

**DATED**

**2017**

**(1) THE INFORMATION COMMISSIONER**

**- and -**

**(2) [THE SUPPLIER]**

## **AGREEMENT**

relating to the supply of  
political monitoring services in UK and  
Mainland Europe

**Contract Reference Number:**  
**2017ICO00091**

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**THIS AGREEMENT** is made on

2017

**BETWEEN:**

- (1) **THE INFORMATION COMMISSIONER** (a corporation sole appointed by Her Majesty the Queen) whose head office is at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF ("**Commissioner**").
- (2) [◆ ] [a company registered in [England and Wales] with company number [◆ ] whose registered office is at [◆ ]] **OR** [of [◆ ]] ("**Supplier**").

**INTRODUCTION**

- A** The Commissioner is a corporation sole appointed by Her Majesty the Queen and reports directly to Parliament. The Commissioner's duties are to regulate and promote compliance with the Data Protection Act 1998 (the "DPA") and the Freedom of Information Act 2000 (the "FOIA").
- B** The Commissioner wishes to appoint the Supplier to provide political monitoring and intelligence services as set out in this Agreement.
- C** The Supplier has the necessary skill and experience to provide such political monitoring and intelligence services and agrees to the appointment on the terms and conditions set out in this Agreement.

**IT IS AGREED** as follows:

**SECTION A - PRELIMINARIES**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the definitions set out in Schedule 1 (Definitions) shall apply.
- 1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 references 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 by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assignees or transferees;

- 1.2.6 the words "**include**", "**includes**" and "**including**" are to be construed as if they were immediately followed by the words "**without limitation**"; and
- 1.2.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.
- 1.3 In the event of, and only to the extent of, any conflict between the clauses of this Agreement, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.3.1 the clauses of this Agreement and Schedule 1 (Definitions);
  - 1.3.2 Part 1 of Schedule 2 ( Services Requirements and Supplier Solution);
  - 1.3.3 any other Schedules and their annexes (except for Part 2 of Schedule 2 ( Services Requirements and Supplier Solution));
  - 1.3.4 Part 2 of Schedule 2 ( Services Requirements and Supplier Solution); and
  - 1.3.5 any other document referred to in the clauses or Schedules of this Agreement.

## **2. DUE DILIGENCE**

The Supplier acknowledges that it:

- 2.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Commissioner;
- 2.2 has raised all relevant due diligence questions with the Commissioner before the Commencement Date; and
- 2.3 has entered into this Agreement in reliance on its own due diligence alone.

## **SECTION B - SUPPLY OF SERVICES**

### **3. PROVISION OF SERVICES**

- 3.1 The Supplier shall supply the Services (including for the avoidance of doubt any Additional Services which the Commissioner may require and which are agreed to be supplied by the Supplier in accordance with clause 15) throughout the Term and shall ensure that the Services:
  - 3.1.1 comply in all respects with the Services Requirements; and
  - 3.1.2 are supplied in accordance with the Supplier Solution and the terms of this Agreement.
- 3.2 The Supplier shall at all times perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
  - 3.2.1 Good Industry Practice; and
  - 3.2.2 all applicable Laws.

3.3 The Supplier shall draw any conflict between any of the requirements of clause 3.1 and the requirements of clause 3.2 to the attention of the Commissioner and shall comply with the Commissioner's decision on the resolution of that conflict.

3.4 If the Commissioner requires Additional Services, it shall notify the Contractor in writing and the parties shall agree any necessary changes to the Agreement in accordance with clause 15.

#### **4. EFFECT OF COMMISSIONER CAUSE**

4.1 To the extent that a Service Failure has occurred as a result of a Commissioner Cause, the Supplier will have the rights and relief set out in clause 4.2.

4.2 The Supplier shall:

4.2.1 (in measuring the performance of any affected Service) be treated as though the relevant Service had met the relevant requirements of this Agreement to the extent that the Service Failure is due to any Commissioner Cause; and

4.2.2 not be treated as being in breach of this Agreement to the extent that non-performance or breach is due to any Commissioner Cause; and

4.2.3 be entitled to the Contract Price in respect of the relevant Services affected by the Commissioner Cause as if it had not occurred.

4.3 If the Supplier claims that clause 4.1 applies, and in order to claim the rights and reliefs in clause 4.2, it shall provide the Commissioner with details of the Commissioner Cause within 10 Working Days of the event which the Supplier alleges to have given rise to the Commissioner Cause.

4.4 Any disputes about or arising out of whether a Commissioner Cause applies to the Supplier's failure to provide the Services in accordance with this Agreement shall be resolved in accordance with the provisions of clause 16 (Dispute Resolution). Pending the resolution of the dispute both parties shall continue to resolve the causes of, and mitigate the effects of, such failure.

#### **5. QUALITY STANDARDS**

The Supplier shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that no Quality Standards have been specified in the Services Requirements, the Supplier shall agree any relevant standards for the Services with the Commissioner prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under this Agreement in accordance with the provisions of clause 3 (Provision of Services).

#### **6. REPORTING AND CONTRACT MANAGEMENT**

The Supplier shall comply with the provisions of Schedule 5 (Contract Management Requirements).

#### **7. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE**

7.1 Subject to the Commissioner providing written consent in accordance with clause 8.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence

of this Agreement, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

7.2 In the event that the Commissioner is of the reasonable opinion that there has been a material breach of this Agreement by the Supplier, then the Commissioner may, without prejudice to its rights under clause 38.3 (Termination on Default), do any of the following:

7.2.1 require the Supplier to re-perform the relevant Services or to comply with its obligations, at its own cost;

7.2.2 without terminating this Agreement, itself supply or procure the supply of all or part of the Services by a third party until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Commissioner that the Supplier will once more be able to supply all or such part of the Services in accordance with this Agreement;

7.2.3 without terminating the whole of this Agreement, terminate this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or

7.2.4 terminate, in accordance with clause 38.3 (Termination on Default), the whole of this Agreement.

7.3 Without prejudice to its right under clause 11 (Recovery of Sums Due), the Commissioner may charge the Supplier for any costs reasonably incurred (including reasonable administration costs) in respect of the supply of any part of the Services by the Commissioner or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Commissioner uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

## **8. PROVISION AND REMOVAL OF EQUIPMENT AND ACCESS TO PREMISES**

8.1 Unless the Commissioner specifies otherwise the Supplier shall provide all Equipment necessary for the supply of the Services.

8.2 The Supplier shall not deliver any Equipment, access the Premises, nor begin any work on the Premises, without obtaining prior Approval.

8.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Commissioner shall have no liability for any loss of or damage to any Equipment unless the Supplier is able to demonstrate that such loss or damage was caused or contributed to by the Commissioner's Default. The Supplier shall provide for the haulage or carriage thereof to the Premises at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Supplier.

8.4 The Supplier shall maintain the Equipment within the Premises in a safe, serviceable and clean condition.

8.5 The Supplier shall, at the Commissioner's written request, remove from the Premises any Equipment and/or other materials brought into the Premises by the Supplier which in the reasonable opinion of the Commissioner are either hazardous, noxious or not in accordance



with this Agreement and substitute proper and suitable Equipment and/or materials (as appropriate) at the Supplier's expense as soon as reasonably practicable.

- 8.6 On completion of the Services the Supplier shall remove the Equipment at its sole cost together with any other materials (including any packaging materials) used by the Supplier in respect of the Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or any Staff.

## **SECTION C - PAYMENT**

### **9. CHARGING AND INVOICING**

- 9.1 Without prejudice to its rights under clause 11 (Recovery of Sums Due), in consideration of the Supplier's performance of its obligations under this Agreement, including the provision of the Services, the Commissioner shall pay the Contract Price to the Supplier in accordance with the payment profile and invoicing procedure specified in Schedule 3 (Pricing and Invoicing).
- 9.2 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement pursuant to clause 38.4 (Termination by the Supplier) for failure to pay undisputed sums of money. Interest shall be payable by the Commissioner on the late payment of any undisputed sums of money properly invoiced at an annual rate of 2% above the base rate of The Royal Bank of Scotland Plc from time to time.
- 9.3 Where the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

### **10. TAX**

- 10.1 The Contract Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable by Law and paid by the Commissioner to the Supplier or Her Majesty's Revenue and Customs ("HMRC") (as applicable) following Receipt of a valid UK VAT invoice.
- 10.2 The Supplier shall indemnify the Commissioner on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Commissioner at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 10.2 shall be paid by the Supplier to the Commissioner not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Commissioner.

