



**GENERAL TERMS AND  
CONDITIONS  
FOR THE SUPPLY  
OF GOODS SERVICES AND  
WORKS**

1

April 2013

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These General Terms and Conditions are incorporated in contracts of all values and types made between STaRH and a Contractor for the supply of Goods and Services (as defined below).

Only those Terms and Conditions denoted with the suffix **"W"** (**Property Services contracts**) or **"Z"** (**Highways contracts**) will be incorporated into those agreements where a standard form contract is being used to provide Works (as defined below)

## 1. DEFINITIONS

1.1 In this document the following words shall have the following meanings:

<b>'Agreement'</b>	means the Agreement between STaRH and the Contractor consisting of the Purchase Order or Form of Agreement, these General Terms and Conditions and any other documents (or parts thereof) specified in the Purchase Order or Form of Agreement.
<b>'Associated Person'</b>	means in respect of STaRH, a person, partnership, limited liability partnership or company (and company shall include a company which is a subsidiary, a holding company or a company that is a subsidiary of the ultimate holding company of that company) in which STaRH has a shareholding or other ownership interest.
<b>'Bribery Act'</b>	the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.
<b>"STaRH Data"</b>	the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (a) supplied to the Contractor by or on behalf of STaRH; or which the Contractor is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which STaRH is the Data Controller;
<b>"STaRH Software"</b>	software which is owned by or licensed to STaRH, including software which is or will be used by the Contractor for the purposes of providing the Services but excluding the Contractor Software;
<b>"STaRH System"</b>	STaRH's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by STaRH or the Contractor in connection with this Agreement which is owned by or licensed to STaRH by a third party and which interfaces with the Contractor System or which is necessary for STaRH to receive the Services;
<b>"STaRH Representative"</b>	the representative appointed by STaRH
<b>"STaRH"</b>	means Shropshire Towns and Rural Housing Limited
<b>"Commercially Sensitive Information"</b>	comprises the information of a commercially sensitive nature relating to the Contractor, its Intellectual Property Rights or its business which the Contractor has indicated to STaRH in writing that, if disclosed by STaRH, would cause the Contractor significant commercial disadvantage or material financial loss;
<b>"Confidential Information"</b>	any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of STaRH or the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") ;
<b>"Contractor"</b>	means the person, firm or company or any other organisation specified in the Agreement contracting with STaRH.
<b>"Contractor Equipment"</b>	the hardware, computer and telecoms devices and equipment supplied by the Contractor or its Sub contractors (but not hired, leased or loaned from STaRH) for the provision of the Services;

<b>"Contractor Software"</b>	software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services;
<b>"Contractor System"</b>	the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding STaRH System);
<b>"Contractor"</b>	all employees, agents, consultants and contractors of the Contractor and/or of any Sub-contractor;
<b>"Data Controller"</b>	shall have the same meaning as set out in the Data Protection Act 1998
<b>"Data Processor"</b>	shall have the same meaning as set out in the Data Protection Act 1998
<b>"Data Protection Legislation"</b>	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"EIR"</b>	means the Environmental Information Regulations 2004 (as may be amended from time to time.)
<b>"Exempt Information"</b>	means any information or class of information (including but not limited to any document, report, Agreement or other material containing information) relating to this Agreement or otherwise relating to the parties to this Agreement which potentially falls within an exemption to FOIA (as set out therein)
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and all subsequent regulations made under this or any superseding or amending enactment and regulations; any words and expressions defined in the FOIA shall have the same meaning in this clause
<b>"FOIA notice"</b>	means a decision notice, enforcement notice and/or an information notice issued by the Information Commissioner
<b>"Form of Agreement"</b>	means the contract document (other than a Purchase Order) to which these General Terms and Conditions are attached or referred to
<b>"Goods"</b>	means all goods specified in the Agreement.
<b>"Hazardous Goods"</b>	means any solid, liquid, or gas that can cause harm to humans and other living organisms due to being radioactive, flammable or explosive, irritating or damaging the skin or lungs, interfering with oxygen intake and absorption (asphyxiants), or causing allergic reactions (allergens).
<b>"Information"</b>	has the meaning given under section 84 of the Freedom of Information Act 2000;
<b>"Intellectual Property Rights"</b>	means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable
<b>"Law"</b>	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

<b>“Malicious Software”</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>“Packages”</b>	includes bags, cases, cylinders, drums, pallets and other containers
<b>"Personal Data"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>“Price”</b>	means the price of the Goods and/or charge for the Services or Works being provided by the Contractor
<b>‘Prohibited Act’</b>	the following constitute Prohibited Acts: (a) to directly or indirectly offer, promise or give any person working for or engaged by STaRH a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement; (c) committing any offence: (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with STaRH; or (d) defrauding, attempting to defraud or conspiring to defraud STaRH.
<b>“Public body”</b>	as defined in the FOIA 2000
<b>'Purchase Order'</b>	means STaRH's official order which encompasses orders written or electronically generated via any of STaRH's ordering systems and to which these General Terms and Conditions are attached or referred to
<b>“Receiving Party”</b>	means a party to this Agreement to whom a Request for Information is made under FOIA, and who thereafter has overall conduct of the request and any response
<b>‘Regulated Activity’</b>	in relation to children, as defined in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006, and in relation to vulnerable adults, as defined in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
<b>‘Regulated Provider’</b>	as defined in section 6 of the Safeguarding Vulnerable Groups Act 2006
<b>“Regulatory Bodies”</b>	those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of STaRH and "Regulatory Body" shall be construed accordingly;
<b>“Request for Information”</b>	means a written request for information pursuant to the FOIA as defined by Section 8 of the FOIA
<b>"Security Policy"</b>	STaRH's security policy as updated from time to time;
<b>“Services”</b>	means any and all of the services to be provided by the Contractor under this Agreement including those set out in any schedules or service descriptions.
<b>"Software"</b>	Specially Written Software, Contractor Software and Third Party Software;

<b>"Specially Written Software"</b>	any software created by the Contractor (or by a third party on behalf of the Contractor) specifically for the purposes of this Agreement;
<b>'Sub-Contract'</b>	any contract or agreement, or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor the Goods, Works or Services or any part thereof, or facilities or services necessary for the provision of the Goods, Works or Services or any part of the Goods, Works or Services, or necessary for the management, direction or control of the Goods, Works or Services or any part of thereof.
<b>'Sub-Contractor'</b>	the third parties that enter into a Sub-Contract with the Contractor.
<b>"Third Party Software"</b>	software which is proprietary to any third party which is or will be used by the Contractor for the purposes of providing the Services
<b>"Working Day"</b>	any day other than a Saturday, Sunday or public holiday in England and Wales.
<b>"Works"</b>	means all civil engineering and building works of whatever nature to be provided by the Contractor to STaRH
<b>'Writing'</b>	includes facsimile transmission and electronic mail, providing that the electronic mail is acknowledged and confirmed as being received.

