

**FRAMEWORK AGREEMENT SCHEDULE 4 – CALL-OFF TERMS AND
CONDITIONS**

**TERMS AND CONDITIONS FOR
THE SUPPLY OF SERVICES**

CONTRACT REFERENCE: C3582

CONTRACT: PROVISION OF OCCUPATIONAL HEALTH SERVICES

APPLICABLE FRAMEWORK: Occupational Health and Associated Services (lii)
WGCD-PCS-118-22

CALL OFF LOT: Lot 1 - Occupational Health Services

CALL-OFF START DATE: 12 October 2024

CALL-OFF EXPIRY DATE: 11 October 2027

CALL-OFF INITIAL PERIOD: 3 years (with 'break clause' after the first 12 months at discretion of the Customer).

CALL-OFF OPTIONAL EXTENSION PERIOD: There is an option to extend for a further two periods of 12 months.

CALL-OFF CHARGES: See details at Schedule 1 – Price

PAYMENT METHOD: Payment will only be made on satisfactory delivery of the agreed occupational health services.

INVOICE DETAILS REQUIRED: Before payment, any invoices that are received must include a **detailed breakdown** of the work completed, the associated costs and rates as well as quoting reference number. All invoices must quote a relevant IPO Purchase Order and Contract reference.

CUSTOMERS'S INVOICING ADDRESS: REDACTED

CUSTOMER'S AUTHORISED REPRESENTATIVE:
REDACTED, REDACTED

SUPPLIER'S AUTHORISED REPRESENTATIVE:
REDACTED, REDACTED

Signed by an authorised signatory for and behalf of the Supplier

Supplier_Signature

REDACTED

REDACTED

08/10/2024

For and on behalf of the Buyer

Contracting_Authority_Signature

REDACTED

REDACTED

09/10/2024

THIS AGREEMENT IS DATED 26 SEPTEMBER 2024

PARTIES

- (1) Intellectual Property Office (IPO) REDACTED. ("**Customer**"), which term includes any successor to it in the exercise of its statutory functions and its permitted assigns;
- (2) Insight Health Screening Limited (trading as Insight Workplace Health), REDACTED, Company number REDACTED ("**Supplier**")

the Customer and the Supplier are each referred to as a "**Party**" and together, the "**Parties**".

BACKGROUND

- (A) The Welsh Ministers placed a Contract Notice (OJEU Contract Notice: 2022/S 000-029046) seeking expressions of interest from potential framework providers for the provision of Services (divided into Lots) under a framework agreement.
- (B) Following receipt of expressions of interest, the Welsh Ministers invited potential service providers (including the Supplier) to tender for the provision of Occupational Health and Associated Services.
- (C) On the basis of the Supplier's Tender, the Welsh Ministers selected the Supplier to enter a framework agreement - WGCD-PCS-118-22 (the "**Framework Agreement**") to provide services to Participating Organisations who may award call-off contracts for the Services in accordance with the Framework Agreement.
- (D) This Call-Off Contract sets out the main terms and conditions for the provision of Services.
- (E) The Customer is a Participating Organisation, as specified in the Contract Notice. It has selected the Supplier to provide the Services and the Supplier is willing and able to provide the Services in accordance with the terms and conditions of this Call-Off Contract.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 For the purposes of this Agreement except where expressly stated to the contrary, the following words shall have the following meaning:

Affected Party	means the Party seeking to claim relief in respect of a Force Majeure Event;
Agreement	has the meaning given at Clause 4.1 (<i>Scope</i>);
Award Decision Notice	means the notice sent by the Customer to the Supplier notifying it that its tender has been successful and it has been awarded a Call-Off Contract for the supply of the Services;

Brexit Legislation	means the European Union (Withdrawal) Act 2018, the European Union (Withdrawal) Act 2019, the European Union (Withdrawal) (No 2) Act 2019; any other legislation made by the UK Parliament or the Senedd and any applicable delegated or secondary legislation made by Ministers of the UK Government or Welsh Ministers concerning or in consequence of the withdrawal of the UK from the European Union;
CEDR	means the Centre for Effective Dispute Resolution;
Change Control Request	means a written notice served on the Supplier under Clause 30.1 (<i>Change Control</i>) by the Customer which requests a variation to the Services;
Commencement Date	means the date set out in the Order or if none, the earlier of the date first set out above and the date when the Supplier commenced providing the Services;
Confidential Information	means information designated as such by the Customer, which is considered by the Supplier or the Customer to be confidential under Section 41 of the FOIA and the disclosure of which would be considered by the Supplier or the Customer to constitute an actionable breach of confidence (without prejudice to the Customer's obligations under the FOIA);
Confidentiality Undertaking	means an undertaking not to use or disclose any Confidential Information received save as strictly required to fulfil the purposes of this Agreement (including, without limitation, its re-tender);
Contract Period	means the period from the Commencement Date to the Termination Date;
Contracting Authority	means any contracting authority as defined in Public Contracts Regulations 2015 (as amended);
Controller, Processor, Data Subject, Personal Data, Personal	take the meaning given in the Data Protection Legislation;

Data Breach, Data Protection Officer	
Customer Representative	means a person appointed by the Customer to act on its behalf for the purposes of this Agreement;
Data Protection Legislation	(i) the UK GDPR (to the extent applicable), (ii) the DPA 2018 to the extent that it relates to processing of Personal Data and privacy; (iii) all applicable Law about the processing of Personal Data and privacy; UK GDPR: UK GDPR
Data Protection Impact Assessment	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;
Data Subject Access Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
Environmental Information Regulations or EIR	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Regulations;
Estimate	has the meaning given in Clause 30.2 (<i>Change Control</i>);
Equality Law	has the meaning given in Clause 26.1 (<i>Discrimination and Equality</i>);
Exit Day	means 11:00pm on 31 st January 2020;
Equipment	has the meaning given in Clause 17.2 (<i>Materials, Plant, Equipment etc.</i>);

FOIA

means the Freedom of Information Act 2000 and any subordinate legislation made under the 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 Act;

Force Majeure Event

means any circumstance or event beyond a Party's reasonable control which prevents or delays the performance of any of that Party's obligations under this Agreement including (to the extent not of that Party's making nor reasonably capable of prevention or mitigation by contingency planning): (i) earthquake, storms, flood and other acts of nature, epidemic or pandemic, war, riots, hostility (whether or not war has been declared), terrorist acts, acts of any civil or military authority, public disturbance; or (ii) any strike, lock-out or other industrial trade dispute (other than in each case by the personnel or other employees, contractors, suppliers or agents of the Party seeking to rely on Force Majeure). For the avoidance of doubt, failure or delay of performance of any supplier or Sub-Contractor of either Party shall not be an event of Force Majeure; Sub-Contractor

Good Industry Practice

means the exercise of the degree of skill, diligence, prudence, efficiency, foresight and timeliness which would be expected from a leading provider within the relevant industry or business sector of services of a similar type to the Services to be supplied under the Agreement;

Health and Safety Regime

means the Factories Act 1961, the Offices, Shops and Railway Premises Act 1963, the Health & Safety at Work etc Act 1974, the Fire Precautions Act 1971, the Environmental Protection Act 1990, the Food Safety Act 1990 the Environment Act 1995, the Water Industry Act 1991, and the Water Resources Act 1991 (including in each case any associated regulations, guidance or approved codes of practice), and any similar or analogous health, safety or environmental Law which has as its aim

	the protection of persons or the environment or the prevention or reduction of risk of harm or injury to persons or the environment, or relating to the health and safety of the Services or their provision, as is in force from time to time;
Holding Company	shall have the meaning given in section 1159 of the Companies Act 2006;
Implementation Date	means the date by which the Services must be implemented;
Indemnified Loss	means all liabilities, fines, penalties, damages, demands, proceedings, claims, costs expenses whatsoever and howsoever arising, incurred including without limitation all legal expenses (on an indemnity basis) and other professional fees (together with any VAT thereon);
Information	shall have the meaning given under section 84 of the Freedom of Information Act 2000 and/or Regulation 2 of the Environment Information Regulations;
Invitation to Tender	means in respect of any procurement conducted under the Framework Agreement, the invitation to tender in each case issued by the Customer for the provision of the Services;
Intellectual Property Rights	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain rights, trade or business names, moral rights and any other similar rights or obligations whether registrable or not in any country (including but not limited to the UK) and the right to sue for passing off;

Law	<p>means -</p> <ul style="list-style-type: none"> • any applicable statute or proclamation or any delegated or subordinate legislation; • any applicable guidance, direction or determination with which a Party is bound to comply; and • any applicable judgment or decision of a court of competent jurisdiction which is a binding precedent in England and Wales or in Wales only, <p>in each case to the extent in force in England and Wales, or in Wales only;</p>
Mediation Notice	has the meaning given in Clause 32.2 (<i>Dispute Resolution Process</i>);
Necessary Consents	all approvals, certificates, authorisations, permissions, licences, permits, regulations and consents necessary from time to time for the performance of the Services.
Order	means an order for the Services placed by the Customer in accordance with Clause 5 (<i>Supply of Services</i>) of this Agreement;
Order Number	means the official number allocated by the Customer to an Order;
Parent Company	shall have the meaning given to it in section 1162 and Schedule 7 of the Companies Act 2006;
Payment Period	has the meaning given in Clause 11.5 (<i>Charges and Payment</i>);
PCR 2015	The Public Contracts Regulations 2015 (as amended);
Price	means the price or prices specified in the Order;
Programme of Work	means any programme, timetable or key milestones which regulates or specifies the period or periods for the completion of the Services or any part thereof;

Protective Measures

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

Prohibited Act

the following constitute Prohibited Acts:

(a) directly or indirectly to offer, promise or give any person working for or engaged by the Customer or any Contracting Authority a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) directly or indirectly to request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence:

(i) under the Bribery Act 2010;

(ii) under Law creating offences concerning fraudulent acts;

(iii) at common law concerning fraudulent acts relating to this Agreement or any other contract with the Customer; or

(iv) defrauding, attempting to defraud or conspiring to defraud the Customer;

