



**FRAMEWORK SCHEDULE 5**

**Part 1: Pro Forma Letter of Appointment**

Crown Commercial Service  
Room 2Y92  
Concept House  
Cardiff Road  
Newport  
NP10 8QQ

26<sup>th</sup> August 2016

Dear Sirs,

**Contract Reference SO10883**

**Contract for the provision of Communications – Creative and Delivery Services by M&C Saatchi (UK) Limited, 36 Golden Square, London, W1F 9EE as a Supplier to The Department for Work and Pensions, Caxton House, 6-12 Tothill Street, London, SW1H 9NA as Customer pursuant to the Communications – Creative and Delivery Services Framework Agreement (RM 988) dated 03/05/2013 between the Minister for the Cabinet Office acting through Government Procurement Service as the Authority (1) and the Supplier (2)**

1. We refer to the above Communications – Creative and Delivery Services Framework Agreement (the “**Framework Agreement**”). For the purposes of this Letter of Appointment:
  - capitalised terms and expressions used in this Letter of Appointment have the same meanings given to them in or pursuant to the Call-Off Terms attached to this Letter of Appointment unless the context otherwise requires;
  - references to Appendices are references to the appendices to this Letter of Appointment; and
  - the Appendices shall form part of this Letter of Appointment.
2. This Letter of Appointment constitutes an Order for the provision by you to us of the Contract Services specified in Appendix 1 on the basis of the day rate Contract Charges set out in Appendix 2 and in accordance with the Call-Off Terms.
3. Contracted Services will be provided in line with your proposal of 31<sup>st</sup> May 2016
4. The Contract commenced on Monday 8th August 2016 and will expire on Tuesday 7th August 2018.
5. The Contract will be for an initial two (2) year period with the option to extend for a further and final one (1) year period to 7<sup>th</sup> August 2019, subject to review and agreement by both parties. Or until the agreed budget has been exhausted, whichever is sooner.
6. The maximum budget for the contract is £3,000,000.
7. The individual with overall responsibility for the supply of the Contract Services is **REDACTED** and the fee earners assigned to the supply of the Contract Services are the core team outlined in the Supplier’s proposal. The initial Key Personnel are detailed in the table below:

Team Member	Role
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REDACTED	REDACTED

8. The Customer's Representative for the purpose of the Contract is **REDACTED** and any disputes in relation to the Contract shall be escalated as follows:

Name	Role	Contact Details
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED

9. Payment will be made electronically by the Authority via invoicing against a valid Purchase Order (PO), which will be provided.

10. For the purposes of the Contract, the address of each Party is:

- for the Customer:

The Department for Work and Pensions, Caxton House, 6-12 Tothill Street, London, SW1H 9NA

For the attention of: **REDACTED**  
Tel: **REDACTED**  
Email: **REDACTED**

- for the Supplier:

M&C Saatchi (UK) Limited, 36 Golden Square, London, W1F 9EE

For the attention of: **REDACTED**  
Tel: **REDACTED**  
Email: **REDACTED**

**Please would you sign and return this Letter of Appointment with the acknowledgement signed by a partner of your firm.**

**You should be aware that by signing and returning this Letter of Appointment you will have entered into a legally binding contract with us to supply the Contract Services specified in Appendix 1 and you hereby represent and warrant that you have carried out a conflict check in relation to such contract and that this revealed no conflicts of interest.**

Yours faithfully,

**REDACTED**

For and on behalf of Department for Work and Pensions

I hereby confirm receipt of the above Letter of Appointment and the agreement of M&C Saatchi (UK) Limited to provide to The Department for Work and Pensions the Contract Services as specified in the Letter of Appointment in accordance with its terms.

M&C Saatchi

Signed:

Date:

Name:

Status:

Department for Work and Pensions

Signed:

Date:

Name:

Status:

## **Appendix 1 (Contract Services)**

### **1. PURPOSE**

- 1.1 This is a call off contract with core requirements outlined upfront with the potential for further project briefs as required across the Pensions Portfolio team.
- 1.2 This is an exciting opportunity to help drive vital behaviour change among 41 million working age people, and provide reassurance to current pensioners, as we embark on a landmark phase in the revolutionary changes to the pensions landscape.
- 1.3 The Authority requires a strategic creative approach to communicating the major changes to the State Pension, Automatic Enrolment and the pensions freedoms. Together these support the Government's objective to provide people with the security and independence to plan for their future and in retirement. This affects millions of people and billions of pounds, as the Authority help increase pension savings by around £15 billion a year. The supplier's advice will enable the Authority to reposition their messages, to help people save more and take personal responsibility for their retirement:
  - 1.3.1 Ensuring more people know what to expect from their State Pension as a firm foundation to their retirement;
  - 1.3.2 Giving individuals an opportunity to top up their State Pension in a way that will protect them from inflation;
  - 1.3.3 Prompting behaviour change, encouraging individuals to save and save more for retirement through a workplace pension;
  - 1.3.4 Giving people more choice and responsibility to secure their retirement.

### **2. BACKGROUND TO THE CONTRACTING AUTHORITY**

- 2.1 The Authority is responsible for welfare, pensions and child maintenance policy. As the UK's biggest public service department it administers the State Pension and a range of working age, disability and ill health benefits to over 22 million claimants and customers.
- 2.2 The role of the Pensions Portfolio team within the Authority's Strategic Communications Directorate is to provide communications across a range of pensions policies to support our customers by:
  - 2.2.1 Informing and promoting saving as individuals prepare for and move into their retirement;
  - 2.2.2 Through The Pensions Regulator, informing employers of their new legal duties to enrol eligible staff into a workplace pension through Automatic Enrolment.
- 2.3 The Communications Directorate also protects the reputation of The Authority and its policies across the media and stakeholder landscapes.
- 2.4 Specifically, the Pensions Portfolio team is responsible for:
  - 2.4.1 Supporting State Pension policy – The Authority is currently planning activity to support the introduction of a new State Pension from April 2016. This replaces the current, complicated, multi layered system of basic and additional State Pensions.
  - 2.4.2 The aim for this campaign is to increase awareness and understanding that the State Pension is changing, so all working age people have a clear and simple foundation to save from.

- 2.4.3 The focus up to now has been on making sure those closest to State Pension age 'know the facts', including what their 'starting amount' will be and explaining what action can be taken.
- 2.4.4 The Authority also raises awareness of increases to the State Pension age.
- 2.4.5 For current pensioners, the Authority provide reassurance messages and run communications activity on State Pension top up, which is a scheme that allows existing claimants to increase their State Pension income in exchange for additional National Insurance contributions.
- 2.4.6 The workplace pensions campaign that supports the Automatic Enrolment of people into an occupational pension. The aim of this new joint 'Workie', 'Don't ignore the workplace pension' campaign, between DWP and The Pensions Regulator, is to maximise employer compliance and ensure all eligible workers are enrolled and stay enrolled in a workplace pension. The campaign works alongside The Pensions Regulator's programme of direct communications to employers, including letters and emails.
- 2.4.7 Finally, the Pension Wise guidance service will transfer into DWP from HM Treasury in April 2016. This Government priority aims to provide greater flexibility in how individuals can access their pensions, including the opportunity to cash in their full fund from a defined contribution pension, rather than buy an annuity. This has significantly increased the choice available but it also heightens the risk of individuals not understanding their options, and making irreversible decisions that are not in their long-term financial interest. Pension Wise is a free, impartial guidance service set up by the government to help people make the best retirement savings choices for them and their families. The service is available online, over the phone and face to face.
- 2.4.8 The role of communications is to raise awareness of the service and how to access it, ensuring demand continues to grow. The Authority do not have as much data or consumer insight about target audience, or data about recent users/customers of the service, as desirable and the results of various research studies that are being instigated will not be available until, at the earliest, the end of 2016.
- 2.4.9 The policy and strategic objectives for Pension Wise may change following the outcome of the Financial Advice and Markets Review (FAMR). This may also lead to innovation in the financial guidance/advice market which Pension Wise may end up "competing" with.

### **3. BACKGROUND TO REQUIREMENT/OVERVIEW OF REQUIREMENT**

- 3.1 This contract is the result of a re-tender of an existing contract for creative services for pensions which expired at the end of April 2016.
- 3.2 The contract shall be for two (2) years or until the agreed budget has been exhausted whichever is sooner, with an option to extend for up to a further one (1) year.
- 3.3 The Supplier will meet the Authority's requirements around specific policies:
  - 3.3.1 Develop a new creative approach for a two-year State Pension campaign incorporating the new State Pension and increases to State Pension age. The campaign should run from autumn 2016 and use online and offline channels (excluding TV). This builds on an existing campaign (see GOV.UK/yourstatepension for more information) for a pre-State Pension age, 55 and over audience but extends it to promote the new digital service (search Check your State Pension service on GOV.UK), to all working age audiences. The Authority want a particular focus on key life stages within this working age audience.

- 3.3.2 The Authority want to tell people that the State Pension has changed and encourage behaviour change - engaging many for the first time to use the digital service to check their State Pension entitlement, find out their State Pension age, and take action to plan and save for their retirement.
- 3.3.3 The Authority would like to see how the State Pension creative could flex across to a separate campaign for current pensioners about actions they can take and provide reassurance (including the State Pension top up scheme). However, the Authority is not currently looking for a new creative treatment for this pensioner audience.
- 3.4 Throughout the contract period, the Supplier will be required to extend the successful 'Workie' workplace pensions campaign (workplacepensions.gov.uk). This includes retaining the existing creative approach, building on the success of the character and maximising the recognition. The Authority want to further drive relevancy among the target audience of small and micro employers, their employees and their business advisers. The Authority want to explore how 'Workie' and 'Don't ignore the workplace pension' can evolve to highlight the support available to employers, motivating them to take action towards compliance, and the benefits of staying enrolled to employees.
- 3.5 'Workie' is a new 3-year TV-led campaign to make workplace pensions the norm. To do this, the Authority's approach brings to the forefront the latent need for pension saving.
- 3.6 Throughout the contract period, the Supplier will be required extend the Pension Wise campaign (pensionwise.gov.uk), using the existing creative approach at first, to drive the demand for the service and ensure people get the guidance they need, including incorporating the introduction of further freedoms in 2017. This is also a TV-led campaign.

**4. DEFINITIONS**

Expression	Description
FAMR.	Meaning Financial Advice and Markets Review
MCAT	Meaning DWP Ministerial Commercial Approvals Team

**5. SCOPE OF REQUIREMENT**

- 5.1 Communications objectives, audiences, messages and background information for the State Pension, Workplace Pensions and Pension Wise campaigns are attached.



**Pension Wise  
campaign.docx**



**State Pension  
campaign.docx**



**Workplace pension  
campaign.docx**

- 5.2 Challenges

- 5.2.1 The key challenges across the campaigns are:
  - 5.2.1.1 Separate campaigns need to align, complement and be consistent with the wider Pension narrative and Government priorities;

- 5.2.1.2 Not only are pensions a complex subject, they are also of low interest to many people, making it more difficult to achieve cut-through;
- 5.2.1.3 Diversity and changing profile of audiences – they need to cover a wide variety of income and demographic groups, to instil financial confidence and propensity to engage in the subjects;
- 5.2.1.4 Continuing economic climate makes people more frugal, and potentially less inclined/able to save or willing to help others save for their future;
- 5.2.1.5 The need to be flexible and adaptable to a changing environment and develop campaigns that are sustainable within an evolving market;
- 5.2.1.6 Campaigns need to be suitable, transferable and integrated across paid for, low cost and no cost media, PR, partnerships and stakeholder activity.

### 5.3 Specific challenges - State Pension campaign

- 5.3.1 Deliver a campaign that promotes State Pension reforms that are designed to simplify the current system, reduce long-term costs and focus expenditure on providing a basic income. Complex transitional rules mean challenges in communicating the changes to those affected, for example:
  - 5.3.1.1 Misconceptions - such as confusion over the value of the new State Pension, including for those who have been 'contracted out' and the number of years required for a full State Pension;
  - 5.3.1.2 Specific changes faced by key groups including the self-employed, those at risk of not meeting the Minimum Qualifying Period and people (women in particular) who may be affected by the changes to the rules around deriving/inheriting pensions based on their spouses' or civil partner's NI record.
- 5.3.2 Promote further changes to the State Pension age, especially for women.
- 5.3.3 Build on an existing State Pension campaign that has been successful to date and take the creative forward to aid people's understanding, without undermining the Authority's progress so far.

