

## SCHEDULE 1

## ORDER FORM

## FROM

<b>Authority</b>	United Kingdom Financial Investments Limited
<b>Service Address</b>	United Kingdom Financial Investments Limited UK Financial Investments Ltd
<b>For the attention of</b>	100 Parliament Street, London SW1A 2BQ
<b>Email</b>	[REDACTED]
<b>Invoice Address</b>	United Kingdom Financial Investments Limited 100 Parliament Street, London SW1A 2BQ
<b>For the attention of</b>	[REDACTED]
<b>Contact Ref:</b>	Ref: 20131127    Phone: [REDACTED]    e-mail: [REDACTED]
<b>Order Number</b>	20131127
<b>Order Date</b>	20-12-2013

## TO

<b>Service Provider:</b>	Nomura International plc
<b>For the attention of:</b>	[REDACTED]
<b>E-mail</b>	[REDACTED]
<b>Telephone number</b>	[REDACTED]

<b>Address</b>	1 Angel Lane London EC4R 3AB United Kingdom
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**1. SERVICES REQUIREMENTS****Services and Deliverables Required:**Planning phase

Assist with developing the preparations and processes for the execution;

Advising on timings and methodology of disposal;

Draw up the detailed plans for the various work streams, logistics and resources required.

Preparation phase

Evaluate options available at the time and prepare documentation as required;

If [REDACTED] is pursued the Service Provider would be required to work with UKFI [REDACTED] to successfully [REDACTED]

Implementation phase

Oversee and project manage the execution of the disposal and coordinate all sub-contractors actions and work streams;

Review and periodically update programme plans, timetables and specifications;

Monitor risks and address them when necessary;

Advise on the [REDACTED]

Assist with resolution of any queries;

If required, conduct and document a [REDACTED]

Any other tasks required to successfully execute the [REDACTED]  
[REDACTED]

Milestones and performance targets

Milestones and performance targets will be developed in due course.

The adviser will be required to allocate a contract manager who will liaise with

the Authority's contract manager via the route of weekly updates.

**(1.2) Commencement Date:**

8-1-2014

**(1.3) Price Payable by Authority:**

██████████  
Fully discretionary fee payable by authority to Service Provider based on the Service Provider's performance with a maximum of ██████████ of the ██████████  
██████████

*Sub Provider Costs*

As an underwriter, the Service Provider will have legal counsel and pay for this service. In the instance that the discretionary fee is less than the legal costs the authority will cover the balance.

██████████  
Fully discretionary fee payable by authority, to Service Provider based on Service Provider's performance with a maximum of ██████████ of the ██████████ ██████████

*Sub Provider Costs*

As an underwriter, the Service Provider will have legal counsel and pay for this service. In the instance that the discretionary fee is less than the legal costs the authority will cover the balance.

**(1.3a)**

The authority will pay a fee based on the following criteria;

**Criteria A** ██████████ linked to price achieved by UKFI on the ██████████ gross of any fees (i.e. before Nomura fee, if any, before UKFI legal and other fees including listing fees). Price is defined as "clean" price excluding accrued interest:

- ██████████ if price is ██████████
- ██████████ if price is at or above ██████████
- Sliding scale in between.

- UKFI will have the ability to revisit the upper level of the fee if market conditions change for better or worse.

**Criteria B** [REDACTED]

- Quality of advice.
- Ability to manage and run seamless execution process.
- Project management excellence and support for UKFI.

**(1.4) Completion Date:**

[REDACTED] is complete (to be completed under 9 months from start of contract date).

**2 ADDITIONAL REQUIREMENTS****(2.1) Supplemental Requirements in addition to Terms and Conditions:**

- Such additional Services as the Authority may reasonably require from time to time (after consulting with the Service Provider).

**3. PERFORMANCE OF THE SERVICES AND DELIVERABLES****(3.1) Key Personnel of the Service Provider to be involved in the Services and Deliverables:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**(3.2) Performance Standards:**

Weekly updates and any additional standards as reasonably required by the Authority.

**(3.3) Location(s) at which the Services are to be provided:**

UKFI - 100 Parliament Street, London, SW1A 2BQ

[REDACTED]

Nomura - 1 Angel Lane, London, EC4R 3AB United Kingdom

**(3.4) Quality Standards:**

As agreed between the Authority and the Provider.

**(3.5) Contract Monitoring Arrangements:**

Thirty (30) minute call or meeting with contract manager for Nomura to identify any concerns over the Contract on a monthly basis.



**4. CONFIDENTIAL INFORMATION****(4.1) The following information shall be deemed Commercially Sensitive Information or Confidential Information:**



All information supplied by and to the Contractor by the Customer during the period of the Services.

**(4.2) Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information:**



As specified in the Terms and Conditions.

**BY SIGNING AND RETURNING THIS ORDER FORM THE SERVICE PROVIDER HEREBY AGREES** to provide to the Authority the Services specified in this Order Form. This Order Form incorporates the Terms and Conditions set out in the Contract entered into by the Service Provider and UK Financial Investments Limited (UKFI).

For and on behalf of the Service Provider:

Name and Title	
Signature	
Date	13/01/2014

For and on behalf of the Authority:-

Name and Title	
Signature	
Date	14/1/14



## Schedule 2

## TERMS AND CONDITIONS

## 1. GENERAL PROVISIONS

## 1.1 Definitions

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

<b>"Affiliate"</b>	means in relation to a person , any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time
<b>"Approval" and "Approved"</b>	means the written consent of the Authority
<b>"Auditor"</b>	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires
<b>"Authority"</b>	means UK Financial Investments Ltd (UKFI)Authority
<b>"Commencement Date"</b>	means 8 <sup>th</sup> January 2014
<b>"Commercially Sensitive Information"</b>	<p>means the Confidential Information listed in the Order Form comprised of information:-</p> <p>(a) which is provided by the Service Provider and designated as commercially sensitive information by the Authority for the period set out in that Order Form and/or</p> <p>(b) that constitutes a trade secret</p>
<b>"Conditions"</b>	means these Call-Off terms and conditions
<b>"Confidential Information"</b>	<p>means</p> <p>(a) any information which has been designated as confidential by the Service Provider in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of the Service Provider, trade secrets, Intellectual Property Rights and know-how of the Service Provider ; and</p> <p>(b) the Commercially Sensitive Information</p>
<b>"Confidentiality Agreement"</b>	has the meaning given to such term in the Framework Agreement

