

General terms and conditions for the provision of services

4. Performance and obligations of the Contractor

- 4.1 The Contractor shall carry out the Services in accordance with the Service Specification and the terms of the Contract. Unless otherwise specified in the Contract, the Contractor undertakes that the design, workmanship and materials used will be fit to achieve the purpose for which the Services are required, either as specified by the Authority expressly in the Contract or as may be implied from the Contract. The Contractor shall exercise all reasonable skill, care and diligence in the performance and discharge of the Services.
- 4.2 The Contractor shall provide all supervision, labour, materials, transport, plant, tools, equipment and facilities necessary to perform the Services in accordance with the Contract.
- 4.3 The Contractor shall proceed with the carrying out of the Services regularly, diligently and shall meet any dates related to the performance of the Services (or any part of the Services) included in the Contract.
- 4.4 Unless otherwise provided for the Contractor shall not deliver any items to the Premises or remove any items belonging to the Authority from the Premises without having first obtained written permission from the Authority. The Contractor shall maintain written records of all items so delivered or removed.
- 4.5 With effect from the Commencement Date, the Contractor shall be deemed to have inspected the Premises and to have satisfied itself of the conditions and all circumstances affecting the Premises and the carrying out of the Services. Accordingly, the Contractor shall not be entitled to bring any claim for additional payment or an extension of time for performance of the Services on the grounds of any matter relating to the Premises or as to the circumstances or conditions under which the Services are to be provided, except where such matter, circumstance or condition has arisen after the Commencement Date and could not have been reasonably foreseen by the Contractor.

5. Contract management

- 5.1 The Contractor and the Authority shall comply with their respective contract management obligations (if any) set out in Schedule 6 (Contract Management) of the Contract.

6. Contractor's staff

- 6.1 The Contractor must employ sufficient staff to ensure that the Services are provided in accordance with the Service Specification at all times. The Contractor must ensure that a sufficient reserve of staff is available to provide the Services during planned and unplanned staff absences.
- 6.2 The Contractor must employ for the purposes of this Contract only such persons as are careful, skilled and experienced in the duties required of them, and must ensure that every such person is properly and sufficiently trained and instructed and carries out the Services with regard to (and in compliance with):
- a) the task that person has to perform;
 - b) all relevant provisions of the Contract;

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- c) all relevant rules, policies, procedures and standards of the Authority;
- d) fire risks and fire precautions;
- e) the need to observe the highest standards of hygiene, courtesy and consideration; and
- f) the requirements of the Health and Safety at Work Act 1974 and other relevant legislation and codes of practice.

- 6.3 The Contractor must provide all of its staff attending the Premises with a form of identity acceptable to the Authority and must ensure that they display that identity on their clothing at all times when they are on the Premises.
- 6.4 The Contractor must ensure that its staff do not smoke on the Premises except where smoking is expressly permitted.
- 6.5 The Contractor must remove any of its staff from the Premises if on grounds of efficiency or public interest (or under clause 8.3) the Authority requests it to do so.
- 6.6 The Contractor shall comply with any staff vetting procedures notified in writing to the Contractor by the Authority in respect of all Contractor personnel employed or engaged in the provision of the Services. Where Contractor personnel employed or engaged in the provision of the Services have not been vetted to the standard set out in such staff vetting procedures, the Authority may require that such personnel immediately cease providing the Services or any part thereof.
- 6.7 The Contractor shall ensure that no person who discloses that he has a conviction (other than motoring offences), or who is found by the Contractor to have any convictions (other than motoring offences) whether as a result of a police check or through the Disclosure and Barring Service (formerly known as the Criminal Records Bureau) procedures or otherwise, is employed or engaged in the provision of any part of the Services without the Authority's prior and express written consent.
- 6.8 If the Contractor uses persons other than its employees to perform the Services, the Contractor shall be fully responsible for the work performed by such persons and the provisions of the Contract shall apply to such persons as if they were members of the Contractor's staff.

7. Liaison

- 7.1 The Contractor shall appoint a representative (the '**Contractor's Representative**') and such appointment shall be notified to the Authority within 10 Working Days after the Commencement Date. The Contractor's Representative shall be responsible for liaison with the Authority.
- 7.2 The Contractor shall notify the Authority promptly of any proposed change to the identity of the Contractor's Representative. Any replacement of the Contractor's Representative shall be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).
- 7.3 The Authority shall appoint a representative (the '**Authority Representative**') and such appointment shall be notified to the Contractor within 10 Working Days after the

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Commencement Date. The Authority shall not be liable for any instructions issued to the Contractor by any person other than the Authority Representative.

- 7.4 The Authority shall notify the Contractor promptly of any proposed change to the identity of the Authority Representative.

8. Access for the Contractor

- 8.1 The Authority shall give the Contractor access to the Premises for the purpose of carrying out the Services at such times as may be specified in the Contract or, if not so specified, as may reasonably be required by the Contractor to carry out the Services in accordance with the Contract.

- 8.2 While on the Premises, the Contractor shall comply strictly with all applicable statutory enactments and regulations, the Authority's applicable policies and procedures (copies of which are available to the Contractor on request) and instructions from the Authority.

