

STANDARD TERMS & CONDITIONS

MANAGED SERVICES

1. DEFINITIONS

In these Conditions the following meanings shall apply:

"Agreement" means these terms and conditions, including the Summary of Services;

"Consultancy Services" means the consultancy services (if any) specified in the Summary of Services;

"AJACO" means AJACO Limited or its assignees; Registered Number 03357315. Registered and Operating Address AJACO, 7 Crossways Village, Silwood Road, Ascot, Berkshire, SL5 0PY;

"Approval" means the prior written consent of the Supplier or the Contracting Body as appropriate;

"Assignment" means an assignment under which the Temporary Worker sourced via the Supplier is providing Temporary Worker Services to the Contracting Body;

"Assignment Period" means the period from the Commencement Date to:

(a) the date upon which the Assignment with the Contracting Body shall end as determined by the Contracting Body and notified to the Supplier; or

(b) such earlier date of termination or partial termination of the Assignment in accordance with the provisions of this agreement or Law;

"Assignment Terms" means these terms and conditions in respect of the provision of the Temporary Worker Services;

"Commencement Date" means the date on which the Temporary Worker Services are first provided to the Contracting Body by the Temporary Worker;

"Consultancy Services Charge" means that part of the Contract Charge (if any) which relates to the Consultancy Services as specified in the Summary of Services;

"Contracting Authority" means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Contracting Body;

"Contracting Body" means the person for whom the Temporary Worker supplies the Temporary Worker Services;

"Contracting Body Data" means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

(i) supplied to the Temporary Worker by or on behalf of the Contracting Body; and

(ii) which the Temporary Worker is required to generate, process, store or transmit pursuant to the Assignment Terms; and

(b) any Personal Data for which the Contracting Body is the Data Controller;

"Contracting Body Pre Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Contracting Body prior to or independently of the performance by the Temporary Worker of the Temporary Worker Services and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Contracting Body's Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know how, personnel, and suppliers of the Contracting Body, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Contract Charge" means the charge for the Services specified in the Summary of Services;

"Crown" means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Customer" means the organisation to whom AJACO agrees to supply Services as specified in the Summary of Services;

"Direct Agreement" an agreement between the Contracting Body and the Temporary Worker, described in Clause 1.1.7;

"Embedded Materials" means any Temporary Worker Pre Existing IPR and/or Third Party Materials embedded or otherwise contained within any Temporary Worker Bespoke IPR;

"Equipment" means the services and /or items of equipment specified in a **[Schedule 1]**;

"Fix Time" means the number of hours which elapse between the receipt of a request for maintenance of the Equipment and completion of the maintenance by AJACO, or, where a maximum permitted Response Time is also specified in the Summary of Services, the number of hours which elapse between the expiry of the maximum permitted Response Time and completion of the maintenance by AJACO;

"Fraud" means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Temporary Worker Services or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Contracting Body;

"FOIA" Freedom of Information Act 2000;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would be expected from a leading Temporary Worker within the relevant industry or business sector;

"Information" has the meaning given under section 84 of the FOIA;

"Intellectual Property Rights" and **"IPRs"** means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi conductor topography rights, domain names and website addresses,

trade or business names, rights in Know How and confidential information, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off;

“Hardware Maintenance Charge” means that part of the Contract Charge (if any) which relates to the Hardware Maintenance Service as specified in the Summary of Services;

“Hardware Maintenance Service” means on-call maintenance of the Equipment in order to return the Equipment to a satisfactory operating condition in accordance with the manufacturer’s specifications and such other maintenance of the Equipment as may be specified in the Summary of Services or is otherwise agreed between the parties;

“Help Desk Charge” means that part of the Contract Charge (if any) which relates to the Help Desk Service as specified in the Summary of Services;

“Help Desk Service” means the help desk services to be provided by AJACO (once introduced) as set out in the Summary of Services;

“Hourly Rate” means the rate from time to time charged by AJACO for Services performed outside the Prime Shift or otherwise provided at the request of Customer additional to those set out in the Summary of Services;

“Initial Period” means the initial period of this Agreement specified in the Summary of Services;

“Intellectual Property Right” means any copyright, patent, registered design, trade mark, rights in databases or other industrial or intellectual property right;

“IT Services” means that part of the Contract Charge (if any) which relates to the IT Managed Service as specified in the Summary of Services;

“Know-How” means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Temporary Worker Services;

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body (which, in respect of the latter, the parties are bound to comply with);

“Personal Data” shall have the same meaning as set out in the Data Protection Act 1998;

“Premises” means premises owned, controlled or occupied by the Contracting Body or its Affiliates which may be made available for use by the Temporary Worker for provision of the Temporary Worker Services;

“Prime Shift” means the hours specified in the Summary of Services during which the Services shall be available on each day; **“Renewal Period”** shall have the meaning set out in Schedule 1 clause 3.1;

"Property" means the property, other than real property and IPR, issued or made available to the Temporary Worker by the Contracting Body in connection with the provision of the Temporary Worker Services;

"Response Time" means the number of hours which elapse between the receipt of a request for maintenance of the Equipment and the AJACO engineer's arrival at the Site;

"Request for Information" a request for information made under FOIA

"Services" means the services to be performed by AJACO under this Agreement, which may include the Hardware Maintenance Service, the Support Services, the Help Desk Service, the Consultancy Services and the Training Service;

"Service Provider" means the service provider which has contracted with the Contracting body for the supply of temporary labour, and which has contracted with the Supplier to provide the Temporary Worker to fulfil the Contracting Body's requirement;

"Site" means the location or locations specified in the Summary of Services in respect of which the Services are to be provided or such other location or locations as may be agreed by AJACO in Writing

"Software" means the items of software specified in a [Schedule 1];

"Specification" means the facilities and functions of any item of Software and Hardware as set out in the manufacturer's or supplier's documentation;

"Summary of Services" means the listing of key details of the Services offered pursuant to this Agreement annexed as a [Schedule 1];

"Supplier" means the employment business through which the Temporary Worker is supplied to the Contracting Body via the Service Provider to carry out the Temporary Worker Services;

"Support Services" means the services to be provided in relation to the support of the Equipment and the Software as set out in the Summary of Services;

"Support Services Charge" means that part of the Contract Charge (if any) which relates to the Support Services as specified in the Summary of Services;

"Tax Legislation" all legislation relating to or in connection with the provision of Temporary Worker Services including:

- a) the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax;
- b) the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions; and
- c) the Social Security Contributions (Intermediaries) Regulations 2000;

"Technology" means any computer, technology or other electronic system which is capable of accessing, storing, transmitting, copying or processing data including, without limit, hardware, software and/or telecommunications equipment;

"Temporary Worker" the person named as such in these Assignment Terms as the Temporary Worker;

"Temporary Worker Bespoke IPR" means only IPRs arising as a result of the provision of the Temporary Worker Services. For the avoidance of doubt this excludes Embedded Materials;

"Temporary Worker's Pay" means, in relation to any particular period, the amount payable by the Supplier to the Temporary Worker in respect of or in connection with the provision by the Temporary Worker of the Temporary Worker Services;

"Temporary Worker Pre Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Temporary Worker prior to or independently of the performance of the Temporary Worker Services and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Temporary Worker Services" means the services to be supplied by the Temporary Worker as notified by the Contracting Body to the Temporary Worker from time to time;

"Temporary Worker's Pay" means, in relation to any particular period, the amount payable by the Supplier to the Temporary Worker in respect of or in connection with the provision by the Temporary Worker of the Temporary Worker Services;

"Third Party Materials" means any materials, documentation, information, programs and codes, the IPR in which are:

- (a) owned by a third party; and
- (b) used by the Temporary Worker to provide the Temporary Worker Services;

"Total Annual Employment Costs" means the total sum of payments which AJACO will incur in the financial year concerned in respect of an employee, including, without limitation, gross annual salary, National Insurance contributions, contributions to a pension scheme and any costs which AJACO may incur in relation to other benefits to which the employee is entitled;

"Training Services" means the provision by AJACO of such training course or courses as are specified in the Summary of Services or which AJACO otherwise agrees in writing to provide to the Customer;

"Training Services Charge" means AJACO's fee for the provision of the Training Services as specified in the Summary of Services or as otherwise agreed between AJACO and the Customer

"Working Day" means any day other than a Saturday or Sunday or public holiday in England and Wales.