- 1.2 Clause and paragraph headings shall not affect the interpretation of these terms and conditions.
- 1.3 A person includes an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 A reference to a holding company or subsidiary means a holding company or subsidiary as defined in section 1159 of the Companies Act 2006.  
In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that:
- (i) references in sub-sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and
  - (ii) the reference in sub-section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.
- 1.6 Words in the singular shall include the plural and vice versa.
- 1.7 A reference to one gender shall include a reference to the other genders.
- 1.8 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9 A reference to writing or written includes faxes but not e-mail, unless otherwise specifically agreed.
- 1.10 Any obligation in these terms and conditions on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.11 References to clauses are to the clauses of these terms and conditions.
- 1.12 Where any statement is qualified by the expression so far as the Contractor is aware or to the Contractor's knowledge or any similar expression, that statement shall be deemed to include an additional statement that it has been made after due and careful enquiry.
- 1.13 Where there is any conflict or inconsistency between the provisions of these terms and conditions or any other document forming part of the agreement with STaRH, such conflict or inconsistency shall be resolved in a manner at STaRH's sole discretion.

## **2 GENERAL**

- 2.1 When requested, the Contractor shall specify the Goods, Services or Works to be provided at the price payable.
- 2.2 No variation of these General Terms and Conditions shall be binding unless agreed expressly in Writing by both STaRH and the Contractor.
- 2.3 These General Terms and Conditions shall apply to the exclusion of any other terms or conditions submitted, proposed or stipulated by the Contractor, whether in Writing or orally, and any such other term or condition is hereby expressly excluded or waived.
- 2.4 The Contractor shall complete the Works or Services or supply the Goods within the agreed times but time shall not be of the essence in the performance of any services unless expressly stated in Writing by STaRH.

## **3 SPECIFICATION AND QUALITY OF THE GOODS, SERVICES AND WORKS**

- 3.1 The quantity, quality and description of the Goods or Services shall comply in all respects with any quoted British Standards and the specification or illustration contained in any product pamphlet or other sales or marketing literature of the Contractor or drawings, samples and patterns specified in the Agreement or any modifications thereof that may be agreed by STaRH in Writing.
- 3.2 All Goods will be of good construction, sound materials, and of adequate strength, shall be free of defects in design materials and workmanship, and shall comply with the requirements of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, as applicable to this Agreement and as amended by any related statutes, and any statutory re-enactment(s) or modification(s) thereof.

## **4 ALTERATIONS TO THE SPECIFICATION OF GOODS AND SERVICES**

- 4.1 The parties may at any time mutually agree upon and execute alterations in the scope of Goods, Works or Services to be provided under this Agreement
- 4.2 On receipt of a request from STaRH for alterations the Contractor shall, within 5 working days or such other period as may be agreed between the parties, advise STaRH by notice in Writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties
- 4.3 Where the Contractor gives written notice to STaRH agreeing to perform any alterations on terms different to those already agreed between the parties, STaRH shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Contractor by notice in Writing whether or not it wishes the alterations to proceed thereafter the Contractor shall perform this Agreement upon the basis of such amended terms

## **5 PRICE AND PAYMENT**

- 5.1 The price for the supply of Goods and Services are as set out in the Agreement and the Contractor shall invoice STaRH at the time the Goods are dispatched or the Services are provided.
- 5.2 The Price, which shall include all charges for delivery to STaRH, packaging, insurance and carriage, shall be exclusive of VAT and shall be a fixed price for the duration of the Agreement and shall not be varied without prior written consent of STaRH.
- 5.3 STaRH reserves the right to set off against the price of the Goods or Services any sums owed or becoming due to STaRH from the Contractor.

- 5.4 Provided that a nominated employee or authorised signatory of STaRH has signed for Goods or Services STaRH will make payment to the Contractor by BACS (Bank Automated Clearing System) within 45 days following of receipt of the relevant undisputed invoice or acceptance of the relevant Goods or Services. No other method of payment shall be acceptable and the Contractor shall ensure that their bank account details are provided to STaRH at least 45 days prior to payment becoming due to enable the payment to be made. STaRH shall not be liable for any late payment charges where the Contractor fails to provide STaRH with their correct bank account details in accordance with this clause.
- 5.5 VAT, where applicable, shall be shown separately on all invoices as a strictly net extra, the Invoice must comply with VAT rules and regulations. The correct Purchase Order number must be quoted on all invoices, and STaRH will accept no liability whatsoever for invoices, delivery notes or other communications which do not bear such Purchase Order numbers.
- 5.6 STaRH reserves the right to refuse payment of sums invoiced in excess of the prices stated in the Agreement.
- 5.7 Unless otherwise agreed in Writing by STaRH the Contractor will pay any of its appointed sub-contractors within 30 days from receipt of an undisputed invoice.