### 5.4 Specific challenges - Workplace Pensions campaign

- 5.4.1 Deliver a joint campaign that meets the needs of the Authority and The Pensions Regulator.
- 5.4.2 Develop the strategic direction of the 'Workie' character introduced in October 2015 as the workplace pension representation, and his role in future advertising, working alongside the animation agency that has developed the character.
- 5.4.3 Promote the Automatic Enrolment policy recently extended to small and micro employers (employing between 1 and 29 employees), their employees and business advisers. While the Authority's priority is to be more targeted, it will still be essential to build on the existing 'social norming' campaign and continue to build positivity among the wider working population.
- 5.4.4 Encourage the scheme administration – the Authority is responsible for promoting workplace pensions to employers (through The Pensions Regulator) but the schemes themselves are provided by private companies. The Authority is therefore

promoting a concept rather than a specific service/scheme, and have no control over what an employer may offer to their staff.

- 5.4.5 Develop campaign activity that is relevant to its target audience - as the Authority start reaching small and micro employers, the behaviour and mind-set of employers is likely to be more aligned with that of individuals. Employers may include many who do not run businesses (e.g. individuals who employ a nanny or someone to provide personal care) and therefore may not immediately consider themselves as employers.
  - 5.4.6 Deliver a campaign that targets smaller companies who are less likely to have in-house expertise, meaning that they need more support and seek more information. These companies are more likely to consider Automatic Enrolment an administrative burden, so may need more prompting before starting to take action.
  - 5.4.7 Promote diversity of audience – the Authority is trying to reach both employers and employees with two different messages, encouraging them to take different actions in response to campaign activity. Messages need to be clear so there is no confusion on desired campaign response or behaviour change for these two audiences. The Authority may need to review channel mix as the campaign progresses to ensure that risk sectors and regions requiring additional targeting are reached therefore the supplier will need to be flexible.
  - 5.4.8 Promote Automatic Enrolment to the small and micro audiences that are implementing their legal duties, without alienating the larger employers that are approaching their new re-enrolment requirements. The Authority need to ensure that that this audience is not disaffected by small and micro messaging.
  - 5.4.9 Collaborating and partnering with The Pensions Regulator, and their agencies, and continuing to build the brand profile of The Pensions Regulator. The Authority aims to help employers understand that this is the organisation which will help them through Automatic Enrolment, not just a ‘regulator’.
- 5.5 Specific challenges – Pension Wise
- 5.5.1 Increase awareness of Pension Wise. This programme has been in existence for only 10 months, so awareness levels and trial of the service are still relatively low. The Authority has greater capacity to deliver appointments than demand, which it is looking to address by ongoing promotion of the service and in the renewal of Grant Agreements with delivery partners.
  - 5.5.2 Promote Pension Wise and encourage people to make an appointment. Pension Wise is funded by a levy on Financial Services, which results in a great deal of scrutiny of the quality of the service being delivered and calls for financial advice to be delivered, instead, by “professionals”. Financial sector press has been critical of the low take-up to date and of the perceived high cost per appointment (transaction) – approx. £500/appointment. If the Authority can drive demand for appointments, this cost will reduce.
  - 5.5.3 Communicate up and coming changes and events for example, April 2017 will see the launch of the secondary market for annuities. For Pension Wise, this means that from December 2016 the Authority will need to communicate to people already in receipt of an annuity about this new freedom and the fact that Pension Wise appointments can now provide guidance about their options.
- 5.6 Channels
- 5.6.1 The Authority’s current campaigns have operated across a variety of channels, including (but not limited to):

- 5.6.1.1 Television
  - 5.6.1.2 Video on Demand (e.g., DWP's Pension Tube channel)
  - 5.6.1.3 National and local radio
  - 5.6.1.4 Digital display, native and search
  - 5.6.1.5 National, local, BME and trade print media
  - 5.6.1.6 Out of home media
  - 5.6.1.7 Commuter media
  - 5.6.1.8 Social media
  - 5.6.1.9 Media partnerships
  - 5.6.1.10 Brand partnerships.
- 5.6.2 The Supplier would be expected to work with the Authority team to identify the best channels, and potential low/no cost options to support paid campaign activity

## **6. THE REQUIREMENT**

6.1 The Supplier will:

6.1.1 Develop a strategically thought out, "deep truth", unifying creative proposition to communicate what the pension changes mean for all working age people (and employers) and the long-lasting behaviour change that sits behind them. A narrative is:

6.1.1.1 'The State Pension provides a foundation but people need to take responsibility for planning and saving ahead for the income they want in retirement, and when they get there, they now have the freedom and flexibility to put them in control. Check your State Pension, stay enrolled in a workplace pension and think about how much you'll need in retirement.'

6.1.2 Bring the new proposition alive across the Authority's campaigns - develop a long-lasting creative approach (creative platform, visual identity) that builds on the success of our current campaign activity and can illustrate how the elements work together to create a single story, in an appealing, engaging and breakthrough way that inspires behavior change. The use of this will build over time – the Authority envisage a phased approach to merge the campaigns. The Authority need a new creative approach for the State Pension messages immediately but the Authority want to build on the success of our other existing campaigns, refreshing them and bringing out their role within the overarching proposition in an appropriate way. Therefore the creative approach needs to be flexible to ensure the right audience is targeted at the right time with joined-up messages. For example, the Authority want to start reaching life stage audiences and key life moments (such as first job or starting a family), to engage people in the pensions story at the most appropriate time.

6.2 Contracted services will be called-off as and when required by the Authority.

6.2.1 The Supplier will provide a detailed proposal and associated price breakdown to meet each of the Authority's call off requirements including associated deliverables and timelines.

- 6.2.2 All pricing will be inclusive of expenses, exclusive of VAT and broken down in line with the Contract Charges at Appendix 2.
- 6.2.3 The Supplier will not undertake work without prior written approval to proceed from the Authority.
- 6.2.4 Any work undertaken without prior written approval of the Authority will be undertaken at the Supplier's own risk.
- 6.2.5 A Purchase Order Number will be provided by the Authority for each individual call-off.
- 6.3 The location of the Services will be carried out at the Suppliers' premises and the Supplier may be required to attend DWP Head Office on occasions.

## **7. Knowledge transfer / IPR requirements**

- 7.1 The current Workplace Pensions Campaign is underpinned by a CGI character, 'Workie'. The IPR for 'Workie' is owned by the animation agency, Glassworks. The Supplier will need to work with the animation agency in future campaign development. Any cost derived from the animation agency will form part of the campaign production costs that the Authority will fund.
- 7.2 The current Pension Wise Campaign features animation developed by another illustrator. The Supplier may choose to work with appointed illustrators in any initial campaign development.

## **8. REPORTING**

- 8.1 The Supplier will provide contact reports to document decisions made and actions taken in all Authority/Supplier meetings, reports will be provided within 3 days of the meeting;
- 8.2 The Supplier will provide monthly spend data in a format designed by the Authority to the Authority within 5 working days of request.

## **9. VOLUMES**

- 9.1 This is a Call-Off Contract and as such the Authority cannot guarantee volumes of work.

## **10. CONTINUOUS IMPROVEMENT**

- 10.1 The Supplier will be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration.
- 10.2 Changes to the way in which the Services are to be delivered must be brought to the Authority's attention and agreed prior to any changes being implemented.

## **11. SUSTAINABILITY**

- 11.1 There are no specific sustainability considerations outside of those stipulated in the framework terms and conditions.

## **12. QUALITY**

- 12.1 No specific quality accreditation required other than any stipulated in the framework terms and conditions.

## **13. PRICE**

- 13.1 The contract value will be up to a maximum of £3,000,000.00 (excluding VAT).
- 13.2 The Contract value is based on anticipated spend across the campaigns which is subject to prior approval.

- 13.3 All pricing will be inclusive of expenses, exclusive of VAT and broken down in line with the Contract Charges at Appendix 2.
- 13.4 Work will be undertaken on a call-off or project basis and costs will be agreed in advance between the Authority and the Supplier.
- 13.5 The Authority reserves the right to link a proportion of the Supplier's payment to the successful completion of deliverables; any payment by deliverables will be agreed in advance between the Supplier and DWP Communications. Progress against this will be monitored and agreed collaboratively using pre-agreed measures of performance.
- 13.6 The contract shall be for two (2) years or until the agreed budget has been exhausted whichever is sooner, with an option to extend for up to a further one (1) year.

#### 14. STAFF AND CUSTOMER SERVICE

- 14.1 A sufficient level of resource will be provided by the Supplier throughout the duration of the Contract in order to consistently deliver a quality service to all Parties.
- 14.2 The Supplier's staff assigned to the Contract shall have the relevant qualifications and experience to deliver the Contract.
- 14.3 The Supplier shall ensure that their staff understand the Authority's vision and objectives and will provide excellent customer service to the Authority throughout the duration of the Contract.

#### 15. SERVICE LEVELS AND PERFORMANCE

- 15.1 The Authority will measure the quality of the Supplier's delivery by:

KPI/SLA	Service Area	KPI/SLA description	Target
1.	Service Delivery	The Supplier's adherence to the timescales/ project plans unless otherwise agreed by the Authority;	On-going
2.	Service Delivery	Customer satisfaction with account management arrangements, as judged by regular client questionnaires	On-going
3.	Service Delivery	The Supplier's delivery of strategic and creative campaign approaches based on audience and market insight that help achieve agreed campaign KPIs and value for money.	On-going
4.	Account Management	The Supplier's acknowledgement of complaints and issues raised within 48 hours and implements and manages resolutions within 5 working days.	5 working days
5.	Service Delivery	The Supplier's adherence to DWP's branding guidance, (to be provided to the successful tenderer upon appointment);	On-going

6.	Service Delivery	The Supplier's commitment to supplying contact reports to document decisions made and actions taken in all client/supplier meetings, and supplying these reports within 3 days of the meeting;	3 days
7.	Service Delivery	The Supplier's response within 5 working days to written briefs for specific pieces of work. The response must include costed proposals;	5 working days
8.	Account Management	The Supplier's response to queries and requests within 24 hours, for example in response to changing Ministerial and Departmental requirements;	24 hours
9.	Account Management	The Supplier's provision of monthly spend data in a format designed by the Authority to the Authority within 5 working days of request.	5 working days
10.	Account Management	The Supplier's provision of a main contact/ account manager for DWP Pensions Communications and at least two back-up contacts;	On-going
11.	Account Management	The Supplier's provision of accessibility to appropriate members of staff for DWP Pensions Portfolio, and our agencies, at all reasonable times in order to discuss routine operational matters;	On-going
12.	Account Management	The Supplier's consistent provision of regular contact with DWP Pensions Portfolio to discuss progress (daily if deemed necessary by DWP Pensions Portfolio);	On-going
13.	Account Management	The Supplier's provision of a final report detailing the delivery of the Service as well as achievements, targets met, and lessons learned;	On-going

14.	Service Delivery	The Supplier's agreement to some payments being made on a performance related basis. Payment related KPIs will be jointly agreed with the Supplier and incorporated into a contract with the successful bidder, along with an agreed measure of performance.	Quarterly
15.	Service Delivery	The Supplier's provision of strategic advice, attendance of ad hoc meetings and providing ad hoc reports when requested by DWP Pensions Portfolio;	On-going
16.	Contract Management	The Supplier's weekly attendance of telephone meetings with the Authority to discuss progress and any recommended continuous improvements dependent on the campaign needs.	Weekly
17.	Service Delivery	The Supplier's commitment to working with the Authority and its Creative Agencies during the 3 week handover period at the beginning of the contract.	3 weeks

**16. SECURITY REQUIREMENTS**

16.1 The Supplier shall sign a Non-Disclosure Agreement and a Confidentiality Agreement when requested by the Authority.

**17. INTELLECTUAL PROPERTY RIGHTS (IPR)**

17.1 All Intellectual Property Rights ("IPR") created in connection with the supply of the Contract Services shall vest in the Supplier who shall grant to the Authority a non-exclusive, unlimited, irrevocable licence to use and exploit the same, without further payment to the Supplier.