"Web Portal" means the internet-based common technology platform provided by the Service Provider on behalf of Crown Commercial Services to facilitate the delivery of services to Contracting Bodies.

2. GENERAL

2.1 AJACO agrees to provide the Services on the terms set out herein. Notwithstanding anything to the contrary in the Customer's standard conditions or elsewhere, this Agreement

contains the only terms upon which AJACO will carry out Services and shall not be varied except to the extent they are varied by the amendments to the standard terms and conditions set out in a **[Schedule 1]**, or unless expressly agreed in writing, signed by a Director of AJACO. No other servant or agent of AJACO is authorised to vary the conditions herein contained whether orally or in writing or to make representations or promises about the Services provided. In the case of any conflict or inconsistency between the standard terms and those amendments to the standard terms and conditions set out in a **[Schedule 1]**, such amendments shall prevail.

2.2 This Agreement supersedes all prior agreements, arrangements and understandings between the parties relating to the subject matter hereof and constitutes the entire agreement between the parties relating to the subject matter hereof. The Customer acknowledges that in entering into this Agreement it has not relied on any representation, warranty, agreement or statement not set out in this Agreement and that (in the absence of fraud) it will not have any right or remedy arising out of any such representation, warranty, agreement or statement.

2.3 Each of the provisions of this Agreement is distinct and severable from the others and in the event that any one or more of the provisions contained in this Agreement shall for any reason be or become unenforceable, illegal or otherwise invalid in any respect (whether wholly or in part), such unenforceability, illegality or invalidity shall not affect any other provisions of this Agreement (or, as the case may be, the remaining parts of the relevant provisions) which shall continue in full force and effect and this Agreement shall then be construed as if such unenforceable, illegal or invalid provisions (or parts thereof) had never been contained herein. The parties shall thereupon use their respective best endeavours to agree valid and enforceable terms to replace such unenforceable illegal or invalid provisions to meet so far as possible the original intention of the parties.

2.4 The Customer shall not assign, sub-contract, sub-licence or otherwise transfer any right or obligation under this Agreement without the prior written consent of AJACO.

2.5 AJACO reserves the right to sub-contract any of the Services to be provided under this Agreement and to assign this Agreement in whole or in part to a third party and the Customer hereby agrees to any such sub-contracting or assignment.

2.6 This Agreement is enforceable by the parties and by their successors in title and permitted assignees. Any rights of any other person to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

3. PERIOD OF AGREEMENT

3.1 This Agreement shall remain in force for the Initial Period unless terminated earlier in accordance with the terms of this Agreement. At the end of the Initial Period, this Agreement shall be automatically renewed for periods of one year (each such period being referred to as a "Renewal Period"), unless terminated earlier in accordance with the terms of this Agreement or by either party giving at least 90 days written notice to the other (such notice to expire on the last day of the Initial Period or any Renewal Period).

4. TERMS OF PAYMENT

4.1 AJACO complies with Part 3 of the Criminal Finances Act 2017.

4.2 The Customer shall pay the Contract Charge in accordance with the terms stated in the Summary of Services. Where any services additional to those set out in the Summary of Services are provided at the request of the Customer, the Customer shall pay AJACO forthwith on presentation of an invoice for the charges.

4.3 If an invoice is not paid in accordance with Clause 4.1, AJACO reserves the right to charge interest on a daily basis on outstanding sums at the rate of 4% above Barclays Bank plc.'s base rate per annum as published from time to time, from the due date for payment until receipt by AJACO of the full amount whether before or after judgement.

4.4 The Customer shall pay all accounts in full and not exercise any rights of set-off or counterclaim.

4.5 All charges are exclusive of Value Added Tax which will be payable by the Customer at the rate applicable from time to time.

4.6 AJACO reserves the right subject to giving a minimum of 14 days' notice in writing to suspend performance of the Services where payment is not received in accordance with Clause 4.1 or any alternative terms of payment agreed in writing in advance.

4.7 Where a Contract is deemed within scope of IR35, AJACO will be responsible for payment of the Temporary Worker's earnings and deductions and payment of all National Insurance contributions and PAYE deductions.

6. AJACO WARRANTY

6.1 AJACO warrants that the Services shall be supplied and rendered with all due skill, care and diligence by appropriately experienced, qualified and trained personnel in accordance with good industry practice.

6.2 Should the Customer become dissatisfied with the performance of any personnel assigned by AJACO to perform the Services, the Customer shall notify AJACO in writing with details of the unsatisfactory performance, and provided that AJACO is satisfied that the Customer's dissatisfaction is reasonable, AJACO shall replace that person as soon as reasonably practicable.

7. CUSTOMERS' WARRANTIES

7.1 Save where AJACO has been notified otherwise and has agreed in writing to accept the Equipment in other than full working order, the Customer warrants that the Equipment is in good working order and good mechanical and electrical condition at the date of commencement of the Initial Period or in the case of Equipment added to the scope of the Agreement in accordance with Clause 9.1 at the date at which it comes within scope.

7.2 The Customer warrants that any information provided to AJACO about whether the Equipment was in or out of warranty or which was provided for AJACO to calculate which Equipment was in or out of warranty is accurate and complete.

7.3 The Customer warrants that it is entitled or empowered to authorise AJACO to perform the

Services in respect of the Equipment and the Software.

7.4 In the event that any of Customer warranties set out in this clause 7 are inaccurate, AJACO may recover from the Customer any additional costs that it incurs.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

8.1.1 Ensure that all Equipment and Software is installed and operated in accordance with the supplier's instructions;

8.1.2 Give AJACO 30 days' notice of the installation of additional Equipment and/or Software for which support is required and AJACO will decide whether or not it wishes to support them in accordance with the provisions of clause 9.1;

8.1.3 Operate Equipment and Software in a proper manner and always under the supervision of trained and competent personnel;

8.1.4 Co-operate fully with AJACO in the diagnosis of any malfunction of the Equipment or the Software;

8.1.5 Insofar as it is legally authorised to do so, provide AJACO with full and free access at all reasonable times to all technical manuals and other documentation relating to the Equipment or the Software, and any diagnostic software which the Customer possess in relation to the Equipment;

8.1.6 Maintain a suitable environment and electrical supply for the Equipment which complies with specifications given by the manufacturer(s) of the Equipment or AJACO, and keep all external surfaces of the Equipment clean and in good condition;

8.1.7 Provide such services as may reasonably be required for safety or other reasons by AJACO engineers in pursuance of the maintenance of the Equipment and Software;

8.1.8 Notify AJACO immediately if it makes any addition to, modification of, or adjustment to the Equipment and/or the Software. AJACO shall notify the Customer of the implications of any such addition, modification or adjustment in relation to the provision of the Services and in particular, reserves the right to increase the Contract Charge or to terminate this Agreement in relation to the item of Equipment or Software concerned as a result of such addition, modification or adjustment, by giving 7 days' notice in writing to the Customer. For the avoidance of doubt, this clause is not intended to apply where the Customer wishes to add or remove any items of Equipment or Software from the lists in a **[Schedule 1]** to which the provisions of Clause 9 of Section 1 shall apply;

8.1.9 Use only media of a type that is approved of by the manufacturer of the Equipment or Software or AJACO. AJACO will not unreasonably withhold such approval;

8.1.10 Provide sufficient working space and access for inspection and maintenance of the Equipment or Software and reasonable storage space for stocks of spares as reasonably required at no charge to AJACO;

8.1.11 In the event of a maintenance call, before calling for AJACO engineers to visit the Site,

ensure and confirm that the following basic checks have been implemented:

- a) Mains power, external fuses and any external or internal sub-units not covered by this Agreement have been checked and restored;
- b) Diagnostic self-check facilities (where appropriate) have been used in accordance with the instructions in the appropriate operating manual; and
- c) Any adjustments required as part of the relevant self-checks have been implemented wherever possible.

8.1.12 Follow the manufacturer's advice on operating the Equipment and on carrying out operator's routine maintenance; and

8.1.13 Keep all consumable items supplied by the Customer in a serviceable condition.

8.2 The Customer acknowledges that the provision of the Support Service and the Helpdesk Service are not a substitute for proper user training or comprehensive end user documentation. The Customer shall where applicable ensure that:

8.2.1 its staff are fully and properly trained in the use of the Equipment and Software in accordance with AJACO's reasonable recommendations from time to time;

8.2.2 its staff are competent in the use of the Equipment or Software and all software products loaded thereon; and

8.2.3 the Customer has a complete set of comprehensive and up to date end user documentation.