## **6 DELIVERY**

- 6.1 The Agreement will specify the quantity of Goods and the nature of the Services required and the date or dates and place of delivery of the Goods or provision of the Service or Services. The Contractor shall provide such programmes of manufacture and delivery as STaRH may require. Each delivery or consignment shall have a packing note quoting the reference number of the Purchase Order (where applicable) prominently displayed, and STaRH may reject quantities delivered in excess of those stated on the Agreement.
- 6.2 If Goods are in any respect incorrectly delivered the Contractor shall immediately affect correct delivery and shall be responsible for any additional costs or expenses incurred by both parties in so doing.
- 6.3 If Services are provided by the Contractor otherwise than in accordance with the terms of the Agreement, the Contractor shall immediately affect correct provision of the Services and shall be responsible for any additional costs or expenses incurred by STaRH or the Contractor in so doing.
- 6.4 STaRH may reject any Goods which are not in accordance with the Agreement and STaRH shall not be treated as having accepted any Goods until STaRH has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after a latent defect in the Goods has become apparent.
- 6.5 The Contractor shall comply with all applicable regulations or other legal requirements as regards the manufacture, packaging, labelling, and delivery of the Goods. The Contractor shall deliver the Goods properly and securely packed and supply the Services during STaRH's usual business hours (8:45 to 17:00 Monday to Thursday and 8:45 to 16:00 Friday) or in accordance with the instructions shown on the Agreement.
- 6.6 Where Goods are delivered by road vehicle, available empty Packages may be returned by the same vehicle.
- 6.7 Where STaRH has an option to return Packages and does so, STaRH will return such Packages empty and in good order and condition (consigned 'carriage paid' unless otherwise agreed) to the Contractor's supplying works or depot indicated by the Contractor, and will advise the Contractor of the date of despatch.



- 6.8 Packages and containers of all kinds are supplied free by the Contractor and are non-returnable unless otherwise clearly stated, in the first instance, on quotations and subsequently on all Packages, advice notes and delivery notes.

## **7. LOSS OR DAMAGE IN TRANSIT**

- 7.1 The Contractor shall promptly make good, free of charge to STaRH, any loss in transit of the Goods if notified within 21 days of delivery or any damage to or defect in the Goods if notified within 10 days of delivery.

## **8. INSPECTION**

- 8.1 The Contractor shall be responsible for the inspection and testing of the Goods and shall ensure that they comply with the Agreement prior to delivery to STaRH. STaRH shall have the right to inspect the Goods at the Contractor's works and those of its Sub-Contractors at all reasonable times and to reject any part thereof that does not comply with the terms of the Agreement.
- 8.2 The Contractor shall ensure that rights of access, inspection and rejection at premises of any sub-Contractor of the Contractor are given to STaRH in sub-agreements between the Contractor and the Contractor's Sub-Contractors. Any inspection, checking, approval or acceptance given on behalf of STaRH shall not relieve the Contractor or its Sub-Contractors from any obligations or liabilities set forth in this Agreement.

## **9. REJECTION**

- 9.1 STaRH shall have the right to reject any Goods or Services which do not comply with the Agreement, and are, without limitation, not of a stipulated quality or quantity or measurement, unfit for the purpose for which they are required or non-compliant with a description or specification or sample, and STaRH may return such rejected Goods to the Contractor at the Contractor's cost and expense.
- 9.2 If the Contractor is unable to supply acceptable replacement Goods or Services within the time specified in the Agreement, or within any extension of such time as STaRH may grant, STaRH will be entitled to purchase elsewhere other Goods or Services, as near as is practicable to the same Agreement specifications as circumstances shall permit, but without prejudice to any other right which STaRH may have against the Contractor including, but not limited to, payment by the Contractor of any excess costs incurred by STaRH in doing so.
- 9.3 The making of such payment shall not prejudice STaRH's right of rejection and the Contractor shall immediately reimburse STaRH with an amount equal to that paid by STaRH in respect of the Goods or Services and any applicable taxes. Before exercising the said right elsewhere STaRH shall give the Contractor reasonable opportunity to replace rejected Goods or Services with Goods or Services that conform to the Agreement.
- 9.4 STaRH is under no obligation to test or inspect the Goods before or on delivery.

## **10 TITLE - PASSING PROPERTY**

- 10.1 Property and risk in the Goods will remain with the Contractor until the Goods are delivered to the place specified in the Agreement and a nominated employee of STaRH has signed a delivery note for them, whereupon title will pass to STaRH, without any limitation, constraint or encumbrance.
- 10.2 If payment for the Goods is made prior to delivery, property in the Goods shall pass to STaRH once payment has been made and the Goods have been unconditionally appropriated by STaRH.

- 10.3 In these circumstances the Contractor will set aside the Goods and store them separately from similar Goods held at the Contractors premises specified in the Agreement and ensure that they are securely, clearly and visibly marked with the wording "Property of STaRH" so as to identify those Goods as having been unconditionally appropriated by STaRH to whose order they are held
- 10.4 The Contractor will allow a named representative of STaRH reasonable accompanied access to its premises specified in the Agreement to verify compliance with clause 10.3 herein and will immediately rectify any non-compliance as identified by STaRH's named representative
- 10.5 The Contractor will indemnify STaRH for any loss of or damage to the Goods until delivered on-site.
- 10.6 Without prejudice to this indemnity the Contractor will have appropriate and adequate insurance cover against any such loss or damage with a reputable insurer from the time that title in the materials or Goods passes to STaRH until they are delivered on-site and the Contractor shall provide STaRH with certified copies of the relevant policy upon request.
- 10.7 The Contractor agrees that STaRH has the right to enter the Contractor's premises specified in the Agreement where Goods are being held in order to recover the said materials or Goods in the event of the Contractors' insolvency

## **11 STARH'S OBLIGATIONS**

- 11.1 To enable the Contractor to perform its obligations under this Agreement STaRH shall:
- a) co-operate with the Contractor;
  - b) provide the Contractor with any information reasonably required by the Contractor;
  - c) obtain all necessary permissions and consents which may be required before the commencement of the Services or the supply of Goods; and
  - d) comply with such other requirements as may be otherwise agreed between the parties.
- 11.2 Without prejudice to any other rights to which the Contractor may be entitled, in the event that STaRH unlawfully terminates or cancels the Goods or Services agreed to in the Agreement STaRH shall be required to pay to the Contractor as agreed damages and not as a penalty the full amount of any third party costs to which the Contractor has reasonably committed and in respect of cancellations on less than five working days' written notice the full amount of the Goods and Services.

