i) notify the Supplier in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 21.3(ii) (**IPRs Claim**);
- (ii) allow the Supplier, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Supplier shall obtain the Client's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- (iii) provide the Supplier with such reasonable assistance regarding the IPRs Claim as is required by the Supplier, subject to reimbursement by the Supplier of the Client's costs so incurred; and
- (iv) not, without prior consultation with the Supplier, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Supplier considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Client into disrepute.

## 22. Insurance

22.1 During the term of this agreement and for a period of [PERIOD] after the expiry or termination of this agreement, the Supplier shall maintain in force, with a reputable insurance company:

- (i) Professional Indemnity Insurance at an amount not less than £2,000,000,
- (ii) Employers' Liability Insurance of not less than £5,000,000 and
- (iii) Public Liability Insurance of not less than £5,000,000

22.2 The Supplier shall, on the Client's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premium.

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**23. Product liability**

- 23.1 If any claim is made against the Customer arising out of or in connection with the manufacture of or any defect in any Goods supplied, the Supplier shall, except to the extent that the claim is due to any defect in the Specification, indemnify the Client against all damages or other compensation:
- (i) awarded against the Client in connection with the claim;
  - (ii) paid or agreed to be paid by the Client in settlement of the claim; and
  - (iii) all legal costs and expenses incurred by the Client in relation to the defence or settlement of the claim.
- 23.2 The Client shall notify the Supplier as soon as practicable after becoming aware of the claim, and take all action reasonably requested by the Supplier to avoid, compromise or defend the claim and any proceedings in respect of the claim, subject to the Client being indemnified and secured to its reasonable satisfaction against all costs and expenses which may be incurred in doing so.

**24. Compliance with laws and policies**

- 24.1 In performing its obligations under this agreement, the Supplier shall comply with:
- (i) the Applicable Laws; and
  - (ii) the Mandatory Policies.
- 24.2 The Supplier will inform the Client as soon as it becomes aware of any changes in the Applicable Laws.

**25. Data protection**

- 25.1 Both Parties shall comply with all applicable requirements of the Data Protection Legislation. This clause 25 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.
- 25.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the Controller and the Supplier is the Processor. The Data Processing Schedule sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 25.3 Without prejudice to the generality of clause 25.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

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25.4 Without prejudice to the generality of clause 25.1, the Supplier shall, in relation to any Personal Data processed in connection with its obligations under this agreement:

25.5

- (i) process that Personal Data only on the written instructions of the Client (as set out in the Data Processing Schedule), unless the Supplier is required by Domestic Law to otherwise process the Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Council of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Council;
- (ii) ensure that it has in place appropriate technical and organisational measures, (as defined in the Data Protection Legislation), reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its 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 technical and organisational measures adopted by it);
- (iii) not transfer Personal Data outside of the UK unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - a. the Client or the Supplier has provided appropriate safeguards in relation to the transfer as determined by the Client;
  - b. the Data Subject has enforceable rights and effective remedies;
  - c. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - d. the Supplier complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- (iv) notify the Client immediately if it receives:
  - a. a request from a Data Subject to have access to that person's Personal Data;

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- b. a request to rectify, block or erase any Personal Data;
  - c. any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
  - (v) assist the Client in responding to any request from a Data Subject and in ensuring compliance with the Council 's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - (vi) notify the Client immediately and in any event within 24 hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
  - (vii) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination or expiry of this agreement unless required by Domestic Law to store the Personal Data;
  - (viii) indemnify the Client against any losses, damages, cost or expenses suffered by the Client arising from or in connection with any breach by the Supplier of its obligations under this clause 25.
- 25.6 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for audits by the Client or it's designated auditor and authorised representatives of its data processing activity and premises. The Client shall be entitled to inspect, test and audit or appoint representatives to inspect, test and audit all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of the Supplier and the Supplier shall co-operate and assist the Client (and its representative) with each inspect, test and audit. The Supplier shall immediately inform the Council if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 25.7 Where the Supplier intends to engage a sub-contractor pursuant to clause 44 and intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:
- (i) notify the Client in writing of the intended processing by the sub-contractor;
  - (ii) obtain the prior written consent of the Client to the processing;
  - (iii) ensure that any sub-contract imposes obligations on the sub-contractor to give effect to the terms set out in this clause 25.
- 25.8 Either Party may, at any time on not less than 30 Working Days' notice to the other Party, revise this clause 25 by replacing it with any applicable Controller to

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Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this agreement).