9. CHANGE REQUEST PROCESS

9.1 If either party wishes to make changes in relation to the Services, the parties shall use a mutually agreed Change Request procedure

9.2 The Customer may request that certain items of Equipment, Software and/or Services be added to, or deleted from a mutually agreed Schedule respectively. AJACO agrees that it will consider any such reasonable requests in good faith, but AJACO reserves the absolute right to refuse any such requests.

9.3 In the event that AJACO agrees to amend a previously agreed Schedule in accordance with Clause 9.1, AJACO may increase or reduce the Contract Charge as it in its sole discretion deems

appropriate, such increase or reduction to take effect from the date of the installation or removal of the Equipment and/or Software as the case may be. The contract value net of additions and deletions can fall by no more than 10% of the value at the start of last annual renewal without written agreement from AJACO.

9.4 Deletions and/or reductions in service levels to contract shall be effective after ninety calendar days of notification.

10. ROADMAPING

10.1 AJACO shall from time to time during the term of the Contract convene meetings with the

Customer to discuss the status and future availability of product lines (hardware and software)

10.2 From each meeting AJACO will with the assistance of the Customer provide data on initial products, replacement products and new products, including the lifecycle of each product set.

10.3 The Roadmap and all disclosures relating thereto shall be deemed to be Confidential and shall be kept in accordance with the Confidentiality clause herein.

11. NON-AVAILABILITY OF SPARES / TECHNICAL DATA

If AJACO is unable to perform the Services due to the non-availability of parts and/or technical data relating to the Software or Equipment or any item of the Software or Equipment from the manufacturer/supplier, AJACO shall have the right to terminate this Agreement in relation to such item or items of Software or Equipment. Such termination shall be effected by notice in writing. AJACO will use its reasonable endeavours to give at least 90 days' notice of any such termination. In the event that a shorter notice period is necessary, AJACO will give as long a notice period as is reasonably practicable in the circumstances. In the event of any termination pursuant to this clause, AJACO shall refund any part of the Contract Charge which has been paid in advance which relates to the period following termination and which is attributable to the relevant

Software or Equipment and Service.

12. EXCLUSIONS

12.1 The Services do not include maintenance of the Equipment or Software necessitated by other than fair wear and tear and in particular does not include:

12.1.1 Repair of damage caused (a) by accident, misuse, neglect, movement of or interference with the Equipment, software errors in operating systems or application software; or (b) by failure to maintain a suitable environment and electrical supply including (but not limited to) failure of electrical power, poor air conditioning or humidity control, static electricity, or (c) by any cause other than the normal usage of the Equipment;

12.1.2 Equipment found to be faulty prior to the date it was added to contract;

12.1.3 Calls received within 10 working days from the date of notification for Equipment added to contract;

12.1.4 Repair of damage caused by any person other than an authorised representative of AJACO attempting to maintain the Equipment or Software;

12.1.5 Maintenance of accessories, attachments, equipment or any other items not included in the Equipment specified in a **[Schedule 1]**;

12.1.6 Electrical work external to the Equipment, making modifications or specification changes to the Equipment, reconditioning, refurbishing, painting or refinishing the Equipment or adding or removing accessories, attachments or other devices;

12.1.7 Provision, maintenance or replacement of supplies or accessories, including (but not limited to) items defined by the manufacturer of the Equipment as consumables, toner cartridges,

laser printer fuser units and maintenance kits, cartridge discs, floppy discs, print banks, print heads, magnetic tapes, bulbs and memory cards;

12.1.8 Normal operator functions as recommended by the manufacturer and/or AJACO including but not limited to cleaning disc heads or replacing cartridge ribbons, toner cartridges and ink cartridges;

12.1.9 The maintenance or replacement of cathode ray tubes in monitors and terminals except where a defect has arisen as a result of an electrical fault;

12.1.10 Maintenance necessitated as a result of fire, flood, storm, earthquake, willful damage, accidental damage and other similar causes;

12.1.11 Maintenance of laser printers or laser drums beyond their expected working life;

12.1.12 Maintenance of laptop screens and batteries;

12.1.13 Maintenance of unlicensed Software or whereby the Customer cannot prove ownership of the software and maintenance of Software whereby the release of such Software is no longer supported by the software provider;

12.2 At the Customer's request, AJACO may, in its sole discretion, agree to perform any of the services set out in this Clause 12. AJACO shall in such circumstances be entitled to levy additional charges in accordance with the Hourly Rate and cost of parts, consumables and software.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 The Customer acknowledges that all Intellectual Property Rights in all data, reports, drawings, specifications, designs, plans, programs, course materials or other material produced, provided, made available or acquired by AJACO in the course of the performance of the Services shall vest in and remain the property of AJACO or its licensors, suppliers or sub-contractors, unless expressly agreed otherwise in advance and in writing. No copies may be made of such material unless expressly agreed otherwise in advance and in writing by AJACO.

13.2 AJACO warrants that the provision of the Services and use by the Customer of the Software in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights of any third party.

13.3 AJACO shall indemnify the Customer from all liabilities (including reasonable legal costs) incurred by the Customer as a result of any claim or action made by a third party alleging that the provision of the Services or any portion thereof infringes the Intellectual Property Rights of such third party, provided that the Customer:

13.3.1 gives AJACO prompt written notice of such claim;

13.3.2 gives AJACO reasonable assistance and sole authority to conduct and/or settle all negotiations and litigation and defend and/or settle such claims. For the avoidance of doubt, the costs incurred or recovered in such negotiations and litigation shall be at AJACO's expense; and

13.3.3 has no dealings with such third party in relation to its claim and makes no admissions in relation to such a claim without AJACO's prior written consent.

13.4 If any infringement claim is made of the type referred to in clause 12.3, or in AJACO's opinion is likely to be made, AJACO shall have the right, at its option to either:

13.4.1 obtain for the Customer the right to continue using the item in question or to receive the services;

13.4.2 replace or modify the item in question or the service so it ceases to be infringing; or

13.4.3 as a last resort, grant to the Customer a credit for that portion of the Contract Charge attributable to the item/service at issue in such claim, as depreciated, and accept such item's return or termination of the service affected.

13.5 AJACO shall not have any obligation to indemnify the Customer if the alleged infringement is based upon:

13.5.1 use of the item, other than in accordance with the terms of the Agreement and any other instruction AJACO may give concerning its use;

13.5.2 use of the item in an unauthorized manner for which the item is not designed; or

13.5.3 use of the item in a manner other than in accordance with the instructions.

13.6 Neither AJACO nor any third party licensors shall have any liability to the Customer in respect of any infringement, alleged infringement, violation or misappropriation of any Intellectual Property Rights except as expressly provided in this Clause 13.

14. LIMITATION OF LIABILITY

14.1 AJACO shall not be liable for any loss or damage sustained or incurred by the Customer or any third party resulting from any breakdown of or fault in the Equipment or the Software unless such breakdown or fault is caused by the negligence or wilful misconduct of AJACO, its employees, agents or sub-contractors or except to the extent that such loss or damage arises from any unreasonable delay by AJACO in providing the Services.

14.2 AJACO shall not be liable for any damage to physical or real property (not including data) sustained whilst providing the Services to the Customer.

14.3 Except in respect of injury to or death of any person caused by AJACO's negligence (for which no limit applies) the liability of AJACO under or in connection with this Agreement shall not exceed the annual contract value at the time the last event giving rise to the claim occurred.

14.4 Notwithstanding anything else contained in this Agreement AJACO shall not be liable to the Customer or any third party for any loss of profits, contracts, business, revenue or goodwill or indirect, special or consequential loss arising under or in connection with this Agreement, whether arising from negligence, breach of contract or otherwise.

14.5 Except as expressly provided in this Agreement, all conditions, warranties or representations, express or implied, statutory or otherwise, relating to the provision of the Services by AJACO to the Customer, are hereby excluded.

14.6 Notwithstanding anything else contained in this Agreement, AJACO shall not be liable for any loss or damage sustained or incurred by the Customer or any third party, to the extent that such loss or damage was caused by the provision of incorrect or inadequate information to AJACO by the Customer, its employees, agents or contractors or by any failure on the part of the Customer to take back up copies of software and data in accordance with best computing practice.

