

FRAMEWORK SCHEDULE 5

Part 1: Pro Forma Letter of Appointment

Communication Partnership

Contract Ref: CQC AM 128

Grayling Communications
8th Floor, Holborn Gate
26 Southampton Buildings
London
Middlesex
WC2A 1AN

Date: 21st April 17

Dear [REDACTED]

Contract for the provision of Communications – Creative and Delivery Services by Grayling Communications, 8th Floor, Holborn Gate, 26 Southampton Buildings, London, Middlesex, WC2A 1AN as a Supplier to Care Quality Commission, 151 Buckingham Palace Road, London, SW1W 9SW 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 hourly rates including VAT Framework as set out in Appendix 2 and, save as varied and/or supplemented pursuant to the provisions set out in Appendix [2/3], start date 21st April 17 in accordance with the Call-Off Terms.
3. The individual with overall responsibility for the supply of the Contract Services is Grayling Communications and the fee earners assigned to the supply of the Contract Services /are [REDACTED] and their respective roles as regards the Contract Services shall be oversight of the contract and client service [REDACTED] day to day account direction [REDACTED] day to day account delivery ([REDACTED] and account support [REDACTED]
4. The Customer’s Representative for the purpose of the Contract is [REDACTED] and any disputes in relation to the Contract shall be notified to the Customer Representative in the first instance.
5. Payments to the Supplier in respect of the Contract Services shall be made via NHS Shared Business Services. Supplier is to submit invoices to the following address: Care Quality

Commission, T70 payables F175, Phoenix House, Topcliffe Lane, Wakefield, West Yorkshire, WF3 1WE

6. N/A

7. N/A

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

- for the Customer:

Care Quality Commission
151 Buckingham Palace Road
3rd Floor
London
SW1W 9SW

For the attention of: [REDACTED]

- for the Supplier:

Grayling Communications
8th Floor, Holborn Gate
26 Southampton Buildings
London
Middlesex
WC2A 1AN

For the attention of: [REDACTED]

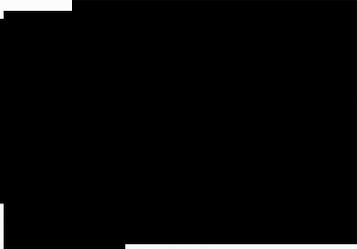
Please would you sign and return the attached duplicate of this Letter of Appointment with the acknowledgement signed by a partner of your firm.

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

For and on behalf of Care Quality Commission.

Signed:



Date: 26/04/2017

Name:



Status:

I hereby confirm receipt of the above Letter of Appointment and the agreement of Grayling Communications to provide to Care Quality Commission the Contract Services as specified in the Letter of Appointment in accordance with its terms.

Signed:



Date: 10/4/17

Name: Kathryn Ager

Status: Director

Appendix 1 Contract Services

Care Quality Commission Service Type Requirements:

1. EXECUTIVE SUMMARY

The Care Quality Commission is the independent regulator of health and adult social care in England. We are responsible for monitoring and inspecting services to ensure they are providing care that is safe, effective, caring, responsive to people's needs and well-led. This includes all NHS services, hospitals, GP practices, dentists, independent providers, care homes and domiciliary care agencies.

The CQC strategy 2016-2021 "shaping the future" commits the organisation to continue building public trust in our work and understanding our role and purpose, to make sure people understand the quality of care they should expect and can use our information to make choices about care. It also makes clear that we will continue to work with the public to focus on what matters to people, to listen and act on people's views and experiences of care, and to protect people's rights, especially those in the most vulnerable circumstances.

In addition the CQC 2016/17 business plan defines successful delivery for people using services, their carer's and the public as follows:

They use our information to make choices
They use our information to hold providers to account
They share their views and experience with us
They trust us and see us as on their side

CQC are looking for a strategic communications partner to work with the Public Engagement team to:

Plan, deliver and evaluate no less than two multi-channel large reach consumer communications campaigns, using a mix of paid and earned channels to achieve maximum impact against our defined objectives;

Commission communications content such as public polls, videos, infographics and other communication materials required for successful delivery of communications campaigns.

The communications campaigns will be targeting two key population groups who are choosing care:

Women who are pregnant, are looking to be pregnant, or have recently used maternity services in England.

People choosing adult social care for themselves or on behalf of a loved one in England.

Through this work we will:

Increase public awareness and understanding of CQC and through this build confidence in our role and purpose;

Promote resources we have available for people to make informed choices around their care, such as our inspection reports and ratings;

Help us make sure we present a view of our role in the health and social care system in a way that makes sense to people;

Encourage and enable people to share their experiences of care with us;

Continue to work with the public to understand and focus on what matters to people, build public trust and confidence in our work, and empower people to understand the quality of care they should expect.

For further information about CQC please visit www.cqc.org.uk

2. THE REQUIREMENT

The Contractor will be required to deliver the following:

An overarching strategy that links both campaigns and takes into consideration CQC's Public Engagement strategy and objectives. Two distinct campaign plans, which include, but are not limited, to the following:

- SWOT or situation analysis.
- Audience breakdown.
- Campaign objectives and strategy.
- Key messages.
- Communication methods and channels.
- Campaign / work plan (breakdown of activities, budget, resources and timescales)
- Evaluation - Campaigns will be evaluated no later than one month after the activity ends. The Contractor will need to be able to provide CQC with evaluation metrics. The evaluations will be used to measure the effectiveness and reach of CQC's public engagement activity.
- An awareness survey of each target audience will need to be conducted before activity begins, and after activity has ended in order to gauge changes in awareness levels.
- Key learnings.

The contractor will be required to collaborate and liaise with CQC's digital marketing agency. Perform quality assurance on all aspects of the programme. Provide CQC with timely and ongoing evaluation and quality assurance information relating to the programme.

It is essential that the Contractor has skills in the following areas:

- Strategic planning.
- Innovative communications development and delivery.
- Media planning and buying.
- Media relations (consumer and lifestyle media).
- Campaign execution.
- Social media.
- Influencer relations.
- Evaluation.

CQC are looking to procure a communications partner who is expected to achieve the following measurable outcomes and outputs.

Through campaigns run internally by CQC we have seen an increase in awareness levels amongst certain population groups we've targeted where raised anywhere from 2% to 14%. For example, our work targeting people with long term conditions resulted in an 11% increase in awareness amongst people with long term conditions in England.