<b>"Contract"</b>	means the written agreement between the Authority and the Service Provider consisting of the Order Form and these clauses save that, for the purposes of Clause 1.6.4 only, reference to 'Contract' shall not include the Order Form
<b>"Contracting Authority"</b>	means the Authority
<b>"Service Provider"</b>	means the person, firm or company with whom the Authority enters into the Contract as identified in the Order Form
<b>"Service Provider Personnel"</b>	means all employees, agents, consultants, directors or officers and Service Providers of the Service Provider and/or of any Sub-Service Providers
<b>"Service Provider's Group"</b>	means the Service Provider and its affiliates and subsidiary undertakings from time to time
<b>"Contract Period"</b>	means the period from the Commencement Date to:- <ul style="list-style-type: none"><li>(a) the date of expiry set out in Clause 1.3 (Initial Contract Period);</li><li>(b) following an extension pursuant to Clause 6.8 (Extension of Initial Contract Period), the date of expiry of the extended period; or</li><li>(c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract</li></ul>
<b>"Contract Price"</b>	means the price (exclusive of any applicable VAT), payable to the Service Provider by the Authority under the Contract, as set out in the Order Form, for the full and proper performance by the Service Provider of its obligations under the Contract
<b>"Crown"</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf
<b>"Crown Bodies"</b>	means any department, office or agency of the Crown
<b>"Authority Data"</b>	means: <ul style="list-style-type: none"><li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic,</li></ul>

optical or tangible media, and which are:

(i) supplied to the Service Provider by or on behalf of the Authority; or

(ii) which the Service Provider is required to generate, process, store or transmit pursuant to this Contract; or

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

**"Deliverables"**

means those deliverables listed in the Order Form

**"DPA"**

means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**"Environmental Information Regulations"**

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

**"Fees Regulations"**

means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

**"FOIA"**

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

**"Force Majeure"**

means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

(a) any industrial action occurring within the Service Provider's organisation; or

(b) the failure by any sub-Service Provider or Service Provider of the Service Provider to perform its obligations under any Contract

<b>"Fraud"</b>	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Authority
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances any another quality standards set out in the Order Form
<b>"Information"</b>	has the meaning given under section 84 of the FOIA
<b>"Initial Contract Period"</b>	means the period from the Commencement Date to the date of expiry set out in Clause 1.3 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
<b>"Intellectual Property Rights" and "IPRs"</b>	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
<b>"Key Personnel"</b>	means any individual identified in the Order Form as being key personnel
<b>"Law"</b>	means any applicable law, common law, Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body
<b>"Material Default", or "Default"</b>	means any material breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or (in the case of the Service Provider) the Staff, whether arising in contract, tort (including negligence), breach of statutory duty or howsoever arising in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other

<b>"Management Information"</b>	means the information specified in the Order Form and/or the Monitoring and Management Information Schedule
<b>"Month"</b>	means a calendar month
<b>"Order Form"</b>	means the order submitted to the Service Provider by the Authority which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards
<b>"Parent Company"</b>	means any company which is the ultimate Holding Company of the Service Provider or any other company of which the ultimate Holding Company of the Service Provider is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider. The term <b>"Holding Company"</b> shall have the meaning ascribed in Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto
<b>"Party"</b>	means the Service Provider or the Authority (and <b>"Parties"</b> shall be construed accordingly)
<b>"Pre-Existing IPR"</b>	shall mean any Intellectual Property Rights vested in or licensed to the Authority or the Service Provider prior to or independently of the performance by the Authority or the Service Provider of their obligations under the Contract and in respect of the Authority includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
<b>"Premises"</b>	means any land or buildings occupied by the Authority being the location where the Services are to be supplied, as more particularly set out in the Order Form
<b>"Project Specific IPRs"</b>	<p>means:</p> <ul style="list-style-type: none"><li>(a) IPRs in items created by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract including, any Deliverables and all updates and amendments of these items; and/or</li><li>(b) IPRs arising as a result of the performance of the Service Provider's obligations under the Contract</li></ul> <p>but shall not, for the avoidance of doubt, include any</p>

Pre-Existing IPR

**"Property"**

means the property, other than real property, issued or made available to the Service Provider by the Authority in connection with the Contract (but shall not, for the avoidance of doubt, include any documents that are not unique originals, any IPRs or any Authority Data).

**"Regulatory Bodies"**

means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority

**"Replacement Service Provider"**

means any third party Service Provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract

**"Request for Information"**

shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)

**"Services"**

means the services to be supplied as specified in the Order Form

**"Staff"**

means all persons employed by the Service Provider, the Service Provider's Holding Company or any subsidiary, branch or affiliate of the Holding Company and who are involved in the performance of the Contract

**"Staff Vetting Procedures"**

means the Authority's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or a sensitive or confidential nature or the handling of information which is subject to any relevant security measure including but not limited to, the provisions of the Official Secrets Act 1911 to 1989 and which shall include as a minimum Baseline Personnel Security Standard checks in accordance with Cabinet Office guidance

**"Sub-contract"**

any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

<b>"Sub-Service Provider"</b>	means the third party with whom the Service Provider enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
<b>"Tender"</b>	means the document(s) submitted by the Service Provider to the Authority in response to the Authority's invitation to suppliers for formal offers to supply it with the Services.
<b>"Variation"</b>	has the meaning given to it in Clause 6.3 (Variation)
<b>"VAT"</b>	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
<b>"Working Day"</b>	means any day other than a Saturday or Sunday or public holiday in England and Wales
<b>"Working Hours"</b>	means 9.00am to 5.00pm on any Working Day

## 1.2 Interpretation

The interpretation and construction of the Contract shall be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

## 1.3 Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise



terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 6.8 (Extension of Initial Contract Period).

