

The following contract, having been awarded by the Department of Health, has been redacted in line with exemptions permitted under the Freedom of Information Act 2000 (FOIA); and in support of the Government's transparency agenda.

The redactions have been made pursuant to:

- Section 40 of the FOIA which provides protection of personal information that would not otherwise be available in the public domain. Therefore, in accordance with the act personal information of the following nature has been redacted:
 - Names
 - Photos
 - Roles
 - Experience
 - Skills

- Section 43 of the FOIA provides protection of commercial interests. Therefore, in accordance with the act the following areas and related text/ diagrams have been redacted:
 - Processes
 - Methods and methodology
 - Systems
 - Business terminology
 - Approach
 - Intellectual Property
 - Trade Secrets
 - Commercial figures including: rates, fees and savings.

The redactions and reasoning is based on the collective agreement with the awarded supplier as to what constitutes commercially sensitive information and what could be considered a real and credible threat to their competitive status both within this contract and also when competing in other procurement activities both in the public and private sectors.

CUSTOMER AGREEMENT BETWEEN

**Secretary of State for Health of Richmond House,
79 Whitehall, London, SW1A 2NS acting as part of the Crown (“the Authority”)**

- and -

BravoSolution Limited

AGREEMENT

relating to

E-PROCUREMENT SYSTEMS

**CONTRACT UNDER THE TERMS OF
Eastern Shires Purchasing Organisation (ESPO) Ref: 774**

**DH Contract Reference
Con_60**

DH Business Case 7562 / PO Ref: 532969

Order Form for Goods and/or Services

This Order Form is issued subject to the provisions of the framework agreement entered into between ESPO and the Supplier on 01 January 2014 ("**Framework Agreement**"). The Supplier agrees to supply the goods and/or services specified below on and subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the annexes and schedules thereto.

Date	24 th April 2017	Order Number	To be quoted on all correspondence relating to this order and will be confirmed following order form sign off
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FROM

Customer	Department of Health " Customer "
Customer's Address	Richmond House, 79 Whitehall, London, SW1A 2NS
Invoice Address	Electronic preferred: mb-paymentqueries@dh.gsi.gov.uk or Accounts Payable, Room 530, Richmond House, 79 Whitehall, London SW1A 2NS
Contact Ref:	Name: Redacted in line with Section 40 of the FOIA – Personal Information Address: Department of Health, Quarry House, Leeds LS2 7UE Phone: e-mail:

TO

Supplier	BravoSolution UK Ltd " Supplier "
Supplier's Address	1ST FLOOR, 85 LONDON WALL, LONDON, EC2M 7AD
Account Manager	Name: Redacted in line with Section 40 of the FOIA – Personal Information Address: 1ST FLOOR, 85 LONDON WALL, LONDON, EC2M 7AD Phone: e-mail:

1. TERM

1.1 Commencement Date

Contract commences at 24th April 2017

License and support dates to commence upon DH acceptance of the live portal (instance availability)

1.2 Expiry Date

1.2. This Contract shall expire on 5th June 2020 (licenses 3 years from the date the portal goes live) unless terminated earlier pursuant to this Contract.

The Department of Health reserves the right to terminate the contract in accordance with clause 21.4 of the Contract by giving notice of 12 months to the supplier and such notice shall only be effective and run from one of the following dates 24/04/17; or 24/04/18; or 24/04/19 or 24/04/20.

We also reserve the right to extend the term for a further period of 1 year.

Subject to earlier termination of the Contract in accordance with clause 21, the Contract shall expire on the Expiry Date provided.

2. GOODS AND/OR SERVICES REQUIREMENTS

2.1 Goods and Services required

Redacted in line with Section 43 of the FOIA – Commercial Interests

Phase 1 order value up to a total of:

3 Years	£304,306
Year 4	<u>£ 57,352</u>
	£361,658 + vat

See also potential associated costs per Appendix 3 – Off Boarding Process.

‘Any termination or early exit will attract any agreed fees for minimum duration plus notice period’

2.2 Deliverables

To be agreed as part of joint implementation plan then attached as an annex

2.3 Performance/Delivery Location/Premises

Leeds, Runcorn, Reading and London as necessary or remote subject to agreement between both parties.