- 8.3 The Authority shall have the right to require the Contractor to remove immediately from the Premises any employee or Sub-Contractor who has:

- a) failed to comply with any of the applicable enactment's, regulations, policies, procedures or instructions; or
- b) in the sole opinion of the Authority has not conducted himself appropriately or been negligent or incompetent,

without thereby incurring any responsibility to the Contractor for any additional costs or time.

- 8.4 The Contractor shall be solely responsible for the suitability and safety of any equipment or tools used by the Contractor's staff and shall not use any equipment or tools, which may be unsuitable, unsafe, or likely to cause damage. The Authority may inspect any such equipment or tools at any time and may require the Contractor to remove from the Premises, any equipment or tools which in the sole opinion of the Authority are unsuitable, unsafe, or likely to cause damage and replace the same, without incurring any responsibility to the Contractor for additional cost or time.

- 8.5 The Contractor shall ensure that at all times when employees of the Contractor are present on the Premises they have present a competent supervisor, and any instructions given by the Authority to that supervisor shall be considered as given to the Contractor.

- 8.6 The Contractor shall be responsible for the obtaining of any wayleaves, permissions, approvals and licences as required for any installation works to take place in locations outside of the Premises.

- 8.7 Without relieving the Contractor of its duty to deliver the Services, the Authority reserves the right to refuse any employee or Sub-Contractor of the Contractor access to the Premises where, in the Authority's absolute discretion, such person's behaviour is unacceptable or they have not satisfied or been subject to the relevant checks referred to in clause 6.

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12. Confidentiality

- 12.1 Any party receiving Confidential Information from the other (**'Receiving Party'**) shall (except as may be subsequently agreed in writing by the party disclosing the Confidential Information (**'Disclosing Party'**)) at any time after the Commencement Date:
- a) keep all Confidential Information of the Disclosing Party strictly confidential and not disclose any part of it to any other person without the Disclosing Party's prior written consent and then only under conditions of confidentiality no less onerous than those contained in the Contract;
 - b) act in good faith at all times in relation to the Disclosing Party's Confidential Information, and will not use any of the Disclosing Party's Confidential Information for any purpose other than the performance of the Contract;
 - c) use the same degree of care to protect the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature, being at least a reasonable degree of care;
 - d) only disclose the Disclosing Party's Confidential Information to its professional advisers, its officers and employees who have a need to have access to the Disclosing Party's Confidential Information for the performance of their work with respect to the Contract, and who are bound by a written agreement or professional obligation to protect the confidentiality of the Disclosing Party's Confidential Information provided that the Receiving Party shall retain full liability for any act or omission of any person to whom Confidential Information is disclosed under this clause 12.1 which would have constituted a breach by that person of the terms of the Contract had such person been a party to it; and
 - e) promptly advise the Disclosing Party of any unauthorised use or disclosure of the Disclosing Party's Confidential Information of which it becomes aware.
- 12.2 The restrictions set out in clause 12.1 shall not apply with respect to Confidential Information which:
- a) is known to the Receiving Party before disclosure directly or indirectly by the Disclosing Party, and is not subject to any obligation of confidentiality;
 - b) is or becomes publicly known through no act or default on the part of the Receiving Party;
 - c) is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that there has been a breach of a duty of confidence; or
 - d) is independently developed by the employees, agents or sub-contractors of the Receiving Party without access to the Disclosing Party's Confidential Information.
- 12.3 The restrictions in this clause 12 do not apply to the extent (and only to the extent) that any Confidential Information is required to be disclosed by the Receiving Party by any law or regulation, judicial or governmental request or order provided that to the extent the Receiving Party is permitted by law:
- a) the Receiving Party must inform the Disclosing Party, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the Confidential Information required to be disclosed; and

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- b) the Receiving Party must take all reasonable steps to (i) minimise the disclosure required of the Disclosing Party's Confidential Information and (ii) where possible ensure the continued confidentiality of the Confidential Information disclosed.

- 12.4 All Confidential Information shall remain the property of the Disclosing Party, and (subject to clause 29) the Receiving Party shall not acquire any Intellectual Property Rights or other rights in the Disclosing Party's Confidential Information by virtue of the Contract, except for the right to use it in accordance with the terms of this Contract.
- 12.5 The parties acknowledge that the Authority is subject to the FoIA and, notwithstanding anything to the contrary in the Contract, may be obliged to disclose any information (including Confidential Information) which it holds in response to a request received under that Act and such disclosure shall in no circumstances be deemed to be a breach of the Contract.
- 12.6 Nothing in this clause 12 shall be deemed or construed to prevent the Authority from disclosing any Confidential Information obtained from the Contractor to any other contracting authority (as defined in the Public Contracts Regulations 2006), provided that the Authority has required that such information is treated as confidential by such contracting authorities and their employees, including requiring employees to enter into a confidentiality agreement prior to disclosure of the Confidential Information, whereupon the Authority shall have no further liability for breach of confidentiality in respect of such contracting authorities. All contracting authorities in receipt of such Confidential Information shall be considered as parties to this Contract within Section 1 of the Contracts (Rights of Third Parties) Act 1999 for the purpose only of being entitled to further disclose the Confidential Information to other contracting authorities on such terms.
- 12.7 Nothing in this clause 12 shall prevent the Contractor or the Authority from using data processing techniques, ideas and know-how gained during the performance of this Contract in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the Authority or the Contractor of any Intellectual Property Rights.