### **11. RECOVERY OF SUMS DUE**

The Commissioner may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement.

## **SECTION D - CONTRACT GOVERNANCE**

### **12. SUPPLY CHAIN RIGHTS**

- 12.1 The Supplier shall not sub-contract any of its obligations under this Agreement without prior Approval, such Approval not to be unreasonably withheld or delayed (subject to the provisions of clause 12.2).
- 12.2 The Commissioner may withhold or delay its consent where it considers that:
- 12.2.1 the appointment of a proposed sub-contractor may prejudice the supply of the Services or may be contrary to the interests of the Commissioner;
  - 12.2.2 the proposed sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers; and/or
  - 12.2.3 the proposed sub-contractor employs unfit persons.
- 12.3 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 12.4 Where the Commissioner has consented to the placing of sub-contracts, copies of each sub-contract shall, at the reasonable request of the Commissioner, be sent by the Supplier to the Commissioner as soon as reasonably practicable.

### **13. AUDIT**

- 13.1 For the purposes of the examination and certification of the Commissioner's accounts or any examination (pursuant if appropriate to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof, or any equivalent legislation) of the economy, efficiency and effectiveness with which the Commissioner has used its resources, the Commissioner's statutory auditors may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanations as they consider necessary provided that the carrying out of an examination, if appropriate, under section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof, or under any equivalent legislation, in relation to the Supplier is not a function exercisable under this clause.
- 13.2 Except where an audit is imposed on the Commissioner in accordance with clause 13.1 or the Supplier is in Default (in which case the Commissioner may undertake the audits it deems to be necessary), the Commissioner may, not more than twice in any calendar year and for a period of 12 Months following the end of the Term, conduct an audit to:
- 13.2.1 verify the accuracy of the Contract Price; and/or
  - 13.2.2 check the Supplier's compliance with the provisions of this Agreement, including clauses 23 (Protection of Personal Data) and 24 (Freedom of Information).
- 13.3 Without prejudice to clauses 13.1 and 13.2, the Commissioner may carry out audits of the Supplier's quality management systems (including its compliance with the Quality Standards and any quality manuals and procedures) at regular intervals throughout the Term.
- 13.4 The Commissioner shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an audit. However, the Commissioner shall use its

reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

- 13.5 Subject to the Commissioner's obligations of confidentiality, the Supplier shall on demand co-operate, and shall procure that its sub-contractors co-operate, with the Commissioner (and/or its agents or representatives) in relation to each audit, including by providing the Commissioner with:

13.5.1 all information requested by the Commissioner within the permitted scope of the audit; and

13.5.2 access to the Staff.

## 14. RECORDS

The Supplier shall keep and maintain until six (6) years after the end of the Term, or such other period as may be agreed between the Parties, full and accurate records of this Agreement, including the Services supplied under it, all expenditure reimbursed by the Commissioner and all payments made by the Commissioner. The Supplier shall on request afford the Commissioner or the Commissioner's representatives such access to those records as may be requested by the Commissioner in connection with this Agreement.

## 15. CONTRACT CHANGE PROCEDURE

No amendment to the provisions of this Agreement shall be effective unless agreed in writing by the Supplier and the Commissioner.

## 16. DISPUTE RESOLUTION

- 16.1 Subject to the provisions of clause 16.2, any dispute arising under, or in connection with this Agreement shall be dealt with in accordance with this clause 16 (Dispute Resolution), and neither the Commissioner nor the Supplier may commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this clause 16 (Dispute Resolution) have been exhausted.

- 16.2 Clause 16.1 shall be without prejudice to the rights of termination stated in clause 38 (Termination Rights) and in addition shall not prevent the Commissioner or the Supplier from applying for injunctive relief in the case of:

16.2.1 breach or threatened breach of confidentiality;

16.2.2 infringement or threatened infringement of its Intellectual Property Rights; or

16.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Commissioner or the Supplier to liability.

- 16.3 All disputes between the Commissioner and the Supplier arising out of or relating to this Agreement shall be referred by Robert Parker (for the Commissioner) or ***[Drafting Note: specify Supplier representative]*** to the other for resolution in the first instance.

- 16.4 If any dispute cannot be resolved pursuant to the provisions of clause 16.3 within 10 Working Days, that dispute shall be referred to Paul Arnold (for the Commissioner) and ***[Drafting Note: specify Supplier's second point of contact]*** for resolution.

- 16.5 If the dispute cannot be resolved pursuant to clause 16.4, the parties will refer the dispute to a suitably qualified and experienced expert for determination ("**Expert**"). Such Expert shall be approved by both parties in writing and the Expert's determination shall (in the absence of being negligent or otherwise breaching the terms of his appointment) be final and binding on the parties.

## **SECTION E - PERSONNEL**

### **17. STAFF**

- 17.1 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 17.2 The Supplier acknowledges that access to the Premises for the purposes of providing the Services shall require the Commissioner's prior written consent and that the Staff shall be accompanied by a member of the Commissioner's staff on and during all visits to the Premises.
- 17.3 The Commissioner may refuse to admit onto, or withdraw permission to remain on, the Premises and/or direct the Supplier to end the involvement in the delivery of the Services of any:
- 17.3.1 member of the Staff; or
- 17.3.2 person employed or engaged by any member of the Staff,
- whom the Commissioner believes represents a security risk or whose admission or continued presence on the Premises would be otherwise undesirable.
- 17.4 At the Commissioner's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Premises in connection with this Agreement, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as the Commissioner may reasonably request.
- 17.5 If the Supplier fails to comply with clause 17.4 within two (2) Months of the date of the Commissioner's request and, in the reasonable opinion of the Commissioner, such failure may be prejudicial to the interests of the Commissioner or any other Crown Body then the Commissioner may terminate this Agreement, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioner.

### **Staffing Security**

- 17.6 The Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises including any requirements imposed pursuant to clause 31 (Security).
- 17.7 Notwithstanding clause 16 (Dispute Resolution), any decision of the Commissioner relating to the interpretation of this clause 17 (Staff), including in respect of:
- 17.7.1 any person refused access to the Premises; and

17.7.2 the Supplier's compliance with clause 17.4,

shall be final and conclusive and it shall not be obliged to provide any reasons for such decision.

## **18. EMPLOYMENT INDEMNITY**

The Supplier shall indemnify the Commissioner against all Employee Liabilities that may arise as a result of any claims brought against the Commissioner by any of the Commissioner's employees or former employees and/or any of the Staff where such claim arises from any act or omission of the Supplier or any Staff.

## **19. HEALTH AND SAFETY**

- 19.1 The Supplier shall promptly notify the Commissioner of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement. The Commissioner shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under this Agreement.
- 19.2 Whilst on the Premises, the Supplier shall comply with any health and safety measures implemented by the Commissioner in respect of its Staff and other persons working there.
- 19.3 The Supplier shall notify the Commissioner immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 19.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Agreement.
- 19.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Commissioner on request.

## **20. EQUALITY AND DIVERSITY**

- 20.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 20.2 The Supplier shall take all reasonable steps to secure the observance of clause 20.1 by all Staff and sub-contractors employed in the execution of this Agreement.

## **21. NON-SOLICITATION**

The Commissioner and the Supplier shall not, and the Supplier shall procure that any sub-contractor shall not, during the Term and for 6 Months following the termination or expiry of

this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the other Party any person employed by such other Party in the provision of the Services or (in the case of the Commissioner) in the receipt and/or administration of the Services.

## **SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

### **22. INTELLECTUAL PROPERTY RIGHTS**

- 22.1 To the extent that, to benefit from the provision of the Services in the manner anticipated by this Agreement, the Commissioner requires access to and a right to use the Supplier's Intellectual Property Rights, the Supplier grants to the Commissioner a non-exclusive and royalty-free licence for the duration of the Term to use any of the Supplier's Intellectual Property Rights, including the right to grant a sub-licence to all employees, sub-contractors, consultants and professional advisors of the Commissioner.
- 22.2 All Intellectual Property Rights belonging to a party prior to the Commencement Date shall remain vested in that party.
- 22.3 All Intellectual Property Rights created as a result of the performance of this Agreement ("**IP Materials**") shall vest in the Commissioner.
- 22.4 The Supplier hereby assigns to the Commissioner, with full title guarantee, title to and all rights and interest in the IP Materials. This assignment shall take effect immediately on the coming into existence of the relevant Intellectual Property Rights. The Supplier shall execute all documentation necessary to execute this assignment at its own expense.