Relevant Authority

means any court with relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the Welsh Ministers, or of the government of the United Kingdom;

Request for Information	shall have the meaning set out in section 8 of the FOIA and/or Regulation 5 of the Environmental Regulations 2004 and includes any apparent request for such Information;
Services	means any and all of the services (or part thereof) supplied or to be supplied by the Supplier in accordance with this Agreement and includes any goods supplied as part of the Services;
Special Conditions	means any special conditions either referred to in the Invitation to Tender or set out in Schedule 3 to this Agreement;
Specification	means the specification attached to the Invitation to Tender;
Sub-ContractorContract	any contract between the Supplier and a third party (including a consortium agreement) pursuant to which the Supplier agrees to source the provision of the performance of any of the Supplier's obligations under this Agreement and includes a sub-contract at any tier or stage of remoteness from the Customer in a subcontracting chain;
Sub- Contractor	means any third party with whom the Supplier enters into a Sub-Contract (including a consortium agreement) or its employees or agents and any third party with whom that third party enters into a sub-contract or its employees or agents for the performance of any part of the Supplier's obligations under this Agreement;

Sub-Processor	any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement;
Supplier Personnel and Supplier's Staff	means all officers, partners, employees, workers, agents, consultants and contractors of whatever nature of the Supplier and/or of any Sub-Contractor;
Termination Date	means the date upon which this Agreement terminates or expires and references to the Termination Date includes the partial termination or expiry of this Agreement;
Tender	means the documentation submitted by the Supplier in response to the Invitation to Tender;
Terms and Conditions	means the terms and conditions of this Agreement;
UK GDPR	means the General Data Protection Regulation (EU) 2016/679 (a) to the extent that it is retained and is in force; and (b) as it is amended, replaced or re-enacted from time to time, in each case in the domestic law of England and Wales;
VAT	means value added tax chargeable under the Value Added Tax Act 1994; and
Working Days	means Monday to Friday 9.00 a.m. to 4.30 p.m. excluding any statutory public holidays in Wales.

- 1.2 In this Agreement the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.
- 1.3 A reference to any statute, statutory instrument, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, statutory instrument, enactment, order, regulation or instrument as subsequently amended, replaced or re-enacted and as in force at the relevant time.
- 1.4 A reference to a Party shall include that Party's personal representatives and permitted assigns.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.6 A reference to a company shall include any company, corporation or other body corporate wherever and however incorporated or established.

- 1.7 A reference to any document shall be construed as a reference to the document as at the date of execution of this Agreement.
- 1.8 Each Party shall comply with any express obligation in this Agreement to comply with any document, statute, enactment, order, regulation or other similar instrument that is referred to in this Agreement.
- 1.9 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.10 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement shall include the Schedules.
- 1.11 Any reference which immediately prior to Exit Day was a reference to:
- 1.11.1 any European Union ("EU") Law that was directly applicable or directly effective in England and Wales prior to Exit Day shall be read as a reference: (i) to such EU Law as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect by the Brexit Legislation or other domestic Law of England and Wales from time to time; or (ii) if none of limb (i) is applicable, the domestic Law of England and Wales covering the relevant matter; and
- 1.11.2 any EU institution or EU authority or other EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body by which its functions are performed from time to time after Exit Day.

2. PRELIMINARIES

- 2.1 The terms of this Agreement shall apply to all Orders made by the Customer.
- 2.2 The Supplier shall, if required to do so by the Customer, enter into a form of supplementary agreement determined by the Customer to reflect the relevant requirements of any Invitation to Tender and (as appropriate) the offers or proposals set out in any Tender submitted in response to it.

3. COMMENCEMENT AND DURATION

- 3.1 This Agreement shall take effect on the Commencement Date.
- 3.2 This Agreement shall expire on the date specified in the Order subject to:
- 3.2.1 the rights of termination contained in this Agreement; and
- 3.2.2 Clause 5.4 (*Supply of Services*).

4. SCOPE

- 4.1 This Agreement shall comprise the following;
- 4.1.1 the Special Conditions and supplementary agreement pursuant to Clause 2.2 (*Preliminaries*), if any;

- 4.1.2 the Terms and Conditions;
 - 4.1.3 the Specification;
 - 4.1.4 the Schedules, if any;
 - 4.1.5 the Invitation to Tender and the Tender;
 - 4.1.6 the Order; and
 - 4.1.7 any other document which is expressly agreed in writing by the Parties to be incorporated into and form part of this Agreement.
- 4.2 The documents listed in Clause 4.1 above shall be read together and construed so as to be consistent with one another so far as possible. In the event of any unavoidable conflict or inconsistency between any of the various documents forming part of this Agreement the following order of precedence shall apply:
- 4.2.1 the Special Conditions and/or supplementary agreement pursuant to Clause 2.2 (*Preliminaries*);
 - 4.2.2 the Terms and Conditions;
 - 4.2.3 the Specification;
 - 4.2.4 the Schedules;
 - 4.2.5 the Invitation to Tender and the Tender;
 - 4.2.6 the Order; and
 - 4.2.7 any other document which is expressly agreed in writing by the Parties to be incorporated into and form part of this Agreement (which does not, for the avoidance of doubt, including any terms and conditions issued by the Supplier).
- 4.3 If there shall be a conflict between the provisions of this Agreement (including any of the documents listed in Clause 4.1 above) and any terms and conditions issued by the Supplier then the terms and conditions contained in this Agreement shall prevail and the Supplier in executing this Agreement hereby confirms acceptance of this condition.

5. **SUPPLY OF SERVICES**

- 5.1 The Customer may at any time during the Contract Period order Services from the Supplier by serving an Order on the Supplier and the Supplier shall supply such Services in accordance with the Customer's Order.
- 5.2 Each Order shall:
- 5.2.1 be given in writing or, if given orally, shall be confirmed by the Customer in writing within two (2) Working Days;
 - 5.2.2 specify the Services ordered;

- 5.2.3 specify the Implementation Date; and
- 5.2.4 specify the Programme of Work (if any).
- 5.3 The Supplier shall ensure that all Necessary Consents are in place to provide the Services and the Customer shall not, unless otherwise agreed, incur any additional costs associated with obtaining, maintaining or complying with the same.
- 5.4 If the Contract Period expires before the supply or delivery of any Services comprised in an Order has been completed, the Supplier shall remain liable for the completion of the Order. The terms and conditions of this Agreement shall continue in full force and effect in respect of such completion.
- 5.5 Clause 5.4 shall survive the termination or expiry of this Agreement.
- 6. **THE SERVICES**
- 6.1 Without prejudice to any higher standard required by this Agreement, the Supplier shall ensure that all Services supplied to the Customer pursuant to this Agreement shall:
 - 6.1.1 be compliant with the Specification;
 - 6.1.2 be compliant with any relevant Law;
 - 6.1.3 be compliant with any relevant British or European Standard and, where applicable, the Supplier shall obtain and maintain accreditation with the relevant authority overseeing the relevant British or European Standard;
 - 6.1.4 be compliant with any policies, rules, codes of practice, procedures and standards with which the Supplier is required to comply;
 - 6.1.5 be provided with reasonable care and skill and in accordance with Good Industry Practice; and
 - 6.1.6 be provided in accordance with the terms set out in this Agreement.
- 6.2 [Where Services include the provision of goods, materials or plant these shall be:
 - 6.2.1 compliant with the Specification;
 - 6.2.2 compliant with any relevant Law;
 - 6.2.3 be compliant with any relevant British Standard and, where applicable, the Supplier shall obtain and maintain accreditation with the relevant authority overseeing the relevant British Standard;
 - 6.2.4 compliant with any policies, rules, codes of practice, procedures and standards with which such goods, materials or plant are required to comply;
 - 6.2.5 of satisfactory quality and fit for any purpose for which such goods, material or plant are commonly used or which is made known to the Supplier in writing by the Customer; and

6.2.6 provided in accordance with the terms set out in this Agreement.

6.3 The Supplier shall -

- 6.3.1 provide to the satisfaction of the Customer such suitably qualified, adequately trained, capable and experienced Supplier Personnel as shall be necessary for the proper execution of the Services and shall not remove or replace such persons without the prior written approval of the Customer;
- 6.3.2 ensure that all Supplier Personnel involved in delivering the Services are sufficiently instructed with regard to the Services and on all relevant provisions of the Agreement;
- 6.3.3 ensure that there are sufficient Supplier Personnel to provide the Services properly;
- 6.3.4 ensure that only those Supplier Personnel who are authorised by the Supplier (under the authorisation procedure to be agreed between the Parties) are involved in providing the Services;
- 6.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.3.6 co-operate with such others as the Customer may reasonably require;
- 6.3.7 satisfy itself that the information, including documentation, provided by the Customer is adequate and will not prejudice the performance of any of the Supplier's obligations under the Agreement. The Supplier shall inform the Customer immediately of any inadequacy of which it becomes aware and the Parties shall discuss in good faith how to resolve the matter;
- 6.3.8 ensure that all Necessary Consents are in place to provide the Services and the Customer shall not incur any additional costs associated with obtaining, maintaining and complying with the same;
- 6.3.9 work diligently to protect and promote the Customer's interests; and
- 6.3.10 take all reasonable care (and shall ensure that its Supplier Personnel shall take all reasonable care) at all times to ensure that in its execution of the Services it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

7. REJECTION OF SERVICES

- 7.1 The Customer shall have the power by notice to reject any Services which it does not reasonably consider to have been carried out in accordance with this Agreement and the Supplier shall, without prejudice to the Customer's other rights, promptly and at its own expense, re-perform the Services or remedy the deficiency in the Services to the satisfaction of the Customer.
- 7.2 If the Supplier fails to remedy the deficiency promptly in accordance with the Customer's instructions, the Customer may remedy or cause to be remedied any deficiency, the costs of which will be payable by the Supplier.

7.3 Notwithstanding that the Services or any part of them have been the subject of any instruction, review, approval, acknowledgement or inspection, the Supplier shall not be relieved from any liability or obligation under the Agreement.

7.4 Any additional costs (including costs of any audit) incurred by the Customer as a result of the Supplier failing to carry out the Services in accordance with the Agreement shall be reimbursed to the Customer by the Supplier.