The expected outcomes of the campaigns are to:

- Raise awareness of CQC amongst women who are pregnant or have recently used maternity services and people who are choosing adult social care by a minimum of 5% (per population group).
- Increase public / consumer use of CQC's inspection findings by a minimum of 5%;
- Increase the volume of feedback CQC receives about people's experiences of care at named health and social care services by a minimum of 5%;
- Deliver 10 million media impressions in consumer and lifestyle publications across the two campaigns;
- Earned and paid social media support resulting in a 10% increase in followers on Twitter and Fans on Facebook.

To enable the above outcomes to be achieved CQC expect the Contractor to:

Measure increases in awareness through benchmarking surveys for each audience, conducted before Campaign activity begins and after it has ended.

Deliver 10 million media impressions of earned consumer and lifestyle media channels online, Broad cast and print, but at least 25% of coverage must be print.

The Contractor will be expected to deliver a coverage report, including press clippings, recordings and/or links to coverage.

The Contractor's work is to result in an increase of 95 share your experiences forms filled per month, (additional 5% on the 1,890 average) during the campaign live periods.

Deliver an additional 165 followers on Twitter and 47 new fans on Facebook per month during the campaign live periods and demonstrate the effectiveness and impact of their activity in targeting our specified target audiences.

CQC will measure the progress of the above outcomes by:

Measuring increases in consumer use of our inspection findings. This will be accomplished by evaluating the sources of traffic to our inspection reports. For example, CQC will measure the increase in traffic that has been generated by a piece of content or online coverage that links back to our website.

Measure increases in share your experience forms filled out by members of the public, our monthly average is 1,890 forms.

Measure the increase in followers on CQC's social media channels. CQC will measure growth on social media by measuring growth on top of monthly average organic growth (CQC's average growth on Twitter per month is 1650 new followers and on Facebook is 475).

3. AUTHORITY RESPONSIBILITIES

CQC will appoint a member of the Public Engagement team to act as Contract Manager and who will be the main point of contact. It is CQC's responsibility to ensure that they are providing the partner with relevant information about upcoming Public Engagement campaign work and to coordinate activity timelines.

4. CONTRACTOR RESPONSIBILITIES

The Contractor shall:

- (a) Appoint a Contract Manager to oversee the work and liaise with / report as CQC requires to CQC's Contract Manager;
- (b) Commit to monthly meetings and as when required by CQC's Contract Manager;
- (c) Provide CQC with timely and ongoing evaluation and quality assurance information relating to the programme; and
- (d) Provide a monthly basis updates on costs.

5. CONTRACT MANAGEMENT AND MONITORING

The partnership will be evaluated on a quarterly basis to ensure that the partnership is delivering against the objectives and key performance indicators set out by CQC.

The key performance indicators for this Contract are as follows:

The Contractor will provide the following by the end of the first 6 months of the contract.

Aid in the delivery, implementation, and execution of one key population group campaign (women who are accessing or have recently accessed maternity services);

Demonstrate that they have reached at least 30% of one of the target audiences;

Through earned media, have secured 5 million media impressions;

Earned or paid social media support resulting in a 5% increase in followers / fans on Twitter / Facebook during the first campaign live period;

The Contractor will provide the following by the end of year one of the contract

Aid in the delivery, implementation, and execution of one key population groups campaign (people with long term conditions);

Demonstrate that they have reached at least 30% of the second target audience;

Through earned media, have secured 10 million media impressions;

Earned or paid social media support resulting in an additional 5% increase in followers / fans on Twitter / Facebook during the second campaign live period;

The Contractor will provide the following by the end of year one of the contract;

A presentation deck evaluating the two campaigns. The presentation should include an evaluation of the overall strategy and the success in reaching the key audiences outlined in the executive summary. Also an evaluation of the outcomes and outputs stated above.

An informal track of each of these KPIs will be maintained throughout the duration of the partnership by the CQC Contract Manager and where any of the KPIs look unlikely to be met, CQC will alert the contractor so they can take remedial action. Failure to perform against each KPI may result in CQC implementing a contract remedial action notice.

The Contractor shall:

Monitor the quality of the service provision to ensure customer satisfaction in accordance with the key performance indicators outlined in the Contract, unless otherwise approved by the Contract Manager;

Respond to queries from CQC within 48 hours;

Provide a report on progress in delivering the requirement to the Contract Manager on a regular basis, at least quarterly;

Attend meetings on site to review progress and discuss the service, as required by the Contract Manager; and

Attend a post contract review with CQC to review whether the objectives of the contract were met, to review the benefits achieved and to identify any lessons learnt for future projects.

6. TIMETABLE

The duration of the contract is for 1 year with the option to extend for a further 1 year (1+1). Please note, in the second year of the contract the CQC may change the target audience, however the scope of the contract will remain the same.

Cost envelope is between £75k to £89k including VAT.

There will be four instalments of payments, submitted to CQC once every quarter as indicated in the payment schedule below.

Payment Schedule	
[REDACTED]	
[REDACTED]	
[REDACTED]	
[REDACTED]	
TOTAL:	100%

7. SKILLS AND KNOWLEDGE TRANSFER

The Contractor shall will share with CQC ongoing insight, advice and expertise in communicating with the target audiences and provide an in-depth report and presentation sharing insight and best practice, including best practice for media relations, strategic planning and evaluating campaigns that will take place at the end of year one of the contract.

8. FURTHER INFORMATION

Please read CQC's strategy 2016-21 <http://www.cqc.org.uk/public/about-us/our-performance-and-plans/our-strategy-and-business-plan> and Public Engagement strategy <http://www.cqc.org.uk/content/our-plan-engaging-public-our-work-2015-16> for further background and context to this invitation to tender.

SECTION A Evaluation Criteria

Please also note that all responses to the evaluation questions must achieve a minimum score of 2. If the tenderer does not achieve a minimum score of 2 for all evaluation questions, this will result in the tender response being disregarded.