### **23. DATA PROTECTION**

- 23.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Commissioner is the Data Controller and that Supplier is the Data Processor.
- 23.2 The Supplier shall:
- 23.2.1 Process any Personal Data (as defined in the Data Protection Act 1998 as the same may be amended, replaced or re-enacted from time to time, any applicable statutory or regulatory provisions and all European Directives and regulations in force from time to time relating to the protection and transfer of personal data and any successor legislation without limitation including the General Data Protection Regulation (EU) 2016/679 with effect from 25 May 2018, together known as the "Data Protection Laws") only in accordance with instructions from the Commissioner (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Commissioner to the Supplier) and in line with the Data Protection Laws;
  - 23.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the delivery of the Supplier's services or as is required by law or any regulatory body;
  - 23.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful

- processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 23.2.4 take reasonable steps to ensure the reliability of any staff who have access to the Personal Data and ensure that all staff 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 clause 23;
- 23.2.5 ensure that no staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Commissioner;
- 23.2.6 notify the Commissioner (within five (5) Working Days) if it receives:
- 23.2.6.1 a request from a Data Subject to have access to that person's Personal Data; or
- 23.2.6.2 a complaint or request relating to the Commissioner's obligations under the Data Protection Laws;
- 23.2.7 provide the Commissioner with full cooperation and assistance in relation to any complaint or request made, including by:
- 23.2.7.1 providing the Commissioner with full details of the complaint or request;
- 23.2.7.2 complying with a data access request within the relevant timescales set out in the Data Protection Laws and in accordance with the Commissioner's instructions;
- 23.2.7.3 providing the Commissioner with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Commissioner); and
- 23.2.7.4 providing the Commissioner with any information requested by the Commissioner;
- 23.2.8 permit the Commissioner or a Commissioner representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data processing activities and comply with all reasonable requests or directions by the Commissioner to enable the Commissioner to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement;
- 23.2.9 on request, provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Commissioner); and
- 23.2.10 not process or otherwise transfer any Personal Data outside the European Economic Area without the prior written consent of the Commissioner and subject to the Supplier entering into a direct data processing agreement with the Commissioner on such terms as may be required by the Commissioner, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

- 23.3 The Supplier shall comply at all times with the Data Protection Laws (and any successor legislation) and shall not perform its obligations under this Agreement in such a way as to cause the Commissioner to breach any of its applicable obligations under the Data Protection Laws.

## **24. FREEDOM OF INFORMATION**

- 24.1 The Supplier acknowledges that the Commissioner is subject to the requirements of the Freedom Of Information Act 2000 ("FOIA") and the Environmental Impact Regulations 2004 ("EIR") and shall assist and co-operate with the Commissioner (at the Supplier's expense) to enable the Commissioner to comply with the FOIA and EIR information disclosure requirements.
- 24.2 The Supplier shall and shall procure that its staff, agents and servants shall:
- 24.2.1 transfer any relevant request for information under the FOIA or EIR to the Commissioner as soon as reasonably practicable after receipt and in any event within three (3) days of receiving such request;
  - 24.2.2 provide the Commissioner with a copy of all FOIA/EIR information in its possession or power in the form that the Commissioner requires within seven (7) days (or such other period as the Commissioner may specify) of the Commissioner requesting that FOIA/EIR information; and
  - 24.2.3 provide all necessary assistance as reasonably requested by the Commissioner to enable it to respond to a request for information within the time for compliance set out in section 10 of FOIA or in the EIR.
- 24.3 The Commissioner shall be responsible for determining at its absolute discretion whether the relevant information:
- 24.3.1 is exempt from disclosure in accordance with the provisions of FOIA/EIR; or
  - 24.3.2 is to be disclosed in response to an FOIA/EIR request; and
  - 24.3.3 in no event shall the Supplier respond directly to such request unless expressly authorised to do so by the Commissioner.
- 24.4 The Supplier acknowledges that the Commissioner may be obliged under FOIA/EIR to disclose information:
- 24.4.1 without consulting with the Supplier; or
  - 24.4.2 following consultation with the Supplier and having taken its views into account,
- provided always that where clause 24.4.2 applies the Commissioner shall take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to Supplier's attention after any such disclosure.
- 24.5 The Supplier shall ensure that all FOIA/EIR information produced in the course of this Agreement or relating to this Agreement is retained for disclosure and shall permit the Commissioner to inspect such records as requested from time to time.



- 24.6 The Supplier acknowledges that the Commissioner may be obliged to disclose anything provided by the Supplier even if provided by the Supplier with a request that it remain “Confidential Information.”

## **25. CONFIDENTIAL INFORMATION AND TRANSPARENCY**

- 25.1 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 is not Confidential Information. The Commissioner shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 25.2 Notwithstanding any other term of this Agreement, Supplier hereby gives their consent for the Commissioner to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement, to the general public.
- 25.3 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, the Supplier hereby agrees to:
- 25.3.1 treat any Confidential Information whether relating to the Commissioner or any temporary worker as confidential and safeguard it accordingly; and
  - 25.3.2 not disclose such confidential information to any other person without the owner's prior written consent.
- 25.4 The Supplier shall not, and shall procure that their staff including any temporary workers, employees, agents and sub-contractors shall not use any confidential information received otherwise than for the purposes of this Agreement.
- 25.5 At the written request of the Commissioner, the Supplier shall procure that any relevant temporary worker sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

## **26. MODERN SLAVERY ACT 2015**

- 26.1 In performing its obligations under this Agreement, the Supplier shall comply with all the provisions of the Modern Slavery Act 2015.

## **SECTION G - SUPPLIER AND COMMISSIONER PROTECTION**

### **27. SUPPLIERS OBLIGATIONS**

- 27.1 The Supplier shall:
- 27.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;
  - 27.1.2 subject to clause 30 (Change in Law) obtain, and maintain throughout the Term, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Services;

- 27.1.3 provide to the Commissioner's other suppliers as are notified to the Supplier periodically such reasonable co-operation, information (including any documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Supplier; and
- 27.1.4 provide the Commissioner with such assistance as the Commissioner may reasonably require during the Term in respect of the supply of the Services.

## **28. WARRANTIES AND REPRESENTATIONS**

28.1 The Supplier warrants, represents and undertakes that:

- 28.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement;
- 28.1.2 this Agreement is executed by a duly authorised representative of the Supplier;
- 28.1.3 in entering into this Agreement it has not committed any Fraud;
- 28.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement;
- 28.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 28.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 28.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement;
- 28.1.8 all Staff used to provide the Services will be vetted in accordance with Good Industry Practice and the Staff Vetting Procedures;
- 28.1.9 it has and will continue to hold all necessary regulatory approvals (if any) from the Regulatory Bodies necessary to perform the Supplier's obligations under this Agreement; and
- 28.1.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Agreement.

## **29. MISTAKES IN INFORMATION**

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

## **SECTION H - RISK PROTECTION**

### **30. CHANGE IN LAW**

- 30.1 The Supplier shall bear the cost of ensuring that the Services shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Supplier at the Commencement Date.
- 30.2 Where such reasonably unforeseeable amendments are necessary, the Commissioner and the Supplier shall use all reasonable endeavours to agree upon reasonable adjustments to the Contract Price as may be necessary to compensate the Supplier for such additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such amendments.

### **31. SECURITY**

- 31.1 The Commissioner shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with, and shall procure the compliance of the Staff with, all security requirements of the Commissioner whilst on the Premises.
- 31.2 The Supplier shall comply, and shall procure the compliance of the Staff, with any security policy and/or manual made known to the Supplier from time to time.