15. TERMINATION

15.1 This Agreement may be terminated forthwith by notice in writing by either party if:

15.1.1 the other commits any material breach of any term of this Agreement which is either incapable of remedy or which, in the case of a breach capable of being remedied, shall not have been remedied within 28 days of a written request to remedy the same;

15.1.2 the other is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but for this purpose ignoring the words “if it is proved to the satisfaction of the court that” in section 123(1)(e) and 123(2)), admits its inability to pay its debts as they fall due, commences negotiations with any one or more of its creditors with a view to the general re adjustment or re scheduling of its indebtedness or makes a general assignment for the benefit of, or a composition with, its creditors; or

15.1.3 the other takes any corporate action or other steps are taken or legal proceedings are started for its winding up, dissolution, reorganisation or for it to enter into any arrangement or composition for the benefit of creditors or for the appointment of a receiver, administrator, administrative receiver, trustee or similar person of any of its revenues or assets or distress is executed against, or an encumbrance takes possession of, any of its revenues or assets.

15.2 Any termination of this Agreement for whatever reason shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights and liabilities of either party nor the coming into or continuance in force of any provision

which is expressly or by implication intended to come into or continue in force on or after such termination.

15.3 Upon completion by AJACO of any Services or the termination or expiry of this Agreement, the Customer will promptly return to AJACO all software, documentation and manuals used by AJACO for performing the Services, or any other items belonging to AJACO which the Customer has no contractual right to retain.

15.4 In the event that the Customer wishes AJACO to support the transition of services to another provider after the completion or termination of the Services then AJACO shall advise the Customer of the costs associated with the transition. Where the Customer agrees to pay these costs then AJACO shall support the transition employing all reasonable endeavours.

16. CONFIDENTIALITY

16.1 Each of the parties undertakes to the other to keep confidential the terms of this Agreement and all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to the entering into or the performance of this Agreement save that which is:

16.1.1 already in its possession or which subsequently comes into its possession other than as a result of a breach of this clause; or

16.1.2 in the public domain other than as a result of a breach of this clause.

16.2 Each of the parties undertakes to the other to take all such steps as from time to time may be reasonable to procure compliance with the provisions of this clause by its employees, agents and sub-contractors. The foregoing obligations as to confidentiality shall survive any termination or expiry of this Agreement.

16.3 It shall not be a breach of the provisions of this Agreement to disclose confidential information as required by law or by order of a court of competent jurisdiction provided that the disclosing party shall (where possible) notify the other party in advance of such disclosure and take reasonable steps to minimize the impact and extent of such disclosure.

17. NON-SOLICITATION OF AJACO EMPLOYEES

17.1 The Customer shall not, and shall procure that any third party on whose premises the Services (or part of them) are to be performed [or who will otherwise take the benefit of the Services (or part of them)] will not, solicit or utilise either directly or indirectly the services of any employee of AJACO who has been involved in the provision of the Services to the Customer for a period of 12 months following the end of any involvement by the individual concerned with any work for the Customer without the prior written consent of AJACO.

17.2 If either:

17.2.1 the Customer employs or uses directly or indirectly the services of any employee of AJACO in contravention of Clause 17.1; or

17.2.2 in circumstances where the Services, or part of them, are not to be performed at the Customer's premises, but at the premises of a third party, or the Services, or part of them, are otherwise performed for the benefit of a third party, and that third party employs or uses directly or indirectly the services of any employee of AJACO who has been involved in the provision of the Services, at any time up to 12 months after the end of any involvement by that employee in the provision of the Services, without the prior written consent of AJACO;

17.2.3 the Customer shall pay to AJACO a sum equal to 40% of the Total Annual Employment Costs to AJACO of the employee concerned, such sum to be payable on the date when such employee is first employed or his services are first used by the Customer, or the third party, as the case may be, it being acknowledged that in view of recruitment difficulties and costs in the industry, this sum is a reasonable pre-estimate of the loss likely to be suffered by AJACO in the circumstances set out in this Clause 17.2.

18. FORCE MAJEURE

18.1 Neither party shall be liable for delay in or failure to perform its obligations under this Agreement if such delay or failure results from circumstances beyond its reasonable control.

18.2 If such event of Force Majeure continues for more than three (3) months the Parties shall meet to attempt to renegotiate the terms of this Agreement but if the Parties are not successful in negotiating alternative terms, either Party shall be free to terminate this Agreement on thirty (30)

days written notice to the other Party and neither party shall be responsible for, or liable for, any losses or costs arising from such termination.

19. DISPUTE RESOLUTION

19.1 In the event of any dispute or difference arising between the parties in connection with this Agreement, either party may refer the matter for decision under the procedure as described below by giving written notice of the reference to the other party in which case the dispute shall be decided in the following manner.

19.2 An independent expert shall be appointed by agreement between the parties or in the absence of agreement by the President for the time being of the British Computer Society.

19.3 The parties shall promptly furnish to such expert who will be required to keep such information confidential to the parties all information relating to the particular dispute reasonably requested by such expert to enable him to give a decision as to what course of action in his reasonable opinion ought to be followed to give an outcome equitable to both parties and to allow performance hereunder to continue with minimum delay or additional cost. Information provided to the expert may be in the form of oral or written submissions but in either case the expert shall afford each party an opportunity equal to the other to put forward information and in any event when receiving oral information from or on behalf of a particular party shall afford the other an opportunity of being present at such a hearing.

19.4 The expert shall use all reasonable endeavours to render his decision within 30 days following his receipt of all information requested or if this is not possible so soon thereafter as may be reasonably practicable and the parties shall cooperate fully with the expert to achieve this objective.

19.5 The decision of the expert shall be final and binding on each of the parties but for the avoidance of doubt this procedure provides for a form of informal disputes resolution and is not a reference to arbitration under the Arbitration Acts 1950 to 1996 nor any other statute.

19.6 The parties shall share equally the fees and expenses of the expert unless the expert directs that the party against whom the decision has been given should pay a greater proportion of such costs by reason of that party's unreasonable or vexatious behaviour concerning the matter the subject of the dispute.

19.7 Where the reference of a matter to the dispute resolution procedure has resulted in delay by either party in performance of its obligations hereunder the dates set out for performance shall be postponed by a period equivalent to the period of decision-making under the dispute resolution procedure.

19.8 The parties nevertheless agree that they will, so far as reasonably practicable, continue to perform their obligations under this Agreement whilst the dispute resolution procedure takes place and in particular, AJACO shall ensure that its personnel continue to carry out its obligations in so far as these do not relate to the matter in dispute.

20. NOTICES

Any notice required or permitted to be given hereunder shall be in writing and shall be given by delivering the same by hand or by sending the same by prepaid first class post or courier service or facsimile to the registered office of the addressee or such other address or number as that party

may have notified to the other pursuant to this Clause 18 (or if no such address has been notified, the last known relevant place of business of that party). Any notice given as aforesaid shall be deemed to have been given or received at the time of delivery or transmission (if delivered by hand or courier or given by facsimile) or 48 hours after posting (if sent by post). In proving service it shall be sufficient to prove that the letter was correctly addressed and was posted, or where it was delivered otherwise than by post that it was delivered to the correct address or where it was sent by facsimile that it was transmitted to the correct number.

21. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

22. TITLE AND RISK

22.1 Title to the any goods supplied shall not pass to the Customer until payment in full of the price (including any interest or other payment due under the contract and as stated in a **[Schedule 1]**.

22.2 Risk in the goods shall pass to the Customer on installation.

22.3 AJACO reserves the right to re-possess any goods in respect of which payment is overdue and thereafter to re-sell the same and for this purpose the Purchaser hereby grants an irrevocable right and licence to AJACO's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. The provisions of this sub-clause shall continue in force notwithstanding termination of the relevant contract howsoever caused.

23. STATUTORY AND OTHER REGULATIONS

23.1 If the cost to AJACO of performing the Services shall be increased by reason of the making or amendment after the date of this Agreement of any law or of any order, regulation or by-law having the force of law that shall affect the performance of AJACO's obligations under this Agreement, the amount of such increase shall be added to the Contract Charge 30 days after AJACO gives the Customer notice in writing of such increase.