EVALUATION CRITERIA	EVALUATION INTENTION	WEIGHT
<p>Overview - Tenderers must provide a concise summary highlighting the key aspects of the proposal.</p>	<p>This response is not evaluated and is used to contextualise the Tenderer's response. N/a</p>	<p>N/a</p>
<p>Leadership Provide details of the qualifications and experience of the individual whose responsibility will be to ensure that the requirement is delivered as well as detail about the proposed team to support the implementation and why this individual and their team are suitable for this requirement <i>(please note CV's will not be accepted)</i>.</p>	<p>Seeks to establish that the Tenderer has the appropriate leadership, expertise and credibility in the field and the skills, qualifications and experience to lead the scope of service delivery requirements; and that the Tenderer leadership arrangements are sufficient and suitable to ensure successful delivery.</p> <p>The Tenderer's response shows that:</p> <ul style="list-style-type: none"> - The individual who will act as Contract Manager has the necessary skills and qualifications; - The team who will be supporting the Contract Manager have the necessary skills and qualifications; - The Tenderer has past experience working with government, arms-length organisations and publically-funded organisations; - The Tenderer has past experience working with third party partners to promote consumer facing health campaigns. 	<p>10%</p>

EVALUATION CRITERIA	EVALUATION INTENTION	WEIGHT
<p>Method Statement Describe (with specific reference the elements of the requirements and the outcomes expected) how it is intended to deliver the requirements of the specification.</p>	<p>Seeks to establish that the Tenderer has understood the requirements and has a credible plan for delivering successful outcomes.</p> <p>The Tenderer's response shows that it:</p> <ul style="list-style-type: none"> - Shows understanding about how to plan and execute multi-channel communications campaigns aimed at our target audiences; - Shows understanding of the planning required when buying media, including advertorials; - Shows understanding of how to create and pitch stories aimed at consumer and lifestyle media publications; - Shows understanding of how to create content for social media; - Has a defined and achievable timeline; - Has considered communications channels or activities in which CQC could use to reach its target audiences; - Has an understanding about how each activity will be evaluated, including any monitoring tools to be used; - Shows an understanding of how to evaluate each requirement. 	<p>15%</p>

EVALUATION CRITERIA	EVALUATION INTENTION	WEIGHT
<p>Campaign Plan</p> <p>Provide a communications plan that outlines the campaign strategies and tactics for engaging with one of CQC's target audiences (as detailed in the executive summary).</p>	<p>Seeks to establish that the Tenderer has the creativity and strategic planning expertise to deliver innovative multi-channel communications campaigns aimed at our target audiences.</p> <p>The Tenderer's response shows that it:</p> <ul style="list-style-type: none"> - Has an understanding of CQC's Public Engagement objectives to increase public awareness and understanding of CQC, as described within the service specification; - Has an understanding of the key audiences CQC will be targeting as part of its Public Engagement campaigns; - Includes an overarching strategy with defined tactics for engagement (supported by a timetable of activity running across each six month period as defined in the specification); - Includes information about earned and paid for activity with evidence and rationale for its inclusion; - Understands how to evaluate campaign activity and success. 	<p>15%</p>

EVALUATION CRITERIA	EVALUATION INTENTION	WEIGHT
<p>Experience</p> <p>Provide examples of relevant case studies and past campaign work.</p>	<p>Seeks to establish that the tenderer has the necessary experience in delivery of integrated public awareness campaigns:</p> <p>The Tenderer's response shows that it:</p> <ul style="list-style-type: none"> - Has provided relevant case studies that show it has experience working on similar campaigns or with similar audiences; - Includes references from satisfied clients who the supplier has delivered similar work for, including contact information. 	<p>10%</p>
<p>Implementation & resource plan</p> <p>Provide a complete resource plan for the delivery of the Specification including details of the team involved what these individuals will be doing.</p>	<p>Seeks to establish that the Tenderer has the level and quality of resources to deliver scope of service delivery requirements.</p> <p>The Tenderer's response shows that it:</p> <ul style="list-style-type: none"> - Has provided sufficient resource to deliver the Method Statement proposals; - Has identified appropriate management of these resources; - Has assigned suitably qualified and experienced resource for service delivery; - Has sufficient resources to deliver the Method Statement proposals; - A resource plan that integrates with the method statement(s). 	<p>5%</p>

EVALUATION CRITERIA	EVALUATION INTENTION	WEIGHT
<p>Exit strategy & skills transfer</p> <p>Describe the processes and deliverables of the exit phase of the service and how skills will be retained within the Authority.</p>	<p>Seeks to establish that the Tenderer has the level and quality of resources to deliver scope of service delivery requirements.</p> <p>The Tenderer's response shows that it:</p> <ul style="list-style-type: none"> - Has an exit strategy plan, which includes information about how they will provide ongoing insight, advice, best practice and expertise in communicating effectively with members of the public, and; - Includes information about how your organisation will ensure the transfer of knowledge back into CQC, and exit the contract in such a way as to facilitate re-procurement and/or project termination. 	5%
<p>Cost of proposal</p>	<p>This response will measure the contract value for money.</p> <ul style="list-style-type: none"> - Detailed breakdown of cost per activity proposed. - Please see below for the price evaluation methodology 	40%

Tenders will be scored using the following scoring model:

Table 1 : Scoring Scheme

GRADE LABEL	GRADE	DEFINITION OF GRADE
Unacceptable	0	The response has been omitted, or the Tenderer proposal evidences inadequate (or insufficient) delivery of the requirement
Weak	1	The Tenderer proposal has merit, although there is weakness (or inconsistency) as to the full satisfaction of the delivery requirement
Satisfactory	2	The Tenderer proposal has a suitable level of detail to assure that a satisfactory delivery of the service requirement is likely.
Good	3	The Tenderer proposal has evidenced a level of understanding that assures there will be desirable value-add within the solution or superior and desirable (time or quality) delivery outcomes.
Excellent	4	The Tenderer proposal evidences significant levels of understanding and offers an innovative solution that includes desirable value-add to the Authority.

Millie joined Grayling having previously worked in communications for a number of health and pharmaceutical clients. Millie delivers communications activity including running consumer facing social media channels for the British Chiropractic Association including working with third party partners to design engaging social content such as infographics.

Method Statement: Describe (with specific reference the elements of the requirements and the outcomes expected) how it is intended to deliver the requirements of the specification.

Grayling Communications response:

During planning stages we undertake in-depth audience analysis. We combine existing knowledge and insights with additional research using tools such as Mintel, Factiva and eMarketer. We map what channels are most relevant for our audience segments – how and where they access information, and what influences or motivates them.

Using the audience insights as the foundation for the campaign strategy, we agree relevant communications tactics, including a mix of earned, owned and paid media. Using in-house or third party skills where required, we create content that tells a story - from editorial to blog posts, animations to advertorials. We consider whether the creative look and feel will resonate with the audience and take a multi-channel approach to getting our messages out where our audience go.

We know what makes news and how best to work with journalists to secure high quality coverage in target publications, especially consumer media, time after time. We amplify campaign messages through relevant influencers, integrating outreach plans for seeding content with leading bloggers, vloggers and stakeholders.

