

Contract Reference Number: **MOPAC XXX**

Date: xx/xx/20xx

## **Services Contract**

**between**

**MAYOR'S OFFICE FOR POLICING AND CRIME  
(MOPAC)**

**and**

**XXXXXX**

**DRAFT**

For the Provision of service known as xxxx for the period xx/xx/xxxx to  
xx/xx/xxxx

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DRAFT

**THIS CONTRACT** is made the xx day of xxxx 20[xx]

**BETWEEN:**

- (1) **THE MAYOR’S OFFICE FOR POLICING AND CRIME** of 169 Union Street, London, SE1 0LL (“**MOPAC**”); and
- (2) [xxxx ], a company/charity registered in England and Wales (Registration Number [xxxx ]) whose registered office is at [complete address including postcode] (“**the Provider**”).

| <b>MOPAC</b>     |  | <b>Provider: Name of company/organisation</b> |  |
|------------------|--|---|--|
| Name             |  | Name  |  |
| Title            |  | Title   |  |
| Email            |  | Email   |  |
| Tel/Mob          |  | Tel/Mob                                       |  |
| GDPR MOPAC role: |  | GDPR Provider role:                           |  |

**RECITALS:**

- A. For the provision of [NAME OF SERVICE], the objectives of which are to [INSERT OBJECTIVES].
- B. MOPAC wishes the Provider to provide the Services based on the terms and conditions set out in the Contract.
- C. The Provider should be aware that MOPAC does not offer any guarantee or minimum volume of the Services that may be delivered under this Contract and does not offer any exclusivity to the Provider.

**THE PARTIES AGREE THAT:**

**1. Definitions and Interpretation**

In the Contract (including the Recitals):

- 1.1 unless the context indicates otherwise the following expressions shall have the following meanings:

“**Affected Party**” has the meaning given to it in Clause 29.3;

|   |  |
|---|--|
| <b>“MOPAC”</b>  | means the Mayor’s Office for Policing and Crime;   |
| <b>“Authority Assets”</b>                               | means any assets (whether tangible or intangible), materials, resources, systems, networks, connectivity and other equipment, machinery and facilities owned by or licensed to the Authority   |
| <b>“Authority Group”</b>                                | (a) means the GLA, TfL, the Mayor’s Office for Policing and Crime (MOPAC), the London Fire and Emergency Planning Authority, London Legacy Development Corporation and the Old Oak and Park Royal Development Corporation ( <b>“Functional Bodies”</b> ) each in their own right and as holding companies of all of their subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any <b>“member of the Authority Group”</b> shall refer to the GLA, any Functional Body or any such subsidiary; |
| <b>“Authority Premises”</b>                             | any land or premises (including temporary buildings) owned or occupied by or on behalf of any member of the Authority Group;   |
| <b>“Anti-Slavery Policy”</b>                            | means the Service Provider will comply with section 54 of the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under section 54 of that Act;  |
| <b>“Business Day”</b>                                   | any day excluding Saturdays, Sundays or public or bank holidays in England;  |
| <b>“Business Continuity and Disaster Recovery Plan”</b> | means any plan prepared pursuant to Clause 38 detailing the processes and arrangements which the Provider shall follow to ensure continuity of business processes and operations supported by the Services following any failure or disruption of the Services and the recovery of the Services in the event of a loss of service  |
| <b>“Cessation Plan”</b>                                 | a plan agreed between the Parties or determined by <b>MOPAC</b> pursuant to Clauses 31.1 to 31.5 (inclusive) to give effect to a Declaration of Ineffectiveness or Clauses 31.6 to 31.10 (inclusive) to give effect to a Public Procurement Termination Event;   |

|                                      |  |
|--------------------------------------|--|
| <b>“Confidential Information”</b>    | all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the MOPAC (or any member of the Authority Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of MOPAC);  |
| <b>“Contract”</b>                    | this contract, including the Schedules, the Tender and all other documents referred to in this contract;   |
| <b>“Contract Commencement Date”</b>  | the date for commencement of the Contract specified in Schedule 1;   |
| <b>“Contract Information”</b>        | (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices and monitoring reports submitted pursuant to Clause 5 which shall include the Providers name and the invoice amount;   |
| <b>“Contract Manager”</b>            | the person named as such in Schedule 1 or such other person as notified to the Provider by MOPAC;  |
| <b>“Data Protection Legislation”</b> | means: <ul style="list-style-type: none"> <li>(a) the Data Protection Act 2018;</li> <li>(a) UK GDPR</li> <li>(b) any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either Party and/or to the processing activity undertaken under the Contract;</li> <li>(c) any statutory codes of practice issued by the Information Commissioner in relation to such legislation and;</li> <li>(d) any laws which implement any such laws and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.</li> </ul> |

**“Declaration of Ineffectiveness”**

a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulations 113(2)(a) or 118(3) of the Utilities Contracts Regulations 2016;

**“Fees”**

means the fees payable by MOPAC, in consideration of the due and proper performance of the Services in accordance with the Contract, as specified in or calculated in accordance with Schedule 4 as the same may be varied from time to time in accordance with Clause 29.6 or Clause 34;

**“Force Majeure Event”**

any of the following: riot, civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, fire, earthquake, extraordinary storm, flood, abnormal weather conditions or other natural catastrophe or strikes, lock-outs or other industrial disputes to the extent that such event has materially affected the ability of the Affected Party to perform its obligations in accordance with the terms of the Contract but excluding any such event insofar as it arises from or is attributable to the wilful act, omission or negligence of the Affected Party or the failure on the part of the Affected Party to take reasonable precautions to prevent such Force Majeure Event or its impact;

**“Holding Company”**

any company which from time to time directly or indirectly controls the Provider as set out by section 1159 of the Companies Act 2006;

**“Insolvency Event”**

any of the following:

- (a) either or both of the Provider or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of either or both of the Provider or the Holding Company;
- (c) being a company, either or both of the Provider or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-

up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);

- (d) either or both of the Provider or the Holding Company ceasing or threatening to cease to carry on its business for any reason or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Provider becoming bankrupt or dying;
- (f) any similar event to those in (a) to (e) above occurring in relation to either or both of the Provider or the Holding Company under the law of any applicable jurisdiction for those purposes;

**“Intellectual Property Rights”**

any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

**“Key Performance Indicators”**

means the outcomes the Provider is expected to meet in its delivery of the Services as detailed in Annex 2 to Schedule 4 in order to be eligible to receive the outcome payments, in line with the provisions of Schedule 4;

**“Key Personnel”**

the Provider’s key personnel named in Schedule 1;

**“Losses”**

all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments;

**“Parties”**

MOPAC and the Provider (including their successors and permitted assignees) and



|  |   |
|--|---|
|  | <p><b>“Party”</b> shall mean either of them as the case may be;</p>   |
| <p><b>“Performance Indicators”</b></p>                 | <p>means the core service standards the Provider is required to meet in its delivery of the Services as detailed in Annex 2 to Schedule 4, and which it shall be required to demonstrate that it is meeting in order to receive service fee payments in line with the provisions of Schedule 4;</p> |
| <p><b>“Personal Data”</b></p>                          | <p>has the meaning given to it in the Data Protection Legislation;</p>  |
| <p><b>“Processing”</b></p>                             | <p>has the meaning given to it in the Data Protection Legislation;</p>  |
| <p><b>“Procurement Manager”</b></p>                    | <p>the person named as such in Schedule 1 and referred to in Clause 8 or such other person as notified to the Provider by MOPAC;</p>  |
| <p><b>“Public Procurement Termination Event”</b></p>   | <p>has the meaning given to it in Clause 31.7;</p>  |
| <p><b>“Public Procurement Termination Grounds”</b></p> | <p>any one or more of the grounds described either in Regulation 73(1) of the Public Contracts Regulations 2015 or Regulation 89(1) of the Utilities Contracts Regulations 2016;</p>  |
| <p><b>“Service Commencement Date”</b></p>              | <p>the date for commencement of the Services set out in Schedule 1;</p>   |
| <p><b>“Service Provider Equipment”</b></p>             | <p>the equipment and materials of whatsoever nature used by the Provider in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the MOPAC under the Contract;</p>  |
| <p><b>“Service Provider’s Personnel”</b></p>           | <p>all such persons, including (without limitation) employees, officers, suppliers, sub-contractors and agents of the Provider, as are engaged in the performance of any of the Services and including the Key Personnel;</p>   |
| <p><b>“Services”</b></p>                               | <p>(a) subject to Clause 29.6 all or any part of the services to be provided to, or activities to be undertaken and completed for, MOPAC by the Provider under the Contract as detailed in the Specification including any variations to</p>  |

such services or activities pursuant to Clause 34; and

- (b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Contract;

**“Specification”** the specification and other requirements set out in Schedule 2;

**“Tender”** means the Provider’s proposals for the delivery of the Service in line with the Specification and as set out in Schedule 3;

**“Term”** the period during which the Contract continues in force as provided in Clause 2 and Schedule 1;

**“Transparency Commitment”** means MOPAC’s commitment to publish its contracts, tender documents, performance and other data in line with standards published in the Local Government Transparency Code 2015 and the Authority Group’s transparency commitments;

**“UK GDPR”** means *Regulation (EU) 2016/679 (General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, (including as further amended or modified by the laws of the United Kingdom or of a part of the United Kingdom from time to time)*

**“VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;

1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Contract;

1.4 a reference to any document other than as specified in Clause 1.3 and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Contract;

- 1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Contract and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.7 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, and if the conflict is between the Specification (Schedule 2) and the Tender (Schedule 3), the provisions in Schedule 2 (The Specification) shall prevail.
- 1.8 the Schedules form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

## **2. Commencement and Duration**

- 2.1 The Contract commences on the Contract Commencement Date and continues in force for the duration stated in Schedule 1 unless terminated earlier in accordance with Clause 29, or extended in line with Clause 2.2.
- 2.2 MOPAC has an option, exercisable at its sole discretion, to extend the duration of the Contract for a further period or periods up to a total of **xx weeks/months/years** by giving notice in writing to the Provider provided that such notice is served at least three months prior to the expiry of the initial duration of the Contract or the expiry of any previous extension, if later.

## **3. The Services**

- 3.1 The Provider:
  - 3.1.1 shall provide the Services to MOPAC from the Service Commencement Date in accordance with the Contract;
  - 3.1.2 acknowledges that it has sufficient information about MOPAC and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the Contract;
  - 3.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Contract due to any misinterpretation or misunderstanding by the Provider of any

fact relating to the Specification or otherwise to the Contract;  
and;

- 3.1.4 shall comply with all lawful and reasonable directions of MOPAC relating to its performance of the Services.
- 3.2 Notwithstanding anything to the contrary in the Contract, MOPAC's discretion in carrying out its statutory duties shall not be fettered or otherwise constrained or affected by any provision of the Contract;
- 3.3 The Provider shall provide the Services:
  - 3.3.1 with the high degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced service providers providing services of a similar scope, type and complexity to the Services and with sufficient resources including project management resources;
  - 3.3.2 in conformance in all respects with the Specification and so that they fulfil the purpose indicated by or to be reasonably inferred from the Specification;
  - 3.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
  - 3.3.4 so that they are properly managed and monitored and shall immediately inform MOPAC if any aspect of the Contract is not being or is unable to be performed.
- 3.4 Where in the reasonable opinion of MOPAC, the Provider has failed to provide the Services or any part of them in accordance with the Contract, the Provider shall, without prejudice to any of MOPAC's other rights, re-perform the Services or part thereof as requested by MOPAC at no additional cost and within such period of time as reasonably specified by MOPAC.
- 3.5 Where reasonably requested to do so by MOPAC and provided the Provider is willing to so contract, the Provider shall contract with such other member(s) of the Authority Group as on the terms of this Contract with only the necessary changes of Parties' details being made.
- 3.6 Throughout the term of the Contract the Provider shall when required give to MOPAC such written or oral advice or information regarding any of the Services as MOPAC may reasonably require.
- 4. Fees**
- 4.1 The Provider shall invoice MOPAC in accordance with the procedures set out in Clause 5 and in consideration of, and subject to the due and proper performance of the Services by the Provider in accordance with the Contract, MOPAC shall pay the Provider the Fees in accordance

with those procedures and with the other terms and conditions of the Contract.

4.2 The Provider is not entitled to reimbursement for expenses unless such expenses are specified in Schedule 4 or have been incurred with the prior written consent of MOPAC, in which case the Provider shall supply appropriate evidence of expenditure in a form acceptable to the MOPAC.

4.3 All Fees exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

## **5. Payment Procedures and Approvals**

5.1 Payments of the Fees will be made in accordance with this clause 5 and the provisions of Schedule 4.

5.2 In order for any payment of the Fees to be made, the Provider shall:

5.2.1 submit an invoice in accordance with the deadlines and procedure set out in Clause 5.3 below and in Schedule 4;

5.2.2 submit the relevant monitoring returns as required and, in the format, requested by MOPAC in accordance with the deadlines set out in Schedule 4; and

5.2.3 submit such other documentation MOPAC reasonably considers that it requires from time to time to evidence the due and proper performance of the Services in accordance with the Contract;

and shall not make any separate charge for submitting any invoice.

5.3 The Provider shall submit invoices to the postal or electronic address set out in Schedule 1 or, (this is : [sscl.mps.ap@police.sscl.com](mailto:sscl.mps.ap@police.sscl.com), copying in the MOPAC commissioner email. Firstname.lastname@mopac.london.gov.uk) where an electronic format for submission of invoices is set out in Schedule 1, such electronic format shall, unless the MOPAC requires otherwise, be used. Each such invoice shall contain all information required by MOPAC, including a separate calculation of any VAT. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.

5.4 In the event of a variation to the Services in accordance with the Contract that involves the payment of additional charges to the Provider, the Provider shall identify these separately on the relevant invoices.