24. HEADINGS

The headings in these Conditions are for convenience only and shall not affect the construction or interpretation thereof.

25. WAIVER

No failure or delay to exercise any power, right or remedy under this Agreement shall operate as a waiver of it or impair or prejudice it nor shall any single or partial exercise or waiver of any power, right or remedy preclude its further exercise or the exercise of any other power, right or remedy.

26. TUPE

26.1 In the event of employees transferring to AJACO under TUPE as a result of the entry into this Agreement, the Customer will indemnify AJACO against all actions claims costs expenses damage awards compensation fines court and tribunal orders and all other liabilities (on a full indemnity basis) arising out of or in connection with the transferring employees' whether prior to, or

after the date of transfer without limitation.

SECTION 2 – SPECIFIC SERVICES

28. SUPPORT SERVICES AND HELP DESK

28.1 In the event that the Customer upgrades the Software, the Customer undertakes to reimburse AJACO for any costs which it incurs in relation to the retraining of its employees who are involved in the provision of the Help Desk Service and the Support Services which are necessitated by the upgrade.

28.2 If as a result of a query raised by the Customer it becomes apparent that any item or part of the Equipment or the Software may not be performing in accordance with the manufacturer's or supplier's Specification, AJACO shall inform the Customer as soon as reasonably possible and, where, in accordance with the Summary of Services, AJACO has agreed to provide the Hardware Maintenance Service, AJACO shall (where appropriate) initiate the provision of the Hardware Maintenance Service in accordance with Clause 27 of this Agreement.

29. CONSULTANCY SERVICES

29.1 AJACO warrants and undertakes to the Customer that:

29.1.1 AJACO employees, agents and sub contractors will have the necessary skill and expertise to provide the Consultancy Services described in the Summary of Services.

29.1.2 AJACO will provide independent and unbiased advice and will exercise reasonable skill and care in the provision of the Consultancy Services.

29.1.3 the Consultancy Services will be provided in a timely and professional manner.

29.2 The terms of reference for the Consultancy Services to be performed by AJACO shall be as specified in the Summary of Services. The Customer may from time to time wish to vary the terms of reference. Under these circumstances, AJACO will use all reasonable endeavours to accommodate such variation. Any changes in the Contract Charge and/or timescales as a result of such variation shall be negotiated between the Customer and AJACO.

29.3 Unless otherwise agreed between the parties, the end product of the Consultancy Services will be a report document, together with all necessary supporting material, proposing a recommended solution. It is the Customers' responsibility to check and verify the viability and suitability of the proposed solution. No liability can be accepted by AJACO for the implementation of the proposed solution by the Customer.

29.4 Where progress reports are to be provided in accordance with the Summary of Services, AJACO shall render such reports at the time and in the manner specified or as otherwise agreed between AJACO and the Customer.

29.5 The parties agree that all Intellectual Property Rights which existed prior to the date of this Agreement in relation to any items used in the performance of the Consulting Services, shall remain the property of the existing owner of such Intellectual Property Rights.

29.6 Except in respect of injury to or death of any person caused by AJACO's negligence (for

which no limit applies), in no event shall AJACO's total cumulative liability to the Customer arising out of the provision of the Consultancy Services, exceed the Consultancy Services Charge, in respect of the Services giving rise to the claim.

30. TRAINING

30.1 The Training Service Charge includes tuition, training materials, manuals, handouts and computer time as appropriate to the course. Any other facilities or resources provided by AJACO at the request of the Customer or a particular student shall be charged separately and shall be payable forthwith on presentation of an invoice for the charges.

30.2 AJACO shall not be liable to refund the Training Service Charge in respect of a cancellation of any course made by the Customer unless AJACO receives notice in writing from the Customer of such cancellation:

30.2.1 at least three weeks before the course is due to start in the case of a course to be held on the Site or any other premises of the Customer ("On-Site Course"); and

30.2.2 at least two weeks before the course is due to start in any other case.

30.2.3 For the purposes of this Clause 30.2, an application to transfer from one course to another shall be regarded as a cancellation.

30.3 AJACO reserves the right to cancel any course if:

30.3.1 it is unable to provide the course as a result of circumstances beyond its reasonable control; or

30.3.2 in its opinion, there are insufficient bookings for the course.

30.3.3 In the event of any cancellation of the course by AJACO, AJACO's liability shall be limited to the refunding of any fees paid in respect of the course.

30.4 It is the Customer's responsibility to ensure that a course is suitable for each student's requirements. Relevant course information and literature is available from AJACO on request.

30.5 AJACO will provide the course with reasonable care and skill, but shall not be liable in the event that the content of the course does not meet the Customer's or a student's requirements.

30.6 AJACO makes no guarantee, representation or warranty as to the results of the Training Service, including, without limitation, the level of competence attained by a student.

30.7 The Customer shall ensure that all students abide by any site security measures operating at the course location.

30.8 The following additional provisions shall apply in relation to On-Site Courses:

30.8.1 The only students permitted to attend On-Site Courses shall be directors, employees or officers of the Customer, unless otherwise agreed in writing by AJACO;

30.8.2 To the extent that AJACO's incidental expenses, including travel, hotel accommodation and meals are not expressly included in the Training Service Charge or the quoted course fee, Customer shall be liable to AJACO for such expenses;

30.8.3 The Customer agrees to provide, at its own expense, such resources and facilities as

AJACO will require for the course, as set out in the Summary of Services or otherwise communicated to the Customer on or before the time of booking;

30.8.4 The Customer will take all reasonable steps to ensure the safety of the personnel or representatives of AJACO when on the Site or the Customer's premises, as well as any property brought onto such premises by AJACO for the purpose of providing the course.

30.9 Except in respect of injury to or death of any person caused by AJACO's negligence (for which no limit applies), in no event shall AJACO's total cumulative liability to the Customer arising out of the provision of the Training Services, exceed the Training Services Charge, in respect of the Services giving rise to the claim.

SCHEDULE 1 (PART A)

ASSIGNMENT TERMS (PAYE)

1. SUPPLY OF TEMPORARY WORKER SERVICES

1.1 Supply of the Temporary Worker Services

1.1.1 In consideration for the payment of the Temporary Worker's Pay by the Supplier, the Temporary Worker shall supply the Temporary Worker Services:

1.1.1.1 during the Assignment Period at such times and in such places as the Contracting Body shall from time to time determine; and

1.1.1.2 in accordance with the Contracting Body's requirements as notified by the Contracting Body to the Temporary Worker from time to time.

1.1.2 The Temporary Worker shall not begin any work at the Premises without obtaining Approval from the Supplier.

1.1.3 The Temporary Worker shall allow the Contracting Body to inspect and examine the manner in which the Temporary Worker supplies the Temporary Worker Services at the Premises at any time without notice.

1.1.4 The Temporary Worker acknowledges that certain days are privilege holidays in the civil service. On these days, the Contracting Body may require that Temporary Worker Services be provided or may specifically require that they are not provided and the Temporary Worker shall notify the Supplier accordingly.

1.1.5 The Temporary Worker may only suspend the provision of the Temporary Worker Services with the prior written agreement of the Contracting Body.

1.1.6 The Temporary Worker shall, where instructed by the Supplier, use the Web Portal in connection with the provision of the Temporary Worker Services which shall include but not be limited to the submission of time spent in providing the Temporary Worker Services and expenses for the approval by the Contracting Body.

1.1.7 If so requested by the Supplier the Temporary Worker shall enter into a Direct Agreement with the Contracting Body on terms notified by the Contracting Body.

1.1.8 The Supplier shall ensure that it fully complies with all its legal obligations including, without limitation, those set down in the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended).

1.2 Quality

1.2.1 The Temporary Worker agrees that the Contracting Body relies on the skill and judgment of the Temporary Worker in the supply of the Temporary Worker Services and the performance of its obligations under the Assignment Terms.