## 26. Confidentiality

- 26.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, Clients, clients or suppliers of the other party [or of any member of the group of companies to which the other party belongs, except as permitted by clause 26.2.
- 26.2 Each party may disclose the other party's confidential information:
- (i) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this clause 26; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 26.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

## 27. Limitation of liability

- 27.1 The Supplier has obtained insurance cover in respect of certain aspects of its own legal liability for individual claims as set out in clause 22 (Insurance) per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess liability.
- 27.2 References to liability in this clause 27 (Limitation of liability) apply to every liability arising under or in connection with this agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 27.3 Nothing in this clause 27 shall limit the Client's payment obligations under this agreement.
- 27.4 Nothing in this agreement shall limit the Supplier's liability under:
- (i) clause 21.3 (IPR indemnity); and
  - (ii) paragraph 1.5 of Schedule 7 TUPE on exit.

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27.5 Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (i) death or personal injury caused by negligence;
- (ii) fraud or fraudulent misrepresentation; or
- (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or other liability which cannot be limited or excluded by applicable law; or

27.6 Subject to clause 27.3 (no limitations in respect of deliberate default), clause 27.4 (liability under identified clauses) and clause 27.5 (liabilities which cannot legally be limited), the Supplier's total liability to the Client:

- (i) for damage to property caused by the negligence of its employees and agents in connection with any Purchase Order issued under this agreement shall not exceed 200% of the value of the relevant Purchase Order for any one event or series of connected events;
- (ii) for loss arising from the Supplier's failure to comply with its data processing obligations under clause 25 (Data protection) shall not exceed £2,000,000; and
- (iii) for all other loss or damage which does not fall within subclause (a) or (b) shall not exceed 200% of the value of the relevant Purchase Order under which the loss or damage is caused.

27.7 Subject to clause 27.3 (no limitations in respect of deliberate default) and clause 27.5 (liabilities which cannot legally be limited), the Client's total liability to the Supplier:

- (i) for damage to property caused by the negligence of its employees and agents in connection with any Purchase Order issued under this agreement shall not exceed 200% of the value of the relevant Purchase Order for any one event or series of connected events;
- (ii) for loss arising from the Client's failure to comply with its data processing obligations under clause 25 (Data protection) shall not exceed £2,000,000; and
- (iii) for all other loss or damage which does not fall within sub-clause (a) or (b) shall not exceed 200% of the value of the relevant Purchase Order under which the loss or damage is caused.

27.8 The caps on the Supplier's liabilities shall not be reduced by:

- (i) amounts awarded or agreed to be paid under:

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- a. clause 21.3 (IPR indemnity); and
  - b. paragraph 1.5 of Schedule 7 TUPE on exit.
  - (ii) amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 27.9 Subject to clause 27.3 (No limitations in respect of deliberate default), clause 27.4 (No limitation of the Client's payment obligations), clause 27.5 (Liability under identified clauses) and clause 27.6 (Liabilities which cannot legally be limited), clause 27.9(ii) identifies the kinds of loss that are not excluded. Subject to that, clause 27.9(i) excludes specified types of loss.
- (i) Types of loss wholly excluded:
    - a. Loss of profits.
    - b. Loss of sale or business.
    - c. Loss of agreements or contracts.
    - d. Loss of anticipated savings.
    - e. Loss of use or corruption of software, data or information.
    - f. Loss of or damage to goodwill.
    - g. Indirect or consequential loss.
  - (ii) Types of loss and specific losses not excluded:
    - a. Sums paid by the Client to the Supplier pursuant to this agreement, in respect of any Available Services not provided in accordance with this agreement.
    - b. Wasted expenditure.
    - c. Additional costs of procuring and implementing replacements for, or alternatives to Available Services not provided in accordance with this agreement. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
    - d. Losses incurred by the Client arising out of or in connection with any third party claim against the Client which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or