8. **TIME OF DELIVERY**

8.1 The Supplier shall perform the Services;

8.1.1 in accordance with the dates and times specified in the Order; and

8.1.2 by the Implementation Date.

8.2 Time shall be of the essence with regard to the Supplier's obligations under this Agreement and if the Supplier fails to perform the Services [by OR on] the Implementation Date, the Customer may release itself from any obligation to accept and pay for the Services and/or may terminate the Agreement, in either case without prejudice to any other rights and remedies of the Customer.

9. **KEY PERFORMANCE INDICATORS**

9.1 Where KPIs are stated to apply as set out in Schedule 2 (*Key Performance Indicators*), the Supplier shall provide the Services in such a manner as will ensure that the KPIs specified in in respect of that Service are achieved or exceeded.

9.2 The Supplier shall provide records summarising performance of the Services against the KPIs and showing whether and to what extent the KPIs have been achieved.

9.3 The Supplier and the Customer shall agree the KPIs that are to apply in respect of the Services and set these out in Schedule 2 prior to the date of signature of this Agreement.

10. **PROGRAMME OF WORK**

10.1 If the Programme of Work is required by the Customer, and has not been previously agreed, the Supplier shall within five (5) Working Days of entering into the Order submit a detailed programme to the Customer's Representative for approval showing the number of days or weeks required for each separate stage to ensure that the Implementation Date is achieved.

10.2 On receipt of the detailed programme the Customer's Representative shall;

10.2.1 signify his/her approval in which event it shall form the Programme of Work; or

10.2.2 reject the programme stating his/her reasons for so doing and require that the programme be amended and resubmitted by the Supplier.

10.3 Approval, rejection and resubmission of the detailed programme (or amended programme) shall be effected without undue delay. Any rejection of the programme should be confirmed no later than five (5) Working Days from the date of receipt of the programme by the Customer's

Representative and the Supplier shall within a period of ten (10) Working Days from the date of such rejection resubmit a further amended programme to the Customer's Representative.

11. CHARGES AND PAYMENT

- 11.1 The charges payable by the Customer in respect of Services shall be determined by reference to the Price for Services set out in Schedule 1 (*Price*).
- 11.2 The Price payable by the Customer in respect of each Order shall be specified in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services.
- 11.3 The Prices are exclusive of VAT. The Customer shall pay the VAT on the Prices at the rate and in the manner prescribed by Law, from time to time.
- 11.4 All invoices submitted by the Supplier to the Customer must be –
 - 11.4.1 valid VAT invoices;
 - 11.4.2 contain the Order Number(s) to which the invoice relates;
 - 11.4.3 sent to the person, section or department specified by the Customer from time to time; and
 - 11.4.4 denominated in pounds sterling; andmust set out the following information -
 - 11.4.5 The name and address of the Supplier;
 - 11.4.6 the period to which the payment relates;
 - 11.4.7 a breakdown of the sum invoiced showing how it is calculated, including (as appropriate) grades and hourly rates of, and time spent by, Supplier Personnel in performing the Services to which the invoice relates.
- 11.5 Where the Supplier submits an invoice to the Customer in accordance with Clause 11.4, the Customer will consider and verify that invoice in a timely fashion. The time for payment of valid invoices shall be twenty (20) Working Days ("**Payment Period**"). Any late payment shall attract interest at the rate of 4% above the Bank of England base lending rate from time to time and the Parties agree that this is a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 11.6 The Price of the Services shall include all royalties, licence fees or similar expenses in respect of making, use or exercise by the Supplier of any invention or design for the purposes of performing the Agreement.
- 11.7 In the event of the submitted invoice being incorrect:
 - 11.7.1 the Customer may return the invoice to the Supplier as a query and/or raise any query or request for information concerning the invoice;

- 11.7.2 the Supplier shall answer any such request within five (5) Working Days; and
- 11.7.3 the Payment Period shall commence from the date of an accurate invoice being received by the Customer.
- 11.8 Payment of invoices payable by the Customer for Services supplied shall be made, at the discretion of the Customer, either by way of the BACS system or the Welsh Purchase Card. Where the Welsh Purchase Card is the preferred method of payment, the Supplier shall be solely responsible for the payment of the merchant fee levied by the card provider and the Supplier shall not recover this merchant fee from the Customer.
- 11.9 If the Customer disputes any invoice or other statement of monies due, the Customer shall promptly notify the Supplier in writing. The Parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the Parties have not resolved the dispute within twenty (20) Working Days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with Clause 31 (*Dispute Resolution Process*). Where only part of an invoice is disputed, the undisputed amount shall be paid in accordance with the terms of this Agreement. The Supplier's obligations to supply the Services shall not be affected by any payment dispute.
- 11.10 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract provisions that:
- 11.10.1 where the Sub-Contractor submits an invoice to the Supplier, the Supplier shall consider and verify that invoice in a timely fashion; and
- 11.10.2 the Supplier shall pay the Sub-Contractor any sums due under such an invoice no later than a period of twenty (20 Working Days from the date of receipt of a valid invoice.
12. **SET OFF**
- 12.1 The Customer may at any time set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement.
- 12.2 Any exercise by the Customer of its rights under this Clause 12 shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
13. **WARRANTIES AND REPRESENTATIONS**
- 13.1 The Supplier warrants and represents that:
- 13.1.1 it has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- 13.1.2 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel;

- 13.1.3 as at the Commencement Date, all information contained in its Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Customer prior to the execution of this Agreement;
- 13.1.4 it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures; and
- 13.1.5 it shall not by any act omission or conduct cause the reputation of the Welsh Ministers to fall into disrepute.

14. POLICIES

- 14.1 The Supplier shall comply with all the Customer's published policies and with any further rules, codes of practice, procedures and standards which the Customer notifies to the Supplier. The Customer shall throughout the Contract Period ensure that any changes to any policies, rules, codes of practice, procedures and standards are brought promptly to the attention of the Supplier.

15. PROGRESS REPORTS AND INSPECTION

- 15.1 Where a progress report, or other information pertaining to the progress of the performance of either Party of its obligations under this Agreement, is submitted in connection with this Agreement, the submission, receipt and acceptance of such a report, or other information, shall not prejudice the rights of either Party under this Agreement.
- 15.2 The Customer may inspect and examine any of the Services being carried out on the Customer's premises without notice at any time.
- 15.3 Where any part of the work or Services is being carried out on premises other than the Customer's premises, at least two (2) Working Days' notice of an intention to inspect shall be given to the Supplier where possible.
- 15.4 The Supplier shall give all such assistance as the Customer may reasonably require for such inspection and examination.

16. REVIEW MEETINGS AND MANAGEMENT INFORMATION

- 16.1 The Supplier shall submit management information reports to the Customer on a monthly basis unless otherwise agreed, covering the period since the date of the previous management information report.
- 16.2 The content of such reports shall be agreed between the Customer and the Supplier following the date of this Agreement.
- 16.3 The Supplier and the Customer shall meet on a quarterly basis, unless otherwise agreed, to review and discuss any issues relating to the performance of the Agreement.
- 16.4 A failure by the Supplier to provide the information required in terms of this Clause 16 shall be a material breach of this Agreement for the purposes of Clause 36 (*Termination*).

17. **MATERIALS, PLANT, EQUIPMENT ETC.**

- 17.1 The Supplier shall make no delivery of nor commence any Services on the Customer's premises without obtaining the Customer's prior written consent.
- 17.2 All equipment, tools, plant or materials (the "**Equipment**") brought onto the Customer's premises shall be at the Supplier's own risk. The Supplier shall arrange the transport and removal of such Equipment at its own expense.
- 17.3 The Customer shall have the power at any time during the progress of the Services to order in writing:
- 17.3.1 the removal from the Customer's premises of any Equipment which in the opinion of the Customer is either hazardous, noxious or not in accordance with the Agreement; and/or
- 17.3.2 the substitution of proper and suitable Equipment.
- 17.4 On completion of the Services, at its own cost, the Supplier shall remove the Equipment and shall clear away from the Customer's premises all waste arising out of the Services and leave the Customer's premises in a neat and tidy condition.

18. **INTELLECTUAL PROPERTY**

- 18.1 It shall be a condition of the Agreement that, except to the extent that the Services incorporate designs furnished by the Customer, the Services will not infringe any Intellectual Property Rights of any third party and the Supplier shall indemnify the Customer against all actions, suits, claims, demands, losses, charges, costs and expenses which the Customer may suffer or incur as a result of or in connection with any breach of this Clause.
- 18.2 All Intellectual Property Rights in all documents (in whatever format, and whether electronic or otherwise) including but not limited to specifications, instructions, plans, drawings, patents, patterns, models, designs or other material:
- 18.2.1 furnished to or made available to the Supplier by the Customer shall remain the property of the Customer;
- prepared by or for the Supplier for use, or intended use, in relation to the performance of this Agreement shall be the subject of a perpetual, irrevocable, royalty free licence to the Customer for the Customer to copy, adapt, distribute, communicate and make available those documents (and shall carry the right for the Customer to grant sub-licences in respect of the same) for all purposes reasonably contemplated by, connected with or ancillary to this Agreement.
- 18.3 The Supplier shall not have the right to use any data, reports, drawings, specifications, designs, inventions, plans, programs or other material referred to in Clause 18.2.1 for its own commercial purposes except upon obtaining the prior written consent of, and subject to such terms and conditions as may be imposed by, the Customer.
- 18.4 At the termination of the Agreement the Supplier shall immediately return to the Customer all materials, work or records held in connection with this Agreement, including any back up media.

18.5 The provisions of this Clause 18 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

19. GOODS AND MATERIALS OF THE CUSTOMER

19.1 All goods and materials issued by the Customer in connection with the Agreement shall remain the property of the Customer and shall be used in the execution of the Agreement and for no other purpose whatsoever without the prior approval in writing of the Customer.

19.2 Such goods and materials shall be deemed to be in good condition when received by or on behalf of the Supplier unless it notifies the Customer to the contrary within five (5) Working Days of receipt.