5.5 MOPAC shall not be required or be liable to pay all or part of the Fees if such documentation referred to in clause 5.2 above is not received by the relevant deadlines

- 5.6 MOPAC shall consider and verify each invoice, which is submitted by the Provider in accordance with this Clause 5, in a timely manner. If MOPAC considers that the Fees claimed by the Provider in any invoice have:
- 5.6.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved, and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as MOPAC may choose from time to time within 30 days of receipt of such invoice or such other time period as may be specified in Schedule 1;
  - 5.6.2 not been calculated correctly or if the invoice contains any other error or inadequacy, including any failure to provide any of the information set out in Clause 5.2, MOPAC shall notify the Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Provider shall submit a revised invoice to MOPAC;
  - 5.6.3 The Provider submit a credit note against the Purchase Order (PO) for which an incorrect Invoice claim was made and;
  - 5.6.4 MOPAC shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.
- 5.7 No payment made by MOPAC (including any final payment) or act or omission or approval by MOPAC or Contract Manager or Procurement Manager (whether related to payment or otherwise) shall:
- 5.7.1 indicate or be taken to indicate MOPAC's acceptance or approval of the Services or any part of them or any act or omission by the Provider, or otherwise prejudice any rights, powers or remedies which MOPAC may have against the Provider, or absolve the Provider from any obligation or liability imposed on the Provider under or by virtue of the Contract; or
  - 5.7.2 prevent MOPAC from recovering any amount overpaid or wrongfully paid including payments made to the Provider by mistake of law or fact. Without prejudice to Clause 20, MOPAC shall be entitled to withhold such amount from any sums due or which may become due to the Provider or MOPAC may recover such amount as a debt.
- 5.8 Except where otherwise provided in the Contract, the Fees shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Provider in discharging its obligations under the Contract.
- 5.9 Interest shall accrue at the rate of two percent (2%) above the base rate of the Bank of England from time to time on all sums due and payable

under this Contract from the due date until the date of actual payment (both before and after judgement). All such interest shall be calculated on the basis of the actual number of days elapsed, over a three hundred and sixty-five (365) day year and compounded at monthly intervals. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

## **6. Monitoring of Service Provider Performance**

6.1 The Provider shall ensure that the Services meet or exceed the Key Performance Indicators (KPIs) and Performance Indicators (PIs) at all times from the Service Commencement Date.

6.2 MOPAC shall monitor the Provider's performance against the KPIs and PIs in accordance with the provisions of Schedule 4 (Payment & Monitoring) or such other requirements as notified by MOPAC to the Provider from time to time. MOPAC may organise regular monitoring and spot checks of the Provider's premises at any time to ensure that the Provider is complying with its obligations under the Contract and the Provider shall co-operate fully, at its own cost, with MOPAC. MOPAC shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the delivery of the Services by the Provider.

6.3 The Provider shall ensure that MOPAC (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Provider's premises, and those of any sub-contractors, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in this Clause 6 including putting in place arrangements to permit legal access to information as may be required.

6.4 With effect from the date of the Contract MOPAC and the Provider shall meet at the times and with such frequency as specified in Schedule 4 (Payment & Monitoring) or as notified by MOPAC to the Provider from time to time. Such meetings shall be convened by MOPAC upon giving reasonable notice to the Provider.

6.5 For the avoidance of doubt, if the Provider fails to meet the KPIs and PIs in its delivery of the Services this shall be deemed a breach of the Contract and if the Service Provider fails to take action to remedy any breach and, or repeats its failure to meet the KPIs and PIs this shall be deemed a material or persistent breach of the Contract for the purposes of Clause 29.1.1.

## **7. Warranties and Obligations**

7.1 Without prejudice to any other warranties expressed elsewhere in the Contract or implied by law, the Provider warrants, represents and undertakes to MOPAC that:

- 7.1.1 the Provider:
  - 7.1.1.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Contract; and
  - 7.1.1.2 is aware of the purposes for which the Services are required and acknowledges that MOPAC is reliant upon the Provider's expertise and knowledge in the provision of the Services; and
  - 7.1.1.3 is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract;
- 7.1.2 the Contract is executed by a duly authorised representative of the Provider ;
- 7.1.3 all materials, equipment and goods used or supplied by the Provider in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification; and
- 7.1.4 all documents, drawings, computer software and any other work prepared or developed by the Provider or supplied to MOPAC under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.

7.2 Each warranty and obligation in this Clause 6 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of the Contract.

## **8. Operational Management**

- 8.1 MOPAC authorises the Contract Manager to act as the MOPAC's representative for the Contract.
- 8.2 The Provider shall deal with the Contract Manager (or his or her nominated representative) in respect of all matters arising under the Contract, except as set out below or unless otherwise notified by the MOPAC:
  - 8.2.1 variations to the Contract;
  - 8.2.2 any matter concerning the terms of the Contract; and
  - 8.2.3 any financial matter (including any issues in Schedule 4),



which shall be referred to the Procurement Manager.

- 8.3 The Provider shall, at MOPAC's request, provide promptly to MOPAC, at no additional cost, such reports on the provision of the Services as MOPAC may reasonably request.

**9. Provider's Personnel**

- 9.1 In the event that the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended do apply the Parties confirm that the provisions set out in Clause 10 shall apply.

- 9.2 Nothing in this Contract will render the Provider's Personnel, an employee, agent or partner of MOPAC or Authority Group by virtue of the provision of the Services by the Provider under the Contract, and the Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Provider's Personnel.

- 9.3 The Provider shall provide Personnel as necessary for the proper and timely performance and management of the Services in accordance with the Contract. All personnel deployed on work relating to the Contract shall have the appropriate qualifications, training and competence, be properly managed and supervised and in these and any other respects be acceptable to MOPAC.

- 9.4 Without prejudice to any of the MOPAC's other rights, powers or remedies, MOPAC may (without liability to the Provider) deny access to any Provider's Personnel to any MOPAC Premises and/or require that any Provider's Personnel be immediately removed from performing the Services if such Provider's Personnel in MOPAC's view have not been properly trained in any way required by this Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. MOPAC shall notify the Provider of such denial and/or requirement in writing and the Provider shall comply with such notice and provide a suitable replacement (with the Contract Manager's prior consent in the case of Key Personnel)

- 9.5 The Provider shall give MOPAC, if so requested, full particulars of all persons who are or may be at any time employed on the Contract and shall take all reasonable steps to avoid changes to any of its staff designated in the Contract as Key Personnel. The Provider shall give MOPAC reasonable notice of any proposals to change Key Personnel and Clause 9.3 shall apply to the proposed replacement personnel. Notwithstanding Clause 9.1, the Provider shall indemnify, keep indemnified and hold harmless MOPAC from and against all Losses which MOPAC or other member of the Authority Group incur or suffer in relation to the Provider's Personnel or any person who may allege to be the same (whenever such Losses may arise) or any failure by the Provider to comply with Clause 9.4.

9.6 The Provider shall pay to their Personnel not less than the amounts declared to MOPAC (if any) as part of the tender process for the Contract and not less than the amounts to which the Provider Personnel are contractually entitled.

## 10. Transfer of Employees to Service Provider

10.1 For the purposes of this Clause 10 and Clause 11, unless the context indicates otherwise, the following expressions shall have the following meanings:

10.1.1 **“Current Service Provider(s)”** means the provider or providers of services substantially similar to the Services immediately before the Service Commencement Date;

10.1.2 **“Employment Costs”** means all salaries, wages, commissions, bonuses, holiday pay (including payment for accrued but untaken holiday), sick pay, national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other emoluments);

10.1.3 **“Employment Liabilities”** means all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages, awards, compensation, claims, demands, proceedings and legal costs (on a full indemnity basis);

10.1.4 **“Final Staff List”** has the meaning set out in Clause 11.4;

10.1.5 **“Further Transfer Date”** means the date on which the Services (or any part of them) cease to be provided by the Provider and start to be performed by MOPAC or any Replacement Service Provider when (assuming that TUPE applies) the transfer of employment of the Re-Transferring Personnel from the Provider to MOPAC or any Replacement Service Provider occurs;

10.1.6 **“Relevant Period”** means the period starting on the earlier of:

10.1.6.1 the date falling 6 calendar months before the date of expiry of the Contract, including where the Contract is extended in line with Clause 2.2; or

10.1.6.2 if the Contract is terminated by either Party in accordance with Clause 26.3 or by the Authority in accordance with Clause 26.1, 26.2, 26.4 or 26.5, the date of the relevant termination notice;

and ending on the Further Transfer Date;

10.1.7 **“Replacement Service Provider”** means any replacement supplier or provider to MOPAC of the Services (or any part of

the Services) and any Sub-Contractor to such replacement supplier or provider;

10.1.8 **“Re-Transferring Personnel”** means any Provider’s Personnel who are assigned (for the purposes of TUPE) to the relevant Services (or any part of them) immediately before the Further Transfer Date and whose employment contract will transfer to MOPAC or the Replacement Service Provider pursuant to TUPE with effect from the Further Transfer Date;

10.1.9 **“Staff List”** has the meaning set out in Clause 11.1;

10.1.10 **“Staffing Information”** has the meaning set out in Clause 11.1;

10.1.11 **“Sub-Contractor”** means any subcontractor to the Current Provider(s), or the Replacement Service Provider as the context dictates which is engaged in the provision of the Services or any part of them (or services substantially similar to the Services or any part of them) and includes the sub-contractor of any such sub-contractor;

10.1.12 **“Transfer Date”** means the date(s) agreed between the Current Provider and the Future Provider when the Transferring Staff shall transfer from the Current to the successful future Provider;

10.1.13 **“Transfer of Services”** means the transfer of the provision of the Services from the Current Provider and any Sub-Contractor to the future Provider and any Sub-Contractor;

10.1.14 **“Transferring Staff”** means such employees of the Current Provider(s) (and its Sub-Contractors) as are assigned (for the purposes of TUPE) to the Services; and

10.1.15 **“TUPE”** means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

10.2 It is understood and acknowledged by the Parties that where TUPE applies to the Transfer of Service accordingly, pursuant to TUPE, the contracts of employment between the Current Provider and any Sub-Contractor and the Transferring Staff will have effect from the Transfer Date, as if originally made between the Provider (or its Sub-Contractor(s)) and the Transferring Staff (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be subject to the provisions of Clause 10.3).

10.3 The Provider will provide the Transferring Staff with access to a pension scheme in accordance with the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 and TUPE with effect from the Transfer Date.

10.4 The Parties agree that all Employment Costs in respect of the Transferring Staff will be allocated as follows:

10.4.1 the Current Provider(s) will be responsible for any Employment Costs relating to the period up to the Transfer Date; and

10.4.2 the successful new Provider will be responsible for any Employment Costs relating to the period on and after the Transfer Date,

and Employment Costs will if necessary be apportioned on a time basis between the Current Provider (s) and the Successful future Provider, regardless of when such sums fall to be paid.

10.5 MOPAC warrants to the successful new Provider that none of the MOPAC's employees will transfer to the Provider under TUPE as a result of the Transfer of Service.

10.6 The successful new Provider will indemnify and keep indemnified MOPAC and the Current Provider (s) (and its Sub-Contractors) from and against all Employment Liabilities which MOPAC or the Current Provider(s) (or its Sub-Contractors) incur or suffer arising out of or in connection with:

10.6.1 any act or omission by or on behalf of the successful new Provider (or its Sub-Contractors) in respect of any person employed or engaged by it (or its Sub-Contractors) (including the Transferring Staff) on or after the Transfer Date;

10.6.2 any failure by the Service Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE in relation to the Transfer of Services;

10.6.3 any claim brought, or other action taken by or on behalf of any of the Transferring Staff which arises from or in connection with (directly or indirectly) any act or omission or communication made to the Transferring Staff by the successful new Provider (or its Sub-Contractors) before the Transfer Date;

10.6.4 the employment or termination of employment by the successful new Provider (or its Sub-Contractors) of any Transferring Staff on or after the Transfer Date;

10.6.5 any actual or proposed changes by the success new Provider (or its Sub-Contractors) to the terms and conditions of employment or working conditions of any of the Transferring Staff which are or are alleged to be to the detriment of any of the Transferring Staff.

10.7 The successful new Provider will provide the Current Service Provider(s) (or its Sub-Contractors), as soon as practicable, but in any event in good time before the Transfer Date with all information which the Current Service Provider (or its Sub-Contractors) may reasonably require to enable it to comply with its information and consultation obligations

under TUPE and, if requested, will confirm to MOPAC when it has done so and provide a copy to MOPAC.

- 10.8 The successful new Provider warrants and undertakes to MOPAC that all information given to the Current Provider(s) (or its Sub-Contractors) regarding the Transferring Staff and any measures it proposes to take in relation to them is and will be full and accurate in all respects.
- 10.9 Clause 33.1 shall be amended so that benefits conferred on the Current Provider or its Sub-Contractors under this Clause 10 shall be enforceable by them (successful new Provider).

## **11. Transfer of Employees on Expiry or Termination**

11.1 The Provider will promptly provide (and procure that its Sub-Contractors provide) when requested by MOPAC (but not more than twice in any 12-month period) and not more than 7 days after the date of any notice to terminate this Contract given by either Party, the following information to MOPAC:

11.1.1 an anonymised list of current Provider's Personnel and employees and workers of its Sub-Contractors engaged in the provision of the Services (each identified as such in the list) (the "**Staff List**");

11.1.2 such of the information specified in paragraph 2 of Schedule 7 as is requested by MOPAC in respect of each individual included on the Staff List;

11.1.3 in the situation where notice to terminate this Contract has been given, an anonymised list of any persons who are materially engaged or have been materially engaged during the preceding six months in the provision of the Services, whom the Provider considers will not transfer under TUPE for any reason whatsoever together with details of their role and the reasons why they think such persons will not transfer;

11.1.4 such information together being the "**Staffing Information**".

11.2 The Provider will notify MOPAC as soon as practicable and in any event within 5 days of them becoming aware of any additional or new Staffing Information and any changes to any Staffing Information already provided.

11.3 The Provider warrants to MOPAC that any Staffing Information which it supplies (including any copies of it) is complete and accurate in all respects and will be kept complete and accurate.

11.4 Subject to Clause 11.5, the Provider will provide MOPAC with a final Staff List (the "**Final Staff List**") and Staffing Information relating to persons on that list not less than 28 days before the Further Transfer Date.