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commenced by sub-contractors, the Supplier's personnel, regulators and Clients of the Client.

## 28. Termination

28.1 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (i) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 90 days after being notified [in writing] to make such payment;
- (ii) the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 28 days after being notified in writing to do so;
- (iii) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (iv) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (v) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
- (vi) the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (vii) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (viii) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);

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- (ix) the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (x) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- (xi) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (xii) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 28.1(iv) to clause 28.1(xi) (inclusive);
- (xiii) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (xiv) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.

28.2 For the purposes of clause 28.1(ii), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:

- (i) a substantial portion of this agreement; or
- (ii) any of the obligations set out in clauses 5 to 13 inclusive,

over the term of this agreement. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

28.3 Without affecting any other right or remedy available to it, the Client may terminate this agreement with immediate effect by giving written notice to the Supplier if:

- (i) the Supplier commits a breach of clause 24; and
- (ii) there is a change of Control of the Supplier.

28.4 The Client shall have the right to end this agreement at any stage by giving not less than 6 months' written notice to terminate to the Supplier.

28.5 If the agreement does not terminate due to conditions in clause 28.1 to 28.4 being met then it shall end on the Termination Date.

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## 29. Obligations on termination and survival

### 29.1 Obligations on termination or expiry

On termination or expiry of this agreement:

- (i) the Supplier shall immediately deliver to the Client all Deliverables whether or not then complete, and return all Client Materials and the Client's Equipment. If the Supplier fails to do so, then the Client may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this agreement; and
- (ii) the Supplier shall, if so requested by the Client, provide all assistance reasonably required by the Client to facilitate the smooth transition of the Available Services to the Client or any replacement supplier appointed by it including the assistance as set out in the relevant Purchase Order.

### 29.2 Survival

- (i) Unless this agreement is terminated due to a condition in Clause 28.1 to 28.3 being satisfied and the agreement being terminated on such grounds, all existing Purchase Orders shall be honoured and completed by the Supplier.
- (ii) Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- (iii) Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## 30. Inadequacy of damages

- 30.1 Without prejudice to any other rights or remedies that the Client may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement by the Supplier. Accordingly, the Client shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this agreement.

## 31. Force majeure

- 31.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

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- (i) acts of God, flood, drought, earthquake or other natural disaster;
- (ii) epidemic or pandemic;
- (iii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (iv) nuclear, chemical or biological contamination or sonic boom;
- (v) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
- (vi) collapse of buildings, fire, explosion or accident; and
- (vii) any labour or trade dispute, strikes, industrial action or lockouts [other than in each case by the party seeking to rely on this clause, or companies in the same group as that party]; and
- (viii) interruption or failure of utility service.

31.2 Provided it has complied with clause 31.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

31.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

31.4 The Affected Party shall:

- (i) as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- (ii) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

31.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 8 weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving 7 weeks' written notice to the Affected Party.

## 32. Assignment and other dealings

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32.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

32.2 The Client may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement, provided that it gives prior written notice of such dealing to the Supplier.

### 33. Variation

33.1 Subject to clause 16 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

### 34. Waiver

34.1 A waiver of any right or remedy under this agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

34.2 A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

34.3 A party that waives a right or remedy provided under this agreement or by law in relation to one party or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

### 35. Rights and remedies

35.1 The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### 36. Severance

36.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

36.2 If any provision or part-provision of this agreement is deemed deleted under clause 36.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 37. Entire agreement

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- 37.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 37.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

### 38. Conflict

- 38.1 If there is an inconsistency between any of the provisions of this agreement and the provisions of any Purchase Order, the provisions of this agreement shall prevail.