### **32. FORCE MAJEURE**

- 32.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of six (6) Months, the Party not suffering from Force Majeure may terminate this Agreement with immediate effect by notice in writing.
- 32.2 Any failure or delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 32.3 A Party cannot claim relief in respect of Force Majeure pursuant to this clause 32 (Force Majeure) where the Force Majeure in question is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.
- 32.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 32.1 it shall immediately notify the other

by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

### **33. ENVIRONMENTAL REQUIREMENTS**

33.1 The Supplier shall comply in all material respects with all applicable environmental Laws in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Supplier shall:

33.1.1 when working on the Premises, perform its obligations under this Agreement in accordance with the Commissioner's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and

33.1.2 promptly provide all such information regarding the environmental impact of the Services as may be reasonably requested by the Commissioner.

33.2 The Supplier shall meet all reasonable requests by the Commissioner for information evidencing compliance with the provisions of this clause 33 (Environmental Requirements) by the Supplier.

## **SECTION I - INDEMNITIES, LIABILITIES AND INSURANCE**

### **34. INDEMNITIES**

34.1 Subject to clauses 35.2 and 35.3, the Supplier shall indemnify the Commissioner and keep the Commissioner indemnified fully against all Losses (including legal fees) which may arise out of, or in consequence of, any IPR Claim, the supply, installation and/or commissioning of the Services or the performance or non-performance by the Supplier of its obligations under this Agreement or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

### **35. LIMITATIONS OF LIABILITY**

35.1 Neither Party excludes or limits liability to the other Party for:

35.1.1 death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable); or

35.1.2 Fraud or fraudulent misrepresentation by it or its employees; or

35.1.3 any breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.

35.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Commissioner or by breach by the Commissioner of its obligations under this Agreement.

- 35.3 Subject always to clause 35.1, the Supplier's liability for Defaults shall be subject to the following financial limits:
- 35.3.1 in respect of the indemnity in clause 10.2 (Tax) and the indemnity in clause 34.1 for all Losses (including legal fees) which may arise out of, or in consequence of, any IPR Claim, shall be unlimited; and
  - 35.3.2 in respect of all other Defaults (other than those governed by clause 35.3.1) shall in no event exceed one hundred and twenty five per cent (125%) of the Contract Price paid or payable by the Commissioner to the Supplier in the year in which the liability arises.
- 35.4 Subject always to clause 35.1, the Commissioner's total aggregate liability under this Agreement, in addition to its obligation to pay the Contract Price, shall in no event exceed the Contract Price paid of properly invoiced in the 12 Month period immediately preceding the event giving rise the liability.
- 35.5 Subject always to clause 35.1, in no event shall either Party be liable to the other for any:
- 35.5.1 loss of profits, business, revenue or goodwill; and/or
  - 35.5.2 indirect, special or consequential loss or damage.
- 35.6 Subject to clause 35.3 the Commissioner may recover as a direct loss:
- 35.6.1 any additional operational, marketing, public relations and/or administrative costs and expenses arising from the Supplier's Default;
  - 35.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Commissioner arising from the Supplier's Default;
  - 35.6.3 the additional cost of procuring Replacement Services for the remainder of the Term; and/or
  - 35.6.4 any anticipated savings.

## **36. INSURANCE REQUIREMENTS**

- 36.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of its performance of its obligations under this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of this Agreement.
- 36.2 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with all applicable Laws in force from time to time.
- 36.3 The Supplier shall give the Commissioner, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 36.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this clause 36 (Insurance Requirements) the Commissioner may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Supplier.
- 36.5 The Supplier shall effect and maintain appropriate professional indemnity insurance cover during the Term and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause 36.5, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than [ ♦ ] for each individual claim or such higher limit as may be required by Law. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of this Agreement.
- 36.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement. It shall be the Supplier's responsibility to determine the amount of insurance cover that will be adequate to enable it to satisfy any liability referred to in clause 34 (Indemnities).

## **SECTION J - TERM, TERMINATION AND EXIT MANAGEMENT**

### **37. TERM**

- 37.1 This Agreement shall take effect on the Commencement Date and shall continue until 23:59 on the day preceding the third anniversary of the Commencement Date and after that for any extension period notified by the Commissioner in accordance with clause 35.2 unless terminated at an earlier date by operation of Law or in accordance with the provisions of this Agreement ("**Term**").
- 37.2 Without prejudice to the rights of termination set out in this Agreement, the Commissioner will be entitled to extend the Term of this Agreement by a period of up to twelve (12) Months' from the date on which it would otherwise have expired by giving a minimum of three (3) Months' written notice to that effect to the Supplier prior to the date on which this Agreement would otherwise have expired.
- 37.3 Prior to exercising its rights under clause 37.2 the Commissioner shall be entitled to request that the Supplier demonstrate improvements to the Services and/or reductions to the Contract Price, which the Supplier shall provide (so far as it is able) to the Commissioner as soon as reasonably practicable following receipt of any such request.

### **38. TERMINATION RIGHTS**

#### **38.1 Termination on Insolvency**

- 38.1.1 The Commissioner may terminate this Agreement by giving written notice of termination to the Supplier if one or more of the circumstances set out in clause 38.1.2 exist.
- 38.1.2 The circumstances giving rise to the Commissioner's right to terminate are:
- 38.1.2.1 where the Supplier is a company, an Insolvency Event occurs in respect of the Supplier;

- 38.1.2.2 where the Supplier is an individual, a Bankruptcy Event occurs in respect of the Supplier;
- 38.1.2.3 where the Supplier is a partnership or a limited liability partnership and in respect of the Supplier:
- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - (b) it is for any reason dissolved; or
  - (c) any applicable Insolvency Event or Bankruptcy Event occurs, such determination to be made by the Commissioner in its sole discretion.

## 38.2 Termination on Change of Control

- 38.2.1 The Supplier shall notify the Commissioner immediately if the Supplier undergoes a change of control within the meaning of section 450 of the Income and Corporation Taxes Act 2010 ("**change of control**").
- 38.2.2 The Commissioner may terminate this Agreement by notice in writing with immediate effect if there is a change of control to which the Commissioner reasonably objects, except where the Commissioner:
- 38.2.2.1 has given its prior written consent to the particular change of control, which subsequently takes place as proposed; or
  - 38.2.2.2 has not served its notice within six (6) Months of the later of the date the change of control took place or the date on which the Commissioner was given notice of the change of control.

## 38.3 Termination on Default

- 38.3.1 The Commissioner may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier:
- 38.3.1.1 commits a Default and if:
    - (a) the Supplier has not remedied the Default to the reasonable satisfaction of the Commissioner within 25 Working Days, or such other period as may be specified by the Commissioner, after issue of a written notice specifying the Default and requesting it to be remedied; or
    - (b) the Default is not, in the opinion of the Commissioner, capable of remedy; or
    - (c) the Default is a material breach of this Agreement;

38.3.1.2 fails to comply with a Correction Plan in respect of a material Service Failure because:

- (a) the Supplier does not submit or resubmit a Correction Plan for Approval within the timescales required or at all; or
- (b) the Commissioner (acting reasonably) does not approve the proposed Correction Plan on the second occasion of seeking Approval; or
- (c) within a reasonable period following Approval, the Correction Plan fails to remedy the relevant Service Failure.

38.3.2 Where the Commissioner terminates this Agreement pursuant to this clause 38.3 (Termination on Default) and makes alternative arrangements for the supply of Services, the Commissioner may recover from the Supplier the cost reasonably incurred of making such alternative arrangements and any additional expenditure incurred by the Commissioner throughout the remainder of the Term. The Commissioner shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Commissioner to the Supplier in respect of the Services supplied by the Supplier prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Commissioner, until the Commissioner has established the final cost of making the alternative arrangements envisaged under this clause.

#### **38.4 Termination by the Supplier**

38.4.1 The Supplier may terminate this Agreement in writing with immediate effect only if the Commissioner is in material breach of its obligation to pay any undisputed element of the Contract Price by giving the Commissioner 60 days written notice specifying the breach and requiring its remedy, save that such right of termination shall not apply where the failure to pay is due to the Commissioner exercising its rights under clause 11 (Recovery of Sums Due).

38.4.2 The Supplier shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

#### **38.5 Termination for Convenience**

38.5.1 The Commissioner shall have the right to terminate this Agreement at any time by giving one (1) Months' written notice to the Supplier.