- 11.5 If the Contract is terminated by either Party in accordance with Clause 29.3 or by MOPAC in accordance with Clause 29.1, 29.2, 29.4 or 29.5 then the Final Staff List will be provided by the Provider to MOPAC as soon as practicable and no later than 14 days after the date of termination of the Contract.
- 11.6 The Provider warrants that as at the Further Transfer Date:
- 11.6.1 the Final Staff List and the Staffing Information relating to persons on that list will be complete and accurate;
  - 11.6.2 the Final Staff List will identify all actual and potential Re-Transferring Personnel; and
  - 11.6.3 it will have disclosed all terms and conditions of employment or engagement and other Staffing Information relating to the Re-Transferring Personnel to MOPAC.
- 11.7 During the Relevant Period the Provider will not and will procure that its Sub-Contractors do not without the prior written consent of MOPAC (such consent not to be unreasonably withheld or delayed):
- 11.7.1 terminate or give notice to terminate the employment or engagement or replace the persons listed on the most recent Staff List or any Re-Transferring Personnel (save for any termination for gross misconduct, provided that MOPAC is informed promptly of such termination);
  - 11.7.2 deploy or assign any other person to perform the Services who is not included on the most recent Staff List other than temporarily and in the ordinary course of business;
  - 11.7.3 make, propose or permit any changes to the terms and conditions of employment or engagement of any persons listed on the most recent Staff List or any Re-Transferring Personnel;
  - 11.7.4 increase to any significant degree the proportion of working time spent on the Services by any of the Provider's Personnel other than temporarily and in the ordinary course of business; or
  - 11.7.5 introduce any new contractual or customary practice (including for the avoidance of doubt any payments on termination of employment) applicable to any person listed on the most recent Staff List or any Re-Transferring Personnel.
- 11.8 The Provider will promptly notify MOPAC of any notice of resignation received from any person listed on the most recent Staff List or the Final Staff List (if any) during the Relevant Period regardless of when such notice takes effect.
- 11.9 The Provider agrees that MOPAC will be permitted to disclose any information provided to it under this Clause 11 in anonymised form to

any person who has been invited to tender for the provision of the Services (or similar services) and to any third party engaged by the Authority to review the delivery of the Services and to any Replacement Service Provider (successful new Provider).

11.10 If TUPE applies on the expiry or termination of the Contract, on the termination or variation of any Service or any part of such a Service, or on the appointment of a successful new Provider, the following will apply:

11.10.1 The contracts of employment of the Re-Transferring Personnel will have effect from the Further Transfer Date as if originally made between the Re-Transferring Personnel and MOPAC or successful new Provider (or its Sub-Contractor) (as appropriate) (except in relation to occupational pension scheme benefits excluded under Regulation 10 of TUPE which will be treated in accordance with the provisions of the Pensions Act 2004 and the Transfer of Employment (Pensions Protection) Regulations 2005).

11.10.2 During the Relevant Period the Provider will:

11.10.2.1 provide MOPAC or successful new Provider (as appropriate) with access to such employment and payroll records as MOPAC or successful new Provider (as appropriate) may require to put in place the administrative arrangements for the transfer of the contracts of employment of the Re-Transferring Personnel to MOPAC or successful new Provider (as appropriate);

11.10.2.2 allow MOPAC or successful new Provider (as appropriate) to have copies of any of those employment and payroll records;

11.10.2.3 provide all original employment records relating to the Re-Transferring Personnel to MOPAC or successful new Provider (as appropriate); and

11.10.2.4 co-operate with MOPAC and any successful new Provider in the orderly management of the transfer of employment of the Re-Transferring Personnel.

If the Re-Transferring Personnel are employed or engaged by Sub-Contractors, the Provider will procure such Sub-Contractors provide MOPAC or successful new Provider (as appropriate) with the same level of access, information and cooperation.

11.10.3 The Provider warrants to each of MOPAC and the successful new Provider that as at the Further Transfer Date no Re-

Transferring Personnel (except where the Provider has notified MOPAC and the successful new Provider (if appointed) in writing to the contrary) to the Provider's knowledge:

11.10.3.1 is under notice of termination;

11.10.3.2 is on long-term sick leave;

11.10.3.3 is on maternity, parental or adoption leave;

11.10.3.4 has committed any serious security breach or engaged in any serious fraudulent activity or misconduct amounting to a breach of any regulations;

11.10.3.5 is entitled or subject to any additional terms and conditions of employment other than those disclosed to MOPAC or Successful new Provider (as appropriate);

11.10.3.6 is or has been within the previous two years the subject of formal disciplinary proceedings;

11.10.3.7 has received a written warning (other than a warning that has lapsed);

11.10.3.8 has taken or been the subject of a grievance procedure within the previous two years; or

11.10.3.9 has objected, or has indicated an intention to object, in accordance with TUPE to his or her employment transferring to MOPAC or successful new Provider (as appropriate) under TUPE.

11.10.4 The Provider undertakes to both MOPAC and any successful new Provider that it will (and will procure that its Sub-Contractors will):

11.10.4.1 continue to perform and observe all of its obligations under or in connection with the contracts of employment of the Re-Transferring Personnel and any collective agreements relating to the Re-Transferring Personnel up to the Further Transfer Date;

11.10.4.2 pay to the Re-Transferring Personnel all Employment Costs to which they are entitled from the Service Provider or any Sub-Contractor which fall due in the period up to the Further Transfer Date;

11.10.4.3 to pay to MOPAC or the Successful new Provider (as appropriate) within 7 days of the Further Transfer



Date any apportioned sum in respect of Employment Costs as set out in Clause A21.10.5; and

11.10.4.4 to comply in all respects with its information and consultation obligations under TUPE and to provide to MOPAC or Successful new Provider (as appropriate) such information as MOPAC or Successful new Provider may request in order to verify such compliance.

11.10.5 The Parties agree that all Employment Costs in respect of the Re-Transferring Personnel will be allocated as follows:

11.10.5.1 the Provider will be responsible for any Employment Costs relating to the period up to the Further Transfer Date;

11.10.5.2 MOPAC or (where appointed) any Successful new Provider will be responsible for the Employment Costs relating to the period on and after the Further Transfer Date,

and will if necessary be apportioned on a time basis (regardless of when such sums fall to be paid).

11.10.6 The Provider will indemnify and keep indemnified each of the MOPAC and any Successful new Provider from and against all Employment Liabilities which MOPAC or the Successful new Provider incurs or suffers arising directly or indirectly out of or in connection with:

11.10.6.1 any failure by the Provider to comply with its obligations under this Clause 11.10;

11.10.6.2 any act or omission by or on behalf of the Provider (or its Sub-Contractors) in respect of the Re-Transferring Personnel whether occurring before on or after the Further Transfer Date;

11.10.6.3 any failure by the Provider (or its Sub-Contractors) to comply with Regulation 13 of TUPE (except to the extent that such failure arises from a failure by MOPAC or the successful new Provider to comply with Regulation 13 of TUPE);

11.10.6.4 any claim or demand by HMRC or any other statutory authority in respect of any financial obligation including but not limited to PAYE and national insurance contributions in relation to any Re-Transferring Personnel to the extent that such claim

or demand relates to the period from the Contract Commencement Date to the Further Transfer Date;

11.10.6.5 any claim or demand or other action taken against MOPAC or any successful new Provider by any person employed or engaged by the Provider (or its Sub-Contractors) (other than Re-Transferring Personnel included on the Final Staff List) who claims (whether correctly or not) that MOPAC or successful new Provider has inherited any liability from the Provider (or its Sub-Contractors) in respect of them by virtue of TUPE.

11.11 If TUPE does not apply on the expiry or termination of the Contract, the Provider will remain responsible for their Personnel and will indemnify and keep indemnified MOPAC against all Employment Liabilities which MOPAC incurs or suffers arising directly or indirectly out of or in connection with the employment or termination of employment of any of the Provider Personnel or former Service Provider Personnel (Former Provider).

11.12 The Provider will procure that whenever MOPAC so requires on reasonable notice at any time during the continuance in force of this Contract and for 2 years following the date of expiry or earlier termination of the Contract MOPAC will be given reasonable access to and be allowed to consult with any person, consultant or employee who, at that time:

11.12.1 is still an employee or sub-contractor of the Provider or any of the Provider's associated companies; and

11.12.2 was at any time employed or engaged by the Provider in order to provide the Services to MOPAC under this Contract,

and such access and consultation will be provided on the first occasion free of charge and thereafter be charged at reasonable rates for the time spent by the Provider or its employees or Sub-Contractors on such consultation. The Provider will use all reasonable endeavours to procure that such persons co-operate with MOPAC's requests.

11.13 Clause 33.1 shall be amended so that benefits conferred on the successful new Provider under this Clause 11 shall be enforceable by them.

## **12. Sub-Contracting and Change of Ownership**

12.1 The Provider shall not assign or sub-contract all or any part of the Services without the prior written consent of MOPAC, which may be refused or granted subject to such conditions as MOPAC sees fit. For the avoidance of doubt any changes to the list of sub-contractors in Schedule 1 also require the prior written consent of MOPAC.

- 12.2 Where the Provider sub-contracts all or any part of the Services to any person, the Provider shall:
- 12.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Provider under the Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;
  - 12.2.2 be responsible for payments to that person;
  - 12.2.3 remain solely responsible and liable to MOPAC for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Provider;
  - 12.2.4 without prejudice to the provisions of Clause 15, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
  - 12.2.5 include a term in each sub-contract (of any tier):
    - 12.2.5.1 requiring payment to be made by the Provider or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
    - 12.2.5.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements;
    - 12.2.5.3 entitling the Provider or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law;
    - 12.2.5.4 a requirement that the sub-contractor includes a provision having the same effect as Clause 12.2.5.3 above in any sub-contract it awards;

- 12.2.5.5 a provision restricting the ability of the sub-contractor to terminate the sub-contract without first informing the Authority and giving the Authority at least thirty (30) Business Days to discuss with the Provider any issues raised by the sub-contractor;
  - 12.2.5.6 a provision requiring the sub-contractor to notify MOPAC promptly in writing of any material non-payment or late payment of any sums properly due to the sub-contractor from the Provider under the sub-contract, under a specified valid invoice and not subject to a genuine dispute. For the avoidance of doubt, MOPAC shall have no liability whatsoever in respect of, or in connection with, any such material non-payment or late payment by the Provider to the sub-contractor;
  - 12.2.5.7 a provision requiring the sub-contractor to provide all reasonable co-operation and assistance to MOPAC in connection with the monitoring of the performance of the Contract and/or the Services; and
  - 12.2.5.8 any other provision as notified by MOPAC to the Provider from time to time; and
- 12.2.6 comply with any guidance and, or codes of practice issued by MOPAC in relation to the fair and effective management of sub-contractors. Any breach by the Provider of this clause 12.2.6 shall be deemed a material breach for the purposes of clause 29.1.1 and shall entitle MOPAC (at its absolute discretion) to exercise its rights under this clause.
- 12.3 The Provider shall give notice to MOPAC within 10 Business Days where:
- 12.3.1 there is any change in the ownership of the Provider where such change relates to 50% or more of the issued share capital of the Provider; and
  - 12.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company; and
  - 12.3.3 (in the case of an unincorporated Provider) give notice to the MOPAC if there is any change in the management personnel of the Provider, which alone or taken with any other change in management personnel not previously notified to MOPAC, equates to a change in the identity of 50% or more of the management personnel of the Provider.

Upon the occurrence of any of the events referred to at Clauses 12.3.1 to 12.3.3 above, MOPAC shall have the right to terminate the Contract.

### **13. Conflict of Interest**

- 13.1 The Provider warrants that it does not and will not have at the Contract Commencement Date or Service Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any member of the Authority Group, save to the extent fully disclosed to and approved by the MOPAC.
- 13.2 The Provider shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every six months and shall notify MOPAC in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any member of the Authority Group and shall work with MOPAC to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to MOPAC's satisfaction, provided that, where MOPAC is not so satisfied, it may terminate the Contract in accordance with Clause 29.1.4.

### **14. Access to Premises and Assets**

- 14.1 For the purpose of the delivery of this contract access to MOPAC's premises or assets shall not be required.

### **15. Compliance with Policies and Law**

- 15.1 The Provider, at no additional cost to MOPAC:
- 15.1.1 undertakes to procure that all the Provider's Personnel comply with all of MOPAC's policies and standards that are relevant to the performance of the Services, including the provisions set out in Schedule 5 and those relating to safety, safeguarding, security, business ethics, and any other regulations specified by MOPAC. MOPAC shall provide the Provider with copies of such policies and standards on request;
  - 15.1.2 shall provide the Services in compliance with and shall ensure that the Provider's Personnel comply with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), by-laws, treaties and other regulatory requirements relevant to either or both of the Provider's or the MOPAC's business, from time to time in force which are or may become applicable to the Services. The Provider shall promptly notify MOPAC if they are required to make any change to the Services for the purposes of complying with its obligations under this Clause 15.1.2;

- 15.1.3 without limiting the generality of Clause 15.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
- 15.1.4 acknowledges that MOPAC is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a “**Relevant Protected Characteristic**”) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with MOPAC where possible in satisfying this duty;
- 15.1.5 where possible, shall provide the Services in such a manner as to:
- 15.1.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
  - 15.1.5.2 eliminate unlawful discrimination; and
  - 15.1.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation;
- 15.1.6 The Provider shall:
- 15.1.6.1 obey directions from MOPAC with regard to the conduct of the Contract in accordance with the duties referred to in Clauses 15.1.4 to 15.1.5;
  - 15.1.6.2 assist, and consult and liaise with MOPAC with regard to any assessment of the impact on and relevance to the Contract of the duties referred to in Clauses 15.1.4 to 15.1.5;
  - 15.1.6.3 on entering into any contract with a sub-contractor in relation to this Contract, impose obligations upon the sub-contractor to comply with this Clause 15.1.6 as if the sub-contractor were in the position of the Provider;
  - 15.1.6.4 provide to MOPAC, upon request, such evidence as MOPAC may require for the purposes of determining whether the Provider has complied with this Clause 15.1.6 In particular, the Provider shall provide any evidence requested within such timescale as

MOPAC may require, and co-operate fully with MOPAC during the course of the their investigation of the Provider's compliance with its duties under this Clause 15.1.6; and

15.1.6.5 inform MOPAC forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract by any person for breach of the Equality Act 2010.