Travel will be kept to a minimum and comply with DH T&S Policy principles as follows:

Redacted in line with Section 43 of the FOIA – Commercial Interests

- Hotel in London up to £
- Hotel elsewhere up to £
- Receipts to be evidenced as necessary
- Meal allowance up to £ for each 24hrs
- In addition up to £ per day receipted incidentals
- No first class travel
- Mileage: cars per mile, motorcycle per mile
- Taxis: permitted for journeys up to miles unless exceptional circumstances
- No domestic air travel

2.4 Standards

Quality and Technical Standards

To meet requirements as outlined within the ESPO framework and tender specification, including the DH Cloud Security Assessment (Appendix 4).

Redacted in line with Section 43 of the FOIA – Commercial Interests

Details of technical standards can be found in schedule 1 of the Framework Agreement and also in Appendix 2 – Supplier Solution (Security) page 120

Redacted in line with Section 43 of the FOIA – Commercial Interests

2.5 Disaster Recovery and Business Continuity

To meet requirements as outlined within the ESPO framework, tender specification and response.

Documented within “Service Continuity and Availability Plan_2.docx”

BravoSolution formally manages Business Continuity and Disaster Recovery procedures under their ISO 20000-1/ISO 27001/ISO 22301 Integrated System, and has applicable plans in place which are regularly tested & updated and which may be shared with DH if required

3. SUPPLIER SOLUTION

3.1 Supplier Solution

Bravo Advantage Solution

Redacted in line with Section 43 of the FOIA – Commercial Interests

For reference, the below table provides the mapping between ESPO module names and BravoSolution module names:

Redacted in line with Section 43 of the FOIA – Commercial Interests [see also 7.1]

ESPO Module Name	BravoSolution Module Name
eTendering	
eContract Management	
eVendor Management	
eEvaluation	
eAuction	
Cross system Light Touch user	

Workflow Manager	
Spend Analytics	
Spend Refresh	
Procurement Analytics	
Contract and Supplier Scorecard Management	
Supplier Relationship Management	
Savings Management	
P2P Invoice & Catalogue Management	
Complete eProcurement Solution All Modules	

3.2 Key Personnel of the Supplier to be involved in the provision of the Goods, Services and Deliverables

Redacted in line with Section 40 of the FOIA – Personal Information
 – DH Implementation Lead

Additional personnel will be confirmed at the supplier implementation planning meeting

BravoSolution adopt the following measures:

- Human resources security prior to employment (screening)
- Human resources security during employment (Information security awareness, education and training)

ISO/IEC 27001:2013 Annex A controls implemented in BravoSolution context for personnel security:

Please refer to the BravoSolution ISO27001 documents:

“Pol.14-POLICY Pre-employment screening_0.docx”

“Pro.15-Procedure Human Resources Education, Training and Awareness_1.docx”

3.3 Supplier's inspection of the Premises and Infrastructure

To confirm any requirements at the supplier implementation planning meeting

3.4 Relevant Convictions

N/A

3.5 Training

To be delivered at the Department’s premises unless agreed otherwise between the parties.

To be provided by the Supplier, up to 12 people per day which would usually be 6 hours minimum training unless agreed with the DH contract manager, any less would be considered half a day. Training must include lunch for delegates.

Any other elements will be clarified at the implementation planning meeting as necessary.

4. PERFORMANCE OF THE GOODS AND/OR SERVICES AND DELIVERABLES

4.1 Implementation Plan and Milestones or e.g. delivery schedule (including dates for completion and/or delivery)

This will be completed through joint discussion at the implementation planning meeting and included as an annex by way of an agreed project plan

Redacted in line with Section 43 of the FOIA – Commercial Interests

Implementation charges:

Implementation days and Consultancy days - “Discounted implementation days may only be used against agreed scope of module implementation and not against any BAU projects or change request activity. Bravo reserves the right to charge DH for BAU projects or change request activity exceeding 0.5 days in effort which will be agreed between DH and BravoSolution and charged at £ Redacted in line with Section 43 of the FOIA – Commercial Interests per day excluding expenses as per the pricing table during the tendering response. Bravo will maintain a change request log that will be shared with the customer’s representatives to monitor such requests and days used.