19.3 The Supplier shall keep all such goods and materials used in the performance of the Services in good, clean and serviceable repair for the proper performance of the Services and the Customer shall be under no liability in respect thereof.

19.4 The Supplier shall return such goods and materials on demand and shall be responsible for all loss of, or damage and the costs of repair to, or the replacement of them, however caused (fair wear and tear excepted), prior to their re-delivery to the Customer.

19.5 The Supplier shall, following completion of the Services or in response to an earlier request by the Customer, return the goods, materials work or records held, including any back up media, in good condition, fair wear and tear excepted.

20. SUPPLIER'S PERSONNEL

20.1 The Customer reserves the right under this Agreement to refuse any Supplier Personnel admission to any premises occupied by or on behalf of the Customer if in the opinion of the Customer, such admission is undesirable or unnecessary.

20.2 If and when directed by the Customer, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the performance of this Agreement to any premises occupied by or on behalf of the Customer, specifying the capacities in which they are concerned with this Agreement and such other particulars as the Customer may reasonably require.

20.3 The Supplier and the Supplier Personnel 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 in the vicinity of any Customer premises.

20.4 The decision of the Customer as to whether any person is to be refused admission to any premises occupied by or on behalf of the Customer and as to whether the Supplier has failed to comply with Clause 20.3 shall be final and conclusive.

20.5 If the Supplier shall fail to comply with Clause 20.3 or fails to do so within a reasonable time of written notice so to do, then the Customer may terminate this Agreement in accordance with Clause 35 (*Termination*) provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall afterwards accrue to the Customer

- 20.6 The Supplier acknowledges that each member of the Supplier Personnel engaged in the performance of the Services shall have full authority to act on behalf of the Supplier for all purposes in connection with this Agreement provided always that if the Customer shall at any time be dissatisfied for any reason with the performance of any person engaged in carrying out the Services, the Supplier shall, if the Customer so requires, provide a competent substitute to carry out the Services at no additional cost to the Customer.
- 20.7 The Supplier shall replace any of the Supplier Personnel who the Customer reasonably decides have failed to carry out their duties with reasonable care and skill. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services. The Customer shall have no liability to the Supplier or the Supplier Personnel for any losses of any nature whatsoever arising out of the operation of this clause.
- 20.8 The Supplier shall maintain up to date personnel records on the Supplier's Personnel engaged in the provision of the Services and, on request, provide reasonable information to the Customer on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the applicable Data Protection Legislation.

21. ACCESS TO PREMISES

- 21.1 Unless otherwise agreed use of any land or premises (including temporary buildings) made available to the Supplier by the Customer in connection with this Agreement shall be made available to the Supplier free of charge (but without prejudice to the right of the Customer to require reimbursement for any out goings arising from that occupation or expenditure incurred, including in respect of any fuel or telecommunications charges attributable to the Supplier) and shall be used by the Supplier solely for the purpose of performing this Agreement. The Supplier shall have the use of such land or premises as licensed and shall vacate the same upon the termination or expiry of this Agreement or at such earlier date as the Customer may determine. Access to the Customer's premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Services concurrently with the execution of work by others.
- 21.2 The Parties agree that there is no intention on the part of the Customer to create a tenancy of whatsoever nature in favour of the Supplier or the Supplier's Personnel and that no such tenancy has or shall come into being and the Customer retains the right at any time to use any premises owned or occupied by the Customer.
- 21.3 The Supplier and Supplier's Personnel shall observe and comply with all rules and regulations in relation to the use of such premises as determined by the Customer, and pay for the cost of making good any damage caused by the Supplier or the Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, or to plant, fixed equipment or fittings in the buildings. The Supplier shall notify the Customer immediately on becoming aware of any damage caused to such premises.
- 21.4 The Supplier shall comply with all reasonable security requirements of the Customer while on the premises, and shall procure that all of its Supplier Personnel shall comply with such requirements. Where relevant the Customer shall provide the Supplier upon request with copies of its written security procedures and shall afford the Supplier upon request with an opportunity to inspect its physical security arrangements.

- 21.5 The Supplier shall at its own cost, provide its Supplier Personnel with a form of identification that is acceptable to the Customer. The Supplier Personnel shall display such identification on their clothing at all times when they are on the Customer's premises.
- 21.6 The Supplier shall ensure that all requests and instructions of the Customer whilst on Customer owned premises are adhered to.
- 21.7 The Supplier shall ensure that all its Supplier Personnel have been instructed about fire risks and that they are expressly forbidden to smoke while on any premises owned or controlled by the Customer.

22. **HEALTH AND SAFETY**

22.1 The Supplier and its Supplier Personnel shall:

- 22.1.1 comply with all relevant parts of the Health and Safety Regime and with the Customer's own policies and procedures;
- 22.1.2 in relation to all persons likely to be affected by the Services take all such steps as may be reasonably practicable to ensure their health and safety;
- 22.1.3 promptly notify the Customer of any health and safety hazards, which may arise in connection with the performance of this Agreement;
- 22.1.4 not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with every statutory duty which is relevant;
- 22.1.5 notify the Customer immediately of any health and safety hazards of which it is aware (having made all reasonable enquiries) and which may arise in connection with the performance of this Agreement;
- 22.1.6 notify the Customer immediately in the event of any incident occurring in performance of this Agreement on the Customer's premises where that incident causes any personal injury or damage to property that could give rise to personal injury;
- 22.1.7 during the continuance of this Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment;
- 22.1.8 ensure that in performing the Services it adopts safe methods of work in order to protect the health and safety of:
 - 22.1.8.1 the employees of the Supplier;
 - 22.1.8.2 the employees of the Customer;
 - 22.1.8.3 the employees of the Supplier Personnel; and
 - 22.1.8.4 any other persons including but without limitation, members of the public.

- 22.1.9 produce to the Customer if requested its detailed safe working system for carrying out duties under this Agreement and its health and policy statement (as required by the Health and Safety at Work etc. Act 1974).
- 22.2 The Customer shall notify the Supplier of any health and safety hazards which may exist or arise at any Customer premises and which may affect the Supplier. The Supplier shall draw these hazards to the attention of its Supplier Personnel.
- 22.3 The Supplier shall inform all persons engaged in the performance of this Agreement at the premises of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.
- 22.4 Nothing in this Clause 22 shall relieve the obligations of the Supplier to comply with its statutory duties.
23. **OFFERS OF EMPLOYMENT**
- 23.1 For the duration of the Agreement and for a period of twelve (12) months thereafter the Supplier shall not employ or offer employment to any of the Customer's staff who have been associated with the Services without the Customer's prior agreement in writing save that this condition shall not relate to a bona fide advertisement for employment with the Supplier.
24. **CONFLICTS OF INTEREST**
- 24.1 The Supplier shall take appropriate steps to ensure that neither itself nor the Supplier Personnel is placed in a position where there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of such persons and the duties owed to the Customer under the provisions of this Agreement. The Supplier will disclose to the Customer full particulars of any such conflict of interest which may arise.
- 24.2 The provisions of this Clause 24 shall apply during the continuance of this Agreement and indefinitely after termination. Failure to disclose this information will be considered a material breach incapable of remedy and this Agreement may be terminated in accordance with Clause 35.
25. **DISCRIMINATION AND EQUALITY**
- 25.1 The Supplier shall ensure that it complies with all relevant requirements of all current equalities Law, regulations and duties including but not limited to the Equality Act 2010 and all other similar Law ("**Equality Law**") in force from time to time together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission and shall in addition discharge its obligation under this Agreement and provide the services in a manner consistent with the Customer's equalities policies.
- 25.2 The Supplier shall not unlawfully discriminate within the meaning and scope of any Equality Law (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 25.3 The Supplier shall provide any information reasonably requested by the Customer in respect of the Equality Law in so far as it relates to the performance of this Agreement.

25.4 The Customer is required by the Welsh Language Act 1993 as amended together with the Welsh Language (Wales) Measure 2011 to maintain a Welsh Language Scheme. The Supplier shall comply with the Customer's Welsh Language Scheme as updated from time to time and notified to the Supplier in writing.

25.5 The Supplier shall take all reasonable steps to secure the observance of this Clause 25 by all servants, employees or agents of the Supplier and all Supplier Personnel and any Sub-Contractors employed in performance of this Agreement.

26. HUMAN RIGHTS

26.1 The Supplier shall not (and shall ensure that the Supplier Personnel shall not) do or permit or allow anything to be done which may result in the Customer acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

26.2 The Supplier shall (and shall use its reasonable endeavours to procure that its staff shall) at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement.

26.3 The Supplier shall undertake, or refrain from undertaking, such acts as the Customer requests so as to enable the Customer to comply with its obligations under the Human Rights Act 1998.

27. PROTECTION OF PERSONAL DATA

27.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule 4 (*Data Processing*) by the Customer and may not be determined by the Supplier.