13. Default by Contractor

- 13.1 If the Contractor is in breach of any of its obligations under the Contract, the Authority shall be entitled to give the Contractor notice in writing to forthwith remedy such breach.
- 13.2 If the Contractor fails to comply with such notice within seven (7) days following its receipt or such longer period as the Authority may allow in writing having regard to the nature of the breach, the Authority shall be entitled forthwith to terminate the Contract and either carry out himself or employ others to carry out the Services that the Contractor has not performed at the Contractor's risk and cost.
- 13.3 Upon such termination, the Authority shall be under no obligation to pay the Contractor any further sums until the whole of the Services, which were to have been provided by the Contractor under the Contract, have been completed. Upon such completion the Authority shall pay to the Contractor, or be entitled to recover from the Contractor, the difference between the sums due to the Contractor for the Services performed by the Contractor in accordance with the Contract up to the date of termination, and the costs incurred by the Authority in the completion of the Services, together with the direct damages suffered by the Authority arising out of the Contractor's default.

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provided that each party shall be entitled to retain one copy of such information if and solely to the extent required for the purposes of satisfying any of its audit and regulatory requirements; and

- d) the Contractor shall deliver to the Authority all materials developed in performance of the Services then in the Provider's possession or control whatever their state of development at that time, and all materials and information reasonably required by the Authority to complete any partially completed materials and continue delivery of the Services itself or through another third party.

- 15.3 Provisions of the Contract which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.

16. Costs

- 16.1 Each party shall bear its own costs with regard to the finalisation of this Contract prior to its execution.

17. Indemnity

- 17.1 The Contractor shall indemnify and keep indemnified the Authority against any liability, loss, costs, expenses, claims or proceedings whatsoever arising under any statute or at common law in respect of:

- a) any loss or damage to property (whether real or personal); and
- b) any injury to any person, including injury resulting in death

in any way arising out of the provision of the Services by the Contractor, its employees or Sub-Contractors except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Authority, its employees or agents (not being the Contractor or employed by the Contractor).

18. Insurance

- 18.1 Subject to the requirements (if any) set out in Schedule 12 (Insurance), without prejudice to its liability to indemnify the Authority under clause 17 the Contractor shall throughout the Contract Period maintain the following insurances with a reputable insurance company:

- a) third party insurance against all loss of and damage to property and injury to persons (including death) under which the cover shall not be less than £10,000,000 in respect of any one incident; and
- b) professional indemnity insurance under which the cover is not less than £500,000 in respect of any one incident and shall maintain such cover for six (6) years after the end of the Contract for all claims to which this clause applies.

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- 18.2 The Contractor shall upon request made from time to time produce to the Authority documentary evidence that the insurances required by clauses 18.1(a) and 18.1(b) are properly maintained.
- 18.3 The Contractor shall also maintain Employer's Liability Insurance in accordance with the Employers Liability (Compulsory Insurance) Act 1969 and such insurance policy (ies) shall incorporate a waiver of subrogation rights against the Authority.

19. Severance of terms

- 19.1 If any provision contained in this Contract is held by any competent authority to be invalid or unenforceable in whole or in part, it shall insofar as it is severable from the remainder of the Contract, be deemed to be omitted from the Contract and the validity of the other provisions contained in this Contract and the remainder of the provision in question shall not be affected thereby.

20. Entire agreement

- 20.1 This Contract contains or expressly refers to the entire agreement between the parties with respect to the subject matter hereof and expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the parties, and each party acknowledges and confirms that it does not enter into this Contract in reliance on any representation warranty or other undertaking not fully reflected in the terms of this Contract.

21. Amendments

- 21.1 Any amendments to this Contract shall be made in writing and signed by authorised signatories of the parties hereto.

22. Variations and Change Control

- 22.1 In the event that the Authority shall require any reasonable alteration or addition to or omission from the Services or any part thereof (hereinafter referred to as a '**Variation**'), the Contractor shall state in writing the effect such Variation will have on the Services and what adjustment, if any, will be required to the Charges. The Contractor shall furnish such details within fourteen (14) days after receipt of the Authority's written request or such other period as may be agreed.
- 22.2 In the event that the Contractor is unable to accept the Variation or where the parties are unable to agree a change in the Charges, the Authority may:
- a) allow the Contractor to fulfil its obligations under the Contract without the variation; or
 - b) acting reasonably, terminate the Contract with immediate effect upon giving notice to the Contractor.
- 22.3 The Contractor shall be obliged to satisfy the Authority as to the reasonableness of the extra costs or savings resulting from Variations under this clause 22.