#### **38.6 Right to terminate in part**

38.6.1 In any of the circumstances in clause 38 in which the Commissioner may terminate this Agreement, the Commissioner may instead terminate any element or part of the Services. In the event of partial termination, the Commissioner and the Supplier shall implement a corresponding reduction in the Contract Price in accordance with Schedule 3 (Pricing and Invoicing). The Supplier shall perform its obligations under clause 39 (Consequences of Expiry or Termination) in relation to the terminated portion of the Agreement only.



### **39. CONSEQUENCES OF EXPIRY OR TERMINATION**

- 39.1 Save as set out in clause 38 (Termination Rights), the Commissioner shall not be required to pay any sums to the Supplier in respect of the termination or expiry of this Agreement by way of compensation or otherwise.
- 39.2 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 39.3 Termination or expiry of this Agreement shall not affect the continuing rights, remedies or obligations of the Commissioner or the Supplier pursuant to clauses 10 (Tax), 11 (Recovery of Sums Due), 13 (Audit), 21 (Non-solicitation), 22 (Intellectual Property Rights), 23 (Protection of Personal Data), 24 (Freedom of Information), 25 (Confidential Information), 34 (Indemnities), 35 (Limitations of Liability), 36 (Insurance Requirements), 39 (Consequences of Expiry or Termination), 40 (Recovery upon Expiry or Termination), 41 (Transfer of Terms), 47 (Prevention of Corruption), 48 (Third Party Rights), 50 (Severance), 51 (Entire Agreement) and 54 (Governing Law and Jurisdiction).

### **40. RECOVERY UPON EXPIRY OR TERMINATION**

- 40.1 Following the service of a notice to terminate for any reason the Supplier shall continue to be under an obligation to provide the Services and to ensure that there is no degradation in the standards of the Services until the date of the termination.
- 40.2 In the event of termination or expiry of this Agreement the Supplier shall:
- 40.2.1 repay to the Commissioner any aspect of the Contract Price it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination;
  - 40.2.2 subject to clause 40.2.4 below, cease to use the Commissioner Data and, at the direction of the Commissioner provide the Commissioner and/or the Replacement Supplier with a complete and uncorrupted version of the Commissioner Data in electronic form in the formats and on media agreed with the Commissioner and/or the Replacement Supplier;
  - 40.2.3 subject to clause 40.2.4 below, upon the earlier of:
    - 40.2.3.1 the receipt of the Commissioner's written instructions; or
    - 40.2.3.2 12 Months after the date of expiry or termination,destroy all copies of the Commissioner Data, excepting a copy of any such Commissioner Data which is also a record as set out in clause 14 (Records) and promptly provide written confirmation to the Commissioner that the data has been destroyed;
  - 40.2.4 immediately return to the Commissioner (or such other party as nominated by the Commissioner) all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

- 40.2.5 immediately deliver to the Commissioner (or such other party as nominated by the Commissioner) all Property (including materials, documents, information and access keys) provided to the Supplier. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - 40.2.6 assist and co-operate with the Commissioner (or such other party as nominated by the Commissioner) to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and
  - 40.2.7 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Commissioner for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Commissioner or the Replacement Supplier to conduct due diligence.
- 40.3 If the Supplier fails to comply with clauses 40.2.2 to 40.2.5, the Commissioner may recover possession of the relevant materials and the Supplier grants a licence to the Commissioner or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.
- 40.4 Except where the end of the Term arises as result of the Commissioner's exercise of its option pursuant to clause 38.5 (Termination for Convenience), the Supplier shall meet all of its obligations under this clause 40 (Recovery Upon Expiry or Termination) at no charge to the Commissioner.

## **SECTION K - MISCELLANEOUS AND GOVERNING LAW**

### **41. TRANSFER OF TERMS**

- 41.1 Notwithstanding any other provision of this Agreement, to the extent that at any time during the Term the Commissioner is mandated by the Department for Digital, Culture, Media & Sport (or any other Governmental body) to transfer this Agreement onto any other form of standard Government agreement ("**New Agreement**") the Supplier hereby agrees to:
- 41.1.1 terminate this Agreement in the timescales notified by the Commissioner; and
  - 41.1.2 continue providing the Services set out in this Agreement (as specified in the Services Requirements) pursuant to the terms of the New Agreement for the unexpired Term of this Agreement and in consideration for payment by the Commissioner of the Contract Price set out in Schedule 3 of this Agreement (prorated to the extent necessary for the purposes of the New Agreement).

### **42. ASSIGNMENT AND NOVATION**

- 42.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without Approval.
- 42.2 The Commissioner may:
- 42.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any other Contracting Authority; or

42.2.2 novate this Agreement and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Commissioner. If this transfer increases the burden of the Supplier's obligations under this Agreement the Supplier may be entitled to a reasonable increase in the Contract Price by way of compensation which can be agreed pursuant to clause 15.

42.3 A change in the legal status of the Commissioner shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Commissioner.

#### **43. WAIVER AND CUMULATIVE REMEDIES**

43.1 The rights and remedies provided by this Agreement may be waived only in writing by an authorised representative of the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

43.2 Unless a right or remedy of the Commissioner is expressed to be an exclusive right or remedy, the exercise of it by the Commissioner is without prejudice to the Commissioner's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

43.3 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Agreement.

#### **44. RELATIONSHIP OF THE PARTIES**

At all times during the Term the Supplier shall be an independent contractor and nothing in this Agreement shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Agreement.

#### **45. COMMISSIONER'S OBLIGATIONS**

Save as otherwise expressly provided, the obligations of the Commissioner under this Agreement are obligations of the Commissioner in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Commissioner in any other capacity, nor shall the exercise by the Commissioner of its duties and powers in any other capacity lead to any liability under this Agreement howsoever arising on the part of the Commissioner to the Supplier.

#### **46. CONFLICTS OF INTEREST**

46.1 The Supplier shall take appropriate steps to ensure that neither it nor any member of the Staff is placed in a position where, in the reasonable opinion of the Commissioner, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Commissioner under the provisions of this Agreement. The Supplier will disclose to the Commissioner necessary particulars of any actual or potential conflict of interest which may arise as soon as reasonably practicable after becoming aware that such actual or potential conflict exists.

- 46.2 The Commissioner may, in its reasonable opinion, terminate this Agreement immediately by notice in writing and/or to take such other steps as it deems necessary where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Commissioner under the provisions of this Agreement. The actions of the Commissioner pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioner.

#### **47. PREVENTION OF CORRUPTION**

- 47.1 The Supplier, its Staff and the Supplier's agents and contractors, including each sub-contractor shall not, in connection with this Agreement:

- 47.1.1 directly or indirectly offer, promise or give any person working for or engaged by the Commissioner a financial or other advantage to:

47.1.1.1 induce that person to perform improperly a relevant function or activity; or

47.1.1.2 reward that person for improper performance of a relevant function or activity;

- 47.1.2 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.

- 47.2 The Supplier shall not enter into this Agreement if it has knowledge that, in connection with it, any financial or other advantage has been, or will be, given to any person working for or engaged by the Commissioner, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Commissioner before execution of this Agreement.

- 47.3 The Supplier shall have an anti-bribery policy and procedure (details of which shall be disclosed to the Commissioner) to prevent any of its Staff, agents or sub-contractors from bribing another person or being bribed.

- 47.4 If any of the Supplier, its Staff, agents or sub-contractors, (in all cases whether or not acting with the Supplier's knowledge):

47.4.1 breaches clause 47.1;

47.4.2 breaches any applicable legal and regulatory anti-bribery obligations, including the Bribery Act 2010; or

47.4.3 commits a Prohibited Act;

the Commissioner may terminate this Agreement by written notice with immediate effect.

- 47.5 If any breach of clause 47.4 is suspected or known the Supplier shall notify the Commissioner of such suspected or known breach immediately.

- 47.6 In the event that the Supplier notifies the Commissioner that it suspects or knows that there may be a breach of clause 47.4 the Supplier shall respond promptly to the Commissioner's enquiries, co-operate with any investigation and allow the Commissioner to audit books, records, and any other relevant documentation.