27.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

27.3 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

27.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;

27.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services

27.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and,

27.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

27.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement::

27.4.1 process that Personal Data only in accordance with the instructions of the Customer

and as set out within Schedule 4 (*Data Processing*), unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

27.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the -

27.4.2.1 nature of the data to be protected;

27.4.2.2 harm that might result from a Data Loss Event ;

27.4.2.3 state of technological development; and

27.4.2.4 cost of implementing any measures;

27.4.3 ensure that :

27.4.3.1 the Supplier's Staff do not process Personal Data except in accordance with this Agreement (and in particular Schedule 4 (*Data Processing*));

27.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Supplier Staff who have access to the Personal Data and ensure that they:

27.4.3.2.1 are aware of and comply with the Supplier's duties under this Clause 28;

27.4.3.2.2 are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;

27.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and

27.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;

27.4.3.3 not transfer Personal Data outside the UK or the European Economic Area ("**EEA**") (transfers between the UK and the EEA shall be permitted, to the extent permitted by the Data Protection Legislation from time to time, and provided that this is done in accordance with the Data Protection Legislation and the conditions below) unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

27.4.3.3.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance

- with UK GDPR Article 46) as determined by the Customer;
- 27.4.3.3.2 the Data Subject has enforceable rights and effective legal remedies;
 - 27.4.3.3.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations); and
 - 27.4.3.3.4 the Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - 27.4.4 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data;
- 27.5 Subject to clause 28.6, the Supplier shall notify the Customer immediately if the Supplier -
 - 27.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request;
 - 27.5.2 receives a request to rectify, block or erase any Personal Data;
 - 27.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 27.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 27.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 27.5.6 becomes aware of a Data Loss Event.
- 27.6 The Supplier's obligation to notify under Clause 28.5 above shall include the provision of further information to the Customer in phases, as details become available.
- 27.7 Taking into account the nature of the processing, the Supplier shall provide the Customer with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 28.5 above (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
 - 27.7.1 the Customer with full details and copies of the complaint, communication or request;
 - 27.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 27.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data

Subject;

- 27.7.4 assistance as requested by the Customer following any Data Loss Event; and
 - 27.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 27.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:
- 27.8.1 the Customer determines that the processing is not occasional;
 - 27.8.2 the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; and
 - 27.8.3 the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 27.9 The Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 27.10 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
- 27.11 Before allowing any Sub-Processor to process any Personal Data related to this Agreement, the Supplier must:
- 27.11.1 notify the Customer in writing of the intended Sub-Processor and processing;
 - 27.11.2 obtain the written consent of the Customer;
 - 27.11.3 enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 28 such that they apply to the Sub-Processor; and
 - 27.11.4 provide the Customer with such information regarding the Sub-Processor as the Customer may reasonably require.
- 27.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor
- 27.13 The Customer may, at any time on not less than twenty (20) Working Days' notice, revise this Clause 28 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 27.14 The Parties agree to take account of any guidance issued by the Information Commissioner's

Office.

28. ENVIRONMENTAL REQUIREMENTS

28.1 The Supplier shall;

28.1.1 have a sustainable approach to waste management and not treat, keep or dispose of any waste produced and/or carried by the Supplier as a result of executing this Agreement in a manner likely to cause harm to the health and safety of any person or to the environment and shall comply with all relevant Law including the Producer Responsibility (Packaging Waste) Regulations 1997 – 2007 together with any amendments, additions or re-enactments that may take place from time to time;

28.1.2 perform the Agreement in such a way as 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;

28.1.3 during the execution of this Agreement, take such steps as are reasonably practicable to avoid (or, where avoidance is not possible, to minimise) harm to the environment.

29. CHANGE CONTROL

General Change

29.1 The Customer has the right to propose any variation(s) to the Services (including a request for the Supplier to cease any one or more or any part of the Services) in accordance with this Clause 29. If the Customer wishes to propose a variation to the Services, the Customer shall serve a Change Control Request on the Supplier. No change shall be deemed to occur, and the Supplier shall not be entitled to any additional payment, unless the procedures in this Clause 29 are complied with.

29.2 The Supplier shall accommodate any variation(s) required by the Customer provided that –

29.2.1 such variation would not (if implemented) contravene any Law or the Health and Safety Regime (and the Supplier shall promptly advise the Customer if it believes that the variation would contravene any Law or the health and Safety Regime); and

29.2.2 the Supplier shall only be entitled to payment for any agreed additional costs it incurs as a result on the basis set out in this Clause 29.

29.3 The Change Control Request shall set out the variation to the Services required by the Customer in detail and request a cost estimate (the "**Estimate**") of the costs arising as a direct result of the variation.

29.4 The Supplier shall provide the Customer with the Estimate within ten (10) Working Days of the receipt of the Change Control Request or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of:

29.4.1 the impact of the proposed variation on the provision of the Services;

- 29.4.2 any amendment required to this Agreement to accommodate the proposed variation;
 - 29.4.3 the overall (having regard to the Supplier's general duty of cost efficiency under this Agreement) part year and/or full year cost of, or savings from, implementing the proposed variation; and
 - 29.4.4 any other information reasonably requested by the Customer or appearing to the Supplier to be relevant.
- 29.5 As soon as practicable after the Supplier provides the Customer with the Estimate, the Customer and the Supplier shall meet to discuss and agree any issues arising from the Change Control Request or the Estimate.
- 29.6 The Parties shall endeavour to agree the terms of the Estimate. In the event that the Parties cannot agree any part of the content of the Estimate within a reasonable time of the meeting under Clause 29.5 then the Change Control Request shall be withdrawn by the Customer.
- 29.7 As soon as practicable after any part of the contents of the Estimate have been agreed in accordance with Clause 29.6 the Customer shall:
- 29.7.1 confirm in writing that it wishes to proceed with the Change Control Request (or that part of it which has been agreed or determined as above); or
 - 29.7.2 withdraw the Change Control Request (or the relevant part).
- 29.8 If the Customer confirms that it wishes to proceed with the Change Control Request, the Services shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from the payments, as appropriate.
- 29.9 If the Customer has not confirmed or withdrawn the Change Control Request within twenty (20) calendar days of the date of agreement in accordance with Clause 29.6 then the Change Control Request shall be deemed to be withdrawn by the Customer.
- 29.10 The Customer shall not be liable for any costs incurred by the Supplier in implementing the procedures pursuant to this Clause 29.

Legislative Change

- 29.11 The Supplier shall bear the cost of complying with all Law and any amendments thereto. In the event that a change in Law necessitates a material change to the performance of this Agreement and provided that such change could not have reasonably been foreseen by the Supplier at the date of the Agreement, the Parties shall enter into negotiations in good faith to make such adjustments to the Price as may be necessary to compensate the Supplier for any additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such changes. If the Parties cannot reach agreement on such costs within a reasonable time, then the Customer may at its discretion terminate this Agreement in whole or in part.

30. CORRUPT GIFTS, PAYMENTS OF COMMISSION AND PREVENTION OF BRIBERY

- 30.1 The Supplier:
- 30.1.1 shall not, and shall procure that any Supplier Personnel shall not, in connection with this Agreement:
 - 30.1.1.1 commit a Prohibited Act;
 - 30.1.1.2 commit an offence under the Prevention of Corruption Acts 1989 to 1916; or
 - 30.1.1.3 commit an offence under Sections 117(2) and (3) of the Local Government Act 1972;
 - 30.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Customer, or that an agreement has been reached to that effect, in connection with the execution of this Agreement, excluding any arrangement of which full details have been disclosed in writing to the Customer before execution of this Agreement;
- 30.2 The Supplier shall:
- 30.2.1 if requested, provide the Customer with any reasonable assistance to enable the Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;
 - 30.2.2 within ten (10) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing (such certification to be signed by a senior officer of the Supplier) compliance with this Clause 30 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Agreement. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request.
- 30.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the Customer) to prevent any Supplier Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 30.4 If any breach of Clause 30.1 is suspected or known, the Supplier must notify the Customer immediately.
- 30.5 If the Supplier notifies the Customer that it suspects or knows that there may be a breach of Clause 30.1, the Supplier must respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit books, records and any other relevant documentation.
- 30.6 The Customer may terminate this Agreement by written notice with immediate effect if the Supplier or Supplier Personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 30.1.
- 30.7 Any notice of termination under Clause 30.6 must specify:
- 30.7.1 the nature of the Prohibited Act;

- 30.7.2 the identity of the party whom the Customer believes has committed the Prohibited Act; and
- 30.7.3 the date on which this Agreement will terminate.
- 30.8 Despite Clause 31, any dispute relating to:
- 30.8.1 the interpretation of Clause 30; or
- 30.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the Customer and its decision shall be final and conclusive.
- 30.9 Any termination under Clause 30.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer and the Parties agree that the Customer may recover from the Supplier the amount or value of any gift, consideration or commission given in contravention of this Clause 30, together with all costs to the Customer of terminating and entering into an alternative with another supplier including associated cost of any re-tendering or re-advertising.
- 31. DISPUTE RESOLUTION PROCESS**
- 31.1 The Parties shall refer all matters in dispute arising out of or in connection with this Agreement for consideration and decision by directors or designated senior managers of each Party, who shall use their reasonable endeavours to reach a solution to any such dispute within a period of twenty one (21) days from the date notified in writing by one party to the other in which details of the dispute are specified, and failing which, unless the Parties agree another period of time, any such dispute may, upon written agreement of the Parties be dealt with as set out in Clause 31.2.
- 31.2 If the dispute cannot be resolved by the Parties' representatives nominated under Clause 31.1, within fifteen (15) Working Days or such other period as shall have been agreed between the parties then the dispute may be referred to mediation under the supervision of the Centre for Effective Dispute Resolution ("**CEDR**"). Mediation shall commence by either Party serving on the other written notice ("**Mediation Notice**") setting out in summary the issues in dispute and calling upon that other Party to join in an approach to CEDR for the appointment of a mediator.
- 31.3 The mediation shall be conducted under the CEDR Model Mediation Procedure using a sole mediator in or substantially in accordance with CEDR's recommended agreement for the time being in use. The mediator must be a CEDR accredited mediator agreed between the Parties, or in default of agreement, within ten (10) Working Days of notice by either Party calling upon the other to engage in mediation, appointed by CEDR (provided both Parties have agreed to mediation).
- 31.4 The Parties agree to co-operate fully and promptly and in good faith with CEDR and/or the mediator in the performance of their obligations under this Clause 32. Both Parties will afford the mediator all necessary assistance which the mediator requires to consider the dispute including but not limited to full access to any documentation or correspondence relating to the matters in dispute. All negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the Parties in any future legal proceedings.

- 31.5 If, with the assistance of the mediator, the Parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representatives of each of the Parties, shall be binding on the Parties.
- 31.6 Unless agreed otherwise in the course of the procedure each Party shall bear its own costs of the mediation.
- 31.7 If and to the extent that after engaging in good faith in mediation the Parties do not resolve the matters in dispute, all matters remaining in dispute shall be referred to the Courts in accordance with Clause 56 below.
- 31.8 In the event that the process of mediation does not succeed in finding a resolution to the dispute within a period of forty (40) Working Days, or such other time as the Parties may agree, either Party may take such action as is available to it under this Agreement or at Law.
- 31.9 Nothing in this Agreement shall be taken to prevent or constrain either Party from seeking an injunction or other urgent remedy, or from commencing proceedings to avoid its rights being adversely affected by applicable limitation periods.
- 31.10 Each Party's respective obligations to be carried out under this Agreement shall not cease or be delayed by the invocation of this dispute resolution procedure.