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- 22.4 The Contractor shall not vary the Services in any respect unless instructed in writing to do so by the Authority.
- 22.5 No Variation shall be binding unless it has been agreed in writing and signed by both the Contractor's Representative and the Authority Representative (each as defined in clause 7).
- 22.6 The provisions of this clause 22 are subject to the requirements (if any) set out in Schedule 7 (Change Control),

23. Disputes

- 23.1 The parties each agree that they will attempt in good faith to resolve any claim or dispute arising out of or in connection with the Contract promptly through negotiations between their respective senior executives and management. If the parties are unable to resolve the dispute or claim in accordance with this clause 23.1, either party may commence proceedings in accordance with clause 43.
- 23.2 Nothing in this clause 23 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.

24. Health and safety

- 24.1 The Contractor represents and warrants to the Authority that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of any equipment to be used in the performance of the Services to ensure that such equipment is designed and constructed as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Authority adequate information about the use for which such equipment has been designed and has been tested and about any conditions necessary to ensure that when put to use such equipment will be safe and without risk to the health or safety of any individual.
- 24.2 The Contractor shall at all times comply with the requirements of the Health and Safety at Work Act 1974 and of any other acts, regulations, orders or rules of law pertaining to health and safety.
- 24.3 The Contractor shall forthwith nominate a person to be responsible for health and safety matters relating to the Contract. Whilst on the Premises, the Contractor shall ensure that its employees and Sub-Contractors comply with the Authority's general statement of safety policy and with the lawful requirements of the Authority's health and safety representative.
- 24.4 The Authority shall be able to suspend the provision of the Services or part thereof in the event of non-compliance by the Contractor with this clause 24. The Contractor shall not resume provision of the Services or such part until the Authority is satisfied that the non-compliance has been rectified.

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24.5 The Contractor shall indemnify the Authority against all actions, suits, claims, demands, losses, charges, costs and expenses which the Authority may suffer or incur as a result of or in connection with any breach of this clause 24.

25. Contracts (Rights of Third Parties) Act 1999

25.1 To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. For the avoidance of doubt the consent of any person other than the Authority (or the Contractor, as the case may be) is not required to vary or terminate this Contract.

25.2 Except as provided in clause 25.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause 25.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999.

26. Non-discrimination

26.1 The Contractor shall:

- a) comply with and maintain policies to ensure that it and its Sub-Contractors comply with their and the Authority's statutory obligations under the Equality Act 2010, and not unlawfully discriminate against any person in decisions to recruit, train, promote, discipline, or dismiss or in the provision of the Services (whether in relation to marital status, colour, race, gender, religious belief, sexual orientation, nationality (including citizenship), on the grounds of their disability or otherwise);
- b) comply with the Authority's reasonable requirements from time to time in relation to the elimination of unlawful discrimination and promotion of equality, opportunity and good relations between persons of different racial groups to the extent necessary to ensure compliance with the provisions of the Equality Act 2010;
- c) provide such information as the Authority may reasonably require for the purpose of assessing the Contractor's compliance with this clause 26 including, if requested, recruitment advertisements or other literature and details monitoring applicants and employees;
- d) exercise its duty under the Equality Act 2010 to make reasonable adjustments as defined and described in that Act;
- e) observe, as far as is reasonably practicable, the Equality and Human Rights Commission's Codes of Practice published from time to time during the Contract Period (or any codes published by any body that replaces the Equality and Human Rights Commission);
- f) take all reasonable steps to procure the observance of the provisions of clause 26.1 in the provision of the Services by all employees, agents and consultants of the Contractor and its Sub-Contractors.

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26.2 In the event of any finding of unlawful sex, racial or disability discrimination being made against the Contractor or its Sub-Contractors during the Contract Period by any court or tribunal, or of an adverse finding in any formal investigation (in the case of sex and racial discrimination only) by the Equality and Human Rights Commission over the same period, the Contractor shall inform the Authority of this finding forthwith and shall (but, in the event of an appeal, only after the final and unsuccessful outcome of the appellate process) take appropriate steps to the reasonable satisfaction of the Authority to prevent repetition of the unlawful discrimination.

27. Human rights

27.1 The Contractor shall comply with the Human Rights Act 1998 and any regulations or code of practice made thereunder and in carrying out such obligations shall act as though the statutory provisions relating to public authorities under the Human Rights Act 1998 and any regulations or code of practice made thereunder applied to the Contractor and shall indemnify the Authority in respect of all actions, claims, liabilities and demands suffered or incurred by the Authority arising out of any breach by the Contractor of this clause.

28. Environmental impact

28.1 The Contractor shall comply in all material respects with all applicable environmental laws and regulations in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by the Authority.

28.2 The Contractor shall meet all reasonable requests by the Authority for information evidencing compliance with the provisions of this clause 28 by the Contractor.

29. Intellectual property rights

29.1 Where any Intellectual Property Rights owned or licensed by the Authority are required to be used in connection with the provision of the Services, the Contractor acknowledges that it shall have no right to use the same except to the extent necessary for the provision of the Services and subject to such consents and restrictions as may be specified by the Authority.

29.2 The Contractor hereby assigns (with full title guarantee) to the Authority ownership of any and all Project IPR and shall procure the waiver in favour of the Authority of all moral rights relating to the Project IPR. The Contractor undertakes at the Authority's request and expense to execute all deeds and documents which may reasonably be required to vest such rights in the Authority and to give effect to this clause 29.2.