17.2 The Supplier shall grant a licence, for the benefit of the Customer and the Authority, to permit them to use/ or exploit the IPR created in connection with the supply of the Contract Services, for the benefit of all Contracting Bodies, without further payment to the Supplier.

17.3 Nothing in this contract shall interfere with the rights and responsibilities of the Supplier of any Authority Pre-Existing IPR.

17.4 Subject to Clause 18.1 and save as expressly granted elsewhere under the Contract, the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.

17.5 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Authority and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Authority and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Contract

Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").

- 17.6 If a Claim arises, the Authority shall notify the Supplier in writing of the Claim and the Authority shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 17.6.1 shall consult the Authority on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 17.6.2 shall take due and proper account of the interests of the Authority;
  - 17.6.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Authority into disrepute; and
  - 17.6.4 shall not settle or compromise the Claim without the prior written approval of the Authority (not to be unreasonably withheld or delayed).
- 17.7 The Supplier shall have no rights to use any of the Authority's names, logos or trademarks without the prior written approval of the Authority.

## **18. PAYMENT**

- 18.1 Payment will be made electronically by the Authority via a valid Purchase Order (PO) which will be provided.
- 18.2 The PO number must be quoted on all invoices.
- 18.3 All invoices must be submitted for individual pieces of work within 10 working days of the work being completed to the following address and copied to the key DWP Pensions Portfolio contacts: **REDACTED**
- 18.4 Payment can only be made following satisfactory receipt of agreed deliverables by the Authority.
- 18.5 Before payment can be considered, each invoice must include a detailed elemental breakdown of work completed and the associated costs.

## **Appendix 2 (Contract Charges)**

The maximum budget for the contract is £3,000,000

New creatives for campaigns will be developed within the first year of the contract and as a result, this is where the bulk of the cost will be incurred. Expenditure is subject to review and prior approval.

All Prices quoted are firm maximum prices, inclusive of expenses, exclusive of VAT and applicable for the length of the contract and any extension period.

**REDACTED**

**Appendix 3  
Non Applicable**

## Part 2 – Call-Off Terms

### CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	21
2.	SUPPLY OF CONTRACT SERVICES.....	26
3.	PAYMENT AND CHARGES .....	28
4.	LIABILITY AND INSURANCE.....	29
5.	INTELLECTUAL PROPERTY RIGHTS .....	31
6.	PROTECTION OF INFORMATION .....	32
7.	WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS .....	37
8.	TERMINATION.....	39
9.	CONSEQUENCES OF EXPIRY OR TERMINATION.....	42
10.	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES .....	44
11.	PREVENTION OF BRIBERY AND CORRUPTION.....	44
12.	NON-DISCRIMINATION.....	45
13.	PREVENTION OF FRAUD .....	46
14.	TRANSFER AND SUB-CONTRACTING .....	46
15.	WAIVER.....	47
16.	CUMULATIVE REMEDIES.....	47
17.	FURTHER ASSURANCES.....	47
18.	SEVERABILITY.....	47
19.	SUPPLIER'S STATUS .....	48
20.	ENTIRE AGREEMENT.....	48
21.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT .....	48
22.	NOTICES .....	49
23.	DISPUTES AND LAW .....	49
24.	DISASTER RECOVERY AND BUSINESS CONTINUITY.....	51
25.	REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE CONTRACT SERVICES .....	51
26.	RECORDS AND AUDIT ACCESS.....	52
27.	VARIATION.....	53
28.	MISTAKES IN INFORMATION.....	53
29.	TERM.....	53
30.	TUPE.....	54
	SCHEDULE 1 : SERVICE LEVELS.....	55
	SCHEDULE 2: VARIATION FORM.....	59

SCHEDULE 3: DISASTER RECOVERY AND BUSINESS CONTINUITY .....	61
SCHEDULE 4: OPTIONAL CLAUSES – EXIT, TUPE AND PENSIONS .....	67
SCHEDULE 5: ADDITIONAL OPTIONAL CLAUSES .....	68
SCHEDULE Z: SECURITY MANAGEMENT PLAN.....	79

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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

<b>"Authority"</b>	means <b>THE MINISTER FOR THE CABINET OFFICE</b> (" <b>Cabinet Office</b> ") as represented by Government Procurement Service (formerly Buying Solutions), a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
<b>"BCDR Plan"</b>	means any plan relating to business continuity and disaster recovery as referred to in Schedule 3 (Disaster Recovery and Business Continuity);
<b>"Call Off Commencement Date"</b>	means the date specified as such in the Letter of Appointment;
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
<b>"Contract"</b>	means the written agreement between the Customer and the Supplier consisting of the Letter of Appointment, these Call-Off Terms (save to the extent varied by the Letter of Appointment) and any other documents referred to in the Letter of Appointment or these Call-Off Terms;
<b>"Contract Charges"</b>	means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract for the full and proper performance by the Supplier of the Contract Services;
<b>"Contract Mediator"</b>	has the meaning set out in Clause 23.2.5.1;
<b>"Contract Services"</b>	means the services to be supplied by the Supplier to the Customer as set out in Appendix 1(Contract Services) to the Letter of Appointment;
<b>"Customer"</b>	means the Contracting Body that issues the Letter of Appointment.;

**"Customer's Confidential Information"**

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

**"Customer Data"**

means:

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:

(i) are supplied to the Supplier by or on behalf of the Customer; or

(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; and

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

**"Customer's Personal Data"**

means the Personal Data supplied by the Customer to the Supplier and, for the purposes of or in connection with the Contract;

**"Customer Pre-Existing IPR"**

shall means any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

**"Customer's Representative"**

means the representative of the Customer appointed by the Customer from time to time in relation to the Contract and notified to the Supplier;

<b>"Data Subject"</b>	has the same meaning as set out in the Data Protection Act 1998 as amended;
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Clause 23.2;
<b>"Expiry Date"</b>	means the date specified as such in the Letter of Appointment;
<b>"Goods"</b>	means the goods to be supplied in connection with or ancillary to the supply of the Contract Services and specified within the description of services at Part 1 of Framework Schedule 1 (Services);
<b>"Good Industry Practice"</b>	means standards, practices, methods and procedures conforming to the Law and the requirements of the Suppliers Regulation Authority 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 providing services similar to the Contract Services;
<b>"Information"</b>	has the meaning given under section 84 of the FOIA;
<b>"Key Performance Indicators" or "KPIs"</b>	mean the indicators, if any, set out in the Letter of Appointment;
<b>"Key Personnel"</b>	means any individuals identified as such in the Letter of Appointment and any replacements for such individuals that may be agreed between the Parties from time to time in accordance with Clause 2.3;
<b>"Letter of Appointment"</b>	means the letter from the Customer to the Supplier dated 03/08/2016 (including its appendices) containing the Order to provide the Contract Services;
<b>"Material Breach"</b>	means a material breach of the Contract;
<b>"Party"</b>	means the Customer or the Supplier and <b>"Parties"</b> shall mean both the Customer and the Supplier;
<b>"Persistent Failure"</b>	means any two (2) or more failures by the Supplier in any period of twelve (12) consecutive Months to comply with

its obligations in respect of the Contract Services and under the Contract;

<b>"Replacement Services"</b>	means any services which are substantially similar to any of the Contract Services and which the Customer receives in substitution for any of the Contract Services following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
<b>"Replacement Supplier"</b>	Non Applicable
<b>"Service Levels"</b>	means the service levels set out in Schedule 1 (Service Levels);
<b>"Sub-Contract"</b>	means the Supplier's contract with a Sub-Contractor whereby the Sub-Contractor agrees to provide to the Supplier the Contract Services or any part thereof or facilities, services necessary for the provision of the Contract Services or any part thereof necessary for the management, direction or control of the Contract Services or any part thereof;
<b>"Sub-Contractor"</b>	means any person appointed by the Supplier to carry out any of the Supplier's obligations under the Contract;
<b>"Supplier"</b>	means the Supplier to whom the Letter of Appointment is addressed;
<b>"Supplier's Confidential Information"</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Supplier, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential; and
<b>"Supplier's Staff"</b>	means all persons employed by the Supplier and/or any Sub-Contractor to perform the Supplier's obligations under the Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and

Sub-Contractors used in the performance of the Supplier's obligations under the Contract.

## 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 the words "include", "includes", "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 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;
- 1.2.5 the Annex forms part of these Call-Off Terms and shall have effect as if set out in full in the body of these Call-Off Terms and any reference to these Call-Off Terms includes the Annex;
- 1.2.6 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
- 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;
- 1.2.8 references to "Clauses" and the "Annex" are, unless otherwise provided, references to the clauses of and the Annex to these Call-Off Terms and references to "paragraphs" are, unless otherwise provided, references to paragraphs of the Annex or Schedule in which the references are made;
- 1.2.9 terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;
- 1.2.10 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call-Off Terms, any other document referred to in the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following descending order of precedence:
  - 1.2.11.1 the Framework Agreement (excluding Framework Schedule 5 (Letter of Appointment and Call-Off Terms));
  - 1.2.11.2 the Letter of Appointment;
  - 1.2.11.3 these Call-Off Terms; and

1.2.11.4 any other document referred to in the Contract.

## **2. SUPPLY OF CONTRACT SERVICES**

### **2.1 Contract Services**

- 2.1.1 The Supplier shall supply the Contract Services to the Customer in accordance with the provisions of the Contract including the Service Levels and Key Performance Indicators (if any) stipulated in the Letter of Appointment and Schedule 1 (Service Levels and Key Performance Indicators).
- 2.1.2 The Supplier shall:
- 2.1.2.1 comply with all reasonable instructions given to the Supplier and the Supplier's Staff by the Customer in relation to the Contract Services from time to time, including reasonable instructions to reschedule or alter the Contract Services;
  - 2.1.2.2 immediately report to the Customer's Representative any matters which involve or could potentially involve a conflict of interest as referred to in Clause 2.1.3.1;
  - 2.1.2.3 co-operate with the Customer and the Customer's other professional advisers in relation to the Contract Services as required by the Customer;
  - 2.1.2.4 comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Supplier in writing by the Customer.
- 2.1.3 The Supplier shall not:
- 2.1.3.1 knowingly act at any time during the term of the Contract in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Contract Services; or
  - 2.1.3.2 incur any expenditure which would result in any estimated figure for any element of the Contract Services being exceeded without the Customer's written agreement; or
  - 2.1.3.3 without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Contract Services; or
  - 2.1.3.4 pledge the credit of the Customer in any way; or
  - 2.1.3.5 engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer.
- 2.1.4 The Customer reserves the right to select more than one Supplier from the Framework at any one time to work on and deliver a campaign or project.

- 2.1.5 The Supplier may be expected to work with other Suppliers from the Framework, or any of the Customer's other frameworks to deliver the Contract Services required.
- 2.1.6 The Supplier may be expected to deliver specific requirements in association with other named suppliers of the Customer.
- 2.1.7 The Supplier may be expected to deliver specific requirements in association with the Customer's in house teams. This may include a requirement for the Supplier's Key Personnel to be based at the Customer's premises for an agreed period of time.
- 2.1.8 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 2.1.9 The Supplier accepts that the Customer shall have the right after consultation with the Supplier to require the removal from involvement in the Contract Services of any person engaged in the performance of the Contract Services if in the Customer's reasonable opinion the performance or conduct of such person is or has been unsatisfactory or if it shall not be in the public interest for the person to work on the Contract Services.
- 2.1.10 Where the Supplier is more than one firm acting as a consortium, each firm that is a member of the consortium shall be jointly and severally liable for performance of the Supplier's obligations under the Contract.
- 2.1.11 Time shall not be of the essence in this contract unless stipulated by the Customer in the Letter of Appointment, in which case the provisions of Schedule 5 (Additional Further Clauses), optional Clause 34 will apply.

## **2.2 Variation of Contract Services**

- 2.2.1 The Customer may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order.
- 2.2.2 Any request by the Customer for a variation to the Contract Services shall be by written notice to the Supplier:
  - 2.2.2.1 giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred; and
  - 2.2.2.2 specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable,

and the Supplier shall respond to such request within such timeframe.
- 2.2.3 In the event that the Supplier and the Customer are unable to agree any change to the Contract Charges in connection with any requested variation to the Contract Services, the Customer may agree that the Supplier should continue to perform its obligations under the Contract without the variation or may terminate the Contract in accordance with Clause 8.4.1.