Good implementation is all in the detail. We develop a critical path, with campaign milestones and a line-by-line production/implementation schedule, with interdependencies highlighted and approval processes built in. We meticulously manage deadlines, quality control and budget, with regular reporting, escalating any issues.

We carry out benchmarking research pre and post campaign activity using Google Surveys and combine these findings with a review of key numerical outputs and outcomes. At the end of the campaign period we would provide a detailed evaluation using your own data and additional tools such as Sysomos, Google Analytics and Buzz Sumo, to demonstrate reach, message penetration and engagement figures - broken down by audience, channel, platform, content type and geography and measured against KPIs with key insights and recommendations.

Campaign Plan: Provide a communications plan that outlines the campaign strategies and tactics for engaging with one of CQC's target audiences (as detailed in the executive summary).

Grayling Communications response:

Our plan focuses on people in England choosing adult social care. The planning target for this group is 45-65 year olds as most elderly clients will have adult relatives as key advisors/decision makers. This age group includes Gen X and baby boomers and many of them fall into the 'sandwich generation' description as well.

Pull marketing will be critical as the majority of the target audience actively searches for help and advice on choosing social care. To push messages to our audiences we will utilise national news media/radio. Grayling Connectology research shows that 80% of 45-54s and 78% of 55-64s listen to the radio weekly; 63% of 45-54s and 62% of 55-64s read free online news weekly. Paid national news and Facebook also index high with this audience.

We will create a central creative platform that extends the life of the campaign beyond the

initial news launch. We would launch the concept of 'Care Quality Citizens', inviting people to share their experiences of social care – whether that's choosing a home for a relative, or of the care experienced in a home, in a bid to improve standards. This would complement the Speak Out programme while tapping into the mood of citizenship and consumer empowerment in health.

Launch content would include a press release and short video of inaugural 'Care Quality Citizens'. We would survey people to ask what they look for in a good care home and use the findings as a news hook. We would set a public target– for the number of people who share their experiences this year and invite a credible celebrity such as Esther Rantzen to front the campaign and conduct high profile interviews. Post launch we would drip feed accessible content with practical and useful advice via social channels for example: Checklist of 10 things everyone should ask when they are looking for a care home; top tips when first speaking to a relative about care. For evaluation please see 2.1.6 Method Statement section.

Experience: Provide examples of relevant case studies and past campaign work.

Grayling Communications response:

Working with care home provider Anchor, we challenged stereotypes about older people and engaged Anchor staff, customers and the public through creative campaigns. We wrote and seeded a guide to choosing the right care and worked with a Think Tank to produce an extensive report into the issues surrounding adult social care. We created the 'Anchor Community Band' – residents recorded and released a charity single about ageing. We secured interviews on Daybreak, Ch5 and ITV. Our social media campaign included YouTube and twitter content. Enquiries about Anchor's services increased by 90% and we won the CIPR Excellence Inclusive Communications Campaign Award.
Mario Ambrosi / 07717 348946 / Mario.Ambrosi@anchor.org.uk

Intelligence from National Trading Standards showed a spike in 'hoverboards' being detained at the UK border due to safety concerns. We used this information to create a compelling news story warning of unsafe hover boards exploding or catching fire. To strengthen the message we partnered with other organisations including BIS and the Chartered Trading Standards Institute. We integrated social targeting youth sites like Mashable. The campaign achieved 915+ coverage hits and major retailers withdrew hoverboards from sale.

Wendy Martin / 07738 761212 / wendy.martin@actso.org.uk

Implementation & Resource plan: Provide a complete resource plan for the delivery of the Specification including details of the team involved what these individuals will be doing.

Grayling Communications response: Grayling has a unique network of 142 consultants based in seven UK offices which provides us with the ability to quickly grow or reduce team sizes to meet a project's specific needs. In section 2.1.4 Leadership we have detailed the core team we have selected for this account. Below we have outlined the responsibilities of each role and provided an example month by month resource plan matching the campaign detailed in section 2.1.7.

Responsibilities by role:

Director

- Contract management
- Project lead and team management
- Budgeting and financial forecasting/reporting

Associate Director

- Strategy development
- Senior counsel
- Attendance at project meetings
- Quality control campaign materials

Account Manager

- Day to day project management
- Media and social engagement and management
- Drafting campaign materials

Account Executive

- Project administration & support
- Media and social engagement
- Reporting

Monthly Resource Plan

February

- Kick off meeting and planning – Director
- Finalise plan – Director/Associate Director
- Undertake audience analysis – Associate Director/Account Manager

March

- Benchmarking conducted – Associate Director/Account Manager
- Campaign materials drafted – Associate Director/Account Manager
- Video content filmed – Associate Director/Account Manager
- News survey questions drafted and put into field – Account Manager
- Social content calendar produced – Account Manager/Account Executive
- Celebrity identified and booked – Account Manager

April

- Care Quality Citizens launch email issued – Account Manager/Account Executive
- Monthly dashboard report delivered – Account Executive

May

- Checklist published via social media – Account Executive
- Monthly dashboard report delivered – Account Executive

June

- Top tips published via social media – Account Executive
- Monthly dashboard report delivered – Account Executive

July

- Final evaluation undertaken and presented – Team

Exit Strategy & Skills Transfer: Describe the processes and deliverables of the exit phase of the service and how skills will be retained within the Authority.

Grayling Communication Response: Grayling will agree an exit strategy during the set up phase of the contract. This will ensure ongoing documentation of materials – including campaign plans, key contact grids, assets and all deliverables. In addition Grayling will maintain a lessons learnt log throughout the contract which will be made available to the CQC in full at the end of the contract.

Agreeing this approach at the start of the project will ensure that the handover process is smooth, speedy and efficient. We have employed this approach successfully for previous clients where we have handed over to in-house teams at the conclusion of a project. The documentation collated as during the exit strategy process will be useful whether the CQC decides to take the work in-house and where there is a decision to re-procure or terminate the project. We would provide a full handover document containing useful information, relevant logins, contact details and details of the status of any outstanding actions.

Where the CQC decides to deliver future campaigns in-house it will also be important to ensure there is a transfer of skills. In this instance we will provide a half day training session for CQC staff and will make ourselves available to answer questions on an ad-hoc basis by email and phone for up to two months after the official handover.