15.1.7 shall promptly notify the Provider's Personnel and MOPAC of any health and safety hazards that exist or may arise in connection with the performance of the Services;

15.1.8 without limiting the generality of Clause 15.1.2, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it;

15.1.9 where applicable to the Provider and without limiting the generality of Clause 15.1.2, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it and;

15.1.10 In all cases, the costs of compliance with this Clause 15.1 shall be borne by the Provider.

15.2 In providing the Services, the Provider shall have appropriate regard (insofar as the Provider's activities may impact on the environment) to the need to:

15.2.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;

15.2.2 enhance the environment and have regard to the desirability of achieving sustainable development;

15.2.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and

15.2.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

### 15.3 **London Living Wage**

15.3.1 For the purposes of this Clause 15.3, unless the context indicates otherwise, the expression "London Living Wage" means a basic hourly wage as updated from time to time by the GLA Economics Unit or any relevant replacement organisation and as notified to the Provider.

- 15.3.2 The Provider acknowledges and agrees that the Mayor of London pursuant to section 155 of the GLA Act has directed that members of the Authority Group ensure that the London Living Wage is paid to anyone engaged by any member of the Authority Group who is required to discharge contractual obligations in Greater London or on MOPAC's estate.
- 15.3.3 Without prejudice to any other provision of this Contract, the Provider shall:
- 15.3.3.1 ensure that none of its employees engaged in the provision of the Services (in Greater London or on MOPAC's estate but not otherwise) is paid an hourly wage (or equivalent of an hourly wage) less than the London Living Wage;
  - 15.3.3.2 ensure that none of its employees engaged in the provision of the Services is paid less than the amount to which they are entitled in their respective contracts of employment;
  - 15.3.3.3 provide to MOPAC such information concerning the London Living Wage and as MOPAC or its nominees may reasonably require from time to time;
  - 15.3.3.4 disseminate on behalf of MOPAC to its employees engaged in the provision of the Services such perception questionnaires as MOPAC may reasonably require from time to time and promptly collate and return to MOPAC responses to such questionnaires; and
  - 15.3.3.5 co-operate and provide all reasonable assistance in monitoring the effect of the London Living Wage.
- 15.3.4 For the avoidance of doubt the Provider shall implement any updated London Living Wage on or before 1 April in the year following notification of such updated London Living Wage.
- 15.3.5 MOPAC reserves the right to audit (acting by itself or its nominee(s)) the provision of the London Living Wage to the Provider's staff and the staff of its sub-contractors.
- 15.3.6 Any breach by the Provider of the provisions of this Clause 15.3 shall be treated as a material breach capable of remedy in accordance with Clause 29.1.1.

## **16. Corrupt Gifts and Payment of Commission**

The Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of any member of the Authority Group



nor favour any employee, officer or agent of any member of the Authority Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of any member of the Authority Group other than as a representative of MOPAC, without MOPAC's prior written approval.

## **17. Equipment**

- 17.1 Risk in all Provider's Equipment shall be with the Provider at all times regardless of whether or not the Provider Equipment is located at MOAC Premises.
- 17.2 The Provider shall ensure that all their Equipment meets all minimum safety standards required from time to time by law.

## **18. Quality and Best Value**

- 18.1 The Provider acknowledges that MOPAC has a duty to obtain good value for money and as such MOPAC is required to make arrangements to secure continuous improvements in the way it exercises its functions (having regard to a combination of economy, efficiency and effectiveness) and, as such, the Provider shall, where reasonably requested by MOPAC, participate in any relevant best value review.
- 18.2 The Provider acknowledges that any best value review shall be conducted on an open-book accounting basis and agrees to provide any information reasonably requested by MOPAC to support any best value review.
- 18.3 Where the GLA is the Authority then in accordance with the statutory requirement set out in section 61(3) of the Greater London Authority Act 1999, the Provider shall send such representatives as may be requested to attend the Greater London Assembly for questioning in relation to the Contract. The Provider acknowledges that it may be liable to a fine or imprisonment if it fails to comply with a summons to attend.

## **19. Records, Audit and Inspection**

- 19.1 The Provider shall, and shall procure that its sub-contractors shall:
  - 19.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Provider's obligations under the Contract and all transactions entered into by the Provider for the purposes of the Contract (including timesheets for the Provider's Personnel where such records are material to the calculation of the Fees) ("**Records**"); and
  - 19.1.2 retain all Records during the Term and for a period of not less than 8 years (or such longer period as may be required by law), except Records containing Personal Data (as defined in Data Protection Legislation) which shall only be retained for as long

as necessary, following termination or expiry of the Contract (“**Retention Period**”).

19.2 MOPAC and any person nominated by MOPAC has the right to audit any and all Records at any time during the Retention Period on giving to the Provider what MOPAC considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the Provider’s performance of the Services (including compliance with Clause 15.1) and the Provider shall give all reasonable assistance to MOPAC or its nominee in conducting such inspection, including making available documents and staff for interview.

## **20. Set-Off**

All damages, costs, charges, expenses, debts, sums or other amounts owing (contingently or otherwise) to or incurred by MOPAC arising out of or attributable to this Contract or any other contract between the MOPAC and the Provider may be deducted by MOPAC from monies due or which may become due to the Provider under this Contract or under any other contract with any member of the Authority Group may recover such amount as a debt.

## **21. Indemnity**

21.1 Subject to Clause 21.2, the Provider is responsible for and shall indemnify, keep indemnified and hold harmless MOPAC and all other members of the Authority Group (including their respective employees, sub-contractors and agents) (“**the Indemnified Party**”) against all Losses which the Indemnified Party incurs or suffers as a consequence of any breach or negligent performance of the Contract by the Provider (or any of the Provider’s Personnel) (including in each case any non-performance or delay in performance of the Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Provider (or any of its employees, agents or sub-contractors).

21.2 The Provider is not responsible for and shall not indemnify MOPAC for any Losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under the Contract by MOPAC or any other member of the Authority Group including by any of their respective employees, agents or sub-contractors.

## **22. Insurance**

22.1 The Provider will at its sole cost maintain with adequate insurance coverage, policies of insurance with an insurance company of long-standing and good repute in respect of:

22.1.1 public liability insurance; and

- 22.1.2 such other insurance as may be required in order to fulfil the conditions of this Contract including (without limitation) employers liability insurance.
- 22.2 The Provider will produce evidence to MOPAC on reasonable request of the insurance policies set out in Clause 22.1 and payment of all premiums due on each policy.
- 22.3 The Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 22.1 being or becoming void, voidable or unenforceable.
- 22.4 In the event that any of the Insurances are cancelled or not renewed, the Provider shall immediately notify MOPAC and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to MOPAC.
- 23. The Authority's Data**
- 23.1 The Provider acknowledges MOPAC's ownership of Intellectual Property Rights which may subsist in MOPAC's data. The Provider shall not delete or remove any copyright notices contained within or relating to MOPAC's data.
- 23.2 The Provider and MOPAC shall each take reasonable precautions (having regard to the nature of their other respective obligations under the Contract) to preserve the integrity of MOPAC's data and to prevent any corruption or loss of MOPAC's data.
- 24. Intellectual Property Rights**
- 24.1 The Provider hereby assigns with full title guarantee to MOPAC all Intellectual Property Rights in all documents, drawings, computer software and any other work prepared or developed by or on behalf of the Provider in the provision of the Services (the "**Products**") provided that such assignment shall not include items not prepared or developed for the purposes of this Contract.
- 24.2 The Provider shall provide MOPAC with copies of all materials relied upon or referred to in the creation of the Products together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Products.
- 24.3 The Provider shall have no right (save where expressly permitted under the Contract or with MOPAC's prior written consent) to use any trademarks, trade names, logos or other Intellectual Property Rights of MOPAC.
- 24.4 The Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Contract have been paid and are included within the Fees.

**25. Privacy, Data Protection and Cyber Security**

- 25.1 The Provider shall comply with all of its obligations under Data Protection Legislation and, where Processing Personal Data, shall only carry out such Processing for the purposes of providing the Services and in accordance with the Data Protection Legislation and the provisions set out in Schedule 6 of this Contract. For the avoidance of doubt, any breach of this Clause 25.1, shall be deemed a material breach of the Contract for the purposes of Clause 29.1.1.
- 25.2 The Provider acknowledges that MOPAC places great emphasis on the confidentiality, integrity and security of Personal Data and shall deliver the Services, and shall ensure that its sub-contractors deliver the Services, in compliance with ISO27001/2.
- 25.3 In the event that the Provider does not hold current accreditation for ISO27001/2, then the Provider commits to achieving the ISO27001/2 standard within twelve (12) months of the start date of the Contract. The Provider shall ensure that any sub-contractors that do not current hold ISO27001/2 commit to achieving the accreditation within twelve (12) months of the start of their sub-contract.

**26. Confidentiality and Announcements**

- 26.1 Subject to Clause 27, the Provider will keep confidential:
  - 26.1.1 the terms of this Contract; and
  - 26.1.2 any and all Confidential Information that it may acquire in relation to MOPAC.
- 26.2 The Provider will not use MOPAC's Confidential Information for any purpose other than to perform its obligations under this Contract. The Provider will ensure that its officers and employees comply with the provisions of Clause 26.1.
- 26.3 The obligations on the Provider set out in Clause 26.1 will not apply to any Confidential Information:
  - 26.3.1 which either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 26) and;
  - 26.3.2 which a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.
- 26.4 The Provider shall keep secure all materials containing any information in relation to the Contract and its performance.
- 26.5 The Provider shall not communicate with representatives of the general or technical press, radio, television or other communications media in

relation to the existence of the Contract or that it is providing the Services to MOPAC or in relation to any matter under or arising from the Contract unless specifically granted permission to do so in writing by the MOPAC. MOPAC shall have the right to approve any announcement before it is made.

26.6 Neither Party shall refer to or use any business name or trademark of the other Party in any promotional communications connected with the Contract without the prior written consent of the other Party, except where required by law.

26.7 The provisions of this Clause 26 will survive the expiry or termination of this Contract.

## **27. Freedom of Information and Transparency**

27.1 For the purposes of this Clause 27:

27.1.1 **“FOI Legislation”** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

27.1.2 **“Information”** means information recorded in any form held by MOPAC or by the Provider on behalf of the MOPAC; and

27.1.3 **“Information Access Request”** means a request for any Information under the FOI Legislation.

27.2 The Provider acknowledges that MOPAC:

27.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with MOPAC to enable MOPAC to comply with its obligations under the FOI Legislation; and

27.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Provider.

27.3 Without prejudice to the generality of Clause 27.2, the Provider shall and shall procure that its sub-contractors (if any) shall:

27.3.1 transfer to the Contract Manager (or such other person as may be notified by MOPAC to the Provider) each Information Access Request relevant to the Contract, the Services or any member of the Authority Group that it or they (as the case may be) receive as soon as practicable and in any event within two (2)

Business Days of receiving such Information Access Request;  
and

- 27.3.2 in relation to Information held by the Provider on behalf of MOPAC, provide MOPAC with details about and copies of all such Information that MOPAC requests and such details and copies shall be provided within five (5) Business Days of a request from MOPAC (or such other period as MOPAC may reasonably specify), and in such forms as MOPAC may reasonably specify.
- 27.4 MOPAC shall be responsible for determining whether Information is exempt from disclosure under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 27.5 The Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by MOPAC.
- 27.6 The Provider acknowledges that MOPAC is subject to the Transparency Commitment. Accordingly, notwithstanding Clause 26.1 and Clause 27, the Provider hereby gives its consent for MOAC to publish the Contract Information to the general public.
- 27.7 MOPAC may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion MOPAC may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 27.8 MOPAC may in its absolute discretion consult with the Provider regarding any redactions to the Contract Information to be published pursuant to Clause 27.6. MOPAC shall make the final decision regarding both publication and redaction of the Contract Information.
- 28. Dispute Resolution**
- 28.1 MOPAC and the Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract (“**Dispute**”) before resorting to litigation.
- 28.2 If the Dispute is not settled through discussion between the Contract Manager and a representative of the Provider within a period of seven (7) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (“**Senior Personnel**”) of each of the Parties for resolution.
- 28.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the

assistance of a mediator. Either Party may give notice to the other Party (“**Notice**”) to commence such process and the Notice shall identify one or more proposed mediators.

- 28.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution (“**CEDR**”) in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.
- 28.5 Where a dispute is referred to mediation under Clause 28.3, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.
- 28.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties’ authorised representatives, shall be final and binding on the Parties.
- If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 44.
- 28.7 For the avoidance of doubt, the Provider shall continue to provide the Services in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 28.
- 28.8 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 28 and Clause 28 shall not apply in respect of any circumstances where such remedies are sought.

## **29. Breach and Termination of Contract**

29.1 Without prejudice to MOPAC’s right to terminate at common law, MOPAC may terminate the Contract immediately upon giving notice to the Provider if:

29.1.1 In addition and without prejudice to Clauses 29.1.2 to 29.1.6 (inclusive), the Provider has committed any material or persistent breach of the Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 10 Business Days (or such other timeframe as specified in writing by MOPAC) from the date of written notice to the Provider giving details of the breach and requiring it to be remedied;

29.1.2 the Provider is subject to an Insolvency Event;

- 29.1.3 in the event that there is a change of ownership referred to in Clause 12.3 or the Provider is in breach of Clause 12.3;
  - 29.1.4 MOPAC is not satisfied on the issue of any conflict of interest in accordance with Clause 13;
  - 29.1.5 the Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
  - 29.1.6 the Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or
  - 29.1.7 the Provider fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.
- 29.2 Without prejudice to any of MOPAC's other rights, powers or remedies (whether under the Contract or otherwise) if the Provider is in breach of any of its warranties, or obligations either under Clause 6 or any other provision of this Contract, the Provider shall, if required to do so by MOPAC, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and obligations. Nothing in this Clause 29.2 shall prevent MOPAC from procuring the provision of any Services or any remedial action in respect of any Services from an alternative contractor and, where MOPAC so procures any Services or any remedial action, MOPAC shall be entitled to recover from the Provider all additional cost, loss and expense incurred by MOPAC and attributable to MOPAC procuring such Services or remedial action from such alternative contractor.
- 29.3 Neither Party shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the Contract ("**the Affected Party**"), then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Contract immediately upon giving notice to the Affected Party. If the Contract is terminated in accordance with this Clause 29.3 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.
- 29.4 Without prejudice to MOPAC's right to terminate the Contract under Clause 29.1 or to terminate at common law, MOPAC may terminate the Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1, provided that this Clause 29.4 may be disapplied by notice to that effect in Schedule 1.