1.2.2 The Temporary Worker supplying the Temporary Worker Services shall do so with all due skill, care and diligence.

1.2.3 The Temporary Worker shall ensure that during the Assignment Period it shall:

1.2.3.1 faithfully and diligently perform those duties and exercise such powers consistent with them as are from time to time necessary in connection with the provision of the Temporary Worker Services; and

- 1.2.3.2 obey all lawful instructions and reasonable directions of the Contracting Body and provide the Temporary Worker Services to the reasonable satisfaction of the Contracting Body.
 - 1.2.4 The Temporary Worker shall at all times during the Assignment Period ensure that the Temporary Worker Services and its obligations under the Assignment Terms are performed and conform in all respects with all applicable Laws and in accordance with Good Industry Practice.
- 1.3 Compliance with Contracting Body policies
 - 1.3.1 The Temporary Worker shall ensure that it carries out the Temporary Worker Services in accordance with all and any policies and procedures of the Contracting Body, which are notified to him from time to time, including, without limit, any policies relating to security and health and safety.
 - 1.3.2 To the extent that such policies conflict with any provision of these Assignment Terms, the Temporary Worker agrees that the higher standard, as determined by the Contracting Body (acting reasonably), shall prevail.
 - 1.3.3 The Temporary Worker shall attend such training sessions including, without limit security and health and safety training, as the Contracting Body requires from time to time.
- 1.4 Exit
 - 1.4.1 Prior to expiry or termination of the Temporary Worker's Assignment with the Contracting Body and as determined by the Contracting Body, the Temporary Worker shall:
 - 1.4.1.1 assist and co-operate with the Contracting Body to ensure the completion of any work in progress; and
 - 1.4.1.2 provide such reasonable support and assistance required in order to achieve a smooth transfer of the Temporary Worker Services to the Contracting Body or a replacement Temporary Worker as specified by the Contracting Body. Such support and assistance may include the training of an incoming Temporary Worker,and shall be paid for in the same manner as the Temporary Worker Services.
 - 1.4.2 On expiry or termination of the Temporary Worker's Assignment with the Contracting Body, the Temporary Worker shall:
 - 1.4.2.1 leave the Contracting Body's premises immediately upon the request of the Contracting Body;
 - 1.4.2.2 immediately return to the Contracting Body all the Contracting Body's Confidential Information, Personal Data, Contracting Body Pre-Existing IPRs, Temporary Worker Bespoke IPRs and Contracting Body Data in its possession which were obtained or produced in the course of providing the Temporary Worker Services;
 - 1.4.2.3 immediately deliver to the Contracting Body all equipment provided by the Contracting Body to the Temporary Worker for use in the provision of the Temporary Worker Services and all other materials (together with materials containing Intellectual Property Rights), documents, information and access keys provided to the Temporary Worker. Such property shall be handed back to the Contracting Body in good working order (allowance shall be made for reasonable wear and tear); and

- 1.4.2.4 promptly provide all information concerning the provision of the Temporary Worker Services which may reasonably be requested by the Contracting Body for the purposes of adequately understanding the manner in which the Temporary Worker Services have been provided.
 - 1.4.3 If the Temporary Worker fails to comply with Clause 1.4.2.2 and/or Clause 1.4.2.3 , the Contracting Body may recover possession thereof.
 - 1.4.4 Unless the Supplier states otherwise in writing, the Supplier may terminate this agreement immediately for any reason by giving notice, written or in person, to the Temporary Worker without liability or cost.
 - 1.4.5 The Supplier shall have the right to terminate this agreement, without liability or cost, in the event that the Temporary Worker is in breach of any provision (including any warranties) of this agreement
2. TEMPORARY WORKER'S PAY
- 2.1 The Temporary Worker acknowledges and agrees that the Contracting Body shall be entitled to audit the Supplier's payment of the Temporary Worker's Pay to the Temporary Worker including the amount and frequency of such payment.
 - 2.2 The Temporary Worker acknowledges and agrees that, if so requested by the Supplier or the Contracting Body, it will promptly (or within such period as the Contracting Body or Supplier may request) provide on demand, such information relating to the Temporary Worker's Pay.
 - 2.3 The Supplier shall be responsible for ensuring that any amounts required under the Tax Legislation in respect of the Temporary Worker's Pay are appropriately deducted and remitted to the appropriate authority.
 - 2.4 Where the Temporary Worker is temporarily filling a post at Senior Civil Servant Pay Band 2/Director level (or equivalent) and above, the Temporary Worker acknowledges that, in line with the Government's Transparency Agenda, the Contracting Body will publish:
 - 2.4.1 the grade and post title which the Temporary Worker is temporarily filling;
 - 2.4.2 the Temporary Worker's name; and
 - 2.4.3 the average salary applicable to a permanent appointment to the subject post (in £5,000 bands) together with any explanatory notes.
3. PREMISES AND PROPERTY
- 3.1 Access to Premises
 - 3.1.1 The Temporary Worker shall be granted access to the Premises in connection with the provision of the Temporary Worker Services. The Temporary Worker acknowledges that such access shall be solely for the purpose of performing the Temporary Worker Services. The Temporary Worker shall vacate the Premises immediately upon completion, termination, expiry or abandonment of its Assignment with the Contracting Body.
 - 3.1.2 The Temporary Worker shall observe and comply with such rules and regulations as may be in force at any time for the use of such Premises and conduct of personnel at the Premises as determined by the Contracting Body, and the Temporary Worker shall pay for the cost of making good any damage caused by

the Temporary Worker to the Premises other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

3.2 Property

- 3.2.1 Where the Contracting Body issues Property free of charge to the Temporary Worker for use in the provision of the Temporary Worker Services, such Property shall be and remain the property of the Contracting Body.
- 3.2.2 The Property shall be deemed to be in good condition when received by the Temporary Worker unless the Temporary Worker notifies the Contracting Body otherwise within five (5) Working Days of receipt.
- 3.2.3 The Temporary Worker shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the provision of the Temporary Worker Services and for no other purpose without Approval.
- 3.2.4 The Temporary Worker shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Temporary Worker Services, in accordance with the Contracting Body's reasonable security requirements as required from time to time.
- 3.2.5 The Temporary Worker shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless and to the extent that such loss or damage was caused by the Contracting Body. The Temporary Worker shall inform the Contracting Body within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.

4. TEMPORARY WORKER OBLIGATIONS

- 4.1 The Contracting Body may, by written notice to the Temporary Worker, refuse to admit the Temporary Worker onto, or withdraw permission to remain on, the Premises where the Temporary Worker's admission or continued presence would, in the reasonable opinion of the Contracting Body, be undesirable. The decision of the Contracting Body as to whether any person is to be refused access to the Premises shall be final and conclusive.
- 4.2 The hours of work of the Temporary Worker shall be as agreed between the Temporary Worker and the Contracting Body. Where the Contracting Body requests that additional hours be worked, the Temporary Worker shall use reasonable endeavours to comply with such request. The Temporary Worker acknowledges that any additional hours if not previously agreed will be subject to the agreement of the Contracting Body and the Temporary Worker.
- 4.3 The Temporary Worker shall notify both the Supplier and the Contracting Body as soon as possible of any events which prevent or restrict the provision of the Temporary Worker Services, and, if such events are likely to be prolonged.
- 4.4 The Temporary Worker shall work under the direction and control of the Contracting Body when on the Contracting Body's premises.
- 4.5 Should any of the Temporary Worker's details change at any time whilst the Temporary Worker is assigned to the Contracting Body, the Temporary Worker shall promptly notify the Supplier of such changes and provide full, up to date details.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 All Intellectual Property Rights in and to the Temporary Worker Bespoke IPRs shall vest, as and when created, in the Contracting Body and the Temporary Worker hereby assigns to the Contracting Body, with full title guarantee, title to and all rights and interest in the Temporary

Worker Bespoke IPRs or shall procure that the first owner of the Temporary Worker Bespoke IPRs assigns them to the Contracting Body on the same basis. Such assignment shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Temporary Worker Bespoke IPRs, as appropriate. The Temporary Worker shall waive or procure a waiver of any moral rights in the Temporary Worker Bespoke IPRs assigned to the Contracting Body under these Assignment Terms. The Temporary Worker shall enter into such documentation and perform such acts as the Contracting Body shall request to properly vest such Temporary Worker Bespoke IPRs in the Contracting Body.