## **2.3 Key Personnel**

- 2.3.1 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Contract Services to the Customer. The Key Personnel shall be responsible for performing such roles as are ascribed to them in the Letter of Appointment and such other roles as may be necessary or desirable for the

purposes of the Contract or as may be agreed between the Parties from time to time.

- 2.3.2 The Key Personnel shall not be released by the Supplier from supplying the Contract Services without the agreement of the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment/partnership or other extenuating circumstances.
- 2.3.3 Any replacements to the Key Personnel shall be subject to the agreement of the Customer. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Contract.
- 2.3.4 The Customer shall not unreasonably withhold its agreement under Clauses 2.3.2 or 2.3.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
- 2.3.5 If requested by the Customer, the Supplier shall procure that Key Personnel attend transaction review meetings at no cost to the Customer during the term of the Contract and upon its conclusion.

### **3. PAYMENT AND CHARGES**

#### **3.1 Contract Charges and VAT**

- 3.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with Clause 3.2 (Payment).
- 3.1.2 The Customer shall, in addition to the Contract Charges and following receipt of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Contract Services supplied.
- 3.1.3 The provisions of Framework Schedule 3 (Charging Structure) of the Framework Agreement shall apply in relation to the Contract Services.
- 3.1.4 If at any time before the Contract Services have been delivered in full the Supplier reduces its Framework Prices for any Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement with the result that the Framework Prices are lower than the Contract Charges, the Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.
- 3.1.5 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this Clause 3.1.5 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

#### **3.2 Payment**

- 3.2.1 The Customer shall pay all sums properly due and payable to the Supplier in respect of the Contract Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.

- 3.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Contract Services provided and any disbursements and that the invoice is supported by such other documentation as may reasonably be required by the Customer to substantiate the invoice.
- 3.2.3 The Supplier shall ensure that all invoices submitted to the Customer for the Contract Services are exclusive of the Management Charge payable to the Authority in respect of the Contract Services. The Supplier shall not be entitled to increase the Contract Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.
- 3.2.4 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 3.2.5 Subject always to the provisions of Clause 14, if the Supplier enters into a Sub-Contract in respect of the Contract Services, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 3.2.6 The Supplier shall not suspend the supply of the Contract Services unless the Supplier is entitled to terminate the Contract under Clause 8.2.2 on the grounds of the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Contract Services.
- 3.2.7 The Supplier shall accept the Government Procurement Card as a means of payment for the Contract Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 3.2.8 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

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

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Contract
- 3.3.2 Any overpayment by either Party, whether of the Contract Charges 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.

## **4. LIABILITY AND INSURANCE**

### **4.1 Liability**

- 4.1.1 Neither Party excludes or limits its liability for:

- 4.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors; or
- 4.1.1.2 fraud or fraudulent misrepresentation by it or its employees.
- 4.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Contract Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under the Contract against that individual or such service company in respect of the Contract Services save in the case of Fraud or any liability for death or personal injury. Nothing in this Clause 4.1.2 shall in any way limit the liability of the Supplier in respect of the Contract Services, which such liability shall be uncapped unless otherwise specified in the Letter of Appointment.
- 4.1.3 The Supplier shall fully indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Supplier of its obligations under the Framework Agreement and the Customer's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier.
- 4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:
  - 4.1.4.1 loss of profits;
  - 4.1.4.2 loss of business;
  - 4.1.4.3 loss of revenue;
  - 4.1.4.4 loss of or damage to goodwill;
  - 4.1.4.5 loss of savings (whether anticipated or otherwise); and/or
  - 4.1.4.6 any indirect, special or consequential loss or damage.
- 4.1.5 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:
  - 4.1.5.1 the additional operational and/or administrative costs and expenses arising from any Material Breach;
  - 4.1.5.2 the cost of procuring, implementing and operating any alternative or Replacement Services to the Contract Services; and
  - 4.1.5.3 any regulatory losses, fines, expenses or other losses arising from a breach by the Supplier of any Laws.
- 4.1.6 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Customer in respect of any document or information provided by the Supplier in its provision of the Contract Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit

the obligation of the Supplier to exercise all the obligations of a professional supplier employed in a customer/supplier relationship.

- 4.1.7 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer 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 Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.

## **4.2 Insurance**

- 4.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing and subject to the minimum levels of insurance cover which are referred to in Clause 4.2.7, an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Supplier under the Contract or otherwise in connection with the provision of the Contract Services. Such insurance shall be maintained for so long as the Supplier may have any liability to the Customer.
- 4.2.2 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 4.2.1.
- 4.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 4.2.1, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 4.2.4 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds for the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.
- 4.2.5 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 4.2.6 Where there are goods supplied, in connection with the supply of the Contract Services, the minimum insurance period shall be six (6) years following the expiration or earlier termination of this Contract.
- 4.2.7 The standard minimum levels of insurance cover have been set out in the Framework Agreement. Any variation to those levels are set out in the Letter of Appointment.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 All Intellectual Property Rights ("IPR") created in connection with the supply of the Contract Services shall vest in the Supplier who shall grant to the Customer a non-exclusive, unlimited, irrevocable licence to use and exploit the same, without further payment to the Supplier.

- 5.2 The Supplier shall grant a licence, for the benefit of the Customer and the Authority, to permit them to use and/or exploit the IPR created in connection with the supply of the Contract Services, for the benefit of all Contracting Bodies, without further payment to the Supplier.
- 5.3 Nothing in this contract shall interfere with the rights and responsibilities of the Supplier of any Customer Pre-Existing IPR.
- 5.4 Subject to Clause 5.1 and save as expressly granted elsewhere under the Contract, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors and the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors.
- 5.5 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "**Claim**").
- 5.6 If a Claim arises, the Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 5.6.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 5.6.2 shall take due and proper account of the interests of the Customer;
  - 5.6.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
  - 5.6.4 shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
- 5.7 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the prior written approval of the Customer.

## **6. PROTECTION OF INFORMATION**

### **6.1 Protection of Personal Data**

- 6.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer's Personal Data.
- 6.1.2 The Supplier shall:
- 6.1.2.1 Process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Contract or as otherwise notified by the Customer to the Supplier during the term of the Contract);
  - 6.1.2.2 Process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Contract Services or as is required by Law or any Regulatory Body;

- 6.1.2.3 implement appropriate technical and organisational measures to protect the Customer's 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 Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;
- 6.1.2.4 take reasonable steps to ensure the reliability of all members of the Supplier's Staff who have access to the Customer's Personal Data;
- 6.1.2.5 obtain the Customer's prior written approval in order to transfer all or any of the Customer's Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 6.1.2.6 ensure that all members of the Supplier's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 6.1;
- 6.1.2.7 ensure that none of the Supplier's Staff publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
- 6.1.2.8 notify the Customer within five (5) Working Days if the Supplier receives:
  - 6.1.2.8.1 a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
  - 6.1.2.8.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 6.1.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
  - 6.1.2.9.1 providing the Customer with full details of the complaint or request;
  - 6.1.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - 6.1.2.9.3 providing the Customer with any Customer's Personal Data which the Supplier holds in relation to a Data Subject (within the timescales required by the Customer); and
  - 6.1.2.9.4 providing the Customer with any information requested by the Customer;
- 6.1.2.10 permit or procure permission for the Customer or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under the Contract;

- 6.1.2.11 provide a written description of the technical and organisational methods employed by the Supplier for Processing the Customer's Personal Data (within the timescales required by the Customer); and
- 6.1.2.12 not Process or otherwise transfer any Customer's Personal Data outside the European Economic Area without the prior written consent of the Customer which may be given on such terms as the Customer in its discretion thinks fit.
- 6.1.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 6.1.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Customer's Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 6.1.5 In the event that through any failure by the Supplier to comply with its obligations under the Contract, the Customer's Personal Data that is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

## **6.2 Confidentiality**

- 6.2.1 Except to the extent set out in this Clause 6.2 or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
  - 6.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 6.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 6.2.2 Clause 6.2.1 shall not apply to the extent that:
  - 6.2.2.1 such 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 6.4 (Freedom of Information); or
  - 6.2.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
  - 6.2.2.3 such information was obtained from a third party without obligation of confidentiality; or
  - 6.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
  - 6.2.2.5 it is independently developed without access to the other Party's Confidential Information.

- 6.2.3 The Supplier may only disclose the Customer's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with the Supplier's obligations as to confidentiality as set out in the Contract.
- 6.2.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Contract.
- 6.2.5 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Staff identified in the Customer's request sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 6.2.6 Nothing in the Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to clause 15 of the Framework Agreement):
- 6.2.6.1 to any Crown body or any other Contracting Body 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 Body save as required by Law;
  - 6.2.6.2 to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
  - 6.2.6.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 6.2.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 6.2.7 The Customer shall use all reasonable endeavours to ensure that any government department, customer, employee, third party or contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 6.2.6 is made aware of the Customer's obligations of confidentiality under this Contract.
- 6.2.8 Nothing in this Clause 6.2 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.
- 6.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.2.10 The Supplier shall, at all times during and after the term of the Contract, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of

the Supplier's obligations under this Clause 6.2 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

### **6.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**

6.3.1 The Supplier shall comply with and shall ensure that all members of the Supplier's Staff comply with, the provisions of:

6.3.1.1 the Official Secrets Acts 1911 to 1989; and

6.3.1.2 section 182 of the Finance Act 1989.

### **6.4 Freedom of Information**

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

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

6.4.2.1 transfer to the Customer 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;

6.4.2.2 provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

6.4.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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.

6.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including the Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

6.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.

6.4.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 6.2) the Customer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Contract Services:

6.4.5.1 in certain circumstances without consulting the Supplier; or

6.4.5.2 following consultation with the Supplier and having taken the Supplier's views into account,

provided always that where Clause 6.4.5 applies the Customer shall, in accordance with any recommendations of the Ministry of Justice Codes, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 6.4.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.
- 6.4.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 6.4.5.

## **6.5 Transparency**

- 6.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 6.5.2 Notwithstanding any other term of the Contract, the Supplier hereby gives consent to the Customer to publish the Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
- 6.5.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 6.5.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish the Contract.

## **7. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 7.1 The Supplier warrants, represents and undertakes to the Customer that:
- 7.1.1 it has full capacity and authority and all necessary consents, licences and permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
- 7.1.2 the Contract is executed by a duly authorised representative of the Supplier;
- 7.1.3 in entering the Contract it has not committed any Fraud;
- 7.1.4 it has not committed any offence under Bribery Act 2010;
- 7.1.5 all information, statements and representations contained in the Supplier's tender or other submission to the Customer for the award of the Contract Services are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer 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;
- 7.1.6 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 the Supplier or its assets which will or might affect its ability to perform its obligations under the Contract;
- 7.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

- 7.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
  - 7.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
  - 7.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer; and
  - 7.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.
- 7.2 The Supplier warrants, represents and undertakes to the Customer that:
- 7.2.1 it has read and fully understood the Letter of Appointment and these Call-Off Terms and is capable of performing the Contract Services in all respects in accordance with the Contract;
  - 7.2.2 the Supplier and each of its Sub-Contractors has all staff, equipment and experience necessary for the proper performance of the Contract Services; and
  - 7.2.3 it will at all times perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
  - 7.2.4 where goods are supplied in connection with or ancillary to the Contract Services, those Goods are and will continue to be, throughout the anticipated or stipulated lifetime of the same:
    - 7.2.4.1 of satisfactory quality and fit for purpose;
    - 7.2.4.2 in conformance with the relevant specifications set out in the relevant Letter of Appointment and (if applicable) the manufacturer's specifications and documentation;
    - 7.2.4.3 free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period;
    - 7.2.4.4 supplied with full title guarantee;
    - 7.2.4.5 consistent with any requirements set out or referred to in any Letter of Appointment relating to quality and security and the Supplier shall ensure that all aspects of the said goods are the subject of quality management systems and risk mitigation measures; and
    - 7.2.4.6 serviceable (and, in this connection, that sufficient spare parts shall be readily available for the said anticipated or stipulated lifetime in

conformance with the relevant specifications set out in the relevant Letter of Appointment and (if applicable) the manufacturer's specifications and documentation).