#### 1.4 **Service Provider's Status**

At all times during the Contract Period the Service Provider shall be an independent Service Provider and nothing in the Contract shall create a contract of employment, a fiduciary relationship, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract. The Service Provider has been engaged only by the Authority and the Authority's engagement of the Service Provider is not deemed to be on behalf of and is not intended to confer rights upon any person not a party to this Contract. No one other than the Authority is authorised to rely upon any statements, advice or opinions of the Service Provider

#### 1.5 **Authority's Obligations**

Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity.

#### 1.6 **Entire Agreement**

1.6.1 This Contract together with the Order Form constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

1.6.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract. Whilst the Authority makes no representation as to the accuracy and adequacy of any information supplied by it or on its behalf it acknowledges that the Service Provider is entitled to assume the accuracy of such information in providing the Services provided that in the particular circumstances (including without limitation the Service Provider's professional abilities) it is otherwise reasonable for the Service Provider to make such an assumption.

1.6.3 Nothing in Clauses 1.6.1 or 1.6.2 shall operate to exclude liability for fraud or fraudulent misrepresentation.

1.6.4 In the event of and only to the extent of any conflict or discrepancy between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Order Form;
- (b) the clauses of the Contract; and

- (c) any other document referred to in the clauses of the Contract.

1.6.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

## 1.7 Notices

1.7.1 Except as otherwise expressly provided within the Contract, any notice or other communication which is to be given by one Party to the other under or in connection with this Contract (in this clause 1.7 a “**notice**”) shall only have any validity under the Contract if made in writing by or on behalf of the Party concerned.

1.7.2 Any notice or other communication shall be given by letter (sent by hand, registered post or by the recorded delivery service) or electronic mail. Notices shall be sent to the other Party at the address, and marked for the attention of the relevant individual as set out in Clause 1.7.3. Subject to clause 1.7.4, any notice under this clause 1.7 shall be deemed to have been duly given:

- (a) if sent by letter, two (2) Working Days after the day on which the letter was sent (provided that the letter has not been returned as undelivered); or
- (b) if sent by email, when sent (provided that an email shall be deemed not to have been sent if the sender receives a delivery failure notification).

1.7.3 For the purposes of Clause 1.7.2, the address of each Party shall be:

- (a) for the Authority, the service address set out in the Order Form (and marked for the attention of the individual specified in the Order Form);
- (b) for the Service Provider, the address set out in the Order Form (and marked for the attention of the individual specified in the Order Form).

1.7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

## 1.8 Mistakes in Information

The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Service Provider in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein save that (i) the Service Provider shall be entitled to rely upon and will have no liability for information provided by the Authority (ii) the Service Provider shall not bear responsibility for any prospectus, offering memorandum, press release or announcements.

1.8.1 The Service Provider and its affiliates may from time to time communicate with the Authority electronically. However, the electronic transmission of information cannot

be guaranteed to be secure or error-free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, the Service Provider and its affiliates will use commercially reasonable procedures to check for the then most commonly known viruses.

### **Conflicts of Interest**

1.9 The Service Provider will maintain and operate effective organisational and administrative arrangements to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Authority) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Authority which will, or could, give rise to a material risk of damage to the interests of the Authority under the provisions of this Contract.

1.10 If arrangements made by the Service Provider to manage conflicts of interest in accordance with Clause 1.9 above are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the Authority will be prevented, the Service Provider will, subject to any obligations of confidentiality to third parties which are applicable to the Service Provider, as soon as practicable:

1.10.1 notify the Authority; and

1.10.2 provide full particulars of such conflict; or

1.10.3 where full particulars cannot be provided owing to confidentiality obligations to third parties, to the extent permitted by applicable law or regulation, the Service Provider agrees to:

- (a) clearly disclose the general nature and/or sources of such conflicts of interest to the Authority;
- (b) include sufficient detail to enable the Authority to take an informed decision with respect to the Services in the context of which the conflict of interest arises; and
- (c) provide all such further information and assistance as may be reasonably required by the Authority in forming its determination in accordance with 1.10.3(b) above.

For the avoidance of doubt, the obligations to notify contained in this Clause 1.10 are continuing obligations and the Service Provider agrees to notify the Authority, until the date of termination of this Contract, on each occasion when a situation referred to in this Clause 1.10 arises.

1.11 The Authority reserves the right to terminate this Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Authority under the provisions of this Contract which will, or might reasonably be expected to, give rise to a material risk of damage to the interests of the Authority under the provisions of this Contract. The action of the Authority pursuant to this Clause shall not prejudice or affect any

right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

## **1.12 Prevention of Fraud**

1.12.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Authority.

1.12.2 The Service Provider shall notify the Authority immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

If the Service Provider or its Staff commits any Fraud in relation to the Contract or any other contract with a Contracting Authority or the Authority, the Authority may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

## **2. SUPPLY OF SERVICES**

### **2.1 The Services**

2.1.1 The Service Provider shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Contract in consideration for the payment of the Contract Price.

2.1.2 If the Authority informs the Service Provider in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Authority, the Service Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

2.1.3 Timely supply of the Services shall be of the essence of the Contract.

### **2.2 Manner of Carrying Out the Services**

2.2.1 The Service Provider shall ensure that all Staff supplying the Services shall do so with due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

### **2.3 Key Personnel**

2.3.1 The Parties may have agreed to the appointment of the Key Personnel. The Service Provider shall, where possible obtain the prior Approval of the Authority before removing or replacing any Key Personnel during the Contract Period save that notwithstanding the foregoing the Service Provider may remove or replace Key Personnel who are unable to provide the Services by reason of long-term sickness, maternity leave, paternity leave, termination of employment/partnership or other extenuating circumstances, and, where possible, at least one (1) months' written notice must be provided by the Service Provider of its intention to replace Key Personnel.