32. LIMITATION OF LIABILITY

- 32.1 Nothing in this Agreement shall limit or exclude the liability of either Party for:
- 32.1.1 death of or personal injury to any individual resulting from negligence;
 - 32.1.2 fraud or fraudulent misrepresentation; or
 - 32.1.3 any other act or omission, liability for which may not be limited under any applicable law.
- 32.2 Subject always to Clause 32.1, and notwithstanding any other provision contained herein, the total liability of the Supplier (whether under contract, tort or statutory provision) arising out of or in connection with this Agreement shall in no circumstances exceed five million (£5,000,000) pounds in respect of any one incident or series of related incidents and ten million (£10,000,000) pounds in the aggregate for any or all incidents (whether related or not) arising during the period of the Agreement.
- 32.3 Without prejudice to the Customer's obligation to pay the charges as they fall due, the Customer's liability under this Agreement shall be limited to one hundred per cent (100%) of the total Price payable for the Services pursuant to this Agreement.
- 32.4 Subject always to Clause 32.2, in no event shall either Party be liable to the other for:
- 32.4.1 indirect or consequential loss or damage; and/or
 - 32.4.2 loss of profits; and/or
 - 32.4.3 loss of business; and/or

32.4.4 loss of revenue; and/ or

32.4.5 loss of goodwill,

save as expressly provided for under the terms of this Agreement.

32.5 The provisions of Clause 32.4 shall not be taken as limiting the right of the Customer to claim from the Supplier for any:

32.5.1 additional operational and administrative costs and expenses; and/or

32.5.2 any costs or expenses rendered worthless; and/or

32.5.3 loss or damage resulting directly from the default of the Supplier.

32.6 The Parties expressly agree that neither Party shall be entitled to an order for specific performance to enforce any provision hereunder.

32.7 The Parties expressly agree that should any limitation or provision contained in this Clause 30 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Clause 33.

33. **INSURANCE**

33.1 The Supplier shall hold and shall ensure that all Sub-Contractors involved in the provision of the Services shall maintain the following insurance cover with a reputable insurance company:

33.1.1 Professional Indemnity (if required);

33.1.2 Public Liability including Products Liability; and

33.1.3 Employer's Liability;

in each case with the minimum level of indemnity set out in the Invitation to Tender or any part of this Agreement, and if no level is specified, then a minimum level of indemnity set at five million pounds (£5,000,000) or such higher level as is consistent with Good Industry Practice and any applicable Law.

33.2 Such insurance to be held by the Supplier or by any Sub-Contractor may be limited (with the exception of employer's liability insurance) in respect of any one claim (but shall not be limited in any other respect) PROVIDED THAT any such limit shall in any event be at least one million pounds (£1,000,000). This Clause shall not be construed as imposing any limit of liability on the Supplier.

33.3 Such insurance shall be maintained for a minimum of six (6) years following expiration or earlier termination of this Agreement.

33.4 The Supplier shall from time to time and upon being given not less than two (2) Working Days' notice when so required by the Customer produce the relevant policy of insurance and receipts for premiums or other satisfactory evidence of insurance cover.

- 33.5 If the Supplier or any Sub-Contractor fails or is unable to maintain insurance in accordance with this Clause 33, or fails to provide evidence in accordance with Clause 33.4, the Customer may (so far as it is able), purchase such alternative insurance cover as it deems to be reasonably necessary and shall be entitled to recover all reasonable costs and expenses it incurs in doing so from the Supplier.
- 33.6 The Supplier's liabilities under this Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in clause this Clause 33.
- 33.7 The Supplier shall ensure that the Customer's interest is noted on each insurance policy, or that a generic interest clause has been included.

34. FORCE MAJEURE

- 34.1 Subject to the remaining provisions of this Clause 34 either Party to this Agreement may claim relief from liability for non-performance of its obligations to the extent any non-performance is due to a Force Majeure Event.
- 34.2 A Party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.
- 34.3 An Affected Party cannot claim relief as a result of a failure or delay by any other person in the performance of that other person's obligations under an agreement with the Affected Party (unless that other person is itself prevented from or delayed in complying with its obligations as a result of a Force Majeure Event).
- 34.4 The Affected Party shall immediately give the other Party written notice of the Force Majeure Event. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.
- 34.5 As soon as practicable following after the Affected Party's notification, the Parties shall discuss in good faith and endeavour to agree a means of performing the Agreement so far as reasonably possible for the duration of the Force Majeure Event. In the event that the Parties fail to agree a means of performing the Agreement within two (2) months from the date of the Affected Party's notification, the Customer may in its absolute discretion elect to terminate the Agreement in whole or in part.
- 34.6 The Affected Party shall use all reasonable endeavours to continue to perform, or resume performance of this Agreement for the duration of such Force Majeure Event and if the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 34.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

- 34.8 In the event that the Force Majeure Event continues for a period of two (2) months from the date of the Affected Party's notification, the Customer may in its absolute discretion elect to terminate the Agreement in whole or in part.

35. **TERMINATION**

- 35.1 The Customer may at any time by notice in writing terminate this Agreement as from the date of service of such notice if:

35.1.1 any of the circumstances detailed in Clause 8.2 (*Time of Delivery*), Clause 20.5 (*Supplier Personnel*), Clause 30 (*Corrupt Gifts and Payments of Commission*) and/or Clause 37.8 (*Confidentiality*); or

35.1.2 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Supplier or its Parent Company provided that the Customer shall only be permitted to exercise its rights pursuant to this Clause 35.1.2 for six (6) months after each such change of control and shall not be permitted to exercise such rights where the Customer has agreed in advance in writing to the particular change of control and such change of control takes place as proposed; or

35.1.3 the Supplier, being a company, passes a resolution, or the Court makes an order that the Supplier or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the Supplier or the Parent Company, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the Supplier or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

35.1.4 the Supplier, being an individual, or where the Supplier is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors, or any similar event occurs under the law of any other jurisdiction; or

35.1.5 the Supplier commits a material breach of the terms of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within twenty (20) Working Days after being notified in writing to do so; or

- 35.1.6 the Supplier commits a series of breaches of this Agreement which when taken together amount to a material breach of this Agreement; or
 - 35.1.7 the Supplier repeatedly breaches any terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or inability to give effect to the terms of this Agreement; or
 - 35.1.8 The Agreement has been subject to substantial modification as to its scope and value such that a new procurement exercise would be required to be conducted in accordance with the provisions of Regulation 72(9) of PCR 2015; or
 - 35.1.9 The Supplier, at the time that the Tender was awarded to the Supplier, had been convicted of any one or more of the mandatory grounds for exclusion from participation in the Tender as those grounds are set out in Regulation 57 of PCR 2015; and
 - 35.1.10 The Tender should not have been awarded to the Supplier in view of a serious infringement of the obligations under the PCR 2015 has and that has been declared or found by a Court of competent jurisdiction.
- 35.2 For the purposes of clause 36.1 “**Material Breach**” shall mean a breach (including an anticipatory breach) that is serious in the widest sense of having a material adverse effect on the performance of the Services and/or benefit which the Customer would otherwise derive from the performance of the Supplier's obligations under this Agreement.
- In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap mistake or misunderstanding.
- 35.3 Without affecting any other right or remedy available to it, the Customer may terminate this Call-Off Contract by giving to the Supplier six (6) months' prior notice in writing.
36. **CONSEQUENCES OF TERMINATION**
- 36.1 The termination or expiry of this Agreement or any Order shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party.
- 36.2 In the event of any termination of this Agreement (and/or of any Order), any Orders which at the date of termination have yet to be discharged shall be terminated and the Customer shall, in respect of any non-discharged Orders, be entitled without prejudice to the Customer's other rights and remedies, to obtain a refund of any payments made by the Customer in respect of any Services which have not been performed by the Supplier in accordance with the terms of the non-discharged Order.
- 36.3 In the event of the termination of this Agreement by either Party, the provisions of this Clause 36 (*Consequences of Termination*) and Clauses 28 (*Protection of Personal Data*), 12 (*Set-Off*), 24 (*Transfers of Undertakings*), 31 (*Corrupt Gifts and Payment of Commission*), 33 (*Limitation of Liability*), 33 (*Insurance*), , 37 (*Confidentiality*), 38.3 (*Freedom of Information*), 44 (*Indemnity*), 45 (*Information and Assistance*), and 57 (*Law and Jurisdiction*) shall survive the termination of this Agreement.

- 36.4 Where, following a termination by the Customer pursuant to Clause 35.1 (*Termination*) the Customer re-lets the Agreement, or any part of it, to an alternative supplier, the Supplier shall make good to the Customer all losses damages and expenses it may incur or be liable to in consequence of such re-letting.
37. **CONFIDENTIALITY**
- 37.1 The Supplier acknowledges that any Confidential Information obtained from or relating to the Customer, its employees or agents is the property of the Customer.
- 37.2 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall;
- 37.2.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 37.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 37.3 Clause 37.1 shall not apply to the extent that:
- 37.3.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 38.3 (*Freedom of Information*);
- 37.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 37.3.3 such information was already in the public domain at the time of the disclosure otherwise than by a breach of this Agreement; or
- 37.3.4 it is independently developed without access to other Party's Confidential Information.
- 37.4 The Supplier may only disclose the Customer's Confidential Information to the Supplier Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Supplier Personnel are aware of and shall comply with these obligations as to confidentiality.
- 37.5 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Agreement.
- 37.6 The Supplier undertakes (except as may be required by Law or in order to instruct professional advisers in connection with this Agreement) not to:
- 37.6.1 disclose or permit disclosure of any details of this Agreement to the news media or any third party other than Supplier Personnel;
- 37.6.2 disclose that the Customer is a customer or client of the Supplier; or
- 37.6.3 use the Customer's name and or brand in any promotion of marketing or announcement of orders, without the prior written consent of the Customer.