- 47.7 Any termination under clause 47.4 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Commissioner.
- 47.8 Notwithstanding clause 16 (Dispute Resolution), any dispute relating to:
- 47.8.1 the interpretation of clauses 47.1 to 47.4 inclusive; or
  - 47.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Commissioner and the decision shall be final and conclusive.
- 47.9 **Termination for Prohibited Acts**
- 47.9.1 If a Prohibited Act is committed by the Supplier or by an employee not acting independently of the Supplier, then the Commissioner may terminate this Agreement by giving notice to the Supplier.
  - 47.9.2 If a Prohibited Act is committed by;
    - 47.9.2.1 an employee of the Supplier acting independently of the Supplier;
    - 47.9.2.2 a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor;
    - 47.9.2.3 an employee of a sub-contractor acting independently of that sub-contractor; or
    - 47.9.2.4 any other persons connected to the Supplier not specified in clauses 47.9.2.1 to 47.9.2.3,then the Commissioner may give notice to the Supplier of termination and this Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice the Supplier procures the termination of such person's employment and of the appointment of their employer (where not employed by the Supplier or its sub-contractors) and (if necessary) procures the performance of such part of the relevant obligations under this Agreement by another person.
  - 47.9.3 Any notice of termination under this clause 47.9 (Termination for Prohibited Acts) shall specify:
    - 47.9.3.1 the nature of the Prohibited Act;
    - 47.9.3.2 the identity of the party whom the Commissioner believes has committed the Prohibited Act;
    - 47.9.3.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.
  - 47.9.4 In this clause 47.9 (Termination for Prohibited Acts), the expression "not acting independently of" (when used in relation to the Supplier or its sub-contractors) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Supplier or the sub-contractor (as the case may be).

#### **48. THIRD PARTY RIGHTS**

- 48.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 48.2 Any rights created under clause 48.1 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

#### **49. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 49.1 The Contractor shall not make any press announcement in relation to this Agreement or the provision of the Services, except with prior Approval.
- 49.2 The Contractor shall take reasonable steps to ensure that its Staff, suppliers, professional advisors and consultants comply with clause 49.1.

#### **50. SEVERANCE**

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 of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

#### **51. ENTIRE AGREEMENT**

- 51.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 51.2 Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 51.3 Nothing in this clause 51 (Entire Agreement) shall operate to exclude any liability for Fraud or negligent misstatement.

#### **52. NOTICES**

- 52.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or by email to the address and for the attention of the relevant Party as set out in clause 52.4 below or such other address as that Party may have stipulated in accordance with this clause.
- 52.2 A notice shall be deemed to have been received:
- 52.2.1 if delivered personally, at the time of delivery;

- 52.2.2 in the case of pre-paid first class post, recorded delivery or special delivery, three (3) Working Days after the day on which the letter was posted;
- 52.2.3 in the case of facsimile transmissions, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
- 52.2.4 in the case of electronic mail, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or special delivery to the intended recipient.
- 52.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at the address as set out in clause 52.4 below (or such other address as that Party may have stipulated in accordance with this clause) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax, to the fax number of the relevant Party as set out in clause 52.4 below (or such other fax number as that Party may have stipulated in accordance with this clause).
- 52.4 As at the Commencement Date, the address of each Party shall be:
- 52.4.1 For the Commissioner:
- The Information Commissioner  
Address: Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
For the attention of: Robert Parker  
Tel: 01625 545847  
Email: Robert.Parker@ico.org.uk
- 52.4.2 For the Supplier:
- [◆ ]  
Address:  
[◆ ]  
For the attention of:  
Tel:  
Fax:’  
Email:

### **53. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

### **54. GOVERNING LAW AND JURISDICTION**

Subject to the provisions of clause 16 (Dispute Resolution), the Commissioner and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Agreement

and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

**IN WITNESS** of which this Agreement has been duly executed by the Parties.

**SIGNED** for and on behalf of  
**The Information Commissioner**

**SIGNED** [for and on behalf of] **OR** [by]  
**[Supplier]**

Signature.....

Signature.....

Name: .....

Name.....

Position: .....

Position.....

Date.....

Date.....



## **SCHEDULE 1: DEFINITIONS**

<b>"Additional Services"</b>	means any services to be provided by the Supplier beyond those Services agreed as at the Commencement Date, which shall be agreed and documented pursuant to clause 15;
<b>"Affiliate"</b>	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
<b>"Agreement"</b>	means this written agreement between the Commissioner and the Supplier consisting of these clauses and any attached Schedules. In this Agreement the Commissioner is also acting on behalf of the Crown;
<b>"Approval"</b>	means the written consent of the Commissioner;
<b>"Bankruptcy Event"</b>	<p>means the occurrence of any of the following event (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the relevant entity:</p> <ul style="list-style-type: none"><li>(a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or</li><li>(b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or</li><li>(c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or</li><li>(d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or</li><li>(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or</li><li>(f) he dies or is adjudged incapable of managing his affairs within the meaning of the Mental Capacity Act 2005; or</li><li>(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business;</li></ul>
<b>"Breach of Security"</b>	means the occurrence of:

- (a) any unauthorised access to or use of the Services, the Premises, the Supplier's premises from which the Services are provided, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Commissioner Data) used by the Commissioner and/or the Supplier in connection with this Agreement; and/or
- (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Commissioner Data), including any copies of such information or data, used by the Commissioner and/or the Supplier in connection with this Agreement;

**"Bribery Act"** the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation;

**"change of control"** has the meaning given to it at clause 38.2.1;

**"Code"** means the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000;

**"Commencement Date"** means 14 November 2017;

**"Commissioner Cause"** any breach by the Commissioner of any of the Commissioner's responsibilities set out in this Agreement (except to the extent that it is the result of any act or omission by the Commissioner to which the Supplier has given its prior consent);

**"Commissioner Data"** means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - (i) supplied to the Supplier by or on behalf of the Commissioner; or
  - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Commissioner is the Data Controller;

**"Commissioner System"** means the Commissioner's computing environment (consisting of

hardware, software and/or telecommunications networks or equipment) used by the Commissioner or the Supplier in connection with this Agreement which is owned by or licensed to the Commissioner by a third party and which interfaces with the Supplier System or which is necessary for the Commissioner to receive the Services;

**"Confidential Information"**

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

**"Contract Price"**

means the price (exclusive of any applicable VAT) payable to the Supplier by the Commissioner under this Agreement, as set out in Schedule 3 (Pricing and Invoicing), for the full and proper performance by the Supplier of its obligations under the Agreement;

**"Contracting Authority"**

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;

**"Control"**

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

**"Crown Body"**

means any department, office or agency of the Crown;

**"Data Controller"**

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

**"Data Processor"**

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

**"Data Subject"**

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

**"Default"**

means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;

**"Data Protection Legislation"**

means 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>"Environmental Information Regulations"</b>	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
<b>"Employee Liabilities"</b>	all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses;
<b>"Equipment"</b>	means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Agreement;
<b>"FOIA"</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation;
<b>"Force Majeure"</b>	<p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> <li>(a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or</li> <li>(b) the failure by any sub-contractor to perform its obligations under any sub-contract;</li> </ul>
<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud a Crown Body;

<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
<b>"ICT Environment"</b>	means the Commissioner System and the Supplier System;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Information System"</b>	means a system for generating, sending, receiving, storing or otherwise processing electronic communications;
<b>"Insolvency Event"</b>	<p>means the occurrence of any of the following event (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the relevant entity:</p> <ul style="list-style-type: none"> <li>(a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or</li> <li>(b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or</li> <li>(c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or</li> <li>(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or</li> <li>(e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or</li> <li>(f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or</li> <li>(g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;</li> </ul>
<b>"Intellectual Property Rights"</b>	means patents, inventions, trade marks, service marks, logos,

or <b>"IPR"</b>	design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off;
<b>"IP Materials"</b>	has the meaning given to it in clause 22.1;
<b>"IPR Claim"</b>	means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to in connection with the Services or as otherwise provided by the Supplier (or to which the Supplier has provided access) to the Commissioner in the fulfilment of its obligations under this Agreement;
<b>"Law"</b>	means 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>"Losses"</b>	(without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses;
<b>"Month"</b>	means a calendar month;
<b>"Party"</b>	means a party to this Agreement and <b>"Parties"</b> shall be interpreted accordingly;
<b>"Personal Data"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Premises"</b>	means premises owned, controlled or occupied by the Commissioner which are made available for use by the Supplier or its sub-contractors for provision of the Services (or any of them) on the terms set out in this Agreement or any separate agreement or licence, as set out in the Services Requirements;
<b>"Process"</b>	has the meaning given to it under the Data Protection Act 1998 but, for the purposes of this Agreement, it shall include both manual and automatic processing and <b>"Processing"</b> shall be construed accordingly;
<b>"Prohibited Act"</b>	means: <ul style="list-style-type: none"> <li>(a) directly or indirectly offering, promising or giving any person working for or engaged by the Commissioner a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> </ul>