Appendix 2
Contract Charges

Activity	Team						No. of Units	Fee
Maternity and aged care campaigns								
Finalise campaign plan and kick off meeting	2	2	2	2	2			
Audience insight research	2	4	4	2	2			
Key message development	2	4	4		2			
Develop and implement benchmarking survey including liaising with supplier	1	2	8	8	2			
Develop survey story news package (press release; top tips, checklist)	2	8	12	8	2			
Develop video content - management	1	4	4	4	2			
Media launch sell in and follow-up		6	12	12	2			
Develop content and digital strategy/social media calendar	1	2	8	8	2			
Final campaign report	1	4	8	12	2			
Account management/meetings & updates	1	1	1	1	12			
Total Fee							£46,380	
Core Operational Expenses at 6% of Fee							£2,783	
Sub-Total							£49,163	

Appendix 3
Variations and/or supplements to the Call-Off Terms

N/A

Part 2 – Call-Off Terms

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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:

"Authority"	means THE MINISTER FOR THE CABINET OFFICE ("Cabinet Office") 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;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in Schedule 3 (Disaster Recovery and Business Continuity);
"Call Off Commencement Date"	means the date specified as such in the Letter of Appointment;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
"Contract"	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;
"Contract Charges"	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;
"Contract Mediator"	has the meaning set out in Clause 23.2.5.1;
"Contract Services"	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;
"Customer"	means the Contracting Body that issues the Letter of Appointment.;
"Customer's Confidential"	means all Customer's Personal Data and any

Information"	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: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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;
"Data Subject"	has the same meaning as set out in the Data Protection

Act 1998 as amended;

"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Clause 23.2;
"Expiry Date"	means the date specified as such in the Letter of Appointment;
"Goods"	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);
"Good Industry Practice"	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;
"Information"	has the meaning given under section 84 of the FOIA;
"Key Performance Indicators" or "KPIs"	mean the indicators, if any, set out in the Letter of Appointment;
"Key Personnel"	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;
"Letter of Appointment"	means the letter from the Customer to the Supplier dated 10/03/2017 (including its appendices) containing the Order to provide the Contract Services;
"Material Breach"	means a material breach of the Contract;
"Party"	means the Customer or the Supplier and "Parties" shall mean both the Customer and the Supplier;
"Persistent Failure"	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;

"Replacement Services"

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;

"Replacement Supplier"

means any third party supplier of Replacement Services appointed by the Customer from time to time;

"Service Levels"

means the service levels set out in Schedule 1 (Service Levels);

"Sub-Contract"

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;

"Sub-Contractor"

means any person appointed by the Supplier to carry out any of the Supplier's obligations under the Contract;

"Supplier"

means the Supplier to whom the Letter of Appointment is addressed;

"Supplier's Confidential Information"

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

"Supplier's Staff"

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] [unspecified] 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:
- 2.2.3
- 2.2.3.1 Giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred; and
- 2.2.3.2 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.
- 2.2.4 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 cooperate 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
1. Requirement	1.1 Supplier did have the necessary understanding and expertise 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 optimising costs	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 managing risks	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
2. Quality of advice	2.1 Supplier provides good advice provided within timescale and covers all issues 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
3. Engagement & Relationship	3.1 Supplier engagement 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 relationships 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
4. Project Management	4.1 Supplier resources 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 Roles and responsibilities 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 governance and project management 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 scoping was robust	The scope and resource requirement remained in line with initial proposal - initial proposal was accurate and did not need to be amended
5. Value for Money	5.1 Delivery on time	As per Supplier proposal
	5.2 Delivery on budget	As per Supplier proposal
	5.3 Value for Money	Extent to which the benefits - as outlined in the assignment proposal – were delivered
6. Skills Transfer	6.1 Skills transfer	Supplier identified opportunities for skills and knowledge transfer - Supplier delivered transfer within original time and budget
7. Exit Strategy	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.
8 Other		Please see requirements outlined in the ITT/bidder response.

SCHEDULE 2: VARIATION FORM

No of Order being varied:.....

Variation Form No:.....

BETWEEN:

[insert name of Customer] ("**the Customer**")

and

[Grayling] ("**the Supplier**")

1. The Order is varied as follows and shall take effect on the date signed by both Parties:

Guidance Note to Customer: Insert details of the Variation

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

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 twenty (20) 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

1 ASSISTANCE ON EXPIRY OR TERMINATION

In the event that this Contract expires or is terminated the Supplier shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Contract Services to a Replacement Supplier including as set out in the Exit Plan Schedule X.

2 TUPE & PENSIONS – N/A

DEFINITIONS FOR TUPE MATTERS

The following definitions shall apply in addition to the definitions contained in Annex (Definitions) to the Call Off Terms:

<p>“Acquired Rights Directive”</p>	<p>means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;</p>
<p>“Employment Liabilities”</p>	<p>means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a. redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; b. unfair, wrongful or constructive dismissal compensation; c. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; d. compensation for less favourable treatment of part-time workers or fixed term employees; e. outstanding debts and unlawful deduction of wages, including any PAYE and National Insurance Contributions; f. claims whether in tort, contract or statute or otherwise; g. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);
<p>“Former Supplier”</p>	<p>means the party providing goods and/or services to the Customer similar or the same as the Goods and/or Services and which is being replaced by the Supplier;</p>
<p>“Relevant Transfer”</p>	<p>means a transfer of employment to which TUPE applies;</p>
<p>“Relevant Transfer Date”</p>	<p>means the date upon which the Relevant Transfer takes place;</p>
<p>“Second Generation Fair Deal Employee”</p>	<p>means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on</p>

	<p>the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of insert name of public sector pension scheme immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from insert name of public sector pension scheme to the Former Supplier's Scheme;</p>
"Service Transfer"	<p>means any Relevant Transfer of the Services (or any part), subsequent to the commencement of performance of the Services by the Supplier for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier;</p>
"Service Transfer Date"	<p>means the date of a Service Transfer;</p>
"Staff"	<p>means all persons employed by the Supplier and/or any Sub-Contractor to perform its obligations under this Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of its obligations under this Contract (or any Sub-Contract);</p>
"Staffing Information"	<p>means written information about each of the Supplier or its Sub-Contractor's Staff including in particular: the percentage of working time spent by each of them in the provision of the Services, job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) Years, details of any grievances raised by any of them in the preceding two (2) Years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) Years, any potential proceedings which the Supplier or its Sub-Contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) month or more regardless of the reason at the time the staffing information is requested;</p>
"Supplier's Final Staff List"	<p>means the relevant list of all Supplier Staff engaged in or wholly or mainly assigned to, the provision of the Services or any relevant part of the Services which is ceasing to be provided by the Supplier at the Transfer Date;</p>
"Supplier's Provisional Staff List"	<p>means a list prepared and updated by the Supplier of all Supplier Staff who are engaged in or wholly or mainly assigned to, the provision of the Services (or any relevant part of the Services which it is envisaged will no longer be provided by the Supplier) as at the date of such list;</p>
"Transferring Customer Employees"	<p>means those employees of the Customer to which TUPE will apply on the Relevant Transfer Date;</p>
"Transferring Former Supplier Employees"	<p>means those employees of the Former Supplier to which TUPE will apply on the Relevant Transfer Date ;</p>
"Transferring Supplier Employees"	<p>means those employees of the Supplier to which TUPE will apply on the Relevant Transfer Date.</p>