29.3 The Contractor hereby grants to the Authority an irrevocable, royalty-free non-exclusive licence of any and all Pre-existing IPR subsisting in any materials delivered to the Authority in the performance of the Services (the '**Deliverables**') for the purposes of receiving and using, and to the extent necessary to receive and use, the Services in accordance with the Contract.

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- 29.4 The Contractor warrants that it has in place contractual arrangements with all members of the Contractor's staff and its Sub-Contractors assigning to the Contractor their Intellectual Property Rights and waiving their moral rights (if any) in the Deliverables such that the Contractor can enter into the assignments, licences and waivers set out in this clause 29.
- 29.5 The Contractor warrants that the provision of the Services does not and will not infringe any third party's Intellectual Property Rights and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Authority harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority may suffer or incur as a result of or in connection with any breach of this clause 29, except where any such claim arises from:
- a) items or materials supplied by the Authority; or
 - b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.
- 29.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 29.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- a) shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
 - b) shall take due and proper account of the interests of the Authority; and
 - c) shall not settle or compromise any claim without the Authority's prior written consent (not to be unreasonably withheld or delayed).
- 29.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Authority or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Authority for all costs and expenses (including legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Authority in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause 29.5(a) or (b).
- 29.9 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract, or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:
- a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that

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the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

- b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Authority.

If the Contractor is unable to comply with either clause 29.9 (a) or (b) within twenty (20) Working Days of receipt of the Contractor's notification under this clause 29.9, the Authority may terminate the Contract with immediate effect by notice in writing.

29.10 The Contractor warrants that the Charges include any payments made or to be made to any third party in respect of any right, patent, design, trademark or copyright used for the purpose of performing the Contract.

29.11 The provisions of this clause 29 shall apply during the Contract Period and after its expiry or termination howsoever arising.

30. Data protection and information security

30.1 Where the Contractor pursuant to its obligations under this Contract, undertakes the Processing of Personal Data on behalf of the Authority, it shall:

- a) carry out the Processing of Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Contractor during the Contract Period);
- b) carry out the Processing of Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by any applicable law or regulatory body;
- c) notify the Authority within five (5) Working Days if it receives:
- a request from a Data Subject to have access to that person's Personal Data; or
 - a complaint or request relating to the Authority's obligations under the Data Protection Requirements;
- d) provide the Authority with full cooperation and assistance in relation to any complaint or request made (as described in clause 30.1(c), including by:
- providing the Authority with full details of the complaint or request;
 - complying with a data access request within the relevant timescales set out in the Data Protection Requirements and in accordance with the Authority's instructions;
 - providing the Authority with any Personal Data it holds in relation to the relevant Data Subject (within the timescales required by the Authority); and
 - providing the Authority with any further information requested by the Authority;

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- e) permit the Authority or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Contractor's Data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under this Contract;
- f) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- g) provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and
- h) take reasonable steps to ensure the reliability of any Contractor personnel who have access to the Personal Data;
- i) ensure that all Contractor personnel required to access the Personal Data are informed of the confidential nature of the Personal Data;
- j) ensure that none of the Contractor personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority;
- k) not undertake the Processing of Personal Data outside the European Economic Area without the prior written consent of the Authority and, where the Authority consents to a transfer, to comply with any reasonable instructions notified to it by the Authority including:
 - incorporating standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Requirements) in the Contract or a separate data processing agreement between the parties; and
 - procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Authority on such terms as may be required by the Authority, which the Contractor acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

30.2 The Contractor shall comply at all times with the Data Protection Requirements and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the Data Protection Requirements.

30.3 The Authority may from time to time serve on the Contractor an information notice (including the information described in Section 43 of the Data Protection Act 1998) requiring the Contractor within such time and in such form as is specified in the information

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notice, to furnish to the Authority such information as the Authority may reasonably require relating to:

- a) compliance by the Contractor with the Contractor's obligations under this Contract in connection with the Processing of Personal Data; and/or
- b) the rights of Data Subjects, including subject access rights.

30.4 With respect to the parties' rights and obligations under this Contract, the parties acknowledge that, except where otherwise agreed, the Authority is the Data Controller and the Contractor is the Data Processor. Where the Contractor wishes to appoint a Sub-Contractor to assist it in providing the Services and such assistance includes the Processing of Personal Data on behalf of the Authority, then, subject always to compliance by the Contractor with the provisions relating to the appointment of Sub-Contractors, the Authority hereby grants to the Contractor a delegated authority to appoint on the Authority's behalf such Sub-Contractor to undertake the Processing of Personal Data, provided that the Contractor shall notify the Authority in writing of such appointment and the identity and location of such Sub-Contractor. The Contractor warrants that such appointment shall be on substantially the same terms with respect to Data Protection Requirements as are set out in this Contract.

30.5 Save as set out in this Clause, any unauthorised Processing, use or disclosure of Personal Data by the Contractor is strictly prohibited.