37.7 At the written request of the Customer, the Supplier shall procure that those members of the Supplier Personnel identified in the Customer's notice sign a Confidentiality Undertaking prior to commencement of any work in accordance with this Agreement.

37.8 In the event that the Supplier fails to comply with this Clause 37 the Customer reserves the right to terminate the Agreement by notice in writing with immediate effect.

38. **SECURITY OF CONFIDENTIAL INFORMATION**

38.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of this Agreement, the Supplier undertakes to maintain appropriate security systems, which may be subject to review and approval by the Customer. The Supplier will immediately notify the Customer of any breach of security in relation to Confidential Information and all data obtained in the performance of the Agreement and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Supplier's obligations under Clauses 28 (Protection of Personal Data) and 26 and 37.

38.2 The Supplier shall at its own expense co-operate with the Customer in any investigation that the Customer considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

38.3 The Customer may require the Supplier to alter or update any security systems at any time during the Call-Off Contract Period.

39. **FREEDOM OF INFORMATION**

39.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and co-operate with the Customer (at the Supplier's expense) to enable the Customer to comply with these information disclosure requirements.

39.2 The Supplier shall and shall procure that its Sub-Contractors shall:

39.2.1 transfer all Requests for Information to the Customer as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;

39.2.2 provide the Customer with a copy of all Information in its possession or power in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer requesting that Information; and

39.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5(2) of the EIR.

39.2.4 For the purposes of this Clause 40.2, "**reasonable assistance**" shall include the redaction of documentation within five (5) days of a request from the Welsh Ministers to do so.

39.3 The Customer shall be responsible for determining in its absolute discretion whether the Confidential Information and/or any other Information:

- 39.3.1 is exempt from disclosure under the FOIA and the EIR; and
- 39.3.2 is to be disclosed in response to a Request for information.
- 39.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 39.5 The Supplier shall ensure all information submitted in connection with the tendering process or in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 39.6 The Supplier acknowledges that any lists or schedules provided by it as part of the tendering process outlining the Supplier's Confidential Information are of indicative value only and that the Customer may nevertheless be obliged to disclose Confidential Information in accordance with this Clause.
- 40. PUBLICITY**
- 40.1 Except with the written consent of the Customer, , the Supplier shall not make any press announcements or publicise this Agreement or the Services in any way.
- 40.2 Both Parties shall take all reasonable steps to ensure the observance of the provisions of Clause 40.1 by all their servants, employees, agents and consultants and the Supplier shall take all reasonable steps to ensure the observance of the provisions of Clause 40.1 by its Supplier Personnel.
- 40.3 The Supplier shall not use business logos or publicise the logos of the Customer either in print or electronically without the express written consent of the Customer.
- 40.4 The Parties acknowledge that the Wales Audit Office and the Audit Commission has the right to publish details of this Agreement (including Confidential Information) in their relevant reports to the Senedd and to Parliament (as the case may be) to the extent permitted by law.
- 41. ASSIGNMENT AND SUB-CONTRACTING**
- 41.1 This Agreement is personal to the Supplier.
- 41.2 The Supplier shall not assign, novate, or otherwise dispose of this Agreement or any part of it without the previous consent in writing of the Customer acting in its absolute discretion.
- 41.3 The Supplier shall not sub-contract the performance of its obligations under this Agreement without the prior written consent of the Customer, such consent not to be unreasonably withheld or delayed.
- 41.4 The Supplier may sub-contract the performance of its obligations under this Agreement to any Sub-Contractor or consortium member expressly identified in its Tender for that purpose.
- 41.5 Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.
- 41.6 Subject to Clause 41.7, the Customer shall be entitled to:

- 41.6.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part of it to any Contracting Authority; or
- 41.6.2 novate this Agreement to any other body (including but not limited to any private sector body) which substantially performs any of the functions that previously had been performed by the Customer.
- 41.7 This Agreement is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.
- 41.8 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, affect the validity of this Agreement. In such circumstances, this Agreement shall be binding on any successor body to the Customer.
- 41.9 In the event that the Supplier, in accordance with the terms of this Agreement, enters into a sub-contract in connection with this Agreement, the Supplier shall ensure that a term is included in the sub-contract which requires the Supplier to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the sub-contract (as appropriate).
- 42. JOINT AND SEVERAL LIABILITY**
- 42.1 Where the Supplier is more than one person, each of those persons shall be jointly and severally liable for the Supplier's obligations and liabilities arising under this Agreement. The Customer may take action against, or release or compromise the liability of, or grant any time or other indulgence to, any one of the persons comprising the Supplier without affecting the liability of any other of them.
- 42.2 Where the Supplier is part of a consortium, the Supplier shall ensure that its consortium arrangements provide that each member of its consortium is jointly and severally liable for the Supplier's obligations and liabilities arising under this Agreement.
- 43. INDEMNITY**
- 43.1 The Supplier shall indemnify and keep the Customer indemnified in full against all direct costs, liabilities, expenses, damages and losses (including but not limited to any legal and other professional fees and expenses awarded against or incurred or paid by the Customer) as a result of or in connection with:
- 43.1.1 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its Supplier Personnel or its Sub-Contractors; and
- 43.1.2 any claim made against the Customer for actual or alleged infringement of a third Party's Intellectual Property Rights arising out of, or in connection with, the Services.
- 43.2 If a payment due from the Supplier under this Clause 44 is subject to tax, (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from

the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

44. **INFORMATION AND ASSISTANCE**

44.1 Throughout the duration Agreement and for a period of six (6) years after its expiry, the Supplier shall:

44.1.1 maintain full and accurate records of the Agreement, all expenditure reimbursed by the Customer and all payments made by the Customer; and shall on request afford the Customer or the Customer's Representatives including the Wales Audit Office, the Audit Commission and the Customer's external auditors such access to and copies of those records as may be required in connection with the Agreement; and

44.1.2 give all reasonable assistance to the Customer including attending all meetings of any body of the Customer and/or of the Customer's Executive in order to answer questions pertaining to this Agreement should the need arise.

45. **DESIGNATED REPRESENTATIVES**

45.1 The Customer's Representative has the authority to act on behalf of the Customer for all purposes connected with the Agreement.

45.2 The Customer shall also appoint an authorised representative (the "**Authorised Representative**") to act should the Customer Representative not be available.

45.3 The Supplier shall nominate a supplier's representative (the "**Supplier's Representative**") at the commencement of this Agreement who shall be empowered to act on behalf of the Supplier for all purposes connected with the Agreement which will include but not be limited to:

45.3.1 managing the provision of the Services;

45.3.2 attending meetings with the Customer Representative to review the provision of the Services;

45.3.3 providing all information and documentation reasonably required by the Customer in respect of the Services for the performance of its duties.

45.4 The Customer reserves the right to reject the appointment of any person as the Supplier's Representative who does not in the opinion of the Customer have appropriate experience in the management of services similar to the Services or who is otherwise unsuitable for such appointment.

46. **NOTICES**

46.1 Except as expressly provided otherwise in this Agreement, no communication from one Party to the other shall have any validity under this Agreement unless made in writing.

46.2 The Parties agree that e-mail will be considered a satisfactory form of communication for the purposes of Clause 47.1.

- 46.3 Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email and confirmed by registered first class post or recorded delivery to the address provided by the Party concerned.
- 46.4 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time then notice is left at the proper address;
 - (b) if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Working Day after posting;
 - (c) if sent by email, shall be deemed to be served on the day of transmission if transmitted before 4:00 pm on a Working Day but otherwise on the next Working Day, provided that no error report is generated and confirmation by registered post or recorded delivery is sent the same day.
- 46.5 Unless otherwise agreed in writing between the Parties, for the purposes of Clause 47.3 above the address and contact details of the Supplier shall be as set out in the contact form in the Invitation to Tender and the Customer's details shall be as referred to in the Award Decision Notice.
- 46.6 The Parties agree that this Clause 47 does not apply to the service of any proceedings or other documents in any legal action.
47. **SEVERABILITY**
- 47.1 If any provision or part-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 hereof shall continue in full force and effect as if this Agreement had been executed with the invalid illegal or unenforceable provision eliminated.
- 47.2 In the event of a severed term being so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 47.3 If no agreement has been reached between the Parties within twenty (20) Working Days of commencement, either Party may by notice to the other terminate the Agreement and neither Party shall bear any liability to the other in respect of such termination (but without prejudice to any other provisions of this Agreement).

48. **WAIVER**

48.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled under this Agreement or by law, shall not constitute a waiver of that or any other right or remedy and shall not cause a diminution of the obligations established by this Agreement.

48.2 Waiver of any default shall not constitute a waiver of any subsequent default.

48.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing.

49. **REMEDIES CUMULATIVE**

49.1 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

50. **AMENDMENTS TO THIS AGREEMENT**

50.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Customer's Representative on behalf of the Customer and the Supplier's Representative on behalf of the Supplier.

50.2 Orders placed under this Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Customer's Representative on behalf of the Customer or by the Supplier's Representative on behalf of the Supplier.

51. **THIRD PARTY RIGHTS**

51.1 Save as otherwise expressly provided in this Agreement, a person who is not a Party to this Agreement shall not have any rights under or in connection with it and shall not be entitled to enforce any part of it.

52. **NO AGENCY OR PARTNERSHIP**

52.1 The Supplier is not and shall not in any circumstances hold itself out as being the servant or agent of the Customer. The Supplier shall not hold itself out as being authorised to enter in any contract on behalf of the Customer or in any way bind the Customer to the performance, variation, release or discharge of any obligation to a third party. The Supplier Personnel shall not hold themselves out to be and shall not be held out by the Supplier as being servants or agents of the Customer.

52.2 Nothing in this Agreement shall be construed as constituting a partnership between the Parties.

53. **ENTIRE AGREEMENT CLAUSE**

53.1 This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral relating to its subject matter.

53.2 Each Party acknowledges that in entering into this Agreement, it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

53.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

54. **COSTS**

54.1 Except as provided expressly in this Agreement, each party shall pay its own costs incurred in connection with the negotiation, preparation and execution of this Agreement and any documents referred to in it.