### 39. No partnership or agency

- 39.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 39.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

### 40. Third party rights

- 40.1 Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.
- 40.2 The rights of the parties to rescind or vary this agreement are not subject to the consent of any other person.

### 41. Notices

- 41.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next Business Day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) sent by email to [buying@nyhighways.co.uk](mailto:buying@nyhighways.co.uk) or [commercial@nyhighways.co.uk](mailto:commercial@nyhighways.co.uk).

- 41.2 Any notice shall be deemed to have been received:

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- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

41.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

#### 42. Counterparts

42.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

42.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as transmission of an executed "wet-ink" counterpart of this agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original[s] of their counterpart.

42.3 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

#### 43. Multi-tiered dispute resolution procedure

43.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in any Purchase Order, the parties shall follow the procedure set out in this clause:

- (i) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Key Contacts (see Schedule 1) for both the Client and Supplier shall attempt in good faith to resolve the Dispute;
- (ii) if the Key Contacts for the Client and Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a Director of the Client and a director or senior manager of the Supplier who shall attempt in good faith to resolve it; and
- (iii) if the director of the Client and director/senior manager of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the

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Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than **7** days after the date of the ADR notice.

- 43.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 44 which clause shall apply at all times.
- 43.3 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of 30 days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 45.

#### **44. Appointment of sub-contractors**

- 44.1 The Supplier shall exercise due skill and care in the selection and appointment of any sub-contractors to ensure that the Supplier is able to:
- (i) manage any sub-contractors in accordance with best practice in the Supplier's industry, profession or trade;
  - (ii) comply with its obligations under this agreement in the delivery of the Available Services; and
  - (iii) assign, novate or otherwise transfer to the Client or any replacement supplier any of its rights and/or obligations under each sub-contract that relates exclusively to this agreement.
- 44.2 Prior to sub-contracting any of its obligations under this contract, the Supplier shall notify the Client in writing of:
- (i) the proposed sub-contractor's name, registered office and company registration number;
  - (ii) the scope of any of the Available Services to be provided by the proposed sub-contractor; and
  - (iii) where the proposed sub-contractor is connected to the Supplier, evidence that demonstrates to the reasonable satisfaction of the Client that the proposed sub-contract has been agreed on "arm's-length" terms.

#### **45. Governing law**

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45.1 This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**46. Jurisdiction**

46.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

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**Schedule 1 Service Specification**

1. [Specification to be entered here]

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**Schedule 2 Supplier's Response and Clarifications**

1. **[TENDER SUBMISSION & CLARIFICATIONS TO BE INSERTED]**

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### Schedule 3 Key Contacts

	Client	Supplier
Operational queries	[Operations Manager?]	
Order Queries	<u><a href="mailto:Buying@nyhighways.co.uk">Buying@nyhighways.co.uk</a></u>	
Invoices	<u><a href="mailto:NYHfinance@northyorks.gov.uk">NYHfinance@northyorks.gov.uk</a></u>	
Invoice Queries	<u><a href="mailto:NYHenquiries@northyorks.gov.uk">NYHenquiries@northyorks.gov.uk</a></u> or by telephone 01609 534630 between 08:30-17:00 Monday to Thursdays, 08:30 – 16:30 Friday	
General Framework Management Queries	[Buying Representative <u><a href="mailto:Buying@nyhighways.co.uk">Buying@nyhighways.co.uk</a></u> or Commercial Representative <u><a href="mailto:Commercial@nyhighways.co.uk">Commercial@nyhighways.co.uk</a></u> ]	
Dispute Notices	[Buying Representative <u><a href="mailto:Buying@nyhighways.co.uk">Buying@nyhighways.co.uk</a></u> or Commercial Representative <u><a href="mailto:Commercial@nyhighways.co.uk">Commercial@nyhighways.co.uk</a></u> ]	
Dispute Escalation	Andrew Binner - Head of Commercial <u><a href="mailto:Andrew.binner@nyhighways.co.uk">Andrew.binner@nyhighways.co.uk</a></u>	
[Additional key contacts]		