## **12. WARRANTIES**

- 12.1 The Contractor warrants that as from the date of delivery for a minimum period of 12 months the Goods and all their component parts, where applicable, are free from any defects in design, workmanship, construction or materials. Where certain Goods carry warranties for longer periods the Contractor will notify STaRH of these from time to time as appropriate.
- 12.2 The Contractor warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

## **13 INDEMNIFICATION**

- 13.1 STaRH shall indemnify the Contractor against all reasonable claims, costs and expenses which the Contractor may incur and which arise, directly from STaRH's breach of any of its obligations under this Agreement.

13.2 The Contractor shall indemnify STaRH against all reasonable damage, liability, costs, claims, actions and proceedings arising out of the performance, defective performance or otherwise of this Agreement by the Contractor, its employees, servants or agents

#### **14 TERMINATION AND CANCELLATION**

14.1 STaRH upon giving the Contractor notice in Writing may cancel any Agreement at any time. A fair and reasonable price will be paid for all work in progress at the time of the cancellation, providing all such work is delivered to, and/or performed for STaRH and is accepted as described in Clauses 6 to 9 herein. STaRH's liability is strictly limited to work in progress and no further loss or liability will accrue.

14.2 Either party may terminate this Agreement forthwith by notice in Writing to the other if:

- a). the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 14 calendar days of being given notice in Writing setting out the breach and indicating that failure to remedy the breach may result in termination of this Agreement.
- b). the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- c). the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- d). the other party ceases to carry on its business or substantially the whole of its business; or
- e). the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

#### **15 PREVENTION OF BRIBERY (W) (Z)**

15.1 The Contractor:

- a) shall not, and shall procure that all Contractor Personnel shall not, in connection with this Agreement commit a Prohibited Act;
- b) warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by STaRH, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to STaRH before execution of this Agreement.

15.2 The Contractor shall:

- a) if requested, provide STaRH with any reasonable assistance, at STaRH's reasonable cost, to enable STaRH to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
- b) the Contractor shall, within 10 Working Days of a request from STaRH, certify to STaRH in writing (such certification to be signed by an officer of the Contractor) the Contractor's compliance with this clause 15 and provide such supporting evidence of compliance with this clause 15 by the Contractor as STaRH may reasonably request.

15.3 If any breach of clause 15.1 is suspected or known, the Contractor must notify STaRH immediately.

15.4 If the Contractor notifies STaRH that it suspects or knows that there may be a breach of clause 15.1, the Contractor must respond promptly to STaRH's enquiries, co-operate with any investigation, and allow STaRH to audit books, records and any other relevant

documentation. This obligation shall continue for two years following the expiry or termination of this Agreement.

15.5 STaRH may terminate this Agreement by written notice with immediate effect, and recover from the Contractor the amount of any loss directly resulting from the cancellation, if the Contractor or Contractor Personnel (in all cases whether or not acting with the Contractor's knowledge) breaches clause 15.1. At STaRH's absolute discretion, in determining whether to exercise the right of termination under this clause 15.5, STaRH shall give consideration, where appropriate, to action other than termination of this Agreement unless the Prohibited Act is committed by the Contractor or a senior officer of the Contractor or by an employee, Sub-Contractor or supplier not acting independently of the Contractor. The expression "not acting independently of" (when used in relation to the Contractor or a Sub-Contractor) means and shall be construed as acting:

- a) with the authority; or,
- b) with the actual knowledge;  
of any one or more of the directors of the Contractor or the Sub-Contractor (as the case may be); or
- c) in circumstances where any one or more of the directors of the Contractor ought reasonably to have had knowledge.

15.6 Any notice of termination under clause 15.5 must specify:

- a) the nature of the Prohibited Act;
- b) the identity of the party whom STaRH believes has committed the Prohibited Act; and
- c) the date on which this Agreement will terminate.

15.7 Despite clause 42 (Disputes), any dispute relating to:

- a) the interpretation of clause 15; or
- b) the amount or value of any gift, consideration or commission, shall be determined by STaRH and its decision shall be final and conclusive.

15.8 Any termination under clause 15.5 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to STaRH.

## **16 INTELLECTUAL PROPERTY RIGHTS**

16.1 Any specification, drawing, sample and pattern supplied by STaRH to the Contractor, or specifically produced by the Contractor for STaRH in connection with this Agreement, together with the copyright, design rights or any other intellectual property rights thereto shall be the exclusive property of STaRH. On payment of the price and for no further consideration the Contractor assigns to STaRH with full title guarantee all such copyright, design and other intellectual property rights.

16.2 The Contractor shall not disclose to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) or provide any such specification, drawing, sample or pattern to any third party or use the same except to the extent that it is or becomes public knowledge through no fault of the Contractor, or as is required for the purposes of the Agreement.

16.3 This provision shall survive the expiration or termination of the Agreement.

## **17 INDEPENDENT CONTRACTORS**

17.1 The Contractor and STaRH are independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in Writing by both parties.

## **18 SEVERABILITY**

18.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

## **19 ASSIGNMENT, TRANSFER AND SUB-CONTRACTING**

19.1 STaRH may, subject to clause 19.2:

- (a) assign any of its rights under the Agreement; or
- (b) transfer all of its rights or obligations by novation, to another person.

19.2 The consent of the Contractor is required for an assignment or transfer by STaRH unless:

- (a) the assignment or transfer is to an Associated Person of STaRH; or
- (b) either STaRH or the Contractor have committed a breach of this Agreement which gives the other party the right under the terms of this Agreement to terminate the Agreement. Any such consent must not be unreasonably withheld or delayed and if not expressly refused within five Working Days shall be deemed given.

19.3 The Contractor may not assign any of its rights, or transfer any of its rights or obligations under the Agreement.

19.4 The Contractor will not, without the written consent of STaRH sub-contract its right or obligations under this Agreement nor allow Services to be provided other than through his own employees and using his own equipment.

19.5 In the event that STaRH has consented to the placing of sub-contracts, copies of each sub-contract and order shall be sent by the Contractor to STaRH immediately it is issued.

19.6 Notwithstanding the Contractor's right to sub-contract pursuant to this clause 19, the Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Contractor to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

## **20 WAIVER**

20.1 The failure by either party to enforce at any time or for any period any one or more of these General Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all the terms and conditions of this Agreement.