55. **COUNTERPARTS**

55.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement. No counterpart shall be effective until each Party has signed at least one counterpart.

56. **LAW AND JURISDICTION**

56.1 This Agreement is a contract made in Wales and shall be governed and construed in accordance with the law of England and Wales, as it applies in Wales. Subject to Clause 31 the Parties irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales sitting in the locality of the Customer, or at Cardiff.

SCHEDULE 1 – PRICE

- For the avoidance of doubt, the total contract value will not exceed £323,700.00 exc. VAT for the duration of the contract.
- Any other additional services (if required by the IPO) & not listed within the pricing schedule (below) will be charged at a maximum of the framework rate.

REDACTED

SCHEDULE 2 – KEY PERFORMANCE INDICATORS

KPI/SLA	Service Area	KPI/SLA Description	Target
1	Quality of Services	The Supplier shall exercise reasonable skill, care, and diligence in performance of all its obligations performed under or in connection with the Contract.	100%
3	Delivery of Services	The clinical appointment and the subsequent Report to be provided to IPO HR within 10 working days	95%
4	Customer Service	For the duration of the contract Account Manager (or suitable deputy) attendance at quarterly (or at another interval as agreed by both parties) review meetings to assess and review provider performance.	100%
5	Customer Service	Provision of a telephone advice service for the referring IPO HR Staff Advisor available between 0900hrs and 1700hrs, Monday to Friday. Response to queries with 48 hours.	100%
6	Delivery of Services	Reports provided to the IPO To be effectively presented, clear and bespoke to the individual being assessed.	100%

SCHEDULE 3 - SPECIAL TERMS AND CONDITIONS

None

SCHEDULE 4 Data Processing

1. The Supplier shall comply with any further written instructions with respect to processing by the Customer.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Provision of Occupational Health Services for the Intellectual Property Office (IPO). This includes all subject matter listed in the Appendix A – Specification including advice on absence management cases, referrals, medical advice, fitness to attend the office for work, or recommendation for Ill Health Retirement.
Duration of the processing	The processing will take place for the duration of the contract and any extensions to the contract.
Nature and purposes of the processing	<p>The Parties will Process Personal Data in the context of:</p> <ul style="list-style-type: none">• Requests for Occupation Health Services and the provision of medical advice / reports for/on IPO employees;• Management of the Call-Off Contract and all associated activities. <p>The Customer shall cover all intended purposes.</p>
Type of Personal Data	IPO (Buyer) Staff & Supplier Staff names, email addresses, identification number, IP addresses, location data of staff, medical information, reports and other Personal Data such other personal data as is required to meet the objectives/specification of the Occupation Health services in this Call-Off Contract.
Categories of Data Subject	<p>The Data Subjects will include:</p> <ul style="list-style-type: none">• Individuals working for the Customer;• Individuals working for the Supplier;

	<ul style="list-style-type: none"> • Individuals with whom the Customer does business (whether directly or through their employer) or otherwise has dealings with.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<p>According to IPO (Customer) disposal & retention policies (or as otherwise agreed by the Parties in writing).</p> <p>Supplier: Will hold your data securely for the minimum time required in law where upon it shall be securely destroyed.</p>

SCHEDULE 5 – TUPE – NOT APPLICABLE

1. DEFINITIONS

1.1. In this Schedule, the following definitions shall apply:

Acquired Rights Directive: the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after Exit Day;

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- f) employment claims whether in tort, contract or statute or otherwise;
- g) any investigation relating to employment matters 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;

Employment Regulations: the **Transfer of Undertakings** (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

Former Supplier: a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any Sub-Contractor of such supplier (or any Sub-Contractor of any such Sub-Contractor);

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Replacement Services: any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Customer internally and/or by any third party;

Replacement Supplier: any third party service provider of Replacement Services appointed by the Customer from time to time (or where the Customer is providing replacement Services for its own account, the Customer);

Replacement Sub-Contractor: a Sub-Contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any Sub-Contractor of any such Sub-Contractor);

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Supplier's Provisional Personnel List or Supplier's Final Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:

- a) their ages, dates of commencement of employment or engagement and gender;
- b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- c) the identity of the employer or relevant contracting Party;
- d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- e) their wages, salaries and profit sharing arrangements as applicable;
- 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;
- g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- 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
- j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Supplier Personnel: all directors, officers, employees, agents, consultants and contractors of the Supplier and/or any Sub-Contractor engaged in the performance of the Supplier's obligations under this Agreement;

Supplier's Final Personnel List: a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Supplier's Provisional Personnel List: a list prepared and updated by the Supplier of all Supplier Personnel who are engaged in or wholly or mainly assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

Transferring Supplier Employees: those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

2.1. Where a provision in this Schedule 5 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

3. NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

PROCEDURE IN THE EVENT OF TRANSFER

3.1. The Customer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.

3.2. If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

3.2.1. the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and

3.2.2. the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

3.3. If an offer referred to in Paragraph 3.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that

the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.

3.4. If by the end of the fifteen (15) Working Day period specified in Paragraph 3.2.2:

3.4.1.no such offer of employment has been made;

3.4.2.such offer has been made but not accepted; or

3.4.3.the situation has not otherwise been resolved,

the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

4. INDEMNITIES

4.1. Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of Paragraphs 3.2 to 3.4 above and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 4.4 below, the Customer shall:

4.1.1.)indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in Paragraph 3.2 made pursuant to the provisions of Paragraph 3.4 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

4.1.2.procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of Clause 3.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.2. If any such person as is described in Paragraph 3.2 is neither re-employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in Paragraph 3.4, such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

4.3. Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to Paragraph 4.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

4.4. The indemnities in Paragraph 4.1:

4.4.1.shall not apply to:

- 4.4.1.1. in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
- 4.4.1.2. any claim that the termination of employment was unfair because the Supplier and/or any Sub-Contractor neglected to follow a fair dismissal procedure; and
- 4.4.1.3. shall apply only where the notification referred to in Paragraph 3.2.1 is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within six months of the Effective Date.

5. PROCUREMENT OBLIGATIONS

- 5.1. Where in this Schedule 5 the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

EMPLOYMENT EXIT PROVISIONS

6. PRE-SERVICE TRANSFER OBLIGATIONS

- 6.1. The Supplier agrees that within twenty (20) Working Days of the earliest of:
 - 6.1.1. receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
 - 6.1.2. receipt of the giving of notice of early termination or any partial termination of this Agreement;
 - 6.1.3. the date which is twelve (12) months before the end of the Contract Period; and
 - 6.1.4. receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) month period),it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Customer.
- 6.2. At least twenty-eight (28) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
 - 6.2.1. the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

- 6.2.2.the Staffing Information in relation to the Supplier's Final Personnel List (insofar as such information has not previously been provided).
- 6.3. The Customer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 6.1 and 6.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 6.4. The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to Paragraphs 6.1 and 6.2 shall be true and accurate in all material respects at the time of providing the information.
- 6.5. From the date of the earliest event referred to in Paragraphs 6.1.1. 6.1.2 and 6.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 6.5.1.replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - 6.5.2.make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
 - 6.5.3.increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - 6.5.4.introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
 - 6.5.5.increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
 - 6.5.6.terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Personnel List save by due disciplinary process,
- and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Personnel List regardless of when such notice takes effect.
- 6.6. During the Contract Period, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which the Services are organised, which shall include:

6.6.1.the numbers of employees engaged in providing the Services;

6.6.2.the percentage of time spent by each employee engaged in providing the Services; and

6.6.3.a description of the nature of the work undertaken by each employee by location.

6.7. The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

6.7.1.the most recent month's copy pay slip data;

6.7.2.details of cumulative pay for tax and pension purposes;

6.7.3.details of cumulative tax paid;

6.7.4.tax code;

6.7.5.details of any voluntary deductions from pay; and

6.7.6.bank/building society account details for payroll purposes.

7. EMPLOYMENT REGULATIONS EXIT PROVISIONS

7.1. The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.

7.2. The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all

its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.

7.3. Subject to Paragraph 7.4, the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

7.3.1.any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;

7.3.2.the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:

7.3.2.1. any collective agreement applicable to the Transferring Supplier Employees; and/or

7.3.2.2. any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

7.3.3.any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

7.3.4.any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

7.3.4.1. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and

7.3.4.2. in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

7.3.5.a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national

insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

7.3.6.any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

7.3.7.any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

7.4. The indemnities in Paragraph 7.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

7.4.1.arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or

7.4.2.arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

7.5. If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

7.5.1.the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

7.5.2.the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

7.6. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

7.7. If after the fifteen (15) Working Day period specified in Paragraph 7.5.2 has elapsed:

7.7.1.no such offer of employment has been made;

7.7.2.such offer has been made but not accepted; or

7.7.3.the situation has not otherwise been resolved

the Customer shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

7.8. Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 7.5 to 7.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of Paragraph 7.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

7.9. The indemnity in Paragraph 7.8:

7.9.1.shall not apply to:

7.9.1.1. in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

7.9.1.2. any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and

7.9.2.shall apply only where the notification referred to in Paragraph 7.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six months of the Service Transfer Date.

7.10. If any such person as is described in Paragraph 7.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in Paragraphs 7.5 to 7.7, such person shall be treated as a Transferring Supplier Employee and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

7.11. The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Supplier Employees before and on the Service Transfer Date

(including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

7.11.1. the Supplier and/or any Sub-Contractor; and

7.11.2. the Replacement Supplier and/or the Replacement Sub-Contractor.

7.12. The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7.13. Subject to Paragraph 7.14, the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its Sub-Contractors against any Employee Liabilities in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee) arising from or as a result of:

7.13.1. any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor;

7.13.2. the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

7.13.2.1. any collective agreement applicable to the Transferring Supplier Employees; and/or

7.13.2.2. any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;

7.13.3. any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

7.13.4. any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment

Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- 7.13.5. any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
 - 7.13.6. any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 7.13.7. in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
 - 7.13.8. in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
 - 7.13.9. a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period from (and including) the Service Transfer Date; and
 - 7.13.10. any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 7.14. The indemnities in Paragraph 7.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.