- 5.2 The Temporary Worker shall not (except when necessary for the performance of the Temporary Worker Services) without Approval, use or disclose any of the Temporary Worker Bespoke IPRs to any third party.
- 5.3 The Temporary Worker acknowledges and agrees that it shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Contracting Body or its licensors, including the Contracting Body Pre-Existing IPR and the Temporary Worker Bespoke IPR.
- 5.4 If the Temporary Worker acquires, by operation of law or otherwise, title to Intellectual Property Rights that is inconsistent with Clause 5.3, it shall assign in writing such Intellectual Property Rights as it has acquired to the Contracting Body on the request of the Contracting Body (whenever made).
- 5.5 Where the Contracting Body provides any Contracting Body's Pre-Existing IPR to the Temporary Worker then the Temporary Worker agrees that the right to use such Contracting Body's Pre-Existing IPR and the Temporary Worker Bespoke IPR shall be non-exclusive, non-assignable and for the sole purpose of enabling the Temporary Worker to provide the Temporary Worker Services and not for any other purpose or for the benefit of any person other than the Contracting Body. Further, such right shall not include any right to grant sub-licences.
- 5.6 At the end of the Assignment Period, the right to use the Contracting Body's Pre-Existing IPR and the Temporary Worker Bespoke IPR shall terminate automatically and the Temporary Worker shall deliver all relevant materials to the Contracting Body.
- 5.7 Where, in the provision of the Temporary Worker Services, the Temporary Worker uses any items which include Intellectual Property Rights (including without limitation any Embedded Materials) that are not owned or licensed by the Contracting Body the Temporary Worker shall ensure that it has all necessary rights to use such material and hereby grants to the Contracting Body (and (as necessary) shall procure the grant of) a non-exclusive, irrevocable, transferable, perpetual and royalty free licence (with the right to grant sub-licences on the same terms) to use, amend, modify, enhance and exploit such Intellectual Property Rights to the extent that this is necessary to assure to the Contracting Body the benefit of the Temporary Worker Services.
- 5.8 No Intellectual Property Rights in the trademarks or brands of the Contracting Body shall be used by the Temporary Worker without the Contracting Body's prior written consent.
- 5.9 To the extent that the Temporary Worker creates physical embodiments of and tangible materials representing Temporary Worker Bespoke IPRs and/or outputs from the Temporary Worker Services (in whatever form or media) ("**Service Materials**"), the Temporary Worker shall provide copies of all such Service Materials to the Contracting Body promptly. Notwithstanding the provisions of this Clause 5, title to all Service Materials shall pass to the Contracting Body upon delivery.
- 5.10 The Temporary Worker shall on demand, during and after the Contract Period, indemnify and keep indemnified and hold the Contracting Body and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Body or the Crown may suffer or incur as a result of any claim that the rights granted to the Contracting Body pursuant to these Assignment Terms and/or the performance by the Temporary Worker of the Temporary Worker Services infringes or allegedly

infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:

- 5.10.1 items or materials based upon designs supplied by the Contracting Body (provided that the Claim relates to the designs itself);
- 5.10.2 the use of data supplied by the Contracting Body which is not required, as part of the Temporary Worker Services, to be verified by the Temporary Worker; or
- 5.10.3 any modifications or enhancements made by the Contracting Body to the Temporary Worker's Pre-Existing IPR or Embedded Materials.

6. WARRANTIES AND REPRESENTATIONS

6.1 The Temporary Worker warrants, represents and undertakes to the Supplier that:

- 6.1.1 the Temporary Worker has full capacity and authority and all necessary consents to enter into and perform its obligations under the Assignment Terms;
- 6.1.2 in agreeing to the Assignment Terms the Temporary Worker has not committed any Fraud;
- 6.1.3 all information it provides under or in connection with these Assignment Terms will be true, accurate, complete and not misleading;
- 6.1.4 it shall not manipulate any information supplied to the Web Portal in a manner that would lead to inaccurate, misleading or discriminating presentation of information being displayed;
- 6.1.5 as at the date upon which the Temporary Worker commences its Assignment with the Contracting Body, all information, statements and representations contained in the Temporary Worker's curriculum vitae or information provided as part of any take-on or vetting procedures submitted to the Contracting Body and used by the Contracting Body in selecting the Temporary Worker for the Assignment are true, accurate and not misleading;
- 6.1.6 the Temporary Worker is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on the Temporary Worker's ability to perform its obligations in accordance with the Assignment Terms;
- 6.1.7 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights (other than the Contracting Body Pre-Existing IPRs) that are necessary for the performance of its obligations in accordance with the Assignment Terms; and
- 6.1.8 the Temporary Worker Services shall be provided and carried out with all due skill, care and diligence.

6.2 For the avoidance of doubt, the fact that any provision within these Assignment Terms is expressed as a warranty shall not preclude any right of termination in respect of breach of that provision by the Temporary Worker.

6.3 The Temporary Worker acknowledges and agrees that the warranties, representations and undertakings contained in these Assignment Terms are material and are designed to induce the Supplier and/or the Contracting Body into offering the Temporary Worker a contract for the provision of the Temporary Worker Services.

7. INFORMATION SECURITY

7.1 Use of Technology and Malicious Software

7.1.1 The Temporary Worker shall not use any Technology in connection with the provision of the Temporary Worker Services, except as permitted by any Contracting Body policies or with Approval.

7.1.2 Without prejudice to Clause 7.1.1, the Temporary Worker shall, as an enduring obligation throughout the Assignment Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of and minimise the impact of Malicious Software in any Technology used in connection with the provision of the Temporary Worker Services (or as otherwise agreed between the Parties).

7.2 Security of Contracting Body premises

The Temporary Worker shall comply with all security requirements of the Contracting Body while on the Contracting Body's premises or otherwise carrying out the Temporary Worker Services.

7.3 Contracting Body Data

7.3.1 The Temporary Worker shall not delete or remove any proprietary notices contained within or relating to the Contracting Body Data.

7.3.2 The Temporary Worker shall not store, copy, disclose, or use the Contracting Body Data except as necessary for the performance by the Temporary Worker of the Temporary Worker Services or as otherwise expressly authorised in writing by the Contracting Body.

7.3.3 To the extent that Contracting Body Data is held and/or processed by the Temporary Worker, the Temporary Worker shall supply that Contracting Body Data to the Contracting Body as requested by the Contracting Body and in the format specified from time to time in writing.

7.3.4 To the extent that Contracting Body Data is held and/or processed by the Temporary Worker, the Temporary Worker shall take responsibility for preserving the integrity of Contracting Body Data and preventing the corruption or loss of Contracting Body Data.

7.3.5 The Temporary Worker shall ensure that any system on which the Temporary Worker holds any Contracting Body Data and any Technology which the Temporary Worker uses in connection with the provision of the Temporary Worker Services, including back-up data, is secure and complies with Good Industry Practice and such security policies as the Contracting Body may notify to the Temporary Worker from time to time.

7.3.6 If at any time the Temporary Worker suspects or has reason to believe that Contracting Body Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Temporary Worker shall notify the Contracting Body immediately.

7.4 Protection of Personal Data

7.4.1 The Supplier shall collect, hold and use Personal Data relating to the Temporary Worker in accordance with its policy which shall be provided to the Temporary Worker. The Temporary Worker acknowledges that the Contracting Body may receive Personal Data from the Supplier (or directly if it exercises its rights under Clause 17 to enforce certain clauses of the Assignment Terms) and Process the same in accordance with the Privacy Policy. By agreeing to these Assignment Terms the Temporary Worker agrees that its Personal Data may be used in accordance with the privacy policy referred to above.

7.5 Confidentiality

7.5.1 Except to the extent set out in this Clause 7.5 or where disclosure is expressly permitted elsewhere in this agreement, the Temporary Worker shall:

7.5.1.1 treat the Contracting Body's Confidential Information as confidential and safeguard it accordingly; and

7.5.1.2 not disclose the Contracting Body's Confidential Information to any other person without the Contracting Body's prior written consent.

7.5.2 Clause 7.5.1 shall not apply to the extent that:

7.5.2.1 such disclosure is a requirement of Law placed upon the Temporary Worker, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 7.7 (Freedom of Information);

7.5.2.2 such information was in the possession of the Temporary Worker without obligation of confidentiality prior to its disclosure by the Contracting Body;

7.5.2.3 such information was obtained from a third party without obligation of confidentiality;

7.5.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of these Assignment Terms; or

7.5.2.5 it is independently developed without access to the Contracting Body's Confidential Information.

7.5.3 The Temporary Worker shall not use any of the Contracting Body's Confidential Information received otherwise than for the purpose of carrying out the Temporary Worker Services.