## **21 HAZARDOUS GOODS**

21.1 Hazardous Goods must be marked by the Contractor with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Contractor shall observe the requirements of UK and international laws, regulations and agreements relating to the packing, labelling and carriage of hazardous Goods.

21.2 All information known, held by, or reasonably available to, the Contractor regarding any potential hazards known or believed to exist in transport, handling or use of the Goods supplied shall be promptly communicated to STaRH.

## **22 NOTICES**

22.1 Unless otherwise communicated to the party in Writing any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party that is the registered office or main place of business of the Contractor or if STaRH, the Shirehall, Abbey Foregate, Shrewsbury. SY2 6ND

22.2 A Notice sent by email shall be deemed to be received providing receipt is acknowledged and confirmed, Notice sent by fax shall be deemed to be served on receipt of an error free transmission report, Notice given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by second class post shall be deemed to have been delivered in the ordinary course of post and if by first class post shall be deemed to have been delivered 48 hours after posting and acknowledged

## **23 CONFIDENTIALITY (W) (Z)**

23.1 All plans, drawings, designs or specifications supplied by STaRH to the Contractor shall remain the exclusive property of, and shall be returned to STaRH on completion of the Agreement and shall not be copied, and no information relating to the Goods or the Services shall be disclosed to any third party, except as required for the purpose of this Agreement.

23.2 No photographs of any of STaRH's equipment, installations or property shall be taken without STaRH's prior consent in Writing. The Contractor shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-agreement) all information given by STaRH in connection with the Agreement or which becomes known to the Contractor through his performance of the Agreement or use the same other than for the purpose of executing the Agreement.

23.3 The Contractor shall not mention STaRH's name in connection with the Agreement or disclose the existence of the Agreement in any publicity material or other similar communication to third parties without STaRH's prior consent in Writing.

23.4 The Contractor will keep confidential any information it becomes aware of by reason of the operation of this Agreement.

23.5 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

23.5.1 treat the other party's Confidential Information as confidential; and

23.5.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent

23.6 Clause 23.5 shall not apply to the extent that:

23.6.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the Audit Commission Act 1998 or under the FOIA or the Environmental Information Regulations pursuant to the above clause regarding Freedom of Information;

23.6.2 such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

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

23.6.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

23.6.5 it is independently developed without access to the other party's Confidential Information.

23.7 The Contractor may only disclose STaRH's Confidential Information to the Contractor Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractor Personnel are aware of and shall comply with these obligations as to confidentiality.

- 23.8 The Contractor shall not, and shall procure that the Contractor Personnel do not, use any of STaRH's Confidential Information received otherwise than for the purposes of this Agreement
- 23.9 Nothing in this Agreement shall prevent STaRH from disclosing the Contractor's Confidential Information:  
23.9.1 to any consultant, contractor or other person engaged by STaRH;  
23.9.2 for the purpose of the examination and certification of STaRH's accounts or any other form of audit of STaRH;
- 23.10 STaRH shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to this Agreement is made aware of STaRH's obligations of confidentiality.
- 23.11 Nothing in this clause shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 23.12 The provisions of this Clause shall survive the expiration or termination of this Agreement.

### **23A AGREEMENT STATUS AND TRANSPARENCY (W) (Z)**

- 23A.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement and any associated tender documentation provided by the Contractor (the Tender Submission) is not Confidential Information. STaRH shall be responsible for determining in its absolute discretion whether any of the content of the Agreement or the Tender Submission is exempt from disclosure in accordance with the provisions of the FOIA.
- 23A.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for STaRH to publish this Agreement and the Tender Submission in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 23A.3 STaRH may consult with the Contractor to inform its decision regarding any exemptions but STaRH shall have the final decision in its absolute discretion.
- 23A.4 The Contractor shall assist and cooperate with STaRH to enable STaRH to publish this Agreement and the Tender Submission.

### **24 STARH DATA**

- 24.1 The Contractor shall not delete or remove any copyright or proprietary notices contained within or relating to STaRH Data.
- 24.2 The Contractor shall not store, copy, disclose, or use STaRH Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by STaRH and in particular the Contractor shall not store any STaRH Data, which STaRH has notified the Contractor requires storage in an encrypted format, on any portable device or media unless that device is encrypted.
- 24.3 To the extent that STaRH Data is held and/or processed by the Contractor, the Contractor shall supply that STaRH Data to STaRH as requested by STaRH in any format specified in this Agreement or if none specified in any format reasonably requested by STaRH.
- 24.4 The Contractor shall take responsibility for preserving the integrity of STaRH Data and preventing the corruption or loss of STaRH Data and shall take such back up copies of the STaRH Data at regular intervals appropriate to the frequency of the revision of STaRH Data.
- 24.5 The Contractor shall ensure that any system on which the Contractor holds any STaRH Data, including back-up data, is a secure system that complies with the Security Policy to include, but not limited to, the following requirements in the Security Policy:

- 24.5.1 Access to the system is restricted to Contractor Personnel with a legitimate need to access STaRH Data; and
- 24.5.2 The system is kept up to date with the latest versions of operating system and anti-virus updates; and
- 24.5.3 Transfer of data to and from the system is conducted in a secure manner.
- 24.6 If STaRH Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, STaRH may:
- 24.6.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of STaRH Data as soon as practicable; and/or
- 24.6.2 itself restore or procure the restoration of STaRH Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so including the restoration of STaRH Data.
- 24.7 If at any time the Contractor suspects or has reason to believe that STaRH Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify STaRH via STaRH's ICT Helpdesk immediately and inform STaRH of the remedial action the Contractor proposes to take.
- 24.8 The Contractor shall check for and delete Malicious Software and if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of STaRH Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 24.9 Any cost arising out of the actions of the parties taken in compliance with the provisions of sub-clause .8 above shall be borne by the parties as follows:
- 24.9.1 by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or STaRH Data (whilst STaRH Data was under the control of the Contractor); and
- 24.9.2 by STaRH if the Malicious Software originates from STaRH Software or STaRH Data (whilst STaRH Data was under the control of STaRH).