- 7.2.5 it shall comply with all the KPIs and meet or exceed the Service Levels;
  - 7.2.6 it shall carry out the Contract Services within the timeframe agreed with the Customer; and
  - 7.2.7 without prejudice to its obligations under Clause 2.3 (Key Personnel), the Supplier shall ensure to the satisfaction of the Customer that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced suppliers and/or other staff as shall be necessary for the proper performance of the Contract Services.
- 7.3 The Supplier shall promptly notify the Customer in writing:
- 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;
  - 7.3.2 if the Supplier undergoes a Change of Control; and
  - 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 7.4 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.
- 7.5 The Supplier acknowledges and agrees that:
- 7.5.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Customer into entering into the Contract; and
  - 7.5.2 the Customer has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

## **8. TERMINATION**

### **8.1 Termination on Insolvency**

- 8.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier if:
  - 8.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
  - 8.1.1.2 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Supplier be wound up or a resolution for the winding-up of the Supplier is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

- 8.1.1.3 a petition is presented for the winding-up of the Supplier (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Supplier pursuant to section 98 of the Insolvency Act 1986; or
- 8.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Supplier's business or assets; or
- 8.1.1.5 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within ten (10) Working Days; or
- 8.1.1.6 an application is made in respect of the Supplier either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 8.1.1.7 if the Supplier is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 8.1.1.8 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 8.1.1.9 in the reasonable opinion of the Customer, there is a material detrimental change in the financial standing and/or the credit rating of the Supplier which:
  - 8.1.1.9.1 adversely impacts on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
  - 8.1.1.9.2 could reasonably be expected to have an adverse impact on the Supplier's ability to supply the Contract Services in accordance with the Contract; or
- 8.1.1.10 the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier; or
- 8.1.1.11 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Supplier comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 8.1.1.12 the Supplier being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 8.1.1.13 the Supplier being an individual or any partner or partners in the Supplier who together are able to exercise control of the Supplier where the Supplier is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning

of section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or

- 8.1.2 any event similar to those listed in Clauses 8.1.1.1 to 8.1.1.13 occurs under the law of any other jurisdiction which the Supplier is subject to.

## **8.2 Termination on Material Breach, Persistent Failure or Grave Misconduct etc**

- 8.2.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- 8.2.1.1 the Supplier commits a Material Breach and if:

- 8.2.1.1.1 the Supplier has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Supplier specifying the Material Breach and requesting it to be remedied:

- 8.2.1.1.1.1 remedied the Material Breach; and

- 8.2.1.1.1.2 put in place measures to ensure that such Material Breach does not recur,

- in each case to the satisfaction of the Customer; or

- 8.2.1.1.4 the Material Breach is not, in the opinion of the Customer, capable of remedy; or

- 8.2.1.2 a Persistent Failure has occurred; or

- 8.2.1.3 Grave Misconduct has occurred; or

- 8.2.1.4 the Supplier breaches any of Clause 6.1 (Protection of Personal Data), Clause 6.2 (Confidentiality), Clause 6.3 (Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989), Clause 7 (Warranties, Representations and Undertakings), Clause 11 (Prevention of Bribery and Corruption), Clause 12 (Non-Discrimination), Clause 13 (Prevention of Fraud) and Clause 14 (Transfer and Sub-Contracting); or

- 8.2.1.5 in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms), which conviction might reasonably be expected to lead to the striking off from the roll maintained by the Suppliers Regulation Authority of the individual(s) concerned.

- 8.2.2 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within five (5) calendar days from the receipt of such notice, the Supplier may terminate the Contract by ten (10) Working Days' written notice to the Customer.

## **8.3 Termination on Change of Control**

8.3.1 The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

8.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

8.3.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where the Customer's written consent to the continuation of the Contract was granted prior to the Change of Control.

#### **8.4 Termination on Notice**

8.4.1 The Customer shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Supplier and to terminate the Contract with immediate effect by giving written notice to the Supplier at any time.

#### **8.5 Termination of Framework Agreement**

8.5.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Framework Agreement is terminated for any reason whatsoever.

#### **8.6 Partial Termination**

8.6.1 Where the Customer is entitled to terminate the Contract pursuant to this Clause 8, the Customer shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

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

9.1 Subject to Clause 9.2, where the Customer terminates the Contract pursuant to Clause 8 (Termination) and then makes other arrangements for the supply of the Contract Services:

9.1.1 the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Contract Services in accordance with the requirements of the Contract;

9.1.2 the Customer shall take all reasonable steps to mitigate such additional expenditure; and

9.1.3 no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.

9.2 Clause 9.1 shall not apply where the Customer terminates the Contract:

9.2.1 solely pursuant to Clause 8.3 (Termination on Change of Control) or Clause 8.4 (Termination on Notice); or

9.2.2 solely pursuant to Clause 8.5 (Termination of the Framework Agreement) if termination pursuant to Clause 8.5 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 25.6, 25.11, 25.12 or 25.13 thereof.

- 9.3 On the termination of the Contract for any reason, the Supplier shall, at the request of the Customer and at the Supplier's cost:
- 9.3.1 immediately return to the Customer all Confidential Information and the Customer's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services;
  - 9.3.2 except where the retention of Customer's Personal Data is required by Law, promptly destroy all copies of the Customer Data and provide written confirmation to the Customer that the data has been destroyed;
  - 9.3.3 immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Customer in connection with the Contract;
  - 9.3.4 vacate, and procure that the Supplier's Staff vacate, any premises of the Customer occupied for the purposes of providing the Contract Services;
  - 9.3.5 return to the Customer any sums prepaid in respect of the Contract Services not provided by the date of expiry or termination (howsoever arising); and
  - 9.3.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Customer or any Replacement Supplier to conduct due diligence.
- 9.4 Without prejudice to any other right or remedy which the Customer may have, if any Contract Services are not supplied in accordance with, or if the Supplier fails to comply with, any of the terms of the Contract then the Customer may (whether or not any part of the Contract Services have been delivered) do any one or more of the following:
- 9.4.1 at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;
  - 9.4.2 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with the Contract;
  - 9.4.3 without terminating the whole of the Contract, terminate the Contract in respect of part of the Contract Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or
  - 9.4.4 charge the Supplier for, whereupon the Supplier shall on demand pay, any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.

9.5 Save as otherwise expressly provided in the Contract:

9.5.1 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 the time of such termination or expiry; and

9.5.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses: Clause 3 (Payment and Charges); Clause 4 (Liability and Insurance); Clause 5 (Intellectual Property Rights); Clause 6.1 (Protection of Personal Data); Clause 6.2 (Confidentiality); Clause 6.3 (Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989); Clause 6.4 (Freedom of Information); Clause 11 (Prevention of Bribery and Corruption); Clause 13 (Prevention of Fraud); Clause 21 (Contracts (Rights of Third Parties) Act); Clause 23.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

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

10.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Customer's prior written approval and shall take reasonable steps to ensure that the Supplier's Staff and professional advisors comply with this Clause 10. Any such press announcements or publicity proposed under this Clause 10 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer including any examination of the Contract by the Auditors.

10.3 The Supplier shall not do anything or permit to cause anything to be done which may damage the reputation of the Customer or bring the Customer into disrepute.

## **11. PREVENTION OF BRIBERY AND CORRUPTION**

11.1 The Supplier shall not:

11.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or

11.1.2 engage in, and shall procure that all the Supplier's Staff or any person acting on the Supplier's behalf shall not commit, in connection with the Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

11.2 The Supplier warrants, represents and undertakes that it has not:

11.2.1 paid commission or agreed to pay commission to the Customer, any Contracting Body or any other public body or any person employed by or on behalf of the Customer in connection with the Contract; and

11.2.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer

in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of the Contract.

11.3 The Supplier shall:

- 11.3.1 in relation to the Contract, act in accordance with the Ministry of Justice Guidance;
- 11.3.2 immediately notify the Customer if it suspects or becomes aware of any breach of this Clause 11;
- 11.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 11 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;
- 11.3.4 if so required by the Customer, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Customer in writing of the compliance with this Clause 11 by the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Contract Services. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
- 11.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent the Supplier and any of the Supplier's Staff or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

11.4 If the Supplier, any member of the Supplier's Staff or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

- 11.4.1 this Clause 11; or
- 11.4.2 the Bribery Act 2010 in relation to the Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate the Contract by written notice with immediate effect.

11.5 Without prejudice to its other rights and remedies under this Clause 11, the Customer shall be entitled to recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from and against:

- 11.5.1 the amount of value of any such gift, consideration or commission; and
- 11.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 11.

**12. NON-DISCRIMINATION**

- 12.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 12.2 The Supplier shall take all reasonable steps to secure the observance of Clause 12.1 by all the Supplier's Staff employed in the execution of the Contract.

### **13. PREVENTION OF FRAUD**

13.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by the Supplier and any member of the Supplier's Staff.

13.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Supplier or any member of the Supplier's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

13.3 If:

13.3.1 the Supplier breaches any of its obligations under Clause 13.1 and Clause 13.2; or

13.3.2 the Supplier or any member of the Supplier's Staff commits any Fraud in relation to the Contract or any other contract with the Customer or any other person,

the Customer may recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full against any and all losses sustained by the Customer in consequence of the relevant breach or commission of Fraud, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Contract Services and any additional expenditure incurred by the Customer in relation thereto.

### **14. TRANSFER AND SUB-CONTRACTING**

14.1 The Supplier shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Customer's prior written consent. The Customer has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.

14.2 The Supplier shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.

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

14.3.1 any other Contracting Body; or

14.3.2 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 Customer; or

14.3.3 any private sector body which substantially performs the functions of the Customer.

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

14.4 [The Customer may, if it so chooses, nominate the sub-contractors to be used for bought in services or contract them directly. The Customer will consult fully with the Supplier before exercising this right.]

14.5 [The Customer may, if it chooses, use its in-house resources, business units and other framework agreements to deliver specific services. The Customer will consult fully with the Supplier before exercising this right.]

14.6 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 14.7, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.

- 14.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 14.3 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause any such body being referred to as a "**Transferee**"):
- 14.7.1 the rights of termination of the Customer in Clause 8 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
  - 14.7.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.
- 14.8 The Customer may disclose to any Transferee any of the Supplier's Confidential Information which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 14.9 For the purposes of Clause 14.7 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.

## **15. WAIVER**

- 15.1 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.
- 15.2 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 22.
- 15.3 A waiver by either Party 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.

## **16. 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.

## **17. FURTHER ASSURANCES**

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Contract.

## **18. SEVERABILITY**

- 18.1 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.

- 18.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

## **19. SUPPLIER'S STATUS**

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

## **20. ENTIRE AGREEMENT**

- 20.1 The Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

- 20.2 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.

- 20.3 The Supplier acknowledges that it has:

20.3.1 entered into the Contract in reliance on its own due diligence alone; and

20.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of the Contract.

- 20.4 Nothing in Clauses 20.1 and 20.2 shall operate:

20.4.1 to exclude Fraud or fraudulent misrepresentation; or

20.4.2 to limit the rights of the Customer pursuant to clause 34 of the Framework Agreement (Rights of Third Parties).

- 20.5 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.

## **21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 21.1 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, provided that this Clause 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 21.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Contract or any one or more Clauses of it.

- 21.3 Without prejudice to the Customer's rights as a Contracting Body under clause 34 of the Framework Agreement, the Supplier agrees that the Customer may enforce any of the provisions of the Framework Agreement referred to in clause 34.2 (with the exception of clauses 33 and 34 of the Framework Agreement) as if they were terms of the Contract (reading

references in those provisions to Contracting Bodies and the Supplier as references to the Customer and the Supplier respectively).