30.6 The Contractor shall be liable for and shall indemnify (and keep indemnified) the Authority against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements on a solicitor and Authority basis) and demands incurred by the Authority which arise directly or in connection with the Contractor's Data Processing activities under this Contract, including those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Data Protection Requirements by the Contractor or its employees, agents or Sub-Contractors.

30.7 Principles of security

- a) The Contractor acknowledges that the Authority places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Contractor's systems. The Contractor also acknowledges the confidentiality of Authority Data and shall ensure that no Authority Data is copied to media, including laptops, CD, DVD, USBs, external hard drives or email, other than is necessary under the Contract.
- b) The Contractor shall at all times ensure that the level of security employed in the provision of the Services is in accordance with good industry practice and appropriate to prevent:
 - loss of integrity of Authority Data;
 - loss of confidentiality of Authority Data;
 - unauthorised access to, use of, or interference with Authority Data by any person or organisation;

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- unauthorised access to remote access connections used by the Contractor in the provision of the Services; and
 - use of the Contractor's services by any third party in order to gain unauthorised access to any computer resource or Authority Data.
- c) The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- d) If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and where such corruption, loss or degradation is due to the failure of the Contractor to comply with this clause 30.7 inform the Authority of the remedial action the Contractor proposes to take.

30.8 Breach of security

- a) Either party shall notify the other immediately upon becoming aware of any breach of the security of the Authority Data including any actual, potential or attempted breach, or threat to, such security.
- b) Upon becoming aware of any of the circumstances referred to in clause 30.8(a), the Contractor shall:
- immediately take all reasonable steps necessary to prevent an equivalent breach in the future. Such steps shall include any action or changes reasonably required by the Authority. In the event that such action is taken in response to a breach that is determined by the Authority acting reasonably not to be covered by the obligations of the Contractor under this Contract, then the Contractor shall be entitled to refer the matter to the procedure (if any) set out in Schedule 7 (Change Control); and
 - as soon as reasonably practicable provide to the Authority full details (using such reporting mechanism as may be specified by the Authority from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

31. Freedom of Information Act 2000 (FOIA)

- 31.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority (at the Contractor's expense) to enable the Authority to comply with these information disclosure requirements.
- 31.2 The Contractor shall and shall procure that its Sub-Contractors shall:
- a) transfer all Requests for Information to the Authority as soon as practicable after receipt and in any event within two (2) Working Days after receiving a Request for Information;

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- b) provide the Authority with a copy of all information in its possession or power relating to the relevant Request for Information in the form that the Authority requires within five (5) Working Days after receiving the relevant Request for Information (or such other period as the Authority may specify); and
- c) provide all necessary assistance as reasonably requested by the Authority to enable it to respond to a Request for Information within the time for compliance set out in Section 10 of the FoIA or Regulation 5 of the Environmental Information Regulations.

31.3 The Authority shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or other information:

- a) is exempt from disclosure in accordance with the provisions of the FoIA or the Environmental Information Regulations; or
- b) is to be disclosed in response to a Request for Information.

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

31.4 The Contractor acknowledges that the Authority may, acting in accordance with the Department for Constitutional Affairs' code of practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FoIA or the Environmental Information Regulations to disclose information:

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

31.5 The Contractor shall ensure that all information produced in the course of this Contract or relating to this Contract is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

The Contractor acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Authority may nevertheless be obliged to disclose Confidential Information in accordance with clause 12.5.

32. Publicity

32.1 The Contractor shall not advertise or publicly announce that it is supplying the Services or undertaking work for the Authority without the prior consent of the Authority, such consent not to be unreasonably withheld.

33. Anti-corruption and collusion

33.1 The Contractor undertakes and warrants that neither it nor the Contractor's staff, employees or Sub-Contractors have offered, given or agreed to give, nor shall offer or give or agree to give to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do anything in relation to the obtaining of the Contract or the execution of the Contractor's

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obligations under this Contract or for showing or forbearing to show favour or disfavour to any person, company or firm in relation to the Contract.

33.2 The Contractor warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with third parties.

33.3 The Contractor warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party relating to its pricing under this Contract and further warrants and undertakes that it has complied, and will at all times comply, with the provisions of the Competition Act 1998 (or equivalent anti-trust legislation or regulations applicable in the countries in which the Contractor operates or is to provide the Services) in connection with this Contract and the provision of the Services. Nothing under this clause 33.3 is intended to prevent the Contractor from discussing the terms of the Contract and the Contractor's pricing with the Contractor's professional advisors.

34. Agency

34.1 The Contractor is not and shall in no circumstances hold itself out as being the agent of the Authority, otherwise in circumstances expressly permitted by the Contract.

35. Whistle-blowing

35.1 The Contractor confirms that the corporate secretariat to the Authority is authorised as a person to whom the Contractor's staff may make a qualifying disclosure under the Public Interests Disclosure Act 1998 and declare that any of its staff making a protected disclosure (as defined by the said Act) shall not be subjected to any detriment. The Contractor further declares that any provision in an agreement purporting to preclude a member of its staff from making a protected disclosure is void.

36. Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989

36.1 To the extent such legislation is applicable to the Contractor, the Contractor shall comply with, and shall ensure that persons employed by the Contractor comply with, the provisions of:

- a) The Official Secrets Acts 1911 to 1989; and
- b) Section 182 of the Finance Act 1989.

36.2 In the event that the Contractor or persons employed by the Contractor fail to comply with this clause 36, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

37. Virus protection

37.1 The Contractor shall maintain throughout the Contract Period fully operational, effective, appropriate and up-to-date virus protection measures to minimise the risk of infections, loss or damage to any of the Authority's data (including the Authority Data). The Contractor

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shall also take all reasonable steps to minimise the risks of propagation and onward transmission of any virus. Such steps shall include regular and appropriate awareness programmes for the Contractor's staff on virus protection measures. The Contractor shall provide the Authority (upon demand) with written details of such virus protection measures that the Contractor has in place.

37.2 The Contractor shall notify the Authority immediately of:

- a) any virus infections that occur in any locations where the Authority's data is processed/stored;
- b) the damage caused to the Authority's data; and
- c) the actions that have been taken to eradicate the virus.

38. Waiver

38.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contract.

38.2 A waiver of any default under the Contract shall not constitute a waiver of any subsequent default.

39. Counterparts

39.1 This Contract may be executed in several counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument.

40. Audit access

40.1 The Contractor shall keep or cause to be kept full and accurate records of the Services performed under the Contract (including records in relation to the payment of the Charges) for seven (7) years after completion of the Services.

40.2 The Contractor shall grant to the Authority, any statutory auditors of the Authority and their respective authorised agents ('**Auditors**') the right of reasonable access to the records referred to in clause 40.1 and/or any premises of the Contractor and shall provide all reasonable assistance to the Authority and the Auditors at all times during and after the Contract Period for the purposes of enabling the Authority and the Auditors to carry out an audit of the Contractor's compliance with this Contract including all activities, charges, performance, security and integrity in connection therewith. Subject to clause 40.4, the Contractor shall be repaid any reasonable expenses incurred in giving any such reasonable assistance.

40.3 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the Contractor or any third party the Authority and their respective authorised agents shall have the right of immediate access to the records and/or any Contractor's premises described in clauses 40.1 and/or 40.2 and the Contractor

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agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract Period and at any time thereafter.

- 40.4 If any audit or investigation pursuant to this clause 40 reveals that the Authority has been overcharged or has made an overpayment in connection with the Contract, the Contractor shall reimburse the Authority the amount of the overcharge or overpayment within 14 days, and shall reimburse the Authority for the reasonable costs incurred by the Authority and the Auditors in respect of the relevant audit or investigation. For the avoidance of doubt, the Contractor shall only be repaid its reasonable expenses incurred in giving assistance pursuant to this clause 40 in the event that the relevant audit or investigation reveals no fraudulent activity or other impropriety by the Contractor, its employees, agents or Sub-Contractors.

41. Transfer of Undertakings (Protection of Employment) (TUPE)

41.1 Unless stated otherwise in Part A of this Schedule 4:

- a) the parties consider that the Transfer Regulations shall not apply to the termination (whether in whole or in part) of the Services. The Contractor agrees that it will not at any time contend for any purpose whatsoever that the Transfer Regulations apply upon the termination (whether in whole or in part) of the Services; and
- b) the Contractor shall be liable for and shall indemnify the Authority against any and all costs, liabilities, losses, damages or expenses (including reasonable legal expenses) incurred by the Authority or any Replacement Contractor arising from any claim against the Authority or such Replacement Contractor in connection with any allegation that an individual's employment should transfer or has transferred to the Authority or such Replacement Contractor (as applicable) upon the termination (whether in whole or in part) of the Services.

42. Force Majeure

42.1 Neither party shall be liable to the other for any failure to perform its obligations under the Contract for so long as and to the extent that such performance is rendered impossible by an event of Force Majeure, provided that:

- a) the Contractor shall use its best endeavours to fulfil its obligations under the Contract; and
- b) the party affected by the Force Majeure event shall as soon as reasonably practicable serve notice on the other party specifying the circumstances of the Force Majeure event.

42.2 If the Force Majeure event is such as to prevent or substantially delay the future performance of the Contract the Authority may terminate the Contract by written notice to the Contractor but shall pay the Contractor such reasonable sum agreed between the parties in respect only of the expenditure actually incurred and commitments entered into by the Contractor in the performance of the Contract up to the date of the Force Majeure event which have not been covered by the payments already made to the Contractor.

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43. Governing Law and Jurisdiction

43.1 This Contract and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law and the parties hereby irrevocably submits to the jurisdiction of the English courts to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Contract or its subject matter.

44. Data quality

44.1 The Contractor shall ensure the information it provides to the Authority from its own sources is accurate and shall use all reasonable endeavours to ensure the information it provides to the Authority from third parties is accurate.

45. Conflicts of interest

45.1 The Contractor shall disclose to the Authority Representative any actual or potential conflict of interest arising from the Contractor's provision of the Services as soon as is reasonably practical after becoming aware that such actual or potential conflict exists.