PART C

1. The Customer and the Supplier shall proceed on the basis that the commencement of the provision of the Services by the Supplier under this Call Off Contract will not be the Relevant Transfer to which TUPE will apply in relation to any employees of the Customer.
2. If any employee of the Customer and/or the Former Supplier claims or it is determined that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
 - 2.1 the Supplier shall , within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (and/or at the Customer's option, the Former Supplier);
 - 2.2 the Customer and/or the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
 - 2.3 if such offer is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall immediately release the person from his/her employment or alleged employment;
 - 2.4 if after the fifteen (15) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Supplier may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
3. Subject to the Supplier acting in accordance with the provisions of paragraph 2 and in accordance with all applicable proper employment procedures set out in Law and subject also to paragraph 6 below, the Customer shall indemnify the Supplier against all reasonable costs arising out of the termination of the employment of any employees of the Customer referred to in paragraph 2 made pursuant to the provisions of paragraph 2.4 and shall use reasonable endeavours to procure (to the extent that it is contractually entitled to do so) that the Former Supplier indemnifies the Supplier against all Employment Liabilities arising out of termination of the employment of the employees of the Former Supplier made pursuant to the provisions of paragraph 2.4.
4. If any such person as is described in paragraph 2 is neither re employed by the Customer and/or the Former Supplier nor dismissed by the Supplier within the time scales set out in paragraph 2 such person will be treated as having transferred to the Supplier and the Supplier shall comply with such obligations as may be imposed upon it under Law.
5. Where in accordance with paragraph 4, any person remains employed by the Supplier (or the relevant Sub-Contractor, as the case may be) all Employment Liabilities in relation to such employee shall remain with the Supplier or the relevant Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.
6. The indemnity in paragraph 3 above:
 - 6.1 shall not apply:
 - 6.1.1 to any claim for discrimination, including but not limited to sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay, or compensation for less favourable treatment of part-time workers or fixed term employees in relation to any alleged act or omission

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

6.1.2 shall only apply where the notification referred to in paragraph 2.1 is made by the Supplier to the Customer and Former Supplier within six (6) Months of the Call Off Commencement Date.

7. If the Parties cannot agree whether or not based upon a reasonable assessment of the facts that the transfer of the services from the Customer and/or Former Supplier to the Supplier is a situation to which TUPE and/or the Acquired Rights Directive may apply, the Customer shall based on a reasonable assessment of the evidence available to it make such determination. In assisting the Customer to make such determination, the Supplier and the Former Supplier shall be permitted to make representations to the Customer within such time period as the Customer may reasonably specify.

TUPE EXIT PROVISIONS

- 8.** The Customer and the Supplier agree that where the commencement of the provision of the Services (or part thereof) by the Replacement Supplier constitutes a Relevant Transfer, the contracts of employment between the Supplier and the Transferring Supplier Employees (save insofar as such contracts relate to benefits for old age, invalidity or survivors under any occupational pension scheme) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and each such Transferring Supplier Employee.
- 9.** The Supplier shall, and shall procure that any Sub-Contractor shall, comply with all its obligations in respect of all the Transferring Supplier Employees prior to the Service Transfer Date under TUPE and will perform and discharge all its obligations in respect of all the Transferring Supplier Employees up to and including the Service Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions and any necessary apportionments in respect of any periodic payments will be made.
- 10.** Subject to paragraph 11 below, the Supplier shall indemnify the Replacement Supplier against any Employment Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in TUPE) arising from or as a result of:
 - 10.1** any act or omission of the Supplier or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - 10.1.1** arising out of the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier to occur in the period on or after the Relevant Transfer Date);
 - 10.1.2** arising from the Customer's and/or Replacement Supplier's failure to comply with its obligations under TUPE);
 - 10.2** the breach or non-observance by the Supplier or any Sub-Contractor on or before the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employee;
 - 10.3** any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 10.3.1** in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or prior to the Service Transfer Date; and
 - 10.3.2** in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from Supplier to the Customer and/or Replacement Supplier, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or prior to the Service Transfer Date.
 - 10.4** a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Supplier Employees in respect of the period on or before the Service Transfer Date);

- 10.5 any claim made by or in respect of any person employed or formerly employed by the Supplier other than a Transferring Supplier Employee for which it is alleged the Customer and/or the Replacement Supplier may be liable by virtue of this Call Off Contract and/or TUPE and/or the Acquired Rights Directive
- 10.6 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Supplier in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Customer's and/or Replacement Supplier's failure to comply with Regulation 13(4) of TUPE.
11. The indemnities in paragraph 10 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Replacement Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities:
- 11.1 arising out of the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier to occur in the period on or after the Service Transfer Date); or
- 11.2 arising from the Replacement Supplier's failure to comply with its obligations under TUPE.
12. If any person who is not a Transferring Supplier Employee claims, or it is determined, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier pursuant to TUPE or the Acquired Rights Directive, then:
- 12.1 the Customer shall and shall use its reasonable endeavours to procure that the Replacement Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- 12.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Supplier or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
13. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier, the Customer shall and shall use its reasonable endeavours to procure (to the extent that it is contractually entitled to do so) that the Replacement Supplier shall immediately release the person from his/her employment or alleged employment.
14. If, after the fifteen (15) Working Day period specified in paragraph 12.2 has elapsed:
- 14.1 no such offer of employment has been made; or
- 14.2 such offer has been made but not accepted; or
- 14.3 the situation has not otherwise been resolved,
- the Customer may and shall advise the Replacement Supplier that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
15. Subject to the Customer or the Replacement Supplier acting in accordance with the provisions of paragraphs 12 to 14 and in accordance with all applicable proper employment

procedures set out in Law, the Supplier shall indemnify the Customer and the Replacement Supplier against all Employment Liabilities arising out of the termination pursuant to the provisions of paragraph 14.