## **22. NOTICES**

- 22.1 Except as otherwise expressly provided in the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless given or made in writing by or on behalf of the Party sending the communication.
- 22.2 Any notice or other communication given or made by either Party to the other shall:
- 22.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
  - 22.2.2 unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:
    - 22.2.2.1 if delivered personally, at the time of delivery;
    - 22.2.2.2 if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;
    - 22.2.2.3 if sent by electronic mail, two (2) Working Days after posting of a confirmation letter; and
    - 22.2.2.4 if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error-free transmission report is received by the Party sending the communication.
- 22.3 For the purposes of Clause 22.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Letter of Appointment.
- 22.4 Either Party may change its address for service by serving a notice in accordance with this Clause 22.
- 22.5 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

## **23. DISPUTES AND LAW**

### **23.1 Governing Law and Jurisdiction**

The Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

### **23.2 Dispute Resolution**

- 23.2.1 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 level of representative of each Party specified in the Letter of Appointment.

- 23.2.2 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.
- 23.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 23.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 23.2.5 unless:
- 23.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 23.2.3.2 the Supplier does not agree to mediation.
- 23.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Supplier's Staff shall comply fully with the requirements of the Contract at all times.
- 23.2.5 The procedure for mediation is as follows:
- 23.2.5.1 a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
- 23.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the Contract 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 the CEDR to provide guidance on a suitable procedure;
- 23.2.5.3 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;
- 23.2.5.4 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;
- 23.2.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. 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
- 23.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract 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.

**24. DISASTER RECOVERY AND BUSINESS CONTINUITY**

The Parties shall comply with the provisions of Schedule 3 (Disaster Recovery and Business Continuity).

**25. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE CONTRACT SERVICES**

25.1 Without prejudice to any other right or remedy which the Customer may have, if any of the Contract Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Contract Services have been supplied) do any of the following:

25.1.1 at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Contract Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;

25.1.2 if appendix 1 of the Letter of Appointment provides for the payment of delay payments, then the Supplier shall pay such amounts (as stipulated in the Letter of Appointment) on demand. The delay payments will accrue on a daily basis from the relevant milestone date and will continue to accrue until the date when the milestone is achieved;

25.1.3 carry out, at the Supplier's expense, any work necessary to make the Contract Services comply with the Contract;

25.1.4 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Contract Services in accordance with the Contract;

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

25.1.6 charge the Supplier for and the Supplier shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Contract Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.

25.2 In the event that the Supplier:

25.2.1 fails to comply with Clause 2.1 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

25.2.2 persistently fails to comply with Clause 2.1,

the Customer may terminate the Contract with immediate effect by giving the Supplier notice in writing.

## **26. RECORDS AND AUDIT ACCESS**

- 26.1 The Supplier shall keep and maintain for seven (7) Years after the date of termination or expiry (whichever is the earlier) of the Contract (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 Contract Services provided under it, and the amounts paid by the Customer.
- 26.2 The Supplier shall keep the records and accounts referred to in Clause 26.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 26.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in Clause 26.2 at the Supplier's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
- 26.3.1 to verify the accuracy of the Contract Charges (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Supplier (including Sub-Contractors) of the Contract Services;
  - 26.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
  - 26.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
  - 26.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in Schedule 7 of the Framework Agreement;
  - 26.3.5 to review the Supplier's compliance with its security obligations set out, if appropriate, in Clause 36 and Schedule Z;
  - 26.3.6 to review any books of account kept by the Supplier in connection with the provision of the Contract Services;
  - 26.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
  - 26.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
  - 26.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 26.4 The Supplier shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 26.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the term of the Contract and for the period specified in Letter of Appointment after the date of termination or expiry of the term of the Contract to the Customer and/or the Auditors.
- 26.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Contract Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

- 26.7 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in:
- 26.7.1 all reasonable information requested by the Customer within the scope of the audit;
  - 26.7.2 reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Contract Services; and
  - 26.7.3 access to the Supplier's Staff.
- 26.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 26, unless the audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

## **27. VARIATION**

- 27.1 Subject to the provisions of this Clause 27, the Customer may request a variation to the Contract Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "**Variation**",
- 27.2 The Customer may request a Variation by completing and sending the form set out in Schedule 2 (Variation Form) ("**Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier 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 Order.
- 27.3 In the event that the Supplier is unable to provide the Variation to the Contract Services or where the Parties are unable to agree a change to the Contract Charges, the Customer may:
- 27.3.1 agree to continue to perform their obligations under the Contract without the Variation; or
  - 27.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier 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.
- 27.4 If the Parties agree the Variation and any variation in the Contract Charges, the Supplier 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.

## **28. MISTAKES IN INFORMATION**

The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Contract Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

## **29. TERM**

- 29.1 This Contract shall take effect on the Call Off Commencement Date and shall expire on the Expiry Date unless it is terminated earlier in accordance with its terms or otherwise by operation of Law.

**30. TUPE**

30.1 Lot 1-4 N/A. Lot 5 please refer to Schedule 4 Optional Clauses

## SCHEDULE 1 : SERVICE LEVELS

### 1. SCOPE

This Schedule sets out the Service Levels which the Supplier is required to achieve when delivering the Contract Services.

### 2. SERVICE LEVELS

2.1 The objectives of the Service Levels are to ensure that the Contract Services are of a consistently high quality and meet the requirements of the Customer.

2.2 The Service Levels are as follows:

Performance Criteria	Service Level	Performance Guidance
<b>1. Requirement</b>	1.1 Supplier did have the necessary <b>understanding and expertise</b> to meet Customer expectations.	The Supplier has a good knowledge of the subject and the environment in which the Customer operates - Customer expectations of Supplier expertise are met
	1.2 Supplier is open and proactive in <b>optimising costs</b>	Efforts made to minimise expenses - prices are in line with market expectations - Supplier is open in explaining price breakdown and working with the Customer to identify opportunities to reduce cost – accurate and timely billing of Customer and invoices provided in line with Customer requirements
	1.3 Supplier is proactive in identifying and <b>managing risks</b>	Supplier is proactive in identifying and allocating risk ownership - Supplier supports Customer in assigning and managing risks - Supplier is proactive in assessing impact of risks in the course of performing the Contract and raising issues as appropriate
<b>2. Quality of advice</b>	2.1 Supplier provides <b>good advice</b> provided <b>within timescale</b> and <b>covers all issues</b> requested appropriately.	Advice is technically sound and clearly expressed – Supplier adheres to timelines and shows right focus – Supplier strikes appropriate balance between covering issues thoroughly and providing unnecessary detail
<b>3. Engagement &amp; Relationship</b>	3.1 Supplier <b>engagement</b> with the Customer is appropriate and focused on Contract Services delivery	Supplier uses the right channels within the department - Customer is able to distinguish between business development activity/roles and delivery activity/role - Supplier does not exploit its position/ relationship with the Customer
	3.2 Supplier establishes effective working <b>relationships</b> with the Customer	Supplier integrates well with Customer staff and other advisers- Supplier is flexible in its approach to the Customer - demonstrates a knowledge of Customer culture - manages engagement issues well and does not let them impact on delivery - Supplier builds good relationships with internal

		staff with the Customer - Supplier does not take advantage of its position / relationship with the Customer
<b>4. Project Management</b>	4.1 Supplier <b>resources</b> are deployed in the right way to deliver value.	Staff are consistent throughout the duration of the Contract Services - the Supplier explains how project team has been put together to deliver the Contract Services - resource requirement remains in line with that included in the proposal - focus on Contract Services delivery is maintained
	4.2 <b>Roles and responsibilities</b> of the legal team are clear	Supplier provides clarity as to the roles and responsibilities of each member of the legal team engaged
	4.3 Supplier <b>governance and project management</b> is effective in ensuring the assignment is successful	Issues were raised as soon as possible and solutions offered - delivery plan was developed and agreed with the Customer at the outset - progress against milestones was reported regularly and in line with Customer requirements - Customer satisfaction with delivery was monitored by the Supplier
	4.4 Original <b>scoping</b> was robust	The scope and resource requirement remained in line with initial proposal - initial proposal was accurate and did not need to be amended
<b>5. Value for Money</b>	5.1 <b>Delivery on time</b>	As per Supplier proposal
	5.2 <b>Delivery on budget</b>	As per Supplier proposal
	5.3 <b>Value for Money</b>	Extent to which the benefits - as outlined in the assignment proposal – were delivered
<b>6. Skills Transfer</b>	6.1 Skills transfer	Supplier identified opportunities for skills and knowledge transfer - Supplier delivered transfer within original time and budget
<b>7. Exit Strategy</b>	7.1 Project closure	Supplier reflected any exit strategy requirements in their proposal - the project was closed off with no outstanding dependencies
	7.2 Completion reports	On completion of each project, or at the end of key stages within a project if the Customer so requests, the Supplier will provide a summary of the work carried out to include his assessment of successes/failures and potential improvements that could be made
<b>8 Other</b>	Service Delivery	The Supplier's adherence to the timescales/ project plans unless otherwise agreed by the Authority; (On-going)

	Account Management	<p>Customer satisfaction with account management arrangements, as judged by regular client questionnaires (On-going)</p> <p>The Supplier's delivery of strategic and creative campaign approaches based on audience and market insight that help achieve agreed campaign KPIs and value for money. (On-going)</p> <p>The Supplier's adherence to DWP's branding guidance, (to be provided to the successful tenderer upon appointment); (On-going)</p> <p>The Supplier's commitment to supplying contact reports to document decisions made and actions taken in all client/supplier meetings, and supplying these reports within 3 days of the meeting; (3 days)</p> <p>The Supplier's response within 5 working days to written briefs for specific pieces of work. The response must include costed proposals; (5 working days)</p> <p>The Supplier's agreement to some payments being made on a performance related basis. Payment related KPIs will be jointly agreed with the supplier and incorporated into a contract with the successful bidder, along with an agreed measure of performance. (Quarterly)</p> <p>The Supplier's provision of strategic advice, attendance of ad hoc meetings and providing ad hoc reports when requested by DWP Pensions Portfolio; (On-going)</p> <p>The Supplier's commitment to working with the Authority and its Creative Agencies during the 3 week handover period at the beginning of the contract. (3 weeks)</p> <p>The Supplier's acknowledgement of complaints and issues raised within 48 hours and implements and manages resolutions within 5 working days. (5 working days)</p> <p>The Supplier's response to queries and requests within 24 hours, for example in response to changing Ministerial and Departmental requirements; (24 hours)</p> <p>The Supplier's provision of monthly spend data in a format designed by the Authority to the Authority within 5 working days of request. (5 working days)</p> <p>The Supplier's provision of a main contact/account manager for DWP Pensions</p>
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	<p>Contract Management</p>	<p>Communications and at least two back-up contacts; (On-going)</p> <p>The Supplier's provision of accessibility to appropriate members of staff for DWP Pensions Portfolio, and our agencies, at all reasonable times in order to discuss routine operational matters; (On-going)</p> <p>The Supplier's consistent provision of regular contact with DWP Pensions Portfolio to discuss progress (daily if deemed necessary by DWP Pensions Portfolio); (On-going)</p> <p>The Supplier's provision of a final report detailing the delivery of the Service as well as achievements, targets met, and lessons learned; (On-going)</p> <p>The Supplier's weekly attendance of telephone meetings with the Authority to discuss progress and any recommended continuous improvements dependant on the campaign needs. (Weekly)</p>
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**SCHEDULE 2: VARIATION FORM**

No of Order being varied:.....

.....**Variation Form No:**.....

**BETWEEN:**

The Department for Work and Pensions ("**the Customer**")

and

M&C Saatchi (UK) Limited ("**the Supplier**")

1. The Order is varied as follows and shall take effect on the date signed by both Parties:
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

**Signed by an authorised signatory for and on behalf of the Customer**

Signature

Date

Name (in Capitals)

Address

**Signed by an authorised signatory to sign for and on behalf of the Supplier**

Signature

Date

Name (in Capitals)

Address

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## SCHEDULE 3: DISASTER RECOVERY AND BUSINESS CONTINUITY

### 1. PURPOSE OF THIS SCHEDULE

1.1. The following definitions shall apply to this Schedule:

“**Disaster**” shall have the meaning given to it in the letter of appointment;

“**Related Supplier**” means any person who provides services to the Customer which are related to the Contract Services from time to time;

“**Disaster Recovery System**” means the system identified by the Supplier which shall be used for the purpose of delivering the Disaster Recovery Services; and

“**Disaster Recovery Services**” means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Supplier.

1.2. This Schedule sets out the Customer's requirements for ensuring continuity of the business processes and operations supported by the Contract Services in circumstances of service disruption or failure and for restoring the Contract Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Supplier to develop, review, test, change and maintain a BCDR Plan in respect of the Contract Services.