- 29.5 Without prejudice to MOPAC's right to terminate the Contract under Clauses 29.1, 29.4 or at common law, the Authority may terminate the Contract at any time following a Declaration of Ineffectiveness in accordance with the provisions of Clause 31.
- 29.6 To the extent that MOPAC has a right to terminate the Contract under this Clause 29 then, as an alternative to termination, MOPAC may by giving notice to the Provider require the Provider to provide part only of the Services with effect from the date specified in MOPAC's notice ("**Change Date**") whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Fees applicable with effect from the Change Date will be adjusted proportionately or if in MOPAC's opinion a proportionate adjustment would not be reasonable in such manner as MOPAC may determine.

### **30. Consequences of Termination or Expiry**

- 30.1 Notwithstanding the provisions of Clause 26, wherever MOPAC chooses to put out to tender for a replacement service provider ( new Provider) some or all of the Services, the Provider shall disclose to tenderers such information concerning the Services as MOPAC may require for the purposes of such tender and shall also comply with all requirements as are set out at Schedule 7. The Provider may impose upon any Provider (bidding Organisation) of such information such obligations of confidentiality as it may require.
- 30.2 The termination or expiry of the Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry.
- 30.3 Upon expiry or termination of the Contract (howsoever caused):
- 30.3.1 the Provider shall, at no further cost to MOPAC:
    - 30.3.1.1 take all such steps as shall be necessary to agree with MOPAC a plan for the orderly handover of Services to MOPAC (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to MOPAC and to affect such handover; and
    - 30.3.1.2 on receipt of MOPAC's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
  - 30.3.2 MOPAC shall (subject to Clauses 20, 30.1 and 30.4 and the provisions of any security for due performance supplied by the Provider) pay the Provider any Fees remaining due in relation

to any Services properly performed in accordance with the Contract up to the date of termination or expiry calculated so far as is possible in accordance with Schedule 4 or otherwise reasonably determined by MOPAC.

30.4 On termination of all or any part of the Contract, MOPAC may enter into any agreement with any third party or parties as MOPAC thinks fit to provide any or all of the Services and (save where terminated under Clause 29.4) the Provider liable for all additional expenditure reasonably incurred by MOPAC in having such services carried out and all other costs and damages reasonably incurred by MOPAC in consequence of such termination. MOPAC may deduct such costs from the Fees or otherwise recover such costs from the Provider as a debt.

**31. Declaration of Ineffectiveness and Public Procurement Termination Event**

31.1 In the event that a court makes a Declaration of Ineffectiveness, MOPAC shall promptly notify the Provider. The Parties agree that the provisions of Clause 30 and Clauses 31.1, 31.2, 31.4 to 31.6 (inclusive) and 31.12 shall apply as from the time when the Declaration of Ineffectiveness is made.

31.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in Clauses 31.1 to 31.6 inclusive.

31.3 During any court proceedings seeking a Declaration of Ineffectiveness, MOPAC may require the Provider to prepare a Cessation Plan in accordance with this Clause 31.3 by issuing a notice in writing. As from the date of receipt by the Provider of such notification from MOPAC, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, MOPAC shall reasonably determine an appropriate Cessation Plan with the object of achieving:

31.3.1 an orderly and efficient cessation of the Services or (at MOPAC's request) a transition of the Services to MOPAC or such other entity as MOPAC may specify; and

31.3.2 minimal disruption or inconvenience to MOPAC or to customers of the Services or to public passenger transport services or facilities,

in accordance with the provisions of Clauses 31.2 to 31.6 (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.

31.4 Where there is any conflict or discrepancy between the provisions of Clause 30 and Clauses 31.2 to 31.6 (inclusive) and 31.12 or the

Cessation Plan, the provisions of these Clauses 31.2 to 31.6 (inclusive) and 31.12 and the Cessation Plan shall prevail.

- 31.5 The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by MOPAC) in the event that a Declaration of Ineffectiveness is made.
- 31.6 MOPAC shall pay the Provider reasonable costs in assisting MOPAC in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Fees agreed as part of this Contract or as otherwise reasonably determined by MOPAC. Provided that MOPAC shall not be liable to the Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to any Declaration of Ineffectiveness.
- 31.7 Without prejudice to MOPAC's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or Regulation 89(3) of the Utilities Contracts Regulations 2016, in the event that the Authority exercises its right to terminate pursuant to this Clause 31.7 (a "Public Procurement Termination Event"), the Authority shall promptly notify the Provider and the Parties agree that:
- 31.7.1 the provisions of Clause 30 and these Clauses 31.7 to 31.12 (inclusive) shall apply as from the date of receipt by the Provider of the notification of the Public Procurement Termination Event; and
- 31.7.2 if there is any conflict or discrepancy between the provisions of Clause 30 and these Clauses 31.7 to 31.12 or the Cessation Plan, the provisions of these Clauses 31.7 to 31.12 and the Cessation Plan shall prevail.
- 31.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided in Clauses 31.7 to 31.11 inclusive.
- 31.9 As from the date of receipt by the Provider of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, MOPAC shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 31.9.1 an orderly and efficient cessation or (at MOPAC's election) a transition to MOPAC or such other entity as MOPAC may specify of: (i) the Services; or (at MOPAC's election), (ii) the part

of the Services which are affected by the Public Procurement Termination Grounds; and

31.9.2 minimal disruption or inconvenience to MOPAC or to customers of the Services or to public passenger transport services or facilities,

in accordance with the provisions of these Clauses 31.7 to 31.11 (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.

31.10 Upon agreement, or determination by MOPAC, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.

31.11 MOPAC shall pay the Provider reasonable costs in assisting MOPAC in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Fees agreed as part of this Contract or as otherwise reasonably determined by MOPAC, provided that MOPAC shall not be liable to the Provider for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract as a result of Public Procurement Termination Grounds.

31.12 For the avoidance of doubt, the provisions of this Clause 31 (and applicable definitions) shall survive any termination of the Contract following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.

## **32. Survival**

32.1 The provisions of Clauses 1, 3.1.3, **Error! Reference source not found.**, 5, 7.1.4, 9.1, 12.2.2, 12.2.3, 17, 19 to 23 (inclusive), 24.2, 25 to 28 (inclusive), 30, 31 to 34 (inclusive), 36 to 44 (inclusive) and any other Clauses or Schedules that are necessary to give effect to those Clauses shall survive termination or expiry of the Contract. In addition, any other provision of the Contract which by its nature or implication is required to survive the termination or expiry of the Contract shall do so.

## **33. Rights of Third Parties**

33.1 Save that any member of the Authority Group has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"), the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

33.2 Notwithstanding Clause 33.1, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Authority Group.

**34. Contract Variation**

34.1 Save where MOPAC may require an amendment to the Services, the Contract may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such form as MOPAC may dictate and shall not be binding upon the Parties unless completed in accordance with such form of variation.

**35. Novation**

35.1 MOPAC may novate or otherwise transfer the Contract (in whole or in part).

35.2 Within 10 Business Days of a written request from MOPAC, the Provider shall at its expense execute such agreement as MOPAC may reasonably require to give effect to any such transfer all or part of its rights and obligations under the Contract to one or more persons nominated by MOPAC.

35.3 Subject to Clause 10, the Contract is personal to the Provider who shall not assign the benefit or delegate the burden of the Contract or otherwise transfer any right or obligation under the Contract without the prior written consent of MOPAC.

**36. Non-Waiver of Rights**

36.1 No waiver of any of the provisions of the Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 38. The single or partial exercise of any right, power or remedy under the Contract shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

**37. Illegality and Severability**

37.1 If any provision of the Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the Contract and the remaining provisions shall continue in full force and effect as if the Contract had been executed without the invalid, illegal, or unenforceable provision. In the event that in MOPAC's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the Contract, MOPAC and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

**38. Business Continuity**

38.1 The Provider shall, at all times, ensure that it has appropriate business continuity arrangements in place for the delivery of the Services.

38.2 Within twenty (20) Business Days of the Contract Commencement Date (or such other period as notified by MOPAC to the Provider), the

Provider shall submit a draft Business Continuity and Disaster Recovery Plan to MOPAC.

- 38.3 MOPAC shall either approve the draft Business Continuity and Disaster Recovery Plan within twenty (20) Business Days (or such other period as notified by MOPAC to the Provider), of its receipt pursuant to Clause 38.2 (such approval not to be unreasonably withheld), or it shall inform the Provider why it cannot accept the draft Business Continuity and Disaster Recovery Plan. In such circumstances, the Provider shall address all such concerns in a revised draft Business Continuity and Disaster Recovery Plan, which it shall submit to MOPAC within ten (10) Working Days (or such other period as notified by MOAC to the Provider) of its receipt of MOPAC's comments. If no such notice is given, the Provider draft Business Continuity and Disaster Recovery Plan shall be deemed to be agreed.
- 38.4 If a Business Continuity and Disaster Recovery Plan is agreed, the Provider shall ensure that it is able to implement the Business Continuity and Disaster Recovery Plan at any time in accordance with its terms and, at MOPAC's written request, the Provider shall provide MOPAC with evidence to demonstrate its compliance with the obligations set out in this Clause 38.
- 38.5 The Provider shall undertake regular risk assessments in relation to the provision of the Services and all contingency arrangements at least annually and shall provide the results of, and any recommendations in relation to, those risk assessments to MOPAC promptly in writing following each review.
- 38.6 In the event of a loss of service, the Provider shall immediately invoke the Business Continuity and Disaster Recovery Plan (and shall inform MOPAC immediately of such invocation). In all other instances the Provider shall only invoke or test the Business Continuity and Disaster Recovery Plan with the approval of MOPAC.

## **39. Notices**

- 39.1 Any notice, demand or communication in connection with this Contract will be in writing and may be delivered by hand, prepaid recorded delivery first class post or facsimile addressed to the Provider at its registered office, the address stated in Schedule 1 or any other address (including a facsimile number) notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

39.1.1 if delivered by hand, at the time of delivery;

39.1.2 if delivered by post, two (2) Business Days after being posted or in the case of Airmail 14 Business Days after being posted; or

39.1.3 if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other Party within 24 hours after transmission.

#### **40. Entire Agreement**

40.1 Subject to Clause 40.2:

40.1.1 the Contract and all documents referred to in the Contract, contains all of the terms which the Parties have agreed relating to the subject matter of the Contract and such documents and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the provision of the Services. Neither Party has been induced to enter into the Contract by a statement which the Contract does not contain; and

40.1.2 without prejudice to the Provider's obligations under the Contract, the Provider is responsible for and shall make no claim against MOPAC in respect of any misunderstanding affecting the basis of the Provider's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

40.2 Nothing in this Clause 40 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

#### **41. Counterparts**

41.1 This Contract may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same Contract.

#### **42. Relationship of the Parties**

42.1 Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

#### **43. Further Assurance**

43.1 Each Party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

#### **44. Governing Law**

44.1 The Contract shall be governed by and construed in accordance with the Law of England and Wales. Without prejudice to Clause 25, the

courts of England will have exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract provided that the Authority has the right in its absolute discretion to enforce a judgment and take proceedings in any other jurisdiction in which the Provider is incorporated or in which any assets of the Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

DRAFT



**THE CONTRACT** has been signed for and on behalf of the Parties the day and year written above.

Signed by )  
for and on behalf of )  
**MAYOR's OFFICE FOR )**  
**POLICING AND CRIME )**  
**(MOPAC) )**

Print name:  
Designation:

Signature:  
Date:

Signed by )  
for and on behalf of )  
the **Provider** )  
**xxxx**

Print name:  
Designation:

Signature:  
Date:

## **SCHEDULE 1 - KEY CONTRACT INFORMATION**

**1. Contract Reference Number: MOPAC xxx**

**2. Name of Provider:**

**3. Commencement:**

**(a) Contract Commencement Date:**

**(b) Service Commencement Date:**

**4. Expiry Date:**

**5. Contract Duration:**

**6. Maximum Contract Value (i.e. up to): GBP**

**7. Address where invoices shall be sent:**

Mayor's Office for Policing & Crime  
Purchase to Pay  
c/o SSCL Police Services  
PO Box 14077  
Newport  
Gwent  
NP10 8FZ

Email: [SSCL.MPS.ap@police.sscl.com](mailto:SSCL.MPS.ap@police.sscl.com)

Copy in the MOPAC Commissioner:

[Firstname.lastname@mopac.london.gov.uk](mailto:Firstname.lastname@mopac.london.gov.uk)

**Electronic format required (if any) for submission of invoices by the Provider:**

**8. Details of the MOPAC's Contract Manager (Lead Commissioner)**

**Name:** [name of relevant technical contact]  
**Address:** 169 Union Street, London, SE1 0LL  
**Tel:** 020 7XXX XXXX  
**Fax:** 020 7XXX XXXX  
**Email:** Firstname.lastname@mopac.london.gov.uk

**9. Details of the MOPAC's Procurement Manager**

Not Applicable

**10. Provider's Key Personnel:**

| Name & Position | Contact Details | Area of Responsibility |
|-----------------|-----------------|------------------------|
|                 |                 |                        |
|                 |                 |                        |
|                 |                 |                        |

**11. Notice period in accordance with Clause 29.4 (termination without cause):**  
xx days.

**12. Address for service of notices and other documents in accordance with Clause 39:**

**For MOPAC:**

169 Union Street  
London  
SE1 0LL

For the attention of:  
XXX

## SCHEDULE 2 - SPECIFICATION

## **SCHEDULE 3 – THE TENDER**

## **SCHEDULE 4 – MONITORING AND PAYMENTS**

### **1. Reviewing Contract Performance**

- 1.1 The Provider shall work with MOPAC to establish and maintain an effective and beneficial working relationship and to ensure that delivery of the Services at least meets or exceeds the Key Performance Indicators and Performance Indicators.
- 1.2 The Provider shall work with MOPAC to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract.
- 1.3 MOPAC will regularly monitor and review the performance and quality of the Provider's delivery against the requirements set out in the Contract. Provider reviews may be undertaken formally or informally. The Provider will be responsible for managing and reporting on any sub-contractual arrangements. The Provider will be expected to provide any additional management information required by MOPAC to facilitate contract reviews and arrange where necessary access to any of its delivery locations, including those operated by sub-contractors.
- 1.4 The purpose of the Provider's performance reviews is to encourage an open and regular dialogue between the Parties with the purpose of ensuring that the Services are being delivered appropriately and to drive up the performance and quality of the Services. The Parties shall use the reviews to discuss performance and opportunities for continuous improvement and to raise and address any complaints or persistent problems encountered with the Contract.
- 1.5 Where opportunities for continuous improvement or to improve performance are identified they shall be recorded in a performance improvement plan and the Provider shall implement them within a reasonable time period.
- 1.6 Where quality falls below acceptable levels the Provider will be expected to have suitable escalation procedures in place and, in respect of sub-contracted Services, take action where necessary to terminate the sub-contract.
- 1.7 The regular meetings between MOPAC and the Provider shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of the Contract.
- 1.8 MOPAC shall provide further guidance to the Provider relating to the detailed arrangements for the performance monitoring and management of the Contract prior to the Service Commencement Date and any updates and changes to these arrangements from time to time as required throughout the life of the Contract.