- (b) directly or indirectly requesting, agreeing to receive or accepting 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) entering into this Agreement or any other contract with the Commissioner in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Commissioner;
- (d) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under any other Laws creating offences in respect of Fraud; or
  - (iii) at common law in respect of Fraud in relation to this Agreement or any other contract with the Commissioner; or
- (e) defrauding or attempting to defraud or conspiring to defraud the Commissioner;

**"Property"**

means any equipment, tools or other property, other than real property, issued or made available to the Supplier by the Commissioner in connection with this Agreement;

**"Quality Standards"**

means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, as may be further detailed in the Services Requirements;

**"Receipt"**

means the physical or electronic arrival of an invoice at the address of the Commissioner detailed in Schedule 3 (Pricing and Invoicing) or any other address notified to the Supplier for the submission of invoices;

**"Regulatory Bodies"**

means those government departments and regulatory, statutory and other entities, committees, ombudsmen 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 the Commissioner and **"Regulatory Body"** shall be construed

accordingly;

<b>"Replacement Services"</b>	any services which are substantially similar to any of the Services and which the Commissioner receives in substitution for any of the Services following the expiry or termination or partial termination of this Agreement, whether those services are provided by the Commissioner internally and/or by any third party;
<b>"Replacement Supplier"</b>	any third party service provider of Replacement Services appointed by the Commissioner from time to time;
<b>"Request for Information"</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
<b>"Schedule"</b>	means a schedule attached to, and forming part of, this Agreement;
<b>"Service Failure"</b>	the Supplier's failure to deliver any part of the Services in accordance with its obligations under this Agreement;
<b>"Services Requirements"</b>	means the description of the Services to be supplied under this Agreement as set out in Part 1 of Schedule 2 (Services Requirements and Supplier Solution), including, where appropriate, the Premises and the Quality Standards;
<b>"Services"</b>	means the services to be supplied by the Supplier to the Commissioner pursuant to this Agreement (including any Additional Services), as specified in the Services Requirements;
<b>"Staff"</b>	all employees, agents, consultants and contractors of the Supplier and/or any sub-contractor;
<b>"Staff Vetting Procedures"</b>	<p>the Commissioner's procedures and departmental policies for the vetting of personnel as set out at Schedule 4 (Staff Vetting Procedures);</p> <ul style="list-style-type: none"><li>(a) their ages, dates of commencement of employment or engagement and gender;</li><li>(b) details of whether they be employed, self employed contractors or consultants, agency workers or otherwise;</li><li>(c) the identity of the employer or relevant contracting party;</li><li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li><li>(e) the wages, salaries, profit sharing;</li></ul>



	<ul style="list-style-type: none"> <li>(f) details of other employment related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;</li> <li>(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);</li> <li>(h) details of any such individuals on long term sickness absence, parental leave, maternity or paternity leave or other authorised long term absence; and</li> <li>(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and</li> <li>(j) any other "employee liability information" as such term is defined in Regulation 11 of the Employment Regulations;</li> </ul>
<b>"Supplier Party"</b>	the Supplier's agents and contractors, including each sub-contractor;
<b>"Supplier Solution"</b>	the Supplier's solution for the Services attached to this Agreement at Part 2 of Schedule 2 (Services Requirements and Supplier Solution);
<b>"Supplier System"</b>	the information and communications technology system used by the Supplier in performing the Services including any software, the Equipment and related cabling (but excluding the Commissioner System);
<b>"Tender"</b>	means the document(s) submitted by the Supplier to the Commissioner in response to the Commissioner's invitation to suppliers for formal offers to supply it with the Services;
<b>"Term"</b>	has the meaning set out in clause 37;
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
<b>"Working Day"</b>	means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

## **SCHEDULE 2: SERVICES REQUIREMENTS AND SUPPLIER SOLUTION**

### **Part 1 - Services Requirements**

The Supplier is required to help ensure the Commissioner is aware of and understands all the political issues, developments and discussions that are taking place in the UK and EU on matters relating to the Commissioner's remit and objectives. The relevant list of specific issues and subjects to be searched for will be updated each quarter. This will always include a daily search for mention of the name "Information Commissioner", "ICO" and "Elizabeth Denham".

#### **1. UK and EU services requirements**

For both the UK and EU, the Supplier shall deliver the following information to the Commissioner:

##### **1.1 Daily provision of relevant:**

- Parliamentary questions and debates – UK and EU;
- Written ministerial and EU Commissioner statements;
- Official inquiries;
- Government and EU Commission reports; and
- Parliamentary business and relevant news activities for the day ahead - UK and EU;

##### **1.2 Weekly provision of relevant:**

- Parliamentary business - UK and EU;
- Select committee business - UK and EU;
- Personnel update – personnel movements within Westminster and Whitehall;
- Consultations update – newly introduced and due to close – UK and EU; and
- Relevant APPG activity;

##### **1.3 Summary, coverage and full transcripts of relevant:**

(to be provided promptly, no later than half a day after the event)

- Bill readings;
- Select committee sittings; and
- Public Bill committees; and

##### **1.4 Additional services when required:**

- Comprehensive and current intelligence on individual parliamentarians – UK and EU;
- PQ figures by quarter;

- Names mention analysis;
- Analysis of MPs, MEPs and Lords and their interests in issues relevant to the ICO;
- Live alerts by telephone of high profile and significant comments; and
- Timely updates on progress of specific Bill clauses; and

## **2. General services requirements**

2.1 The Supplier shall immediately inform the Commissioner

- of significant political developments; and
- where provision of intelligence will be delayed;

2.2 The Supplier shall deliver a forward planning grid and ad hoc research support;

2.3 The Supplier shall provide a minimum five (5) free licenses to the Supplier's online platform for the duration of the Agreement;

2.4 The Supplier shall provide a named account manager to deal with ongoing and urgent enquiries;

2.5 Services are to be provided on the Supplier's premises and provided within the timescales (where specified) in paragraph 1.1 (i.e. daily, weekly or no later than half a day after the event) by email and where necessary, telephone calls and/or face-to-face meetings; and

2.6 Where the Supplier becomes aware of a new method of delivering the Services during the life of the Agreement, the Commissioner requires the Supplier to inform the Commissioner.

## **Part 2 - Supplier Solution**

*[Drafting Note: This schedule should be populated with the Supplier's description of how it will comply with the Commissioner's Services Requirements specified in schedule 2 and will need to be fully assured and approved by the Commissioner prior to contract signature.]*

## **SCHEDULE 3: PRICING AND INVOICING**

### **Part 1 Contract Price**

*[Drafting Note: This should be populated with the Supplier's pricing proposals and should include specific details of the Contract Price (which is exclusive of VAT and other taxes).]*

Unless otherwise stated within this Schedule 3, the Commissioner shall not be liable to reimburse the Supplier for any expenses incurred in addition to the Contract Price, save for any professional fees or third party disbursements properly and necessarily incurred by the Contractor in the performance of its obligations under this Agreement.

### **Part 2 Invoicing**

#### **1. Supplier Invoices**

- 1.1 The Supplier shall prepare and provide to the Commissioner for approval a draft pro forma invoice within 10 Working Days of the Commencement Date which shall include, as a minimum, the details set out in paragraph 1.4 of this Part 2 together with such other information as the Commissioner may reasonably require. If the draft pro forma invoice is not approved by the Commissioner then the Supplier shall make such amendments as may be reasonably required by the Commissioner.
- 1.2 The Supplier shall be entitled to raise an invoice in respect of any payment which falls payable to the Supplier pursuant to the Agreement.
- 1.3 The Supplier shall invoice the Commissioner in respect of the Services in accordance with the following timescales for the issue of invoices: Invoices are to be issued quarterly.
- 1.4 The Supplier shall ensure that each invoice contains the following information:
  - 1.4.1 the date of the invoice;
  - 1.4.2 a unique invoice number;
  - 1.4.3 details of the correct agreement reference;
  - 1.4.4 the reference number of the purchase order to which it relates (if any);
  - 1.4.5 the total Contract Price gross and net of any applicable deductions and, separately, the amount of any disbursements properly chargeable to the Commissioner under the terms of the Agreement, and, separately, any VAT or other sales tax payable in respect of the same;
  - 1.4.6 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and
  - 1.4.7 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number).