1.3. The BCDR Plan shall be divided into three parts:

1.3.1. Part A which shall set out general principles applicable to the BCDR Plan;

1.3.2. Part B which shall relate to business continuity ("**Business Continuity Plan**"); and

1.3.3. Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**").

1.4. The BCDR Plan shall detail the processes and arrangements which the Supplier shall follow to ensure continuity of the business processes and operations supported by the Contract Services following any failure or disruption of any element of the Contract Services and the recovery of the Contract Services in the event of a Disaster.

### 2. DEVELOPMENT OF BCDR PLAN

2.1. The BCDR Plan shall unless otherwise required by the Customer in writing, be based upon and be consistent with the provisions of paragraphs 3 to 5 of this Schedule.

2.2. The Supplier shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

### 3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

3.1. The BCDR Plan shall:

3.1.1. set out how its business continuity and disaster recovery elements link to each other;

3.1.2. provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Contract Services;

3.1.3. contain an obligation upon the Supplier to liaise with the Customer and (at the Customer's request) any Related Supplier with respect to issues concerning business continuity and disaster recovery where applicable;

- 3.1.4. detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Customer and any of its other Related Suppliers as notified to the Supplier by the Customer from time to time;
  - 3.1.5. contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Customer;
  - 3.1.6. contain a risk analysis, including:
    - 3.1.6.1. failure or disruption scenarios and assessments and estimates of frequency of occurrence;
    - 3.1.6.2. identification of any single points of failure within the Contract Services and processes for managing the risks arising therefrom;
    - 3.1.6.3. identification of risks arising from the interaction of the Contract Services with the services provided by a Related Supplier; and
    - 3.1.6.4. a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
  - 3.1.7. provide for documentation of processes, including business processes, and procedures;
  - 3.1.8. set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-Contractors) and for the Customer;
  - 3.1.9. identify the procedures for reverting to "normal service";
  - 3.1.10. set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than 0% of data loss and to preserve data integrity;
  - 3.1.11. identify the responsibilities (if any) that the Customer has agreed it will assume in the event of the invocation of the BCDR Plan; and
  - 3.1.12. provide for the provision of technical advice and assistance to key contacts at the Customer as notified by the Customer from time to time to inform decisions in support of the Customer's business continuity plans.
- 3.2. The BCDR Plan shall be designed so as to ensure that:
- 3.2.1. the Contract Services are provided in accordance with the Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2. the adverse impact of any Disaster, service failure, or disruption on the operations of the Customer is minimal as far as reasonably possible;
  - 3.2.3. it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
  - 3.2.4. there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3. The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Contract Services or to the business processes facilitated by and the business operations supported by the Contract Services.

- 3.4. The Supplier shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Contract Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

#### **4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**

- 4.1. The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Contract Services remain supported and to ensure continuity of the business operations supported by the Contract Services including but not limited to and unless the Customer expressly states otherwise in writing:
- 4.1.1. the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Contract Services; and
  - 4.1.2. the steps to be taken by the Supplier upon resumption of the Contract Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2. The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Contract Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

#### **5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**

- 5.1. The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Customer supported by the Contract Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2. The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3. The Disaster Recovery Plan shall include the following:
- 5.3.1. the technical design and build specification of the Disaster Recovery System;
  - 5.3.2. details of the procedures and processes to be put in place by the Supplier and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - 5.3.2.1. data centre and disaster recovery site audits;
    - 5.3.2.2. backup methodology and details of the Supplier's approach to data back-up and data verification;
    - 5.3.2.3. identification of all potential disaster scenarios;
    - 5.3.2.4. risk analysis;
    - 5.3.2.5. documentation of processes and procedures;
    - 5.3.2.6. hardware configuration details;
    - 5.3.2.7. network planning including details of all relevant data networks and communication links;

- 5.3.2.8. invocation rules;
- 5.3.2.9. Contract Services recovery procedures;
- 5.3.2.10. steps to be taken upon Contract Services resumption to address any prevailing effect of the Contract Services failure or disruption;
- 5.3.3. any applicable Service Levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
- 5.3.4. details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5. access controls (to any disaster recovery sites used by the Supplier or any Sub-Contractor in relation to its obligations pursuant to this Schedule 3); and
- 5.3.6. testing and management arrangements.

## 6. PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1. The Supplier shall provide a draft of the BCDR Plan within forty (40) Working Days following the Call Off Commencement Date.
- 6.2. The Supplier shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
  - 6.2.1. on a regular basis and as a minimum once every six (6) Months;
  - 6.2.2. within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
  - 6.2.3. where the Customer requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this Schedule) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Customer's written requirements. The costs of both Parties for any such additional reviews will be met by the Customer.
- 6.3. Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Contract Services or any underlying business processes and operations facilitated by or supported by the Contract Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to the occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within the period required by the BCDR Plan or if no such period is required within such period as the Customer shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Customer a report ("**Review Report**") setting out:
  - 6.3.1. the findings of the review;
  - 6.3.2. any changes in the risk profile associated with the Contract Services; and
  - 6.3.3. the Supplier's proposals ("**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be

expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

- 6.4. The Supplier shall as soon as is reasonably practicable after receiving the Customer's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the project's risk profile.

## **7. TESTING OF THE BCDR PLAN**

- 7.1. The Supplier shall test the BCDR Plan on a regular basis (and in any event not less than once in every year during the term of the Contract). Subject to paragraph 7.2, the Customer may require the Supplier to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Customer considers it necessary, including where there has been any change to the Contract Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2. If the Customer requires an additional test of the BCDR Plan it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Customer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Customer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3. Following each test, the Supplier shall send to the Customer a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Customer considers to be necessary as a result of those tests.
- 7.4. The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with the Customer and shall liaise with the Customer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Customer in this regard. Where required by the Customer, each test shall be carried out under the supervision of the Customer or its nominee.
- 7.5. The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Customer. Copies of live test data used in any such testing shall be (if so required by the Customer) destroyed or returned to the Customer on completion of the test.
- 7.6. The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Customer a report setting out:
  - 7.6.1. the outcome of the test;
  - 7.6.2. any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3. the Supplier's proposals for remedying any such failures.
- 7.7. Following each test, the Supplier shall take all measures requested by the Customer, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Customer, by the date reasonably required by the Customer and set out in such notice.
- 7.8. For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Supplier of any of its obligations under this Schedule or otherwise.

7.9. The Supplier shall also perform a test of the BCDR Plan as part of the commissioning of the Contract Services.

## **8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

8.1. In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Customer promptly of such invocation). In all other instances the Supplier shall only invoke or test the BCDR Plan with the prior consent of the Customer.

9. Following a request from the Customer, the Supplier shall provide a written incident report and the BCDR Plan review following a plan invocation, but in any event within twenty (20) Working Days of full business recovery

**SCHEDULE 4: OPTIONAL CLAUSES – EXIT, TUPE AND PENSIONS**

Not Applicable as per clause 30.1.

## **SCHEDULE 5: ADDITIONAL OPTIONAL CLAUSES**

**Time of the Essence**

**Supplier's Staff**

**Protection of Information**

**Schedule Z Security Management Plan**

### **1. TIME OF THE ESSENCE**

- 1.1 Because of the nature of the Contract Services to be provided, time will be of the essence of the Contract when a delivery date has been agreed and any late delivery or performance by the Supplier will be treated as a fundamental breach of contract not capable of remedy when interpreting Clause 8 of the Contract, except where the delay is caused:
  - 1.1.1 through the fault of the Customer or another supplier to the Customer; or
  - 1.1.2 through reason of Force Majeure (as defined and applied in the Framework Agreement).
- 1.2 In the event of late delivery caused other than by the exceptions given above:
  - 1.2.1 the Customer may withhold any or all of the outstanding value of the Contract;
  - 1.2.2 at the request of the Customer, the Supplier will repay any or all amounts already paid to him in respect of the Contract; and
  - 1.2.3 the Customer shall have the right to decide what amounts will be withheld or repaid. In exercising its rights or remedies under this clause, the Customer will act in a reasonable and proportionate manner paying full and proper regard to the real loss in value of the Contract Services that the late delivery has caused.
- 1.3 In the event that late delivery results in the Contract Services having no value to the Customer and no payment is made to the Supplier, then the Supplier shall retain all rights in materials he has produced and the Customer shall have no rights to such materials.

## 2. SUPPLIER'S STAFF

- 2.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
- 2.1.1 any member of the Supplier's Staff; or
  - 2.1.2 any person employed or engaged by any member of the Supplier's Staff,
- whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 2.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 2.3 Members of the Supplier's Staff engaged within the boundaries of the Customer's Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer's Premises.
- 2.4 If the Supplier fails to comply with Clause 35.2 within [three (3)] weeks of the date of the request, the Customer 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 Customer.
- 2.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 2.2 shall be final and conclusive.

### Relevant Convictions

- 2.6 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in any part of the provision of the Contract Services without Customer approval.
- 2.7 For each member of the Supplier's Staff who, in providing the Contract Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):
- 2.7.1 carry out a check with the records held by DfE;
  - 2.7.2 conduct thorough questioning regarding any Relevant Convictions; and
  - 2.7.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau,

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Contract Services any person who has a Relevant Conviction or an inappropriate record. ]

### **3. PROTECTION OF INFORMATION**

#### **3.1 Security Requirements**

- 3.1.1 The Supplier shall comply, and shall procure the compliance of the Supplier's Staff, with the Security Policy and the Security Management Plan and the Supplier shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.
- 3.1.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 3.1.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Contract Services it may notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs.
- 3.1.4 Until and/or unless a change to the Contract Charges is agreed by the Customer pursuant to Clause 27 the Supplier shall continue to perform the Contract Services in accordance with its existing obligations.

#### **3.2 Malicious Software**

- 3.2.1 The Supplier shall, as an enduring obligation throughout the term of the Contract, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed between the Parties).
- 3.2.2 Notwithstanding Clause 3.2.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Contract Services to their desired operating efficiency.
- 3.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 3.2.1 shall be borne by the Parties as follows:
  - 3.2.3.1 by the Supplier, where the Malicious Software originates from the Supplier Software or the Customer Data (whilst the Customer Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Supplier; and
  - 3.2.3.2 by the Customer if the Malicious Software originates from the Customer Software or the Customer Data (whilst the Customer Data was under the control of the Customer).

#### **3.3 Security of Premises**

- 3.3.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Supplier shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all members of the Supplier's Staff comply with such requirements.

- 3.3.2 The Customer shall provide the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

### **3.4 Customer Data**

- 3.4.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 3.4.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly approved by the Customer.
- 3.4.3 To the extent that the Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.
- 3.4.4 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.
- 3.4.5 The Supplier shall ensure that any system on which the Supplier holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.
- 3.4.6 [The Supplier shall ensure that any system on which the Supplier holds any Customer Data which is protectively marked shall be accredited using [Security Policy Framework and IA Policy, taking into account guidance on Risk Management and Accreditation of Information Systems] [HMG IA Standard Number 2 (Risk Management and Accreditation of Information Systems)] and the Supplier shall review such accreditation status at least once in each calendar Year to assess whether material changes have occurred which could alter the original accreditation decision. If any such changes have occurred then the Supplier shall resubmit such system for accreditation.]
- 3.4.7 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Customer may:
- 3.4.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent and in accordance with the BCDR Plan and the Supplier shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
- 3.4.7.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.
- 3.4.7.3 If at any time the Supplier suspects or has reason to believe that the Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

### **3.5 Protection of Personal Data**

- 3.5.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor.
- 3.5.2 The Supplier shall:
  - 3.5.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Supplier during the term of the Contract);
- 3.5.3 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Contract Services or as is required by Law or any Regulatory Body;
- 3.5.4 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 3.5.5 take reasonable steps to ensure the reliability of all members of the Supplier's Staff who have access to the Personal Data;
- 3.5.6 obtain prior written approval from the Customer in order to transfer the Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 3.5.7 ensure that all members of the Supplier's Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 6.14;
- 3.5.8 ensure that none of the Supplier's Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 3.5.9 notify the Customer (within five (5) Working Days) if it receives:
  - 3.5.9.1 a request from a Data Subject to have access to that person's Personal Data; or
  - 3.5.9.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 3.5.10 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
  - 3.5.10.1 providing the Customer with full details of the complaint or request;
  - 3.5.10.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;

- 3.5.10.3 providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
- 3.5.10.4 providing the Customer with any information requested by the Customer;
- 3.5.11 permit the Customer or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;
- 3.5.12 provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer); and
- 3.5.13 [not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Supplier (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
  - 3.5.13.1 the Supplier shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation procedure and paragraph (b) to (d) below;
  - 3.5.13.2 the Supplier shall set out in its request for a Variation details of the following:
    - 3.5.13.2.1 the Personal Data which will be Processed and/or transferred outside the European Economic Area;
    - 3.5.13.2.2 the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
    - 3.5.13.2.3 any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
    - 3.5.13.2.4 how the Supplier will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
  - 3.5.13.3 in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval

of such Process and/or transfer any Personal Data outside the European Economic Area; and

3.5.13.4 the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:

3.5.13.4.1 incorporating standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and

3.5.13.4.2 procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Supplier acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).]