#### Schedule 4 Reference Charges and Payment Terms

**Fixed price:** [PRE-AGREED PRICES FOR PARTICULAR SERVICES OR METHOD OF CALCULATING FIXED PRICE]

**Time and materials:**

Daily rates: [DAILY RATES FOR MEMBERS OF THE SUPPLIER'S TEAM]

Weekend/overtime rates: [WEEKEND/OVERTIME RATES OF MEMBERS OF THE SUPPLIER'S TEAM]

**Additional charges:**

The following materials and services procured from third parties shall be invoiced to the Client in addition to the Charges: [DETAILS OF THIRD PARTY MATERIALS AND SERVICES TO BE CHARGED IN ADDITION TO THE CHARGES]

**Payment terms:**

Invoicing and Payments

2. The Supplier is required to submit invoices monthly in arrears to the address detailed in the Purchase Order.
3. Each invoice must be fully broken down to show all elements of the services/goods/works which have been provided in the preceding month.
4. The Client will pay undisputed invoices within 30 days of receipt. In the event any invoice is disputed this period will not commence until the disputed element has been resolved. Where feasible to do so, the undisputed element of the invoice will be paid within the 30-day period.
5. The Client operates a "Procure to Pay" (P2P) system which includes a requirement for electronic invoices to be directly submitted by the Supplier. The Supplier must have the capability to raise electronic invoices. Any expenses to the Supplier involved in the submission of electronic invoices shall be met by the Supplier.

**Increase in Charges:**

6. All pricing submitted must be fixed for the first 2 years of the contract, and then subject to CPI for years 3 and 4.
7. Once the initial 24 months of the contract duration have elapsed, the costs may be reviewed and capped at the most recently published Office for National Statistics (ONS) headline rate for the Consumer Price Index (CPI), subject to paragraph 3 below. Any such increase or decrease would apply from the anniversary of the Commencement Date for the remainder of the contract duration.

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8. The Supplier must absorb the first 2% of the figure most recently published by the ONS for the CPI. The Client will only meet the balance of any published amount subject to the Client being liable for a maximum increase of 3% e.g. if the most recently published CPI at the point of extension is 9% the Client will only pay 3% and the Supplier must absorb the remaining 6% (in effect the Supplier meets the first 2% and the last 4% of the total 9%, with the Client meeting their maximum of 3%)."

Or

9. Pricing detailed in Schedule (Reference Charges and Payment Terms) shall be fixed for the first **two years** of the agreement. Thereafter the pricing shall be adjusted on each anniversary of the Commencement Date. Any increase in price shall be capped in line with the most recently published Office for National Statistics (ONS) published headline rate for the Consumer Price Index (CPI).

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**Schedule 5 Mandatory Policies**

The Mandatory Policies can be accessed via the NY Highways website (<https://nyhighways.co.uk/suppliers/>) and are:

- **[Depot and Site Visitors Procedure]**
- Dignity and Respect at Work
- Drugs, Alcohol and Substance Misuse Policy
- Environment policy
- Health and Safety policy arrangements:
- Statement of intent
- Organisational responsibilities
- HSA04 Control of Contractors
- Lifting Procedure
- PPE Standards
- Site Standard
- Behaviours Framework (include in all tenders)]

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## Schedule 6 Data Processing

- The contact details of the Client's Data Protection Officer is:

Information Governance Office  
Veritau  
West Offices  
Station Rise  
York  
North Yorkshire  
YO1 6GA

Email: [infogov@northyorks.gov.uk](mailto:infogov@northyorks.gov.uk)  
Telephone: 01904 552848

- The contact details of the Supplier's Data Protection Officer is:

[Insert contact details]

- Pursuant to clause 25 of the Agreement, the Supplier shall process the Personal Data as follows and any further instructions from the Client shall be incorporated into this Schedule 6 Data Processing.