- 2.3.2 The Authority shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Service Provider.
- 2.3.3 The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Authority. The Service Provider shall unless it has Approval to the contrary ensure that the role of any Key Personnel is not vacant for any longer than strictly necessary and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 2.3.4 The Authority may also require the Service Provider to remove and replace any Key Personnel that the Authority (acting reasonably) considers in any respect unsatisfactory. The Authority shall not be liable for the cost of replacing any Key Personnel.

## 2.4 **Service Provider's Staff**

- 2.4.1 The Authority may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:
- (a) any member of the Staff; or
  - (b) any person employed or engaged by any member of the Staff;
- whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.
- 2.4.2 At the Authority's written request, the Service Provider shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- 2.4.3 The Service Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time and notified in advance to the Service Provider for the conduct of personnel when at or within the boundaries of those Premises.
- 2.4.4 If the Service Provider fails to comply with Clause 2.4.2 within two (2) Months of the date of the request then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.4.5 The decision of the Authority as to whether any person is to be refused access to the Premises and as to whether the Service Provider has failed to comply with Clause 2.4.2 shall be final and conclusive.
- 2.4.6 At the Authority's request, the Service Provider shall promptly provide details of its internal compliance policies and procedures (including policies and procedures as to dealings in securities) to which the Staff are subject. The Service Provider shall ensure that the Staff comply with such policies

and procedures at all times during the Contract Period. Where requested to do so, the Service Provider shall comply with the Staff Vetting Procedures.

## **2.5 Offers of Employment**

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Authority nor the Service Provider shall employ or offer employment to any of the other Party's staff or employees who they have been in contact with during the procurement and/or the contract management of the Services without that other Party's prior written consent. Notwithstanding the foregoing, neither Party will be prevented from running general recruitment advertising campaigns or from offering employment to any individual who may respond to any such campaign.

## **3. PAYMENT AND CONTRACT PRICE**

### **3.1 Contract Price**

3.1.1 In consideration of the Service Provider's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with Clause 3.2 (Payment and VAT).

3.1.2 The Authority shall, in addition to the Contract Price and following receipt of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

### **3.2 Payment and VAT**

3.2.1 The Authority shall pay all sums due to the Service Provider within thirty (30) days of receipt of a valid invoice, submitted in accordance with the payment profile set out in the Order Form.

3.2.2 All invoices shall be sent to the invoice address set out in the Order Form and the Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Authority to substantiate the invoice.

3.2.3 The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

3.2.4 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.

### **3.3 Recovery of Sums Due**

3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, under the Contract.

- 3.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- 3.3.3 Subject to 3.3.1 the Parties shall make any payments due to the other Party without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Party has a valid court order requiring an amount equal to such deduction to be paid to it by the other Party.
- 3.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

#### **4. STATUTORY OBLIGATIONS AND REGULATIONS**

##### **4.1 Prevention of Corruption**

- 4.1.1 The Service Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Authority or any other public body or person employed by or on behalf of the Authority any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Contract or any other contract with the Authority or any other public body or person employed by or on behalf of the Authority, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.
- 4.1.2 The Service Provider warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.
- 4.1.3 If the Service Provider, its Staff or any person acting on the Service Provider's behalf, engages in conduct prohibited by Clauses 4.1.1 or 4.1.2, the Authority may terminate the Contract with immediate effect by giving notice in writing to the Service Provider.

##### **4.2 Discrimination**

- 4.2.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any applicable law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 4.2.2 The Service Provider shall take reasonable steps to secure the observance of Clause 4.2.1 by all servants, employees or agents of the Service Provider employed in the execution of the Contract.

##### **4.3 The Contracts (Rights of Third Parties) Act 1999**

Save as provided in Clause 6.1.1, 7.1.2 and 7.1.3, a person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any



right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

#### 4.4 **Environmental Requirements**

The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Authority's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

#### 4.5 **Health and Safety**

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

### 5. **PROTECTION OF INFORMATION**

#### 5.1 **Authority Data**

- 5.1.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 5.1.2 The Service Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 5.1.3 To the extent that Authority Data is held and/or processed by the Service Provider, the Service Provider shall supply that Authority Data to the

Authority as requested by the Authority in the format reasonably specified by the Authority.

- 5.1.4 The Service Provider shall take reasonable commercial steps to preserve the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 5.1.5 The Service Provider shall perform secure back-ups of all Authority Data and shall ensure that copies of up-to-date back-ups are securely stored off-site. The Service Provider shall ensure that the Authority Data so backed-up are available to the Authority upon reasonable request.
- 5.1.6 The Service Provider shall ensure that any system on which the Service Provider holds any Authority Data, including back-up data, is a secure system.
- 5.1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Authority may:
  - (a) require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Authority Data and the Service Provider shall do so as soon as practicable but not later than one month; and/or
  - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so.
- 5.1.8 If at any time the Service Provider suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Service Provider shall notify the Authority immediately and inform the Authority of the remedial action the Service Provider proposes to take.

## 5.2 Data Protection Act

- 5.2.1 With respect to the Parties' rights and obligations under this Contract, the parties agree that the Authority is the Data Controller and that the Service Provider is the Data Processor.
- 5.2.2 The Service Provider shall:
  - (a) take all reasonable steps to process the Personal Data only in accordance with lawful and reasonable instructions from the Authority (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Authority to the Service Provider during the Contract Period);
  - (b) process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

- (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and have regard to the nature of the Personal Data which is to be protected, the state of technological development and the cost of implementing such measures;
- (d) use reasonable endeavours to engage suitably skilled and qualified staff Service Provider Personnel who have access to the Personal Data;
- (e) obtain prior written consent from the Authority in order to transfer the Personal Data to anyone other than its Affiliates for the provision of the Services;
- (f) ensure that all Service Provider Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 5.2;
- (g) ensure that none of Service Provider Personnel publish, disclose or divulge any of the Personal Data to any third party except where expressly authorised under this Agreement, or unless directed in writing to do so by the Authority or required to do so by Law;
- (h) notify the Authority within ten (10) Working Days if it receives:
  - (i) a request from a Data Subject whose Personal Data is being processed by the Service Provider under this Agreement, to have access to that person's Personal Data; or
  - (ii) a complaint or request relating to the Authority's obligations under the DPA;
- (i) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
  - (i) providing the Authority with full details of the complaint or request;
  - (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
  - (iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
  - (iv) providing the Authority with any information requested by the Authority in relation to the complaint or request;

- (j) permit the Authority or the Authority representative (subject to reasonable and appropriate confidentiality undertakings), and where legally permissible to inspect and audit, in accordance with Clause 5.9 (Records and Audit Access), the Service Provider's data Processing activities (and/or those of its agents, subsidiaries and Sub-Service Providers) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract;
- (k) provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales reasonably required by the Authority); and
- (l) not process Personal Data outside the European Economic Area, except where such transfer
  - (i) is in compliance with the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and
  - (ii) complies with any reasonable instructions notified to it by the Authority.