## **25 PROTECTION OF PERSONAL DATA**

- 25.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that STaRH is the Data Controller and that the Contractor is the Data Processor.
- 25.2 The Contractor shall:
- 25.2.1 Process the Personal Data only in accordance with instructions from STaRH (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by STaRH to the Contractor during the term of this Agreement);
- 25.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 25.2.3 implement appropriate technical and organisational measures, including but not limited to ensuring that Personal Data is not stored on any portable equipment or storage



device or media unless encrypted, to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

25.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

25.2.5 obtain prior written consent from STaRH in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services;

25.2.6 ensure that all Contractor Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Protection of Personal Data clause ;

25.2.7 ensure that no Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by STaRH;

25.2.8 notify STaRH (within five Working Days) if it receives:

- a) a request from a Data Subject to have access to that person's Personal Data; or
- b) a complaint or request relating to STaRH's obligations under the Data Protection Legislation;

25.2.9 provide STaRH with full cooperation and assistance in relation to any complaint or request made, including by:

- a) providing STaRH with full details of the complaint or request;
- b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with STaRH's instructions;
- c) providing STaRH with any Personal Data it holds in relation to a Data Subject (within the timescales required by STaRH); and
- d) providing STaRH with any information requested by STaRH;

25.2.10 permit STaRH or STaRH Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with the Audit clause, the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-contractors) and comply with all reasonable requests or directions by STaRH to enable STaRH to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

25.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by STaRH); and

25.2.12 not process Personal Data outside the United Kingdom without the prior written consent of STaRH and, where STaRH consents to a transfer, to comply with:

- a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
- b) any reasonable instructions notified to it by STaRH

25.2.13 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause STaRH to breach any of its applicable obligations under the Data Protection Legislation.

25.2.14 The Contractor shall ensure that its employees and agents are aware of and comply with this clause and shall indemnify STaRH against any loss or damage sustained or incurred as a result of any breach of this clause.

## **26 STARH DATA AND PERSONAL INFORMATION AUDITS**

- 26.1 Except where an audit is imposed on STaRH by a Regulatory body, STaRH may, acting reasonably, conduct an audit for the following purposes:
- 26.1.1 to review the integrity, confidentiality and security of STaRH Data;
  - 26.1.2 to review the Contractor's compliance with the Data Protection Act 1998, the Freedom of Information Act 2000 in accordance with the Protection of Personal Data and Freedom of Information clauses and any other legislation applicable to the Services;
- 26.2 STaRH shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Contractor or delay the provision of the Services.
- 26.3 Subject to STaRH's obligations of confidentiality, the Contractor shall on demand provide STaRH (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
- 26.3.1 all information requested by STaRH within the permitted scope of the audit;
  - 26.3.2 reasonable access to any Sites controlled by the Contractor and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - 26.3.3 access to Contractor Personnel
- 26.4 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services.
- 26.5 STaRH shall endeavour to (but is not obliged to) provide at least 5 Working Days notice of its intention to conduct an audit.
- 26.6 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause.
- 26.7 This clause shall not apply to any audit or inspection regarding the provision of the Services specified in the Service Specification or elsewhere in this Agreement which may be conducted as specified in this Agreement.

## **27. PUBLIC INTEREST DISCLOSURE ('WHISTLE BLOWING') (W) (Z)**

- 27.1 The Contractor will ensure that his employees and agents are made aware of the STaRH's policy "Speaking Up About Wrongdoing" and that the details of this policy are fully explained to them and shall provide STaRH with evidence of doing so upon request

## **28 INSURANCE**

- 28.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover, or in accordance with any legal requirement for the time being in force, in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of this Agreement, including death or personal injury, loss of or damage to property or any other loss, and unless otherwise agreed with STaRH such policy or policies of Public Liability and Employers Liability insurance shall provide for a minimum of £5,000,000 (FIVE MILLION POUNDS) cover. In respect of death or personal injury due to negligence will be unlimited.
- 28.2 If appropriate and requested in Writing, the Contractor may also be required to provide Product Liability insurance of at least £2,000,000 (TWO MILLION POUNDS) cover for any one claim.
- 28.3 Where the Contractor is providing Services of a professional nature, or STaRH otherwise specifies that professional indemnity insurance is required, the Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional

consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover. To comply with its obligations under this clause, and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, Sub-Contractor or consultant involved in the performance of Services has a limit of indemnity of not less than £1,000,000 (ONE MILLION POUNDS) for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of six years following the expiration or earlier termination of the agreement.

28.4 The Contractor warrants that it has complied with this clause 28 and shall provide the STaRH with certified copies of the relevant policies upon request together with receipts or other evidence of payment of the latest premiums due under those policies.

28.5 If, for whatever reason, the Contractor] fails to give effect to and maintain the insurances required by the agreement STaRH may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

## **29. EQUALITIES (W) (Z)**

29.1 The Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race or ethnic origin, disability, gender, sexual orientation, religion or belief, or age in the supply and provision of Goods, Services or Works under this Agreement, or in its employment practices.

29.2 Without prejudice to the generality of the foregoing, the Contractor and any Sub-Contractor employed by the Contractor shall not unlawfully discriminate within the meaning and scope of the Equalities Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof.

29.3 In addition, the Contractor and any Sub-Contractor employed by the Contractor in providing services to STaRH will comply with the general duty imposed on local authorities by Section 149 of the Equality Act 2010 to eliminate discrimination, harassment and victimisation and promote equality of opportunity between persons who share a protected characteristic and those who do not share it and to foster good relations between persons who share a protected characteristic and those who do not share it .

29.4 The Contractor and any Sub-Contractor employed by the Contractor will take all reasonable steps to observe as far as possible the Codes of Practice produced by the Equalities and Human Rights Commission, which give practical guidance to employers on the elimination of discrimination.

29.5 In the event of any finding of unlawful discrimination being made against the Contractor or any Sub-Contractor employed by the Contractor during the contract period, by any court or employment tribunal, or any adverse finding or formal investigation by the Equalities and Human Rights Commission over the same period, the Contractor shall inform STaRH of this finding and shall take appropriate steps to prevent repetition of the unlawful discrimination.