## **2. Fees and Payments:**

2.1 MOPAC shall pay the Fees to the Service Provider in accordance with the provisions of Clauses 4 and 5 and this Schedule 4.

2.2 Subject to the provisions of this Contract, the Fees are fixed and unless otherwise agreed in accordance with Clause 34 any additional or unforeseen costs incurred by the Provider in delivering the Services shall be borne solely by the Provider.

### **2.3 Types of Payment:**

#### **2.3.1 Start Fee:**

2.3.1.1 The Provider is entitled to a Start Fee payment which is calculated at a value of 5% of the total year 1 value of the Contract;

2.3.1.2 MOPAC shall pay the Start Fee to the Provider in two equal instalments, as per Annex 1 (Payment Profile) to this Schedule;

2.3.1.3 the Provider shall be entitled to submit an invoice for the first instalment of the Start Fee following the Contract Commencement Date and shall be entitled to submit an invoice for the final instalment of the Start Fee following the Service Commencement Date.

#### **2.3.2 Service Fee:**

2.3.2.1 MOPAC shall pay Service Fee payments to the Provider in xx (xx) equal instalments monthly in arrears.

2.3.2.2 In year 1 of the Contract, the Service Fee payments shall be worth 70% of the total year 1 value of the Contract, and in year 2 the Service Fee payments shall be worth 75% of the total year 2 value of the Contract.

2.3.2.3 The Provider shall be required to submit a monitoring return monthly, in line with the timescales set out in Annex 3 to this Schedule, to demonstrate compliance with and performance against the Performance Indicators, prior to submitting an invoice for payment in line with the provisions of Clause 5 and this Schedule 4.



### 2.3.3 Outcome Payments:

2.3.3.1 MOPAC shall pay the Outcome Payments to the Provider in arrears.

2.3.3.2 The amount of the Outcome Payment that will be paid to the Provider in each quarter will be dependent on an assessment of their performance against the Key Performance Indicators. For the avoidance of doubt, if the Service Provider does not meet all of the Key Performance Indicators in a quarter, they will not be entitled to receive 100% of the Outcome Payment.

2.3.3.3 The Provider shall be required to submit a monitoring return quarterly, in line with the timescales set out in Annex 3 to this Schedule, to evidence their performance against the Key Performance Indicators, prior to submitting an invoice for payment in line with the provisions of Clause 5 and this Schedule 4.

## 2.4 Final Payments

2.4.1 Provided all previous payments have been paid (and subject to the provisions of this Contract and any antecedent breach), MOPAC shall have no further liability to make payment of any kind to the Provider once the final payments have been paid.

## Annex 1 – Payment Profile

*to be populated post contract award with the final values.*

### Payment and Monitoring Table

[amend and update table as required]

| Activity   | Deadline – 5pm |
|--|----------------|
| Submit Mobilisation Return   |                |
| Submit Year 1 - upfront payment invoice  |                |
| Submit Year 1, Quarter 1 – Quarterly Spend Form, Quarterly Monitoring Return and invoice |                |
| Submit Year 1 Quarter 2 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 1 Quarter 3 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 1 – Quarterly Spend Form for close of Financial Year [insert financial year] |                |
| Submit Year 1 Quarter 4 – Quarterly Spend Form, Annual Monitoring Return and invoice     |                |
| Submit Year 2 Quarter 1 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 2 Quarter 2 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 2 Quarter 3 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 2 – Quarterly Spend Form for close of Financial Year [insert financial year] |                |
| Submit Year 2 Quarter 4 – Quarterly Spend Form, Annual Monitoring Return and invoice     |                |
| Submit Year 3 Quarter 1 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 3 Quarter 2 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 3 Quarter 3 – Quarterly Spend Form, Quarterly Monitoring Return and invoice  |                |
| Submit Year 3 – Quarterly spend form for close of Financial Year [insert financial year] |                |
| Submit Year 3 Quarter 4 – Quarterly Spend Form, Annual Monitoring Return and invoice     |                |

## **Annex 2 – Key Performance Indicators and Performance Indicators**

*to be populated post contract award with the final information (to be taken from the Specification)*

## **Annex 3 – Monitoring and Reporting Process**

### **1. Schedule of Monitoring Returns**

- 1.1 The Provider shall be required to submit monthly and quarterly returns to demonstrate their performance against the Key Performance Indicators and Performance Indicators in line with the schedule set out below:

*Table including details of returns required and deadlines for their submission to be populated post contract award.*

### **2. Reporting Format**

- 2.1 The Provider shall be required to submit their monthly and quarterly monitoring returns using the template provided, and in the format specified, by MOPAC.

*MOPAC will provide the templates following contract award.*

## **SCHEDULE 5 - CONTRACT COMPLIANCE AND QUALITY CONSIDERATIONS**

### **1. General**

- 1.1 MOPAC shall, prior to the Service Commencement Date and from time to time throughout the life of the Contract, issue instructions and guidance as necessary to the Provider on processes and recommended practices, including any instructions of an operational nature, and/or relating to compliance with policies and law, including but not limited to those referenced in Clause 15.

*The content of this clause will be populated in the final contract to include reference to key policies that the Provider will be expected to have in place (including Safeguarding, Whistle-blowing) and standards referred to in the Specification that it will be expected to follow (including Safe Lives).*

## SCHEDULE 6 - Data Protection

### 1 Definitions and interpretation

#### 1.1 In this Schedule:

|  |  |
|--|--|
| <b>Communication</b>                         | means a complaint, inquiry or request (other than a Data Subject Request) relating to either party's obligations under Data Protection Legislation relevant to the Contract and/or the Processing of any of the Relevant Personal Data, including any compensation claim from a Data Subject or any notice, investigation or other action from a Data Protection Supervisory Authority relating to any of the foregoing;   |
| <b>Consent</b>                               | means a freely given, specific, informed and unambiguous indication (by a statement or by a clear affirmative action) by which the relevant Data Subject has agreed to the relevant transfer(s) and/or Processing of the Relevant Personal Data relating to him or her that has not been withdrawn. For the purposes of this definition, to the extent Relevant Personal Data is Special Category Personal Data, this definition should be read as if the word 'unambiguous' above read 'unambiguous and explicit'. The terms <b>freely given, specific, informed, unambiguous</b> and <b>explicit</b> in this definition shall be construed in accordance with Data Protection Legislation; |
| <b>Contact Point</b>                         | means, in respect of each party, the person identified as such in accordance with <b>paragraph 1 of Appendix 4</b> of this Schedule;   |
| <b>Controller</b>                            | has the meaning given in applicable Data Protection Legislation;   |
| <b>Data Protection Supervisory Authority</b> | means any regulator, authority or body responsible for administering Data Protection Legislation;  |
| <b>Data Subject</b>                          | has the meaning given in applicable Data Protection Legislation from time to time;   |

|                                       |  |
|---------------------------------------|--|
| <b>Data Subject Request</b>           | means a request made by a Data Subject to exercise any right(s) of Data Subjects under the UK GDPR or under any similar Data Protection Legislation in relation to any of the Relevant Personal Data or concerning the Processing of such data;  |
| <b>Permitted Lawful Basis</b>         | means the permitted lawful basis for Processing the Personal Data by the joint controllers as set out in part A of <b>Appendix 1</b> of this Schedule  |
| <b>Permitted Purposes</b>             | means the intended use of the Relevant Personal Data as set out in <i>the applicable part of Appendix 1</i> of this Schedule <i>the permitted purposes for processing by the joint controllers being set out in Part A and the permitted purposes for processing by MOPAC in Part B</i> ); |
| <b>Permitted Recipients</b>           | means employees of the parties and those contractors detailed in <b>Appendix 5</b> of this Schedule who need access to the Relevant Personal Data for or to enable the accomplishment of the Permitted Purposes;   |
| <b>Personal Data</b>                  | has the meaning given in applicable Data Protection Legislation from time to time;   |
| <b>Personal Data Breach</b>           | has the meaning given in applicable Data Protection Legislation;   |
| <b>Processing</b>                     | has the meaning given in applicable Data Protection Legislation from time to time (and related expressions, including <b>Process</b> , <b>Processed</b> and <b>Processes</b> shall be construed accordingly);  |
| <b>Processor</b>                      | has the meaning given in applicable Data Protection Legislation;   |
| <b>Relevant Personal Data</b>         | means Personal Data processed for the Permitted Purposes as set out in <b>Appendix 1</b> of this Schedule <i>the relevant personal data for processing by the joint controllers being set out in Part A and the relevant personal data for processing by MOPAC in Part B</i> ); and        |
| <b>Special Category Personal Data</b> | means special categories of Personal Data as referred to in Data Protection Legislation.   |

- 1.2 Unless the context otherwise requires, references to this Schedule include its Appendices.
- 1.3 Unless otherwise expressly stated in the Contract the Provider's obligations and MOPAC's rights and remedies under this Schedule are cumulative with, and additional to, any other provisions of the Contract.

## **2 Status of this Schedule and the Parties**

- 2.1 Each party shall be a Controller of the Relevant Personal Data. The Relevant Personal Data shall be Processed and managed in accordance with the terms of this Schedule.
- 2.2 For the Permitted Purposes set out in **Appendix 1** part A the parties are Joint Controllers of the part of the Relevant Data set out in part A.
- 2.3 For the Permitted Purposes set out in **Appendix 1** part B the parties are independent controller of the part of the Relevant Data set out in part B.
- 2.4 The Contact Point, for example, the data protection officer or other person with responsibility for compliance with data protection within each party is set out in **Appendix 4** of this Schedule.

## **3 Agreed Basis for Processing**

- 3.1 The parties have determined that it is necessary to process the Relevant Personal Data in order to achieve the Permitted Purposes.
- 3.2 The parties agree that the Contract relates to [ongoing and routine data Processing] [ad-hoc] [one-off data Processing].
- 3.3 The parties have documented additional details relating to the Processing of the Relevant Personal Data in **Appendix 2** of this Schedule, which includes:
  - 3.3.1 the objectives of each party in Processing the Relevant Personal Data; and
  - 3.3.2 the benefits to the Data Subjects and/or society of the Processing of the Relevant Personal Data.

## **4 Compliance with Data Protection Legislation**

1. Subject to compliance by the other party with its express obligations in other provisions of this Schedule, each party shall at all times comply with all Data Protection Legislation in connection with the exercise and performance of its respective rights and obligations under the Contract.

## **5 General Obligations**

- 5.1 The Provider, to the extent it processes the Relevant Personal Data under the Contract shall undertake all Processing of the Relevant Personal Data only:



- 5.1.1 for the Permitted Purposes in accordance with the Contract and in all respects in accordance with Data Protection Legislation; and
- 5.1.2 to the extent consistent with the Permitted Lawful Basis.
- 5.2 The parties agree that in respect of Relevant Personal Data, the Provider:
  - 5.2.1 is, as between the parties and subject to paragraphs 5.3, 9.1 and 9.2, the primary point of contact for Data Subjects in relation to the processing described under part A of **Appendix 1**;
  - 5.2.2 shall direct Data Subjects to its Contact Point as set out in **Appendix 4** of this schedule in connection with the exercise of their rights as Data Subjects and for any enquiries concerning the processing described under part A of **Appendix 1**;
  - 5.2.3 shall ensure that the Relevant Personal Data has been collected, Processed and transferred (including any transfer to MOPAC) in accordance with the Data Protection Legislation as applicable to that data (or anyone acting on its behalf);
  - 5.2.4 shall ensure the Relevant Personal Data is accurate and up-to-date at all times and also when disclosed or made accessible to MOPAC and shall promptly notify MOPAC if such Relevant Personal Data becomes inaccurate or out of date (and shall provide MOPAC with revised and corrected data) during the term of this Contract and for such period of time that the Relevant Personal Data is being processed;
  - 5.2.5 is solely responsible for both parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR or any similar Data Protection Legislation, including as required for all Processing of Relevant Personal Data by or on behalf of MOPAC for the Permitted Purposes on the Permitted Lawful Basis in accordance with the Contract;
  - 5.2.6 shall, as part of discharging its obligations under paragraph 5.2.5, prepare a privacy notice in a form satisfactory to MOPAC which details the processing undertaken by the joint controllers and informs the Data Subjects of the Personal Data that will be shared with MOPAC for the permitted purposes in **Appendix 1** part B and that such processing by MOPAC will be subject to MOPAC's privacy notice.
  - 5.2.7 is solely responsible for providing all Data Subjects with a copy of the notice described at paragraph 5.2.6.
  - 5.2.8 to the extent Consent is as the Permitted Lawful Basis for the collection or processing of any part of the Relevant Personal Data, is solely responsible for obtaining the Consent of Data Subjects, in accordance with Data Protection Legislation as required for the transfers and Processing of that Relevant Personal Data undertaken by either party in connection with this Contract;