#### **2. Payment Terms**

Subject to the provisions of paragraph 1 of this Part 2, the Commissioner shall make payment to the Supplier within 30 days of Receipt of a valid invoice.

### **3. Disputed Invoices**

If the Commissioner reasonably disputes any of the Supplier's invoices, or any part of an invoice, it shall pay to the Supplier the undisputed part or parts of such invoice but may withhold payment in respect of the disputed part pending the Supplier's provision of any further information reasonably requested by the Commissioner. On receipt of such further information the Commissioner may:

- 3.1 pay the invoice within 30 days of receipt of the information; or
- 3.2 escalate the dispute using the procedure set out in clause 16 (Dispute Resolution).

## **SCHEDULE 4: STAFF VETTING PROCEDURES**

### **1. Introduction**

- 1.1 The Commissioner is required by statute to regulate and promote compliance with the Data Protection Legislation and the FOIA. In the performance of his statutory functions the Commissioner receives, processes and retains substantial quantities of information some of which is confidential or sensitive in nature.
- 1.2 The Commissioner requires contractors providing services to his office to observe appropriate security requirements in their dealings with, and work for, the Commissioner in order that the Commissioner may maintain best practice in information security.
- 1.3 The Contractor shall observe the requirements for staff security checks set out below in respect of the Staff given unsupervised access to the Premises, Commissioner's Systems or Confidential Information.

### **2. Security Procedures**

The Contractor shall only provide such Staff in respect of each of whom it has:

- 2.1 satisfactory proof of nationality;
- 2.2 satisfactory proof of identity;
- 2.3 completed a satisfactory integrity check; and
- 2.4 required completion of a criminal record declaration.

### **3. Evidence to be produced in order to prove nationality**

Proof of nationality as referred to in paragraph 2.1(a) should be confirmed by providing the **original** of one of the following (*Note: photocopies are not acceptable*):

- 3.1 Passport;
- 3.2 National Identity Card; or
- 3.3 Birth Certificate.

### **4. Evidence to be produced in order to prove identity**

- 4.1 Where any one of the following has been provided as evidence of nationality no further proof of identity (as set out in paragraph 2.1(b)) is required:
  - 4.1.1 a full, ten year British Passport;
  - 4.1.2 an EEA Passport;
  - 4.1.3 an EEA National Identity Card; or
  - 4.1.4 a full non-EEA Passport.

- 4.2 In all other cases proof of identity should be confirmed as below. **Original** documents are required:

British nationals: 2 of the following:

- 4.2.1 Birth certificate (must have been issued within 6 weeks of birth);
- 4.2.2 Cheque book & bank card (together with 3 statements & proof of signature);
- 4.2.3 Credit card (together with 3 statements and proof of signature);
- 4.2.4 Credit card (with photograph of the individual);
- 4.2.5 Proof of residence (e.g. council tax, or utility bill)

Other nationals: Home Office document confirming the individual's immigration status.

**4.3 The following are NOT acceptable as proofs of identity or nationality:**

- 4.3.1 Duplicate or photocopied identity documents;
- 4.3.2 An international driving licence;
- 4.3.3 Birth certificate issued more than 6 weeks from birth (These can be purchased for any individual without proof of identity); and
- 4.3.4 An old British visitor's passport.

- 4.4 **If appropriate identity documents are not available** (e.g., because the individual is a young person, and this poses a genuine difficulty)

The individual should supply a passport sized photograph endorsed on the back by someone of standing in the community, such as a doctor, teacher, JP, lawyer.

The signatory should have known the individual for 3 years minimum.

A signed statement from the signatory should accompany the photograph giving their full name, address and phone number and the length of time they have known the recruit.

Signatures on the statement and photograph should be matched.

In all cases of doubt the signatory should be contacted to confirm the statement.

- 4.5 References can sometimes be used to provide the basis of proof of identity, particularly when given by a reputable organization or person known to the Commissioner. The Contractor should discuss the use of references to provide proof of identity with the Commissioner prior to starting work.

**5. Integrity check**

- 5.1 The Contractor is required to check the references of any Staff it proposes to provide to the Commissioner to ensure that such references are satisfactory. The following provisions set out the minimum requirements for satisfactory checks to be carried out by the Contractor.

- 5.2 Reasonable steps should be taken to ensure references are genuine, particularly where they are less than convincing, e.g. on poor quality paper, with spelling or grammatical errors.
- 5.3 At least 2 references should be obtained from a combination of employers, academic and personal referees. One should preferably be either from a recent employer or academic referee and cover a period of one year.
- 5.4 Depending on individual circumstances, the following may also be required:
- 5.4.1 if the individual has been abroad for more than 6 months in the previous 3 years, a reference from the overseas employer should be obtained whenever possible;
  - 5.4.2 where the individual has been in the armed forces or civil service references should be obtained from the line manager and not the service or department; and
  - 5.4.3 if the individual has been in full time education in the last 3 years a reference should be obtained from the institution.
- 5.5 Personal referees should be of some standing, e.g. a doctor, JP, priest, lawyer, bank manager or civil servant. Personal referees should not be related to the recruit or in any financial relationship with them.
- 6. Criminal record declaration**
- 6.1 The Contractor will require all Staff carrying out work for the Commissioner to sign a Criminal Record Declaration in the form attached to this Appendix.
- 6.2 For Basic Check purposes the Rehabilitation of the Offenders Act 1974 applies and the individual is not required to declare spent convictions.
- 6.3 Where a criminal declaration form has been completed on recruitment to the Contractor, the individual is not required to complete another form.



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**RESTRICTED (when completed)**

**The Information Commissioner**

**CRIMINAL RECORD DECLARATION**

The Information Commissioner is under a duty to protect the information and material he holds. This obligation extends to his employees and agents. Since you are or may become such a person please complete the following sections.

*Surname:* ..... *Full Forenames:* .....

*Full permanent address:* .....

..... *Date of Birth:* .....

*1. Have you ever been convicted or found guilty by a Court of any offence in any country (excluding parking but including all motoring offences even where a spot fine has been administered by the police) or have you ever been put on probation or absolutely/conditionally discharged or bound over after being charged with any offence or is there any action pending against you? You need not declare convictions which are "spent" under the Rehabilitation of Offenders Act (1974).*

*Yes/No\* (If yes please give details here)*

*2. Have you ever been convicted by a Court Martial or sentenced to detention or dismissal whilst serving in the Armed Forces of the UK or any Commonwealth or foreign country? You need not declare convictions which are "spent" under the Rehabilitation of Offenders Act (1974).*

*Yes/No\* (If yes please give details here)*

*3. Do you know of any other matters in your background which might call into question your reliability or suitability to have access to this information and material?*

*Yes/No\* (If yes please give details here)*

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- *I declare that the information I have given above is true and complete to the best of my knowledge and belief.*
- *I understand that any false information or omission in the information I have given above may disqualify me for employment in connection with Government contracts.*

*Your Signature:* ..... *Date:* .....

- *The information you have given above will be treated in CONFIDENCE*

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## **SCHEDULE 5: CONTRACT MANAGEMENT REQUIREMENTS**

1. The Agreement will be managed by the Commissioner with meetings being held between the Commissioner and the Supplier on a quarterly basis throughout the Term (“Review Meetings”). The Review Meetings will enable the Commissioner and the Supplier to review performance and discuss matters which may include, but not be limited to:

- Delivery of the Services;
- Feedback from end users;
- Complaints and actions to address them;
- Improvements or developments;
- Changes in key personnel, processes, or delivery; and
- Changes in issues and subjects to be searched for by the Supplier.

2. The Supplier shall field the appropriate personnel for each Review Meeting.

3. The Supplier shall provide management information on a periodic basis relative to all activity undertaken under the Agreement at no additional cost to the Commissioner. The content, frequency and formatting of management information shall be agreed between the prior to the Commencement Date.