29.6 The Contractor and any Sub-Contractor employed by the Contractor will provide a copy of its policies to STaRH at any time upon request. In addition, STaRH may reasonably request other information from time to time for the purpose of assessing the Contractor's compliance with the above conditions.

## **30 HUMAN RIGHTS (W) (Z)**

30.1 The Contractor shall where appropriate take account of the Human Rights Act 1998 and shall not do anything in breach of it.

## **31 HEALTH AND SAFETY AT WORK (Z)**

31.1 The Contractor will at all times in providing Goods, Services or Works to STaRH comply with the provisions of the Health and Safety at work Act 1974 and provide evidence of doing so to STaRH at any time upon request.

**32 FREEDOM OF INFORMATION ACT 2000 (FOIA) AND ENVIRONMENTAL INFORMATION REGULATIONS 2004 (EIR) (W) (Z)**

32.1 The Contractor acknowledges that STaRH is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with STaRH to enable STaRH to comply with its Information disclosure obligations.

32.2 The Contractor shall notify STaRH of any Commercially Sensitive Information provided to STaRH together with details of the reasons for its sensitivity and the Contractor acknowledges that any lists or schedules of Commercially Sensitive Information so provided are of indicative value only and that STaRH may be obliged to disclose such information.

32.3 The Contractor shall and shall procure that its Sub-contractors shall:  
32.3.1 transfer to STaRH all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;  
32.3.2 provide STaRH, at the Contractor's expense, with a copy of all Information in its possession, or power in the form that STaRH requires within five Working Days (or such other period as STaRH may specify) of STaRH's request; and  
32.3.3 provide, at the Contractor's expense, all necessary assistance as reasonably requested by STaRH to enable STaRH to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

32.4 STaRH shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations and in considering any response to a Request for Information STaRH may consult with the Contractor prior to making any decision or considering any exemption.

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

32.6 The Contractor acknowledges that (notwithstanding the provisions of this Freedom of Information clause) STaRH may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

32.6.1 in certain circumstances without consulting the Contractor; or

32.6.2 following consultation with the Contractor and having taken their views into account;

provided always that where sub-clause 32.6.1 above applies STaRH shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

32.7 The Contractor shall ensure that all Information required to be produced or maintained under the terms of this Agreement, or by Law or professional practice or in relation to the Agreement is retained for disclosure for at least the duration of the Agreement plus one year together with such other time period as required by the Agreement, law or practice and shall permit STaRH to inspect such records as requested from time to time.

- 32.8 STaRH shall in no event be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA, or any other Law, of any information (including Exempt Information) whether relating to this Agreement or otherwise relating to any other party.
- 32.9 Where the Contractor is a Public Body the parties acknowledges that such obligations and duties of STaRH as set out above are reciprocal to the Contractor. STaRH and the Contractor acknowledge and agree that:
- 32.9.1 as Public Bodies they are subject to legal duties under the FOIA and EIR which may require either party to disclose on request information relating to this Agreement or otherwise relating to the other party;
- 32.9.2 they are required by law to consider each and every Request for Information made under FOIA;
- 32.9.3 that all decisions made by the other pursuant to a request under the FOIA are solely a matter for the Receiving Party and at the discretion of the Receiving Party. 32.9.4 Notwithstanding anything in this Agreement to the contrary (including but without limitation any obligations or confidentiality), the Receiving Party shall be entitled to disclose information in whatever form pursuant to a request made under FOIA, save that in relation to any information that is Exempt Information the Receiving Party shall consult the other party before making any such decision and shall not:
- (a) confirm or deny that information is held by the other party, or
  - (b) disclose information required
- to the extent that in the Receiving Party's opinion the information is eligible in the circumstances for an exemption and therefore the Receiving Party may lawfully refrain from doing either of the things described in part (a) and (b) of this clause.
- 32.9.5 each party shall bear its own costs of:
- a) assessing the application of any exemption under FOIA and/or
  - b) responding to any FOIA notice and/or
  - c) lodging any appeal against a decision of the Information Commissioner in relation to disclosure
- 32.9.6 the Receiving Party shall in no circumstances be liable for any loss, damage, harm, or detriment, howsoever caused, arising from or in connection with the reasonable disclosure under FOIA of any Exempt Information or other information whether relating to this Agreement or otherwise relating to the other party.
- 32.9.7 the other party shall assist the Receiving Party with the request as reasonably necessary to enable the Receiving Party to comply with its obligations under FOIA.

### **33 SAFEGUARDING(W) (Z)**

- 33.1 Where the Service or activity being undertaken in this Agreement is a Regulated Activity the Contractor shall :
- (a) ensure that all individuals engaged in the provision of the Service or activity, and prior to commencing the provision of the service or activity, are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
  - (b) monitor the level and validity of the checks under this clause 33.1 for each member of the Contractor's Personnel.
- 33.2 The Contractor warrants that at all times for the purposes of this Agreement it has no reason to believe that any person who is or will be employed or engaged by the Contractor in the provision of a Service or activity that is a Regulated Activity is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- 33.3 The Contractor shall immediately notify STaRH of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 33 have been met.

- 33.4 The Contractor shall refer information about any person carrying out the Services or the activity to the Disclosure and Barring Service where it removes permission for such person to carry out the Services or activity (or would have, if such person had not otherwise ceased to carry out the Services or the activity) because, in its opinion, such person has harmed or poses a risk of harm to the Service users, children or vulnerable adults.
- 33.5 The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to Service users.
- 33.6 Where the service requirement, specification or Purchase Order specifies that the Service or activity to be provided under this Agreement involves a Regulated Activity, or STaRH otherwise notifies the Contractor, acting reasonably, that the Contractor's Personnel are required to be subject to a Disclosure and Barring Service check, the Contractor shall comply with clause 33.1 above..

#### **34 SUSTAINABILITY**

- 34.1 Contractors should at all times demonstrate how they contribute to the achievement of the STaRH's Sustainability Policy

#### **35 EXPIRY**

- 35.1 The Contractor will on the expiry or termination of the Agreement and, at its own cost, return (or at the request of STaRH destroy) all information obtained in undertaking the performance of the Agreement.