- 5.2.9 without prejudice to its other obligations, shall ensure that it is entitled to transfer the Relevant Personal Data to MOPAC and that MOPAC [(and each of MOPAC's Permitted Recipients)] is entitled under all applicable laws and legal theories to Process the Relevant Personal Data for the Permitted Purposes in accordance with the terms of the Contract;
- 5.2.10 shall promptly notify MOPAC if it becomes aware that any such Consent referred to in paragraph 5.2.8 is withdrawn or if a relevant Data Subject has requested that their Relevant Personal Data is no longer Processed by either party for the Permitted Purposes;
- 5.2.11 is solely responsible for ensuring that where the Relevant Personal Data was received by the Provider from a third party, or has been Processed by a third party on behalf of the Provider, it has in place arrangements with those third parties which are adequate to permit the Provider to lawfully share the Relevant Personal Data with MOPAC (and its Permitted Recipients), and for MOPAC (and its Permitted Recipients) to Process such data in accordance with the Contract; and
- 5.2.12 shall make available to Data Subjects the essence of this Schedule (and notify them of any changes to it) concerning the allocation of responsibilities between the parties and its role as the primary point of contact. Such essence must be outlined in a privacy notice (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing and which shall be in a form satisfactory to MOPAC in so far as it relates to any Processing under the Contract). Confidential Information shall be redacted when such essence is made available further to this paragraph 5.2.12.
- 5.2.13 shall transfer the part of the Relevant Data set out in part B of **Appendix 1** to MOPAC on request, in a secure manner, using appropriate technical and organisational security measures that comply with the obligations of each party under Data Protection Legislation and, without prejudice to the foregoing, that Relevant Personal Data is protected by the measures set out in **Appendix 3**.
- 5.3 Notwithstanding the terms of this Schedule, the parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation against any relevant party as Controller when the parties are acting as Joint Controllers for the Permitted Purposes under **Appendix 1** part A.
- 5.4 Each party shall use its reasonable endeavours to assist the other to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Schedule in such a way as to cause the other party to breach any of the other party's obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

- 5.5 Without prejudice to any other obligation, if either party becomes aware any of the Relevant Personal Data is inaccurate or out of date, it shall promptly notify the other.
- 5.6 Each party shall provide any Data Subject of the Relevant Personal Data with a copy of this Schedule and/or its essence if requested by that Data Subject, provided that Confidential Information shall be redacted prior to any such disclosure.

## **6 Technical and Organisational Measures**

- 6.1 The Provider shall at all times:
- 6.1.1 put in place and maintain appropriate technical and organisational measures so as to ensure the protection of the rights of Data Subjects under Data Protection Legislation and as otherwise required to meet the requirements of both parties under all Data Protection Legislation;
  - 6.1.2 implement and maintain appropriate technical and organisational measures to protect the Relevant Personal Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access, taking into account:
    - (a) the nature of the data to be protected;
    - (b) the harm that might result from any failure to so protect the Relevant Personal Data;
    - (c) the state of technological development; and
    - (d) the cost of implementing any measures;
  - 6.1.3 ensure that it has the capability (technological and otherwise), to the extent required by Data Protection Legislation, to:
    - (a) provide, correct or delete at the request of a Data Subject all the Relevant Personal Data, which it holds relating to that Data Subject; and
    - (b) comply with any Data Subject Requests; and
  - 6.1.4 without prejudice to any other obligation in this paragraph 6, implement and comply with the technical and organisational measures in **Appendix 3** of this schedule.
- 6.2 The Provider shall comply with its obligations, and MOPAC may exercise its rights and remedies, under **Appendix 3** of this schedule.
- 6.3 The Provider will immediately notify MOPAC if it becomes aware of any advance in technology and methods of working, which indicate that the parties should adjust their security measures.

## **7 Third Party Processing**

- 7.1 Except as otherwise agreed in writing by the parties, each party undertakes not to disclose or transfer Relevant Personal Data it holds to any third party other than to a Permitted Recipient where necessary for, or to enable the accomplishment of, the Permitted Purposes. Each party transferring or disclosing Relevant Personal Data it holds must ensure it is transferred or disclosed subject to equivalent and legally binding obligations which are no less onerous than those set out in this Schedule. This paragraph 7.1 is without prejudice to any disclosure or transfer required by applicable law in the United Kingdom.
- 7.2 In respect of any Processing of Relevant Personal Data performed by a Processor on behalf of the Provider, the Provider shall:
- 7.2.1 carry out adequate due diligence on such Processor to ensure that it is capable of providing the level of protection for the Relevant Personal Data as is required by the Contract and Data Protection Legislation, and provide evidence of such due diligence to MOPAC where reasonably requested; and
- 7.2.2 ensure that suitable written agreements are at all times in place with each Processor as required under applicable Data Protection Legislation.
- 7.3 Each party shall be liable to the other for all acts and omissions of each of its respective Permitted Recipients in connection with Relevant Personal Data.
- 7.4 Each obligation in this Schedule on a party to do, or refrain from doing, anything shall include an obligation on that party to ensure all its Permitted Recipients do, or refrain from doing, such thing.

## **8 International Transfers**

- 8.1 Neither party shall transfer the Relevant Personal Data to any country outside the United Kingdom or to any international organisation (as defined in the UK GDPR) without the other party's prior written consent.

## **9 Dealing with Data Subject Requests and Communications**

- 9.1 Responsibility for complying with any Data Subject Request or Communication relating to the processing under part A of **Appendix 1** falls on the Provider.
- 9.2 Responsibility for complying with any Data Subject Request or Communication relating to the processing for which the Parties are independent controllers falls on the Party who is the controller for the processing activity to which the Data Subject Request/Communication relates.
- 9.3 If either party receives a Data Subject Request or Communication relating to the Relevant Personal Data Processed by (or on behalf of) the other party it shall promptly (and in any event within **two (2)** Business Days of receipt) inform

the other party in advance of giving any response, to the extent lawful and reasonably practicable.

- 9.4 Each party shall use all reasonable endeavours to provide the other party with full and prompt cooperation and assistance in relation to any Data Subject Request or Communication made to enable the other party to comply with the relevant timescales set out in Data Protection Legislation and to find an efficient, timely and amicable solution to any issues arising out of any Data Subject Request or Communication. Without prejudice to the generality of the foregoing, the other party shall respond to any request for co-operation or assistance under this paragraph 9.4 within **five (5)** Business Days.

## **10 Personal Data Breaches**

- 10.1 With respect to processing under part A of **Appendix 1** each party shall promptly (and in any event within **twenty-four (24)** hours) notify the other party if it suspects or becomes aware of any occurrence of any Personal Data Breach in respect of any Relevant Personal Data which it Processes. In such circumstances, such party shall promptly provide (to the extent permitted by applicable law in the United Kingdom):

10.1.1 sufficient information as the other party (or its advisors) reasonably requires to meet any obligations to report a Personal Data Breach under Data Protection Legislation (in a timescale which facilitates such compliance);

10.1.2 the Data Protection Supervisory Authorities investigating the Personal Data Breach with complete information as requested by those Data Protection Supervisory Authorities from time to time;

10.1.3 all reasonable assistance the other party (or its advisors) requires, including:

- (a) co-operation with Data Protection Supervisory Authorities (including with investigations or actions to mitigate or remediate the Personal Data Breach);
- (b) making available all relevant data and records required for either party to comply with Data Protection Legislation or as otherwise reasonably required by other party;
- (c) taking such reasonable steps as are directed by the other party to assist in the investigation, mitigation and remediation of a Personal Data Breach (which may include providing the other party with physical access to any facilities affected and facilitating the interview of staff and others involved in the matter); and
- (d) co-ordination with the other party regarding the management of public relations and public statements relating to the Personal Data Breach.

- 10.2 Where the parties are independent controllers, each party's respective obligations in respect of any Personal Data Breach (including notification of the Data Protection Supervisory Authority and/or Data Subject(s)) impacting or relating to any Relevant Personal Data in the possession or control of the parties (or any third party with whom it has shared such data) falls on each party subject to such obligation(s) under the Data Protection Legislation. Each party shall promptly co-operate with and provide reasonable assistance, information and records to the other to assist each party with their respective compliance with such obligations.
- 10.3 MOPAC's obligations under this paragraph 10 shall be performed at the Provider's reasonable expense, except to the extent that the Personal Data Breach (or the circumstances giving rise to the Personal Data Breach or it being threatened or suspected) arose out of any negligence or wilful default of MOPAC or any breach by MOPAC of its obligations under the Contract, in which case the costs shall be borne by MOPAC.

## **11 Data Protection Impact Assessments**

- 11.1 [The parties have completed a data protection impact assessment (DPIA) in respect of the planned Processing of the Relevant Personal under part A of **Appendix 1** Data under the Contract and have agreed that the Contract will assist with mitigating certain risks that have been identified.] [The parties have determined that a data protection impact assessment (DPIA) is not necessary for the planned Processing under the Contract because [insert].]
- 11.2 Where a party considers that, in respect of the processing under part A of **Appendix 1**:
- 11.2.1 a DPIA is necessary for compliance with Data Protection Law; or
  - 11.2.2 the risks identified by a previous DPIA necessary for compliance with Data Protection Law may have changed in respect of Processing activities conducted under or in connection with the Contract,
- the other party shall provide such reasonable assistance as that party may reasonably require in order to prepare a jointly agreed DPIA.
- 11.3 The assistance referred to in paragraph 11.2 may include:
- 11.3.1 a systematic description of the envisaged Processing operations and Permitted Purposes of the Processing of the Relevant Personal Data;
  - 11.3.2 an assessment of the necessity and proportionality of the Processing operations;
  - 11.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;
  - 11.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of the Relevant Personal Data ; and

11.3.5 any prior consultation with the relevant Data Protection Supervisory Authority which may be necessary.

## **12 Records**

Each party shall maintain complete, accurate and up to date written records of all of its Processing of the Relevant Personal Data and as necessary to demonstrate its compliance with this Schedule and all Data Protection Legislation.

## **13 Governance and Review**

Prior to the Processing set out in part A of **Appendix 1**, the parties shall establish, and then comply with and maintain, the arrangements set out in **Appendix 4** to this Schedule until the earlier of the termination or expiry of the Contract.

## **14 Audit**

14.1 The Provider shall (and shall ensure all its Permitted Recipients shall) promptly:

14.1.1 make available to the MOPAC such information as is reasonably required to demonstrate its compliance with its obligations under this Schedule;

14.1.2 [not more than once in any **twelve (12)** month period] upon reasonable prior notice allow for, permit and contribute to audits, including inspections, by MOPAC (or another auditor mandated by MOPAC) during normal business hours to the extent necessary to verify the audited party's compliance with its obligations under this Schedule; and

14.1.3 provide (or procure) access to all relevant systems, personnel, business premises and records for the purposes of each such audit or inspection referred to in paragraph 14.1.2 and provide (and procure) all further reasonable co-operation, access and assistance in relation to any such audit or inspection.

14.2 The Provider shall allow MOPAC to exercise its rights at paragraph 14.1 in the period up to **six (6)** years after its termination or expiry of the Contract.

14.3 When conducting audits and inspections, MOPAC shall comply with the Provider's reasonable directions in order to minimise disruption to the Provider's business and to safeguard the confidentiality of the Provider's Confidential Information. The Provider may require any third parties conducting such audit or inspection to enter into direct confidentiality undertakings to safeguard their Confidential Information.

## **15 Retention**

- 15.1 Subject to paragraph 15.2, each party shall retain the Relevant Personal Data in accordance with the retention periods identified for the specific element of the Relevant Personal Data in accordance with **Appendix 1** to this Schedule.
- 15.2 Except as required by applicable law in the United Kingdom, the parties shall:
- 15.2.1 subject to paragraph 15.2.2 , Process all Relevant Personal Data for no longer than such Processing is necessary for the Permitted Purposes and compliant with this Schedule and all Data Protection Legislation; and
- 15.2.2 immediately, confidentially and securely destroy or dispose of all Relevant Personal Data (and all copies) in its possession or control that can no longer be Processed in accordance with this Schedule, provided that it may retain (and continue to Process) such copies of Relevant Personal Data to the extent necessary for compliance with applicable law in the United Kingdom and to evidence such compliance.

## **16 Indemnity**

- 16.1 The Provider shall indemnify and keep indemnified MOPAC and all other members of the Authority Group (including their respective employees, sub-contractors and agents) against:
- 16.1.1 all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Provider of its obligations under this Schedule; and
- 16.1.2 all amounts paid or payable by MOPAC and/or any members of the Authority Group (including their respective employees, sub-contractors and agents) to a third party which would not have been paid or payable if the Provider's breach of this Schedule had not occurred.

## **17 Conflicts**

- 17.1 Unless otherwise expressly stated in this Contract:
- 17.1.2 nothing in this Contract relieves the Provider of any responsibilities or liabilities under any Data Protection Legislation;
- 17.1.3 nothing in this Contract affects the rights of Data Subjects under Data Protection Legislation (including those in Articles 79 and 82 of the GDPR)



or in any equivalent Data Protection Legislation) against MOPAC, the Provider or any person acting on behalf of either of them; and

17.1.4 this Schedule shall prevail over any other provision of this Contract in the event of any conflict.

## **18 Breach**

18.1 Any breach by the Provider of any of its obligations under this Schedule shall be regarded as being material for the purposes of this Contract.

## **19 Survival**

Except as otherwise expressly stated in this Schedule, the provisions of this Schedule shall survive termination or expiry of the Contract and until all processing ceases.