16. The indemnity in paragraph 15 above shall:
 - 16.1 not apply to any claim for discrimination, including but not limited to sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or claims for equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-Contractor or to any claim that the termination of employment was unfair because the Supplier neglected to follow a fair dismissal procedure; and
 - 16.2 shall only apply where the notification referred to in paragraph 12.1 is made by the Customer or the Replacement Supplier (as the case may be) to the Supplier within six (6) Months of the Call Off Commencement Date.
17. If any such person as is described in paragraph 11 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Customer or Replacement Supplier within the time scales set out in paragraphs 12 to 14, such person will be treated as a Transferring Supplier Employee and the Supplier shall comply with such obligations as may be imposed upon it under the Law.
18. The Supplier shall comply, and shall procure that any Sub-Contractor shall comply, with all its obligations under TUPE and will perform and discharge all its obligations in respect of all the Transferring Supplier Employees, prior to the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.
19. The Supplier shall, promptly provide and the Customer shall use reasonable endeavours to procure (to the extent that it is contractually entitled to do so) that the Replacement Supplier shall promptly provide to each other in writing such information as is necessary to carry out their respective duties under Regulation 13 of TUPE.
20. Subject to paragraph 21, the Customer [shall indemnify] shall use its reasonable endeavours to procure to the extent that it is contractually entitled to do so that the Replacement Supplier indemnifies the Supplier against any Employment Liabilities in respect of any Transferring Supplier Employee (or, where applicable any employee representative (as defined in TUPE) of any Transferring Supplier Employee) arising from or as a result of:
 - 20.1 any act or omission of the Replacement Supplier;
 - 20.2 the breach or non-observance by the Customer or any Replacement Supplier on or after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employee;
 - 20.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 20.3.1 in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

- 20.3.2 in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Supplier, to the Replacement Supplier to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date.
- 20.4 arising out of the resignation of any Transferring Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Sub-Contractor to occur in the period on or after the Service Transfer Date;
- 20.5 any statement communicated to or action undertaken by the Customer and/or any Replacement Supplier to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 20.6 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Supplier Employee relating to any act or omission of the Customer and/or Replacement Supplier in relation to its obligations under Regulation 13 of TUPE.
21. The indemnities in paragraph 20 will not apply to the extent that the Employment Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as appropriate) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employment Liabilities arising from the Supplier's and/or any Sub-Contractor's (as appropriate) failure to comply with its obligations under TUPE).
22. In the event of a Service Transfer to which TUPE or the Acquired Rights Directive does not apply the following provisions shall apply:
- 22.1 The Supplier shall provide a list to the Customer or the Replacement Supplier (as appropriate), detailing all those employees who immediately before the date on which the Customer or the Replacement Supplier (as appropriate) started to perform the Services, had as their primary purpose the performing of the Service for the Customer.
- 22.2 The Customer can and shall advise the Replacement Supplier that it can, in its discretion, make to any of the employees identified on the list provided by the Supplier under paragraph 22.1, an offer, in writing, to employ that employee under a new contract of employment.
- 22.3 When the offer has been made by the Customer or Replacement Supplier and accepted by any employee or worker, the Supplier shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Supplier, which could be without the employee or worker having worked his full notice period, if the employee so requests.
- 22.4 If the employee does not accept an offer of employment made by the Customer or Replacement Supplier, or no such offer is made, the employee shall remain employed by the Supplier (or the relevant Sub-Contractor, as the case may be) and all Employment Liabilities in relation to the employee shall remain with the Supplier or the relevant Sub-Contractor and the Supplier shall indemnify the Customer for itself and on behalf of any Replacement Supplier against any Employment Liabilities that either of them may incur in respect of any such employees of the Supplier or the relevant Sub-Contractor.

23. CRITPA will apply to Paragraphs 10, 15 and 22.4 so that any Former Supplier shall have the right to enforce the obligations owed and the indemnities given to it pursuant to those Paragraphs in its own right pursuant to Section 1(1) of CRITPA.

PART E - N/A

ANNEX 1: PENSIONS

PURPOSE AND STRUCTURE OF THIS ANNEX - N/A

SECTION A – DEFINITIONS FOR PENSIONS MATTERS

For the purposes of this Annex 1, the following terms have the following meanings

“Actuary”	a Fellow of either the Institute of Actuaries or Faculty of Actuaries or any successor to such a body;
“Broadly Comparable”	in respect of a pension scheme, a status demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate relating to: the [insert name of relevant public sector pension scheme] (in respect of Transferring Pensionable Customer Employees); or the [insert name of relevant public sector pension scheme] (in respect of Second Generation Fair Deal Employees).
“Customer’s Actuary”	[an Actuary employed by [insert name of firm] who is advising the Customer in relation to the pensions aspects of this Agreement]/[the Government Actuary’s Department];
“Employee”	any Transferring Pensionable Customer Employee or Second Generation Fair Deal Employee;
“Former Supplier’s Actuary”	an Actuary employed by insert name of firm who is advising the Former Supplier in relation to pension aspects of this Agreement or its contract with the Customer, as appropriate;
“Former Supplier’s Actuary’s Letter”	the letter in the agreed form signed by the Former Supplier’s Actuary and the Customer’s Actuary, a copy of which is attached to this Annex 1 and identified as Former Supplier’s Actuary’s Letter;
“Former Supplier’s Scheme”	a pension scheme established or nominated by the Former Supplier which was certified by the Government Actuary Department as being broadly comparable to t at the effective date of a Relevant Transfer (to which the Employment Regulations applied) of any Second Generation Fair Deal Employee to the Former Supplier;
“Payment Date”	as appropriate, the first Working Day more than twenty eight (28) days after the date when the last of the Paragraph Error! Reference source not found. Provisos and/or the Paragraph Error! Reference source not found. Provisos of this Annex 1 has been satisfied;
“PCSPS”	the Principal Civil Service Pension Scheme as laid before Parliament on 19 November 1974 under section 2(11) of the Superannuation Act 1972 and subsequently amended;]
“PCSPS Actuary”	an Actuary employed by [insert name of firm] or such other firm engaged from time to time to advise on PCSPS;
“PCSPS Actuary’s Letter”	the letter in the agreed form signed by the PCSPS Actuary and the Customer’s Actuary, a copy of which is attached to this Annex 1 and identified as PCSPS Actuary’s Letter;
“Pension Service Credit”	a period of pensionable service under the Supplier’s Scheme credited to any Employee in respect of the rights accrued by the Employee under, as appropriate, PCSPS or the Former