45.2 Should the parties be unable to either remove any conflict of interest notified under clause 45.1 or clause 45.3 and/or to alleviate its effect, the Authority shall have the right to terminate the Contract upon giving notice to the Contractor.

45.3 The Contractor shall immediately notify the Authority's representative of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the Contractor (including its reputation and standing) and/or the Authority of which it is aware or anticipates may justify the Authority taking action to protect its interests.

46. The Pensions Act 2004– Section 82 Restricted information

46.1 The parties acknowledge and agree that restricted information (as defined in clause 46.4) must not be disclosed:

- a) by the Authority; or
- b) by any person who receives the information directly or indirectly from the Authority.

46.2 Subsection (1) is subject to:

- a) clause 46.3; and
- b) sections 71(9), 83 to 88 and 235 of the Pensions Act 2004.

46.3 Subject to section 88(5) of the Pensions Act 2004, restricted information may be disclosed with the consent of the person to whom it relates and (if different) the person from whom the regulator obtained it.

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- 46.4 For the purposes of this clause 46, '**restricted information**' means any information obtained by the Authority in the exercise of its functions which relates to the business or other affairs of any person, except for information:
- a) which at the time of the disclosure is or has already been made available to the public from other sources; or
 - b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.
- 46.5 The parties acknowledge and agree that any person who discloses information in contravention of this section is guilty of an offence and liable:
- a) on summary conviction, to a fine not exceeding the statutory maximum, or imprisonment for a term not exceeding 12 months, or both;
 - b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two (2) years, or both.

47. Transparency

- 47.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions for the FoIA, the content of the Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FoIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FoIA redacted), including from time to time agreed changes to the contract, to the general public.
- 47.2 The Authority may consult with the Contractor to inform its decision regarding any exemptions and redactions but the Authority shall have the final decision in its absolute discretion to determine the extent to which the terms of the Contract as published under clause 47.1.
- 47.3 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract in accordance with this clause 47.

48. Performance bond

- 48.1 On the execution of the Contract, the Contractor shall at its own expense provide a bond from a bank or insurance company approved by the Authority for a sum equal to 100% of the estimated annual Charges payable under the Contract to guarantee the due performance of the Contractor's obligations under the Contract and for the payment by the Contractor to the Authority of all sums due hereunder.
- 48.2 The Contractor shall ensure that such bond remains in force throughout the Contract Period and satisfies any additional requirements set out in Schedule 10 (Performance Bond).

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49. Information Sharing

- 49.1 All Central Government Departments and their Executive Agencies and Non Departmental Public Bodies are subject to control and reporting within Government. In particular, they report to the Cabinet Office and HM Treasury for all expenditure. Further, the Cabinet Office has a cross-Government role delivering overall Government policy on public procurement - including ensuring value for money and related aspects of good procurement practice.
- 49.2 For these purposes, the Authority may disclose within Government any of the Contractor's documentation/information (including any that the Contractor considers to be confidential and/or commercially sensitive such as specific bid information) submitted by the Contractor to the Authority during this Procurement. The information will not be disclosed outside Government. Contractors taking part in this competition consent to these terms as part of the competition process.

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Part C – Expenses Policy

Day subsistence

This is claimable in the following circumstances:

The Authority will pay day subsistence when an individual works away (more than five miles) from home and their office for four or more hours in a day.

The allowances claimable are detailed below

Allowance	Amount	Reason
Breakfast	Up to £5.00	Left home before 7am to work away from office
Lunch	Up to £5.00	
Evening Meal	Up to £10.00	Not able to return home by 8pm but are not staying at a hotel

Night subsistence

Allowance	Amount	
Hotel	Up to £85.00 Up to £135.00	Outside London Inner London Claimable when needing to leave home before 7am or returning later than 8pm
Lodging allowance	£31.00	Payable when away from office or home for 30 or more consecutive nights
Evening meal	Up to £25.00	This includes small tip and VAT but no alcohol
Incidental expenses	£5.00	Newspapers and personal telephone calls

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Public transport

Allowance	
Taxis	Repayable only in the following circumstances 1) You are required to leave home before 7am when working away from the office; 2) You will be returning home after 9pm after working away from the office.
Rail	Standard class travel is the normal rate claimable. First class travel is not permitted.
Car Travel	Mileage rate of 45p per mile up to 6000 miles per year, and 25p per mile over 6001 miles per year
Air	Permissible only in the following instances: <ul style="list-style-type: none"> • More economical because of savings on cost.

Schedule 5

SLA

[to be inserted]

Schedule 6

Contract Management

[to be inserted]

Schedule 7

Change Control

[to be inserted]

Schedule 8

Project Plan

[to be inserted]

Schedule 9

Key Personnel

[to be inserted]

Schedule 10

Performance Bond

[to be inserted]

Schedule 11

Form of Parent Guarantee

[to be inserted]

Schedule 12

Insurance

[to be inserted]

Schedule 13

Vetting Procedures

[to be inserted]

Schedule 14

Health & Safety

[to be inserted]

Schedule 15

Sub-Contractors

[to be inserted]

Schedule 16

Commercially Sensitive Information

[to be inserted]

Schedule 17

Baseline Security

[to be inserted]

SAMPLE