5.2.3 The Service Provider shall comply at all times with the DPA in connection with its data privacy obligations under this Agreement and shall not perform its obligations under this Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

5.2.4 For the purposes of Clause 5.2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DPA.

5.2.5 The provisions of this Clause shall apply during the Contract Period and indefinitely after its expiry.

### 5.3 **Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

5.3.1 Where applicable, the Service Provider shall comply with and shall ensure that its Staff comply with, the applicable provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

5.3.2 In the event that the Service Provider or its Staff fail to comply with this Clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Service Provider.

### 5.4 **Confidential Information**

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

- (a) treat the other party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

5.4.2 Clause 5.4.1 shall not apply to the extent that:

- (a) the disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to clause 5.5 (Freedom of Information) or such disclosure is required by order of a court or such disclosure is made pursuant to an order, requirement or request of a regulatory body having authority over the Service Provider;
- (b) the information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) the information was obtained from a third party to the reasonable knowledge of the party making the disclosure after making all reasonable enquires without obligation of confidentiality;
- (d) the information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- (e) the information is independently developed without access to the other party's Confidential Information; or
- (f) the disclosure is required for the purposes of an arbitration or judicial proceedings.

5.4.3 The Service Provider may only disclose the Authority's Confidential Information to the Service Provider Personnel who are involved in the provision of the Services and who need to know the information, and shall ensure that such Service Provider Personnel are aware of these obligations and are bound by appropriate obligations or duties of confidentiality.

5.4.4 The Service Provider shall not, and shall procure that the Service Provider Personnel do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

5.4.5 Nothing in this Contract shall prevent the Authority from disclosing the Service Provider's Confidential Information, including the Management Information obtained under 6.7:

- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be

disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

- (b) to any consultant, Service Provider or other person engaged by the Authority or any person conducting a gateway review;
- (c) for the purpose of the examination and certification of the Authority's accounts; or
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.

5.4.6 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Service Provider to whom the Service Provider's Confidential Information is disclosed pursuant to clause 5.4.5 is made aware of the Authority's obligations of confidentiality.

5.4.7 Nothing in this clause 5.4 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR. The Service Provider will owe no duty of care to the Authority if the Authority uses the Service Provider's work and advice for a purpose other than that for which the work or advice was provided even if such use is in the Authority's ordinary course of business.

5.4.8 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Service Provider hereby gives his consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public and the Service Provider agrees to assist and cooperate with the Authority to enable it to publish the Contract. Where the Authority is considering disclosure of the terms of engagement of the Service Provider and/or any advice or opinion provided by it to the Authority, the Authority will, where it is reasonably practicable to do so, consult with the Service Provider prior to such disclosure.

5.4.9 The obligations imposed on the Parties in this clause 5.4 shall apply during the Contract Period and for 12 (twelve) months following the expiry or termination of this Contract.

## 5.5 Freedom of Information

5.5.1 The Service Provider acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority, within such timescales as

the Authority may reasonably specify, to enable the Authority to comply with its Information disclosure obligations.

5.5.2 The Service Provider shall:

- 1.1.1 (a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- 1.1.2 (b) provide the Authority with a copy of all Information relating to the Services in its possession, or power which it holds on the Authority's behalf in the form that the Authority requires within five (5) Working Days (or such other longer period as the Authority may reasonably specify) of the Authority's request; and
- 1.1.3 (c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

5.5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

5.5.4 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Authority or failure to do so would constitute a breach of Law.

5.5.5 The Service Provider acknowledges that (notwithstanding the provisions of Clause 5.5.2) the Authority may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Services:

- 5.5.5.1 in certain circumstances without consulting the Service Provider; or
- 5.5.5.2 following consultation with the Service Provider and having taken their views into account,
- 5.5.5.3 provided always that where clause 5.4.2 applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

5.5.6 The Service Provider acknowledges that the inclusion of Commercially Sensitive Information in Schedule 7 is indicative only and that the Authority may be obliged to disclose it in accordance with clause 5.5.5.



## 5.6 Publicity, Media and Official Enquiries

- 5.6.1 Unless otherwise directed by the Authority, to satisfy the requirements of any Law, rule or regulation; or the information included in the press announcements or publicised is already in the public domain, the Service Provider shall not make any press announcements in respect of, or publicise, the Contract or any of the Services in any way without the Authority's prior Approval and shall take all reasonable steps to ensure that its servants, employees and directors comply with this Clause 5.6.1.
- 5.6.2 The Authority shall be entitled to publicise the Contract in accordance with any legal obligation upon the Authority, including any examination of the Contract by the Auditor.
- 5.6.3 The Service Provider shall not do anything or cause anything to be done, which may damage the reputation of the Authority or bring the Authority into disrepute.