	Supplier's Scheme (including, for the avoidance of doubt and in respect of any Second Generation Fair Deal Employee, rights transferred into the Former Supplier's Scheme from PCSPS) calculated on a day for day, year for year basis (or such other appropriate basis as determined by the PCSPS Actuary if, in his reasonable opinion, the actuarial differences between the Supplier's Scheme and PCSPS or the Former Supplier's Scheme, as appropriate, so require);
"Required Transfer Amount One"	the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Transfer Date) contained in the Supplier's Actuary's Letter One as representing the amount required to fund the Pension Service Credit for each Transferring Pensionable Customer Employee who takes up Transfer Option One;
"Required Transfer Amount Two"	the amount calculated in accordance with the assumptions, principles and adjustments (but excluding any timing adjustment in respect of the period after the Transfer Date) contained in the Supplier's Actuary's Letter Two as representing the amount required to fund the Pension Service Credit for each Second Generation Fair Deal Employee who takes up Transfer Option Two;
"Second Generation Fair Deal Employee"	means any employee whose employment transfers under a Relevant Transfer from the Former Supplier to the Supplier on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of [insert name of public sector pension scheme] immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Supplier, and (ii) had elected to transfer such pension rights from [insert name of public sector pension scheme] to the Former Supplier's Scheme;
"Supplier's Actuary"	an Actuary employed by [insert name of firm] who is advising the Supplier in relation to the pensions aspects of this Agreement;
"Supplier's Actuary's Letter One"	the letter in the agreed form signed by the Supplier's Actuary and the Customer's Actuary, a copy of which is attached to this Annex 1 and identified as Supplier's Actuary's Letter One;
"Supplier's Actuary's Letter Two"	the letter in the agreed form signed by the Supplier's Actuary and the Former Supplier's Actuary, a copy of which is attached to this Annex 1 and identified as Supplier's Actuary's Letter Two;

This section is not applicable.

<p>“Supplier’s Scheme”</p>	<p>a pension scheme established or nominated by the Supplier which is Broadly Comparable at the effective date of the Relevant Transfer of employment of any Employee to the Supplier;</p>
<p>“Top Up One”</p>	<p>the amount calculated in accordance with Paragraph Error! Reference source not found. of this Annex 1;</p>
<p>“Top Up Two”</p>	<p>the amount calculated in accordance with Paragraph Error! Reference source not found. of this Annex 1;</p>
<p>“Transfer Amount One”</p>	<p>the amount calculated in accordance with the assumptions, principles and adjustments contained in the PCSPS Actuary’s Letter as representing, for each Transferring Pensionable Customer Employee who takes up Transfer Option One, the value of his accrued rights under PCSPS on a past service reserve basis as at the Transfer Date, adjusted to the Payment Date in accordance with the timing adjustment in the PCSPS Actuary’s Letter;</p>
<p>“Transfer Amount Two”</p>	<p>the amount calculated in accordance with the assumptions, principles and adjustments contained in the Former Supplier’s Actuary’s Letter as representing, for each Second Generation Fair Deal Employee who takes up Transfer Option Two, the value of his accrued rights under the Former Supplier’s Scheme and the value of rights he had accrued under PCSPS and transferred into the Former Supplier’s Scheme, on a past service reserve basis as at the Transfer Date, adjusted to the Payment Date in accordance with the timing adjustment in the Former Supplier’s Actuary’s Letter;</p>
<p>“Transfer Date”</p>	<p>the date on which the Transferring Pensionable Customer Employee and/or the date on which the Second Generation Fair Deal Employee transfers to the Supplier;</p>
<p>“Transfer Option One”</p>	<p>an option given to each Transferring Pensionable Customer Employee to transfer rights [excluding any rights in [insert any applicable pensions or rights under the pension scheme which are to be excluded (for example pensions which fall outside of Fair Deal)]], accrued under [PCSPS] before the Transfer Date, from [PCSPS] to the Supplier’s Scheme;</p>
<p>“Transfer Option Two”</p>	<p>an option given to each Second Generation Fair Deal Employee to transfer rights ([excluding any rights [insert any applicable pensions which are not subject to Fair Deal policies]]) accrued</p>

	under [PCSPS] and transferred into the Former Supplier's Scheme and accrued under the Former Supplier's Scheme, from the Former Supplier's Scheme to the Supplier's Scheme;
"Transfer Option Deadline"	the first Working Day to fall at least three (3) months after Transfer Option One or Transfer Option Two has been sent to each Employee, as applicable;
"Transferee Employer"	any employer of Transferring Former Supplier Employees immediately after a transfer which is a Relevant Transfer (to which the Employment Regulations [shall] apply) of any Service; and
"Transferring Pensionable Customer Employee"	each Customer employee whose employment is transferred to the Supplier (by virtue of being a Relevant Transfer) and who, immediately before such transfer, was a member of the *** PCSPS who was either: [in reckonable service as defined by rule 1.5 of the 1972 Section of the PCSPS; or an active member as defined by rule A.1(4) of the 2002 Section of the PCSPS; or an active member as defined by rule A.1(4) of the 2007 Section of the PCSPS.

SECTION B – PENSIONS ON A TRANSFER OF ANY TRANSFERRING PENSIONABLE CUSTOMER EMPLOYEE – N/A

SECTION D – DISPUTE RESOLUTION OF PENSIONS MATTERS – N/A.

SECTION E – PENSIONS ON TERMINATION OF THE CONTRACT – N/A.

SCHEDULE 5: ADDITIONAL OPTIONAL CLAUSES

Time of the Essence

Supplier's Staff

Protection of Information

Schedule Z Security Management Plan

1. 34. TIME OF THE ESSENCE

1.1 34.1 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. 35 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:

"Breach of Security"	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;
"ISMS"	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;
"Protectively Marked"	shall have the meaning as set out in the Security Policy Framework;
"Security Policy Framework"	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);
"Security Tests"	shall have the meaning set out in paragraph 7 of this Schedule Z;
"Statement of Applicability"	shall have the meaning set out in ISO/IEC 27001 and as agreed by the Parties during the procurement phase.

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 wider aspects of security relating to the Contract Services;
- 4.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 4.1.4 the creation and maintenance of the Security Management Plan;

- 4.1.5 audit and testing of ISMS compliance with the security requirements (as set out in Letter of Appointment);
- 4.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice); and
- 4.1.7 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 Complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
 - 5.2.4 meets any specific security threats to the ISMS;
 - 5.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 6 of this Schedule;
 - 5.2.6 complies with the security requirements as set out in the Letter of Appointment; and
 - 5.2.7 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 twenty (20) 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.