#### **36 AUDIT AND MONITORING) (W) (Z)**

- 36.1 The Contractor will allow access for STaRH's officers to all relevant information for the purposes of audit and the monitoring of the Agreement.

#### **37 RIGHTS OF THIRD PARTIES**

- 37.1 The parties to this Agreement do not intend that any of its terms will be enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **38 ENTIRE AGREEMENT**

- 38.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

#### **39 FORCE MAJEURE**

- 39.1 Neither STaRH nor the Contractor shall be in breach of this Agreement nor liable for any failure or delay in performing their obligations under this Agreement where it is directly caused, arising from or attributable to acts, events, omissions or accidents beyond its reasonable control ("Force Majeure Event"), provided that:-

39.1.1 any delay by a sub-contractor or supplier of the Party who is delayed will not relieve that Party from liability for delay except where the delay is beyond the reasonable control of the sub-contractor or supplier concerned; and

39.1.2 staff or material shortages or strikes or industrial action affecting only the Party who is delayed will not relieve that Party from liability for delay.

39.2 If the Party is subject to a Force Majeure Event it shall not be in breach of this Agreement provided that:-

39.2.1 it promptly notified STaRH in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance; and

39.2.2 it has used its reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible

in which case the performance of that Party's obligations will be suspended during the period that those circumstances persist and that Party will be granted a reasonable extension of time for performance up to a maximum equivalent to the period of the delay.

39.3 Save where that delay is caused by the act or failure to act of the other Party (in which event the rights, remedies and liabilities of the Parties will be those conferred by the other terms of this Agreement and by law):-

39.3.1 any costs arising from that delay will be borne by the Party incurring the same; and

39.3.2 either Party may, if that delay continues for more than 5 weeks, terminate this Agreement immediately on giving notice in writing to the other. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

#### **40 GOVERNING LAW AND JURISDICTION (W)**

40.1 It is the responsibility of the Contractor to comply with all relevant European and English legislation. This Agreement shall be governed by and construed in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts

#### **41 COMPLAINTS PROCEDURE (W) (Z)**

41.1 The Contactor shall operate a complaints procedure in respect of any goods, services or works provided under these terms & conditions, to the entire satisfaction of STaRH, and comply with the requirements of any regulatory body to which the Contractor is subject (including any change in such requirements) and ensure that its complaints procedure meets the following minimum standards:

41.1.1 is easy to access and understand

41.1.2 clearly sets out time limits for responding to complaints and keeping the complainant and STaRH informed of progress;

41.1.3 provides confidential record keeping to protect employees under this contract and the complainant

41.1.4 provides information to management so that services can be improved

41.1.5 provides effective and suitable remedies

41.1.6 is regularly monitored and audited and which takes account of complainant and STaRH feedback

41.2 The Contactor shall ensure that:

41.2.1 under no circumstances is a complaint investigated by a member of its staff employed under this contract who may be part of the complaint.

41.2.2 someone who is independent of the matter complained of carries out the investigation

41.2.3 the complainant is made aware that they are entitled to have the complaint investigated by STaRH if they are not satisfied with either the process of investigation or finding of the Contactor's investigations

41.2.4 the Contactor will ensure that it responds to the complainant within a max of 10 days of receiving the complaint

41.3 The Contactor will make its complaints procedure available on request

41.4 The Contactor shall ensure that all its employees and persons employed under this contract are made aware of its complaints procedure and shall designate one employee (who shall be identified to STaRH) to whom a complaint may be referred should the complainant not be satisfied with the initial response to their complaint

41.5 The Contactor shall keep accurate and complete written records of all complaints received and the responses to them and shall make these records available to STaRH on request or at 12 monthly intervals in any event.

41.6 Where STaRH is investigating a complaint the Contactor is required to participate fully in all investigations within the timescales requested by STaRH

41.7 The Contractor should note that if a complaint is made to STaRH by a third party relating to the goods, services or works provided, the Local Government Ombudsman has the power to investigate such a complaint and STaRH requires the Contractor to fully to co-operate in such investigation. If STaRH is found guilty of maladministration or injustice by the Local Government Ombudsman because of the act or default of the Contractor the Contractor shall indemnify STaRH in respect of the costs arising from such maladministration or injustice.

## **42 DISPUTES**

42.1 If any dispute or difference shall arise between the parties as to the construction of this Agreement or any matter or thing of whatever nature arising under this Agreement or in connection with it then the same shall be dealt with as follows:-

42.1.1 In the first instance a special meeting of both the Parties shall be arranged on 14 days written notice to the other party and the matter shall be discussed and the representatives shall use their reasonable endeavours to resolve the dispute

42.1.2 If the dispute cannot be resolved in accordance with the preceding sub-clause then either one of the Parties may serve STaRH's Chief Executive or the Contractor's senior officer or such other authorised officer of either party whose details have been notified to the other party, with notice of the dispute and those officers shall then appoint their representative to adjudicate and use their reasonable endeavours to resolve the dispute within 21 days of receipt of such notice



<b>Additional definitions for clauses 43 and 44</b>	
<b>"Security Plan"</b>	the Contractor's security plan prepared pursuant [ <i>to paragraph 3 of schedule 2.5 (Security Requirements and Plan) an outline of which is set out in Appendix of schedule 2.5 (Security Requirements)</i> ];
<b>"Staff Vetting Procedures"</b>	STaRH's procedures and policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures.

**43 STAFFING SECURITY**

- 43.1 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Personnel employed or engaged in the provision of the Services. The Contractor confirms that all Contractor Personnel employed or engaged by the Contractor at the commencement of this agreement were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 43.2 The Contractor shall provide training on a continuing basis for all Contractor Personnel employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan

**44 SECURITY REQUIREMENTS**

- 44.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan and the Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.
- 44.2 STaRH shall notify the Contractor of any changes or proposed changes to the Security Policy.
- 44.3 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a request for the Agreement to be varied in respect of any charges or fees payable under the Agreement. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.
- 44.4 Until and/or unless a change to the charges or costs is agreed by STaRH pursuant to this clause the Contractor shall continue to perform the Services in accordance with its existing obligations