## 5.7 Security

- 5.7.1 The Authority shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Authority while on the Premises and shall ensure that all Staff comply with such requirements.
- 5.7.2 The Authority shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

## 5.8 Intellectual Property Rights

- 5.8.1 Save as granted elsewhere under the Contract, neither the Authority nor the Service Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 5.8.2 The Service Provider shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Pre-Existing IPR of the Authority or the Project Specific IPRs to any third party unless required to do so by any Law or order of a court or pursuant to an order, requirement or request of a regulatory body having authority over the Service Provider.
- 5.8.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Service Provider. The Service Provider hereby agrees to grant to the Authority, a world-wide, royalty-free, irrevocable, perpetual licence of any of the Project Specific IPRs and/or shall procure that any third party owner of the Project Specific IPRs grants a licence on the same basis sufficient to enable the Authority to have the full and unrestricted benefit of the Services and/or any Deliverable (both referred to as the "**IP Licence**").
- 5.8.4 The Service Provider agrees and acknowledges that the Authority shall have the right to disclose the Project Specific IPRs (in full or in part) which are the subject of the IP Licence to any and all relevant third parties (including without limitation its Permitted Recipients and to any

Replacement Service Provider) who reasonably require access to the same and allow the Authority to sub-licence the IP Licence at no cost to such third parties.

- 5.8.5 The Authority hereby grants to the Service Provider a non-exclusive, revocable, non -assignable licence to use the Authority Pre-Existing IPR during the Contract Period for the sole purpose of enabling the Service Provider to provide the Services.
- 5.8.6 The Service Provider warrants that the performance by the Authority of the Services and/or the possession or use by the Authority of the Project Specific IPRs and/or the Deliverables does not and will not infringe a third party's Intellectual Property Rights ("**Infringement**").
- 5.8.7 If a claim of Infringement is made in connection with the Contract or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall immediately notify the Authority and, at its own expense and subject to the consent of the Authority (not to be unreasonably withheld or delayed), use its best endeavours to:-
- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the Infringement or the alleged Infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
  - (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged Infringement, on terms which are acceptable to the Authority,

and in the event that the Service Provider is unable to comply with Clauses 5.8.7(a) or 5.8.7(b) within 20 Working Days of receipt of the Service Provider's notification, the Authority may (a) terminate the Contract with immediate effect by notice in writing and the Service Provider shall, upon demand, refund the Authority with all monies paid in respect of the Services or Deliverable that is subject to the Infringement claim; or (b) terminate the performance by the Service Provider of the relevant Service.

## 5.9 **Records and Audit Access**

- 5.9.1 The Service Provider shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Call-Off Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.
- 5.9.2 The Service Provider shall keep the records and accounts referred to in Clause 5.9.1 above in accordance with Good Industry Practice.
- 5.9.3 The Service Provider shall to the extent legally permissible or to the extent that such access will not breach any undertaking of confidentiality to a third party, on reasonable notice afford the Authority, the Authority's

representatives and/or the Auditor such access to such records and accounts as may be reasonably required by the Authority from time to time.

- 5.9.4 The Service Provider shall to the extent legally permissible on request provide such records and accounts (together with copies of the Service Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Authority and/or the Auditor.
- 5.9.5 The Authority shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services; save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Authority.
- 5.9.6 Subject to the Authority's rights of confidentiality, and the Service Provider's duties of confidentiality to third parties and to the extent permitted by law, the Service Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
- (a) all information reasonably requested by the Authority within the scope of the audit;
  - (b) reasonable access to sites controlled by the Service Provider (save where such access reasonably needs to be restricted to protect confidential information) and to Equipment used in the provision of the Services; and
  - (c) reasonable access to Staff.
- 5.9.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.9, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Authority for the Authority's reasonable costs incurred in relation to the audit.

## **6. CONTROL OF THE CONTRACT**

### **6.1 Transfer and Sub-Contracting**

- 6.1.1 The Service Provider shall not assign, novate or in any other way dispose of the Contract or any part of it without prior Approval provided that the Service Provider shall be entitled to transfer all its rights and obligations under the Contract to an affiliate to which substantially all the assets and business of the Service Provider have been or are to be transferred and, from the date of such transfer, references to the Service Provider shall be read as references to such affiliate.. The Service Provider shall not be entitled to sub-contract any of its rights or obligations under this Contract save that the Service Provider may provide its services through or in conjunction with one or more of its affiliates as notified to the Authority from time to time, provided always that the Service Provider shall remain responsible for all acts and omissions of any sub-Service Provider and nothing under this Clause 6.1.1 shall absolve the Service Provider from its obligations to the Authority under this Agreement and references in the

Agreement to the Service Provider shall, save where the context otherwise requires, include any such affiliates.

6.1.2 The Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-

- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions that had previously been performed by the Authority,

(each a “**Transferee**”) provided that any such assignment, novation or other disposal shall not (i) increase the burden of the Service Provider's obligations under the Contract and (ii) be subject to the completion of such procedures (including, without limitation, in respect of client identification and anti money laundering) as the Service Provider is required to operate by Law.

6.1.3 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

6.1.4 The Authority may disclose to any Transferee any Confidential Information which relates to the performance of the Service Provider's obligations under the Contract provided that such Transferee has agreed in writing to treat such Confidential Information in identical fashion to the Authority under the Contract.

6.1.5 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

## 6.2 **Waiver**

6.2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

6.2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 1.7 (Notices).

6.2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

### 6.3 Variation

- 6.3.1 Subject to the provisions of this Clause 6.3, the Authority may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 6.3.2 The Authority may request a Variation by completing and sending the Variation form attached at Appendix 1 ("**the Variation Form**") to the Service Provider giving sufficient information for the Service Provider to assess the extent of the Variation and whether any change to the Contract Price is required in order to implement the Variation may be incurred. The Service Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Variation and the availability of the Service Provider
- 6.3.3 In the event that the Service Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Authority may:-
- (a) allow the Service Provider to continue to perform its obligations under the Contract without the Variation; or
  - (b) terminate the Contract with immediate effect, except where the Service Provider has already delivered part or all of the Services in accordance with the Order Form or where the Service Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 9.2.
- 6.3.4 If the Parties agree to the Variation and any variation in the Contract Price, the Service Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

### 6.4 Severability

- 6.4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 6.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Authority and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