3.5.14 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.

3.5.15 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

3.5.16 The Supplier shall, at all times during and after the term of the Contract, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 3.5 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

### **3.6 Confidentiality**

3.6.1 Except to the extent set out in this Clause 3.6 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

3.6.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

3.6.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

3.6.2 Clause 3.6.1 shall not apply to the extent that:

3.6.2.1 such 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 3.8 (Freedom of Information);

- 3.6.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - 3.6.2.3 such information was obtained from a third party without obligation of confidentiality;
  - 3.6.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - 3.6.2.5 it is independently developed without access to the other Party's Confidential Information.
- 3.6.3 The Supplier may only disclose the Customer's Confidential Information to those members of the Supplier's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 3.6.4 The Supplier shall not, and shall procure that the Supplier's Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 3.6.5 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 3.6.6 In the event that any default, act or omission of any member of the Supplier's Staff causes or contributes (or could cause or contribute) to the Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any member of the Supplier's Staff, the Supplier shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Supplier is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from members of the Supplier's Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with members of the Supplier's Staff in connection with obligations as to confidentiality.
- 3.6.7 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under of the Framework Agreement):
- 3.6.7.1 to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Bodies 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 Body;

- 3.6.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
  - 3.6.7.3 for the purpose of the examination and certification of the Customer's accounts; or
  - 3.6.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 3.6.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 36.5.7 is made aware of the Customer's obligations of confidentiality.
- 3.6.9 Nothing in this Clause 3.6 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.
- 3.6.10 In the event that the Supplier fails to comply with Clause 3.6.1 to Clause 3.6.6, the Customer reserves the right to terminate this Contract with immediate effect by notice in writing.
- 3.6.11 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

### **3.7 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989**

- 3.7.1 The Supplier shall comply with and shall ensure that all members of the Supplier's Staff comply with, the provisions of:
- 3.7.1.1 the Official Secrets Acts 1911 to 1989; and
  - 3.7.1.2 Section 182 of the Finance Act 1989.
- 3.7.2 In the event that the Supplier or its Staff fail to comply with this Clause 3.7 the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

### **3.8 Freedom of Information**

- 3.8.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 3.8.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 3.8.2.1 transfer to the Customer 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;

- 3.8.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- 3.8.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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.
- 3.8.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other contract 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.
- 3.8.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 3.8.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 3.6) the Customer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Contract Services:
  - 3.8.5.1 in certain circumstances without consulting the Supplier; or
  - 3.8.5.2 following consultation with the Supplier and having taken their views into account,

provided always that where Clause 3.8.5 applies the Customer shall, in accordance with any recommendations of the Ministry of Justice Codes, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 3.8.6 The Supplier shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.
- 3.8.7 The Supplier acknowledges that the Commercially Sensitive Information is of indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 3.8.5.

### **3.9 Transparency**

- 3.9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.
- 3.9.2 Notwithstanding any other term of this Contract, the Supplier hereby gives his consent for the Customer 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.

- 3.9.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 3.9.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

## SCHEDULE Z: SECURITY MANAGEMENT PLAN

In this Schedule the following provisions shall have the meanings given to them below:

<b>"Breach of Security"</b>	in accordance with the security requirements in the Letter of Appointment and the Security Policy, the occurrence of:  (a) any unauthorised access to or use of the Contract Services, the Premises, the Sites, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Customer Data) used by the Customer and/or the Supplier in connection with this Contract; and/or  (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Customer Data), including any copies of such information or data, used by the Customer and/or the Supplier in connection with this Contract;
<b>"ISMS"</b>	The Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the Parties and will directly reflect the scope of the Contract Services;
<b>"Protectively Marked"</b>	shall have the meaning as set out in the Security Policy Framework;
<b>"Security Policy Framework"</b>	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
<b>"Security Tests"</b>	shall have the meaning set out in paragraph 7 of this Schedule Z;
<b>"Statement of Applicability"</b>	shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties.

1. Not used.
2. Not used.
3. Not used.

#### 4. INTRODUCTION

- 4.1 This Schedule covers:
  - 4.1.1 principles of protective security to be applied in delivering the Contract Services;
  - 4.1.2 the development, implementation, operation, maintenance and continual improvement of an ISMS;
  - 4.1.3 the creation and maintenance of the Security Management Plan;
  - 4.1.4 audit and testing of ISMS compliance with the security requirements (as set out in Letter of Appointment);

- 4.1.5 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice); and
- 4.1.6 obligations in the event of actual, potential or attempted breaches of security.

## **5. PRINCIPLES OF SECURITY**

- 5.1 The Supplier acknowledges that the Customer places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.
- 5.2 The Supplier shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
  - 5.2.1 is in accordance with Good Industry Practice, Law and this Contract;
  - 5.2.2 complies with the Security Policy;
  - 5.2.3 meets any specific security threats to the ISMS;
  - 5.2.4 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 of this Schedule;
  - 5.2.5 complies with the security requirements as set out in the Letter of Appointment; and
  - 5.2.6 complies with the Customer's ICT standards.
- 5.3 The references to standards, guidance and policies set out in paragraph 5.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 5.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Customer's Representative of such inconsistency immediately upon becoming aware of the same, and the Customer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

## **6. ISMS AND SECURITY MANAGEMENT PLAN**

### **6.1 Introduction**

- 6.1.1 The Supplier shall develop, implement, operate, maintain and continuously improve and maintain (and ensure that all Supplier's Staff and Sub-Contractors implement and comply with) an ISMS which will, without prejudice to paragraph 5.2, be approved, by the Customer, tested periodically updated and audited in accordance with ISO/IEC 27001.
- 6.1.2 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the term of the Contract.
- 6.1.3 The Supplier shall comply with its obligations set out in the Security Management Plan and any other provision of the Framework Agreement relevant to security.
- 6.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Customer, aim to protect all aspects of the Contract Services and all processes associated with the delivery of the Contract Services, including the Premises, the Sites, the Supplier System and any ICT, information and data

(including the Customer Confidential Information and the Customer Data) to the extent used by the Customer or the Supplier in connection with this Contract.

- 6.1.5 The Supplier is responsible for monitoring and ensuring that it is aware of changes to the Security Policy. The Supplier shall keep the Security Management Plan up-to-date with the Security Policy as amended from time to time.

## **6.2 Development of the Security Management Plan**

- 6.2.1 Within forty (40) Working Days after the Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with paragraph 6.4 (Amendment and Revision of the ISMS and Security Management Plan), the Supplier will prepare and deliver to the Customer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 6.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 6.4 (Amendment and Revision of the ISMS and Security Management Plan), is approved by the Customer it will be adopted immediately and will replace the previous version of the Security Management Plan. If the Security Management Plan is not approved by the Customer the Supplier shall amend it within ten (10) Working Days or such other period as the Parties may agree in writing of a notice of non-approval from the Customer and re-submit to the Customer for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Customer. If the Customer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Customer pursuant to this paragraph 6.2.2 may be unreasonably withheld or delayed. However a refusal by the Customer to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in paragraph 6.3 shall be deemed to be reasonable.

## **6.3 Content of the Security Management Plan**

- 6.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Contract Services and all processes associated with the delivery of the Contract Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Contract Services comply with the provisions of this Contract (including this Schedule, the principles set out in paragraph 5.2 and any other elements of this Contract relevant to security or any data protection guidance produced by the Customer);
- 6.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the Supplier's ISMS at the date set out in the Implementation Plan for the Supplier to meet the full obligations of the security requirements set out in this Contract and in the Letter of Appointment.
- 6.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within that standard.
- 6.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Customer engaged in

the Contract Services and shall only reference documents which are in the possession of the Customer or whose location is otherwise specified in this Schedule.

#### **6.4 Amendment and Revision of the ISMS and Security Management Plan**

- 6.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Supplier annually, or from time to time to reflect:
- 6.4.1.1 emerging changes in Good Industry Practice;
  - 6.4.1.2 any change or proposed change to the Supplier System, the Contract Services and/or associated processes;
  - 6.4.1.3 any new perceived or changed security threats;
  - 6.4.1.4 any reasonable request by the Customer.
- 6.4.2 The Supplier will provide the Customer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the ISMS and Security Management Plan at no additional cost to the Customer. The results of the review should include, without limitation:
- 6.4.2.1 suggested improvements to the effectiveness of the ISMS;
  - 6.4.2.2 updates to the risk assessments;
  - 6.4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and
  - 6.4.2.4 suggested improvements in measuring the effectiveness of controls.
- 6.4.3 On receipt of the results of such reviews, the Customer will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out at paragraph 6.2.2.
- 6.4.4 Any change or amendment which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a Customer request or change to the requirement set out in the Letter of Appointment or otherwise) shall be subject to the Variation Procedure and shall not be implemented until approved in writing by the Customer.

#### **7. TESTING**

- 7.1 The Supplier shall conduct tests of the ISMS ("**Security Tests**") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Customer.
- 7.2 The Customer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Customer with the results of such tests (in a form approved by the Customer in advance) as soon as practicable after completion of each Security Test.
- 7.3 Without prejudice to any other right of audit or access granted to the Customer pursuant to this Contract, the Customer and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Customer may notify the Supplier of the

results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of the Contract Services. If such tests adversely affect the Supplier's ability to deliver the Contract Services to the agreed Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the tests.

- 7.4 Where any Security Test carried out pursuant to paragraphs 7.1 and 7.2 above reveals any actual or potential Breach of Security and/or security failure or weaknesses, the Supplier shall promptly notify the Customer in writing of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Customer's approval in accordance with paragraph 6.2.2, the Supplier shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Customer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or security requirements (as set out in the Letter of Appointment), the change to the ISMS or Security Management Plan shall be at no cost to the Customer. For the purposes of this paragraph 8, weaknesses means a vulnerability in security and failure means a possible breach of the Security Management Plan or security requirements.

## **8. COMPLIANCE WITH ISO/IEC 27001**

- 8.1 Where the Customer requests, the Supplier shall obtain independent certification of the ISMS to ISO/IEC 27001 within [twelve (12) Months of the Commencement Date or such reasonable time period as to be agreed with the Customer and shall maintain such certification for the duration of the Contract.
- 8.2 If certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Supplier reasonably believes that it is not compliant with ISO/IEC 27001, the Supplier shall promptly notify the Customer of this and the Customer in its absolute discretion may waive the requirement for certification in respect of the relevant parts.
- 8.3 The Customer shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.
- 8.4 If, on the basis of evidence provided by such audits, it is the Customer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Supplier, then the Customer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Supplier does not become compliant within the required time then the Customer has the right to obtain an independent audit against these standards in whole or in part.
- 8.5 If, as a result of any such independent audit as described in paragraph 8.3 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Customer in obtaining such audit.

## **9. BREACH OF SECURITY**

- 9.1 Either party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.

9.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 9.1, the Supplier shall:

9.2.1 immediately take all reasonable steps necessary to:

9.2.1.1 remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and

9.2.1.2 prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Customer. In the event that such action is taken in response to a breach that is determined by the Customer acting reasonably not to be covered by the obligations of the Supplier under this Contract, then the Supplier shall be entitled to refer the matter to the Variation Procedure; and

9.2.2 as soon as reasonably practicable provide to the Customer full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.