7.6 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989

7.6.1 The Temporary Worker shall comply with the provisions of:

7.6.1.1 the Official Secrets Acts 1911 to 1989; and

7.6.1.2 Section 182 of the Finance Act 1989.

7.6.2 The Temporary Worker acknowledges that the Contracting Body has reserved the right to require the Supplier to terminate this agreement in the event that the Temporary Worker fails to comply with the provisions of this Clause 7.6.

7.7 Freedom of Information

7.7.1 The Temporary Worker acknowledges that the Contracting Body is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Body to enable the Contracting Body to comply with its Information disclosure obligations.

7.7.2 The Temporary Worker shall:

- 7.7.2.1 transfer to the Contracting Body all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;
 - 7.7.2.2 provide the Contracting Body with a copy of all Information in its possession, or control in the form that the Contracting Body requires within five Working Days (or such other period as the Contracting Body may specify) of the Contracting Body's request; and
 - 7.7.2.3 provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 7.7.3 The Contracting Body shall be responsible for determining in its absolute discretion whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 7.7.4 In no event shall the Temporary Worker respond directly to a Request for Information unless expressly authorised to do so by the Contracting Body.
- 7.7.5 The Temporary Worker acknowledges that (notwithstanding the provisions of Clause 7.5) the Contracting Body may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Temporary Worker or the Temporary Worker Services:
- 7.7.5.1 in certain circumstances without consulting the Temporary Worker; or
 - 7.7.5.2 following consultation with the Temporary Worker and having taken their views into account,

provided always that where this Clause 7.7.5 applies the Contracting Body shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Temporary Worker advanced notice, or failing that, to draw the disclosure to the Temporary Worker's attention after any such disclosure.

- 7.7.6 The Temporary Worker shall ensure that all Information is retained for disclosure in accordance with the provisions of these Assignment Terms and in any event in accordance with the requirements of Good Industry Practice and shall permit the Contracting Body to inspect such records as requested from time to time.

8. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

The Temporary Worker acknowledges and agrees that the Temporary Worker Services are not provided pursuant to a contract of employment with the Contracting Body.

9. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 9.1 The Temporary Worker shall not publicise its involvement with the Contracting Body in any way without Approval. In the event that the Temporary Worker obtains Approval pursuant to this Clause 9.1, the Temporary Worker shall have regard to the Contracting Body's Confidential Information and any commercially sensitive information of the Contracting Body in publicising its involvement.
- 9.2 The Contracting Body shall be entitled to publicise the Temporary Worker's provision of the Temporary Worker Services in accordance with any legal or government policy obligation upon the Contracting Body, including any examination of the Assignment Terms or the Direct

Agreement by the National Audit Office or an auditor appointed by the Audit Commission. The Contracting Body shall have regard to any confidential information in publicising the Assignment Terms and/or any Direct Agreement.

- 9.3 The Temporary Worker shall not do anything or permit to cause anything to be done, which may damage the reputation of the Contracting Body or bring the Contracting Body into disrepute.

10. HEALTH AND SAFETY

- 10.1 The Temporary Worker shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of the Temporary Worker Services. The Contracting Body shall promptly notify the Temporary Worker of any health and safety hazards which may exist or arise at the Premises and which may affect the Temporary Worker in the performance of the Temporary Worker Services.
- 10.2 While on the Premises, the Temporary Worker shall comply with any health and safety measures implemented by the Contracting Body in respect of staff and other persons working there.
- 10.3 The Temporary Worker shall notify the Contracting Body immediately in the event of any incident occurring in the performance of the Temporary Worker Services on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 10.4 The Temporary Worker 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 to health and safety, which may apply to staff and other persons working on the Premises in the supply of the Temporary Worker Services under the Assignment Terms.

11. ENVIRONMENTAL REQUIREMENTS

- 11.1 The Temporary Worker shall, when working on the Premises, carry out the Temporary Worker Services in accordance with the Contracting Body's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 11.2 The Temporary Worker shall consider, and wherever possible address, sustainability issues when delivering the Temporary Worker Services. The Temporary Worker shall also have regard to the Contracting Body's own sustainability and corporate social responsibility policies, standards and targets when delivering the Temporary Worker Services.

12. PREVENTION OF CORRUPTION

- 12.1 The Temporary Worker shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Body or any other public body or person employed by or on behalf of the Contracting Body any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the delivery of the Temporary Worker Services or any other contract with the Contracting Body or any other public body or person employed by or on behalf of the Contracting Body (including the appointment of the Temporary Worker to carry out the Temporary Worker Services), or for showing or refraining from showing favour or disfavour to any person in relation to the Temporary Worker Services any such contract. The attention of the Temporary Worker is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.
- 12.2 The Temporary Worker warrants that it has not paid commission or agreed to pay commission to the Contracting Body or any other public body or any person employed by or on behalf of the Contracting Body or any other public body or any person employed by or on behalf of the

Contracting Body or a public body in connection with the delivery of the Temporary Worker Services.

- 12.3 If the Temporary Worker engages in conduct prohibited by Clauses 12.1 or 12.2 above or any other contract with the Contracting Body or any other public body or person employed by or on behalf of the Contracting Body, the Temporary Worker acknowledges that the Contracting Body may require the Supplier to terminate this agreement with immediate effect.

13. DISCRIMINATION

The Temporary Worker shall not unlawfully discriminate within the meaning and scope of any Law relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

14. PREVENTION OF FRAUD

- 14.1 The Temporary Worker shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud in connection with the receipt of monies from the Contracting Body.

- 14.2 To the extent permitted by Law, the Temporary Worker shall notify the Contracting Body and/or any appropriate Regulatory Body immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

- 14.3 If the Temporary Worker commits any Fraud in relation to the delivery of the Temporary Worker Services or any other contract with a Contracting Authority or the Contracting Body, the Temporary Worker acknowledges that the Contracting Body may require the Supplier to terminate this agreement with immediate effect.

15. MISTAKES IN INFORMATION

The Temporary Worker shall be responsible for the accuracy of all drawings, documentation and information supplied to the Contracting Body by the Temporary Worker in connection with the provision of the Temporary Worker Services and shall pay the Contracting Body any extra costs occasioned by any discrepancies, errors or omissions therein.

16. STATUS OF TEMPORARY WORKER

At all times during the Assignment Period, the Temporary Worker shall be an independent contractor and nothing in the Assignment Terms nor any Direct Agreement as envisaged by Clause 1.1.7 shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Temporary Worker and the Contracting Body and, accordingly, neither the Contracting Body nor the Temporary Worker shall be authorised to act in the name of, or on behalf of, or otherwise bind the other save as expressly permitted by the terms of the Assignment Terms or the Direct Agreement.

17. CONTRACTING BODY RIGHTS

The Temporary Worker acknowledges and agrees that the Contracting Body may enforce any of provisions in these Assignment Terms as a third party beneficiary in accordance with the Contracts (Rights of Third Parties) Act 1999.

18. TRANSFER AND SUB-CONTRACTING

The Temporary Worker shall not assign, novate, sub-contract or in any other way dispose of the Assignment Terms or any element of the provision of the Temporary Worker Services without Approval.

19. OTHER TERMS

To the extent that any other terms of this agreement contradict or otherwise conflict with these Assignment Terms, the Assignment Terms shall prevail.

20. CONFLICTS OF INTEREST

- 20.1 The Temporary Worker shall take appropriate steps to ensure that it is not placed in a position where (in the reasonable opinion of the Contracting Body), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Temporary Worker and the duties owed to the Contracting Body in accordance with the provisions of these Assignment Terms.
- 20.2 The Temporary Worker shall promptly notify the Contracting Body and provide the Contracting Body with full particulars or as much detail as it is able to in circumstances where any conflict referred to in Clause 20.1 above arises or is reasonably foreseeable.
- 20.3 The Temporary Worker acknowledges that the Contracting Body has reserved the right to require the Supplier to terminate immediately by giving notice in writing to the Service Provider and/or Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Temporary Worker and the duties owed to the Contracting Body in accordance with the provisions of these Assignment Terms. The actions of the Contracting Body pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Contracting Body.
- 20.4 This Clause 20 shall apply:
 - 20.4.1 during the Assignment Period; and
 - 20.4.2 for a period of two (2) years following the end of the Assignment Period or such other period as is agreed between the Contracting Body and the Temporary Worker.