### 6.5 Remedies in the event of inadequate performance

- 6.5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Service Provider's obligations under the Contract, then the Service Provider shall take all reasonable steps to investigate the complaint. The Authority may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 8.2 (Termination on Default) of the Contract.
- 6.5.2 In the event that the Authority is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider, then the Authority may, without prejudice to its rights under Clause 8.2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Authority that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
  - (c) terminate, in accordance with Clause 8.2 (Termination on Default), the whole of the Contract if the Service Provider has committed a Default that is a material breach of the Contract; and/or
  - (d) charge the Service Provider for and the Service Provider shall pay any costs reasonably incurred by the Authority (including any reasonable administration costs) in respect of the supply of any part of the Services by the Authority or a third party provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 6.5.3 If the Service Provider fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Service Provider to remedy the failure and the Service Provider shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Authority's instructions or such other period of time as the Authority may direct.
- 6.5.4 In the event that the Service Provider:
- (a) fails to comply with Clause 6.5.3 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
  - (b) persistently fails to comply with Clause 6.5.3 above;

the Authority may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

## 6.6 Cumulative Remedies

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract 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.

## 6.7 Monitoring of Contract Performance

6.7.1 The Service Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Service Provider may be reasonably required to produce under the Contract.

6.7.2 The Service Provider agrees that the Authority may provide the Cabinet Office with information relating to the Services procured and any payments made under the Contract.

6.7.3 Upon receipt of any Management Information supplied by the Service Provider in response to a request under Clause 6.7.1 above or receipt of information provided by the Authority to the Cabinet Office under 6.7.2, the Authority and the Service Provider hereby consent to the Cabinet Office:

- (a) storing and analysing the Management Information and producing statistics; and
- (b) sharing the Management Information or any statistics produced using the Management Information, with any other Contracting Authority

6.7.4 In the event that the Cabinet Office shares the Management Information or information provided under this Clause 6.7 any Contracting Authority receiving the Management Information shall be informed of the confidential nature of that information and shall be requested not to disclose it to any person who is not a Contracting Authority (unless required by law).

6.7.5 The Authority may make reasonable changes to the Management Information which the Service Provider is required to supply and shall give the Service Provider at least one (1) Month's written notice of any changes.

## 6.8 Extension of Initial Contract Period

Subject to satisfactory performance of its obligations under the Contract by the Service Provider during the Initial Contract Period, the Authority may, by giving written notice to the Service Provider not less than one (1) Month(s) prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

## 7. LIABILITIES

### 7.1 Liability, Indemnity and Insurance



- 7.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- (a) death or personal injury caused by its negligence; and
  - (b) Fraud or fraudulent misrepresentation
- 7.1.2 Neither the Service Provider nor any other member of the Service Provider's Group (nor any of its or their respective Relevant Persons) shall be liable to the Authority for any claim, loss, damage, liability, cost and/or expense ("**Losses**") suffered by the Authority or any such other person arising out of or related to the Service Provider's obligations under this Contract ("**Authority Losses**") except for Authority Losses that arise out of any action or failure to act by the Service Provider that is found in a final determination of judicial proceedings to constitute either (i) fraud, wilful default or gross negligence on the part of the Service Provider; or (ii) a material breach of this Contract.
- 7.1.3 The Authority agrees to indemnify and hold harmless the Service Provider, each member of the Service Provider's Group and their Relevant Persons (each an "**Indemnified Person**" and cumulatively, "**Indemnified Persons**") against any Losses as incurred (including, without limitation, all reasonable fees and disbursements of legal advisors) arising out of any actual or proposed or completed Services or the Service Provider's engagement hereunder; provided, however, there shall be excluded from such indemnification any such Losses to the extent that they arise out of any action or failure to act by the Service Provider that is found in a final determination of judicial proceedings to constitute either (i) fraud, wilful default, or gross negligence on the part of the Service Provider or (ii) a material breach of this Contract.
- 7.1.4 For the purposes of this Clause 7, "**Service Provider's Group**" shall mean the Service Provider and its affiliates and subsidiary undertakings from time to time; "**Relevant Persons**" shall mean, in relation to a member of the Service Provider's Group, the directors, officers, and employees of that member and any successor or assign of such persons and "parent undertaking" and "subsidiary undertaking" shall each be construed in accordance with section 1162 of the Companies Act 2006.
- 7.1.5 Subject to Clause 7.1.1 and notwithstanding Clause 7.1.2. in no event shall either Party be liable to the other for any:
- (a) loss of profits;
  - (b) loss of business;
  - (c) loss of revenue;
  - (d) loss of or damage to goodwill;
  - (e) loss of savings (whether anticipated or otherwise); and/or
  - (f) any indirect or consequential loss or damage.
- 7.1.6 The Authority may, amongst other things, recover as a direct loss:

- (a) any additional operational and/or administrative expenses arising from the Service Provider's Default;
- (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Authority arising from the Service Provider's Default; and
- (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider.

7.1.7 The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all reasonably insurable risks which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract save that the Authority acknowledges that the Service Provider's professional indemnity insurance may not necessarily cover all risks arising from claims of breach of contract or claims arising under this Contract.

7.1.8 The Service Provider shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

7.1.9 The Service Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

7.1.10 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

7.1.11 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in Clause 7.1.2.

## 7.2 Professional Indemnity

The Service Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period. To comply with its obligations under this clause and as a minimum, the Service Provider shall ensure professional indemnity insurance held by the Service Provider has a limit of indemnity of not less than £1 million (one million pounds) for each individual claim or such higher limit as the Authority may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

### 7.3 Taxation, National Insurance and Employment Liability

The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Authority and keep the Authority indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Authority is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to Her Majesty's Revenue or Customs ("HMRC") as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

### 7.4 Warranties and Representations

7.4.1 The Service Provider warrants and represents that to the best of its knowledge:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Service Provider;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract and it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (f) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (g) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

- (h) it owns, has obtained or so far as it is aware is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (i) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff in accordance with Good Industry Practice;
- (j) in the three (3) years prior to the date of the Contract:
  - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
  - (ii) save as otherwise publicly disclosed, the Service Provider is not aware of any failures to comply with applicable securities laws and regulations in the jurisdiction in which it is established that are material in the context of the services to be provided under the Contract or that would affect the fit and proper standing of the Service Provider to undertake the Contract; and
  - (iii) it has not done or omitted to do anything with respect to its financial accounting or reporting which could have an adverse effect on its position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

## 8. DEFAULT, DISRUPTION AND TERMINATION

### 8.1 Termination on insolvency and change of control

8.1.1 The Authority may terminate the Contract with immediate effect by giving notice in writing where the Service Provider is a company and in respect of the Service Provider:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other scheme of arrangement or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

- (e) an application order is made either for the appointment of an administrator or for an administration order (which is not dismissed or withdrawn within 14 days of its being made), an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in Clause 8.1.1(a) – 8.1.1(g) occurs under the law of any other jurisdiction.