**Appendix 1  
The Relevant Personal Data**

**Part A: Relevant Personal Data Processed by the joint controllers**

| <b>Relevant Personal Data</b> | <b>Data Subjects</b>             | <b>How will the Personal Data be Processed?</b>  | <b>Permitted Legal Basis</b>   | <b>Permitted Purposes</b>                                 | <b>Retention period for the Relevant Personal Data</b> | <b>Is it necessary to Process the Personal? Yes/No</b>                            | <b>If the answer is no, please confirm why the Personal Data is still being Processed</b>   |
|-------------------------------|----------------------------------|--|--|---|--|---|---|
|                               | <i>[Users of the [ ] service</i> | <i>[Data will be collected and used in order to provide the Services under the Contract]</i> | <i>[Guidance note: Insert legal basis relied upon to process the personal data set out in Article 6(1) of the UK GDPR. If Special Category Personal Data an additional Article 9 legal basis must be included]</i> | <i>Data is processed in order to provide the Services</i> |  | <i>[Guidance note: can the purposes only be achieved with the Personal Data?]</i> | <i>[Guidance note: we must only Process Personal Data if this is necessary, if the Processing is not necessary, we could be in breach of Data Protection Legislation]</i> |
|                               |                                  |  |  |   |  |   |   |

**Part B: Relevant Personal Data Processed by MOPAC**

| Relevant Personal Data | Data Subjects | Permitted Purposes   |
|------------------------|---------------|--|
|                        |               | 2. <i>To permit the evaluation of the services provided by the Provider under the Contract</i> |
|                        |               |  |

## **Appendix 2**

### **Agreed Basis for Data Processing**

This Appendix 2 is included for convenience only and shall have no legal effect, including no effect on the interpretation of the Contract.

#### **1. Data Processing Objectives**

The parties have determined the following aims and objectives of Processing the Relevant Personal Data for the Permitted Purposes:

[Guidance note: this section should be completed with a full and detailed explanation of why the data Processing initiative is necessary together with details of the specific aims of the parties]

#### **2. Benefits of Data Processing**

The parties have determined the following benefits will be derived by Data Subjects and/or society from Processing the Relevant Personal Data:

[Guidance note: this section should be completed with a full and detailed explanation of the benefits that you hope to bring to individuals more widely]

#### **3. Risks of Data Processing and Mitigation Measures**

[The parties have conducted data protection impact assessments dated [insert date] in respect of the Processing and sharing arrangements set out in the Contract.]

The parties have determined the following risks may arise from Processing the Relevant Personal Data, and have agreed measures to remove or mitigate such risks, including those measures set out in the Contract:

[Guidance note: before Processing any personal data, MOPAC should consider if a DPIA is required. In this instance (if the processing necessitates this – please refer to the DPIA policy) a joint DPIA will be required for the joint processing and a DPIA produced by MOPAC for the evaluation it will be undertaking.]

If DPIAs have been undertaken leave in the wording in yellow and add the dates of the DPIAs. Even if a DPIA has not been undertaken, any perceived risks with the data Processing and mitigations should be included, for example if there was a concern that individuals may not know that their personal data would be processed in this way, the mitigation could be to update the privacy notice and journey to make this clear and if necessary have a pop up telling them their data is shared too at a certain point in the journey].

## Appendix 3

### Technical and Organisational Measures

[Guidance note: insert any technical and organisational measures which will apply to the transferring and protection of the Relevant Personal Data , some provisions have been included as a starting point]

#### 1 Security Management

- 1.1 Where the Provider shares Personal Data with MOPAC, it will provide the Personal Data in [insert full details of agreed format] by the following means [identify means of transfer of the data].
- 1.2 The Provider shall ensure Personal Data is transferred to MOPAC using the following security measures:
  - 1.2.1 [insert appropriate security measures, such as pseudonymisation, specific encryption methods, use of secure email addresses, etc as set out in Article 32(1) of the UK GDPR.]
- 1.3 The Provider shall, implement and maintain the following measures in respect of Relevant Personal Data:
  - 1.3.1 [insert details of specific appropriate technical and organisational security measures];
  - 1.3.2 All end-user mobile devices such as laptops must be encrypted. Personal Data must be held in encrypted folders.
  - 1.3.3 Personal Data deletion must be undertaken using specialist deletion software that meets the current industry standard.
  - 1.3.4 AES-encrypted portable media, with two-factor authentication and BitLocker in Windows operating systems must be used to secure both system drives and external media.
  - 1.3.5 For Personal Data accessed via the internet and through the use of mobile phones, HTTPS protocol must be used. This uses TLS/SSL

(Transport Layer Security/Secure Sockets Layer) to provide critical data protection during Internet transmission.

- 1.3.6 Access control permissions must provide Personal Data access to named individuals only;
  - 1.3.7 Access to Personal Data must be strictly controlled by access rights via assigned group membership. Access must only be granted to those who need access to the Personal Data and access must only be granted to those who need access to the Personal Data for the Permitted Purposes in accordance with this Contract.
- 1.4 Where Personal Data is Special Category Personal Data, the Provider shall, in addition:
- 1.4.1 [insert agreed measures to safeguard the Special Category Personal Data.]

## **2 Personnel**

- 2.1 The Provider shall, at all times, to the extent it Processes the Relevant Personal Data, ensure the Processing by natural persons shall be limited to its employees and the employees of its Permitted Recipients (collectively, **personnel**) that need to Process it for the for the Permitted Purposes in accordance with the Contract and that all such personnel:
- 2.1.1 are reliable and have undergone adequate training in the use, care, protection and handling of Personal Data as required for compliance with all Data Protection Legislation and this Schedule;
  - 2.1.2 are informed of the confidential nature of the Relevant Personal Data and subject to appropriate obligations of confidentiality;
  - 2.1.3 have been subject to [insert details of any checks] vetting;
  - 2.1.4 do not publish, disclose or divulge any of the Relevant Personal Data to any third party where the party subject to this obligation would not be permitted to do so;
  - 2.1.5 are subject to (and comply with) a binding written contractual obligation to keep the Relevant Personal Data confidential; and

2.1.6 are aware of and comply with their duties under this Schedule and those in the Contract.



## Appendix 4 Governance and Review

### 1 Contact Points

- 1.1 The Contact Point for MOPAC is as follows: [insert detail of Contact Point for issues arising under the Contract]
- 1.2 The Contact Point for the Provider is as follows: [insert detail of Contact Points for issues arising under the Contract]
- 1.3 The parties have designated the Contact Points identified above, as the first Contact Points for Data Subject Request and Communications and any other matter relating to the Relevant Personal Data as between the parties.

### 2 Reporting

- 2.1 The parties each undertake that they shall report to the other party every month on the following information:
  - 2.1.1 the volume of Data Subject Requests (or purported Data Subject Requests) relating to Relevant Personal Data from Data Subjects (or third parties on their behalf) that it has received during that month; and
  - 2.1.2 any Communications relating to the Relevant Personal Data (including any requests for disclosure of the Relevant Personal Data which is required or purported to be required by applicable law in the United Kingdom) that it has received during that month.

### 3 Relationship between Contact Points

- 3.1 The Contact Points of each party shall meet, by phone if necessary, not less than **one (1)** months to manage the relationship between the parties and assess:
  - 3.1.1 the overall effectiveness of the arrangements set out in the Contract;
  - 3.1.2 any Communications or other areas of concern;

- 3.1.3 whether the objectives as set out in **Appendix 2** of this Schedule are being met;
  - 3.1.4 whether each Permitted Lawful Basis and Permitted Purpose remains valid and appropriate;
  - 3.1.5 whether the benefits as set out in **Appendix 2** of this Schedule are being delivered and whether the Relevant Personal Data needs to continue to be processed;
  - 3.1.6 whether the privacy notices and arrangements under the Contract remain appropriate;
  - 3.1.7 the latest quality checks conducted under **Appendix 4** of this Schedule (or any similar data);
  - 3.1.8 whether the risks of the data Processing have changed; and
  - 3.1.9 whether the technical and organisational measures as set out at **Appendix 3** of this Schedule are adequate.
- 3.2 [The Contact Point of each party shall promptly provide a joint report of their findings to the Governance Committee referred to in paragraph 6 of **Appendix 4**.]

#### **4 Quality Checks**

3. [The Provider] shall conduct a periodic test of a sample of Relevant Personal Data in to test that it is accurate and up-to-date. Such test shall be conducted at least once in each **six (6)** months of the term of the Contract.

#### **5 Review**

5.1 The parties shall review periodically the content of the Contract (the **Review**), which shall include confirmation:

- 5.1.1 that the arrangements reflect current practice and the objectives of the parties;

- 5.1.2 that the scope of the Permitted Purposes is still relevant and the scope for which the Relevant Personal Data is being used by the Provider has not been expanded without agreement of the parties;
  - 5.1.3 that the benefits to the Data Subjects or society, as stated in **Appendix 2** of this Schedule are being realised;
  - 5.1.4 whether it would be appropriate to undertake a new data protection impact assessment;
  - 5.1.5 whether the arrangements in this **Appendix 4** are adequate and working in practice;
  - 5.1.6 whether the Relevant Personal Data should continue to be processed under the Contract; and
  - 5.1.7 that the Data Subjects are still the focus of the Processing arrangement and whether their rights are being respected
- 5.2 The Review shall take place at least every **six (6)** months during the first two years following its commencement, and at least every **twelve (12)** months thereafter.

## **6 Governance Committee**

- 6.1 The parties shall establish and maintain a **Governance Committee** which shall be constituted by **[insert]** from MOPAC, and **[insert]** from the Provider. The Governance Committee shall meet face to face at least every **six (6)** months.
- 6.2 The Governance Committee shall, at each meeting, review and consider at least:
- 6.2.1 the areas of assessment set out for the Contact Points at paragraph 3.1 of this **Appendix 4**;
  - 6.2.2 the reports provided by each Contact Point;
  - 6.2.3 the latest Review (as described in paragraph 5 of this **Appendix 4**), if any.
- 6.3 The Governance Committee shall promptly recommend any necessary changes or amended requirements to the parties.]

**Appendix 5**  
**Permitted Contractors and Sub-contractors**

[Guidance note: insert details of any contractors and sub-contractors which are Permitted Recipients.]

| Organisation   | Permitted Recipient of   | Contact details  |
|--|--|--|
| <i>[Insert, [name of organisation], a company incorporated in [insert] under number [insert registered number] whose registered office is at [insert address]]</i> | <i>[Confirm whether it is a Permitted Recipient of MOPAC or the other party]</i> | <i>[Insert contact details for the contractor or sub-contractor]</i> |
|  |  |  |
|  |  |  |

## **SCHEDULE 7 – RE-TENDER COOPERATION AND EXIT PLANNING**

### **1. Exit Planning**

- 1.1 The Provider shall prepare an exit strategy and accompanying high level plan (“**Exit Plan**”) for the Contract and submit them for agreement by MOPAC within six (6) Months of the Commencement Date.
- 1.2 Once agreed, these items will be incorporated into the Contract as Appendix 1 to this Schedule 7 in accordance with the change process outlined in Clause 34.
- 1.3 The Exit Plan will set out the provisions for exiting the Contract in a controlled manner and where appropriate handing over activity to an alternative provider. This should include any pre and post termination support and activity required. During the life of the Contract the Provider and MOPAC will review the Exit Plan and the Recipient shall develop it to ensure that it is workable and practical.
- 1.4 The Provider shall fully cooperate with MOPAC and any new provider during the exit and handover and meet all reasonable requests for support within reasonable timescales.
- 1.5 The Exit Plan shall, as a minimum, include the following:
  - 1.5.1 agreement about access to staff for communication and training purposes;
  - 1.5.2 agreement about access to the Service premises and facilities during the transition period;
  - 1.5.3 agreement about data sharing with any future service provider, always ensuring that the Provider remains fully compliant with the Data Protection Legislation;
  - 1.5.4 agreement about the transfer of intellectual property rights owned by MOPAC during transition; and
  - 1.5.5 agreement to the classification and transfer of any assets.
- 1.6 The Exit Plan will be amendable from time to time with the Contract of both the Provider and MOPAC.

### **2. Staffing Information to be Provided on Expiry or Termination**

- 2.1 In line with the provisions of Clause 11, the Provider shall provide the information listed below in respect of those on the Staff List:
  - 2.1.1 Amount of time spent on the Services (or any part of the Services specified by MOPAC);
  - 2.1.2 Date of birth;

- 2.1.3 Role Title/Designation and Role Profile;
- 2.1.4 Annual Salary £;
- 2.1.5 Bonus and Commission Amount and Frequency;
- 2.1.6 Pay Frequency and Date;
- 2.1.7 Overtime - Contractual or Non Contractual and Rates;
- 2.1.8 Contractual Working Hours;
- 2.1.9 Contract Type - Permanent/Temporary;
- 2.1.10 Geographical Area Of Work/Location;
- 2.1.11 Commencement of Employment Date;
- 2.1.12 Continuous Service Date;
- 2.1.13 Car Allowance;
- 2.1.14 Pension Contributions, from both the employer and the employee, and including additional information on:
  - 2.1.14.1 who were originally employees of MOPAC;
  - 2.1.14.2 who were members of (or eligible to become members of) the TfL Pension Fund / The Local Government Pension Scheme for England and Wales/The Principal Civil Service Pension Scheme;
  - 2.1.14.3 whose employment transferred from MOPAC to the Service Provider under TUPE; and
  - 2.1.14.4 who were entitled to broadly comparable benefits under the Current Provider's Scheme;
- 2.1.15 Details of the relevant employee representative body or bodies and relevant collective agreements;
- 2.1.16 Date of Annual Pay Award;
- 2.1.17 Annual Leave Entitlement;
- 2.1.18 Contractual Notice Period;
- 2.1.19 Public Holiday/Concessionary Days Entitlement;
- 2.1.20 Sickness Entitlement (in 12 month rolling period);
- 2.1.21 Salary/wage increases pending;
- 2.1.22 Eligibility for enhanced redundancy pay and any other contractual or non-contractual termination of severance arrangements (including methods of calculation);
- 2.1.23 Details of any other benefits provided, whether contractual or non-contractual;
- 2.1.24 Copy of employment contract or applicable standard terms and employee handbook;
- 2.1.25 Any loans or educational grants;

- 2.1.26 For those employees who are foreign nationals the country of citizenship, immigrant status and all documentation required by law to demonstrate a right to work in the United Kingdom;
- 2.1.27 Information on any disciplinary or grievance procedure taken against or by an employee in the two years immediately preceding the information being provided;
- 2.1.28 Information about any tribunal claims in the immediately preceding two years or whether there are reasonable grounds to believe a claim may be brought;
- 2.1.29 Department and place on organisation chart;
- 2.1.30 Average absence due to sickness; and
- 2.1.31 Training and competency records.