Description	Details
Subject matter of the processing	The Supplier processes the Personal Data under the agreement for the purposes set out in the agreement and otherwise in the furtherance of the arrangements between the Parties, in each case in connection with the provision of the Services.
Duration of the processing	For as long as is necessary for the Supplier to comply with its obligations under the agreement and for the furtherance of the arrangements between the Parties, and as otherwise permitted by this agreement.
Nature and purposes of the processing	Processing activities such as collection recording, and storage may be undertaken by the Supplier for the purpose of fulfilling orders for the Services. For example Purchase Orders may include named staff from the Client and their work contact details.
Type of Personal Data being processed.	Personal Data: name, address, telephone number in relation to the Client's staff
Categories of Data Subject	Depending on the circumstances, the Personal Data may concern one or more of the following categories of Data Subjects (as determined by the Client or agreed

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	between the Parties) and such other categories as the Client may specify or the Parties may agree from time to time: Staff (including volunteers, agents, and temporary workers),
Plan for return and destruction of the Personal Data once the processing is complete UNLESS requirement under union or member state law to preserve that type of Personal Data	The Personal Data (and any copies of it) will be returned to the Client once the processing activity to which it relates has been completed and on termination of this agreement unless the Parties agree in writing that it can instead be securely destroyed in any particular case in accordance with an agreed document retention and destruction policy.

## Schedule 7 TUPE on exit

### 1. Personnel

1.1 In this Schedule 7 TUPE on exit, the following definitions apply:

- (i) **New Supplier:** another party chosen by the Client to take over the provision of all or part of the Works.
- (ii) **Returning Employees:** those persons listed in a Schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Works immediately before the Subsequent Transfer Date.
- (iii) **Subsequent Transfer Date:** means the date or dates on which there is a transfer of responsibility for the provision of the Works or part of the Works between the Supplier and the Client and/or a New Supplier (as the case may be).
- (iv) **TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

1.2 The parties acknowledge and agree that where all or part of the Works cease to be provided by the Supplier for any reason and where all or part of the Works continue to be provided by the Client and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the Client and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the Client and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.

1.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Client and/or the New Supplier.

1.4 The Supplier shall not later than [six] months prior to the expiry of [this agreement OR the relevant Statement of Work] (or, if earlier, within [NUMBER] days of notice being given of termination of this agreement) to the extent lawfully permitted provide the Client with the following details:

- (i) a list of those personnel engaged in the Works (**Potential Returning Employees**);
- (ii) job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;

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- (iii) terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
- (iv) any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
- (v) any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
- (vi) all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees; and
- (vii) information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.

The Supplier shall provide updates of the details listed above at regular intervals to be specified by the Client.

1.5 The Supplier shall indemnify the Client (both for itself and a New Supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Client and/or a New Supplier in connection with or as a result of:

- (i) any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;
- (ii) any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the Client and/or New Supplier to comply with its or their duties under regulation 13 of TUPE; and
- (iii) a claim by any person who transfers or alleges that they have transferred to the Client or the New Supplier but whose name is not included in the list of Returning Employees.

1.6 If TUPE applies to transfer the employment of any person employed by the Supplier to the Client or any New Supplier then if the Client or such New Supplier shall serve a notice terminating the employment of such person within [six months] after the date of such transfer, the Supplier shall indemnify the Client (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the Client is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.

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**For and on behalf of the Supplier**

Name and Title	
Signature	
Date	

Name and Title	
Signature	
Date	

**For and on behalf of the Client**

Name and Title	
Signature	
Date	

Name and Title	
Signature	
Date	