8.1.2 The Authority may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Service Provider shall notify the Authority immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Authority may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a Change of Control has occurred; or

- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

## 8.2 Termination on Default

8.2.1 The Authority may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Service Provider commits a Default that was not caused by the preceding act or omission, directly or indirectly of the Authority and if:

- (a) the Service Provider has not remedied the Default to the reasonable satisfaction of the Authority within ten (10) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the reasonable opinion of the Authority, capable of remedy; or
- (c) the Default is a material breach of the Contract.

8.2.2 In the event that through any Default of the Service Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Service Provider shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

8.2.3 If the Authority fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under Clause 3.3 (Recovery of Sums Due).

## 8.3 Break

The Authority shall have the right to terminate the Contract at any time by giving one (1) Month's written notice to the Service Provider.

## 8.4 Authority Service Provider **Consequences of Expiry or Termination**

8.4.1 Subject to 8.4.2 below, notwithstanding the service of a notice to terminate the Contract, the Parties shall continue to fulfil their obligations under the Contract until the date of expiry or termination of the Contract or such other date as required under this Clause 8.

8.4.2 Where the Authority terminates the Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Service Provider the cost reasonably

incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 8.2 (Termination on Default), no further payments shall be payable by the Authority to the Service Provider until the Authority has established the final cost of making those other arrangements.

8.4.3 Subject to Clause 7, where the Authority terminates the Contract under Clause 8.3 (Break), the Authority shall indemnify the Service Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under Clause 8.3 (Break).

8.4.4 The Authority shall not be liable under Clause 8.4.3 to pay any sum which:

- (a) was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

8.4.5 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Service Provider under Clauses 1.9 (Conflicts of Interest), 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 4.3 (The Contracts (Rights of Third Parties) Act 1999), 5.2 (Data Protection Act), 5.3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 5.4 (Confidential Information), 5.5 (Freedom of Information), 5.8 (Intellectual Property Rights), 5.9 (Records and Audit Access), 6.6 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 7.2 (Professional Indemnity), 8.6 (Consequences of Expiry or Termination), 8.8 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction).

## 8.5 Disruption

- 8.5.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other Service Provider employed by the Authority.
- 8.5.2 The Service Provider shall not be held liable for a delay and/or failure to fulfil its duties and obligations under the Contract to the extent to which such failure can be directly attributed to an act or omission of the Authority under this Contract and was the sole cause of the Service Provider's failure or delay. The Service Provider shall be required to notify the Authority as soon as it becomes aware of any such act or omission, which it reasonably determines would affect the fulfilment of any of its duties and obligations under this Contract. Notwithstanding the foregoing, the Service Provider agrees to fulfil its duties and obligations to the fullest extent possible given the Authority's act or omission and shall comply with all its duties and obligations under the Contract as soon as it becomes able to do so.
- 8.5.3 The Service Provider shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 8.5.4 In the event of industrial action by the Staff, the Service Provider shall seek the Authority's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 8.5.5 If the Service Provider's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Authority acting reasonably then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- 8.5.6 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

## **8.6 Recovery upon Termination**

- 8.7.1 On the termination of the Contract for any reason, the Service Provider shall:
- (a) promptly return to the Authority all Personal Data and Authority's Pre-Existing IPR's in its possession or in which was obtained or produced in the course of providing the Services;
  - (b) promptly deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Service Provider. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear) provided that



the Service Provider shall be entitled to keep one copy of the Confidential Information which it is required to retain by applicable law, regulation or its internal compliance procedures and further that the Service Provider shall not be obliged to delete documents which have been stored pursuant to its electronic back-up archiving procedures;

- (c) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or the completion of any work in progress.
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Authority or the Replacement Service Provider to conduct due diligence.

8.7.2 If the Service Provider fails to comply with clause 8.7.1 (a) and (b), the Authority may recover possession thereof and either (i) the Service Provider grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers where any such items may be held or (ii) where regulatory or compliance restrictions placed upon the Service Provider result in it not being reasonably practicable for the Service Provider to grant a licence in accordance with (i) arranges the recovery to the Authority, and/or alternative access for the Authority to those items specified in Clause 8.6.1.

8.7.3 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all reasonable assistance under clause 8.7.1 (c) and (d) free of charge. Otherwise, the Authority shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

8.7.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.8.5 shall automatically terminate without the need to serve notice.

## 8.7 Force Majeure

8.7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all

reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

8.7.2 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent supplier shall be regarded as due to Force Majeure only if that agent or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

8.7.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 8.8.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

## **9. DISPUTES AND LAW**

### **9.1 Governing Law and Jurisdiction**

The Contract and any non-contractual obligations arising out of or in relation to it shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts to settle any disputes arising out of or in connection with this Agreement (including, without limitation, disputes relating to any non-contractual obligations) and that accordingly any proceedings arising out of or in connection with this Contract shall be brought in such Courts..

### **9.2 Dispute Resolution**

9.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

9.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

9.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 9.2.1 the dispute may, by agreement between the Parties, be referred to mediation pursuant to the procedure set out in Clause 9.2.5.

9.2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Parties shall comply fully with the requirements of the Contract at all times save for where expressly provided otherwise in this Contract.

9.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- (a) a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("**CEDR**") to appoint a Mediator;
- (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
- (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.