Scoping – Agreement that days limit is final and implementation must be completed within Redacted in line with Section 43 of the FOIA – Commercial Interests days unless further days are procured – “Implementation for technology modules will be scoped at the kick off workshops and an indication of days effort provided by BravoSolution to the customer with a view to ensuring that the completion within the number of days procured for implementation is realistic. BravoSolution will maintain a project log of days used against the project plan. BravoSolution must provide project and time reporting to confirm how the days have been used

4.2 Service Levels and Service Credits

Service Levels:

See Schedule 1 at 2.4 above

Service Credits:

Set out in Appendix to PART A of Schedule 1 at 2.4 above

4.3 Critical Service Failure

Set out in Appendix to PART A of Schedule 1 at 2.4 above

4.4 Monitoring



**PART B -
Performance Monitori**

Management Information to be provided in accordance with clause 7 of the Call-Off Terms.

A Weekly review meeting will take place to discuss progress and agree next steps. Any risk or issues will be identified with mitigating plans agreed and actions assigned. The implementation plan will be updated accordingly and financial impacts agreed to facilitate budget management within DH

On a monthly basis DH has to produce a Highlight Report. Any matters required to input to the completion of that report will be agreed.

Three reports to be delivered quarterly;

1. System Summary report, due at the end of each financial quarter.
2. SIR, Security Incident Report: for security incidents, if any have occurred.
3. RCA, Root Cause Analysis: for unscheduled service interruptions, if any have occurred.

4.5 Continuous Improvement, Value for Money and Benchmarking

- (i) The Customer shall regularly benchmark the Contract Charges and performance of the Goods and/or Services, against other suppliers providing goods and/or services substantially the same as the Goods and/or Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services and delivery of the Goods with charges and service offered by third parties so as to provide the Customer with information for comparison purposes.
- (ii) The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in paragraph (i) above.
- (iii) The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Goods and/or Services to ESPO and other Contracting Bodies and representatives of the Crown.
- (iv) The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking referred to in this paragraph 5.6, such information requirements to be at the discretion of the Customer.

5. CUSTOMER RESPONSIBILITIES

5.1 Customer's Responsibilities (where appropriate)

The customer will participate in the project board with the supplier and stakeholders to ensure any

issues with implementation are dealt with and escalated as quickly as possible.

5.2 Customer's equipment

In order to access the service, the customer must be equipped with computer access with internet connections and internet browser, that meet the minimum software levels set within the Bravo browser requirement

6. CHARGES AND PAYMENT

6.1 Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS))

Payments to be made in conjunction with **Implementation Plan and Milestones (Schedule 2, see 4.1)**. Invoices to be raised following agreement with the customer that each milestone has been achieved.

Invoices will be sent from BravoSolution UK Ltd to DH quoting the official Purchase Order Number
 DH will receipt services to the value of the invoice where deliverables are met
 Payments will then be made via BACS in accordance with the payment terms

VAT is payable at 20%.

- Implementation costs will immediately become available as milestones are delivered
- 50% of license costs will be invoiced immediately
- Further 50% of license costs becomes due when the portal goes live (instance availability) – this is also the date that the actual licenses commence for annual renewal

7. CONFIDENTIAL INFORMATION

7.1 The following information shall be deemed Commercially Sensitive Information, but can be shared within the Health Family:

Tenderer's commercially sensitive information	Potential implication of disclosure	Duration of commercially sensitive information
Individual service level pricing such as: module pricing, per license pricing, implementation pricing, day-rate pricing etc.	Commercial impacts to BravoSolution	Four (4) years

<p>Individual service module functionality descriptions such as: Spend Analysis, eTendering / RFx, Contracts etc. including any associated technical & security information.</p>	<p>Commercial impacts to BravoSolution intellectual property Potential security impacts to customer</p>	<p>Four (4) years</p>
<p>Individual service delivery service descriptions such as: implementation, transition, training, change management etc.</p>	<p>Commercial impacts to BravoSolution intellectual property</p>	<p>Four (4) years</p>

8. INSURANCE

8.1 Minimum Insurance Period

6 (six) years following the expiration or earlier termination of the Contract.

8.2 To comply with its obligations under clause 21.2 and as a minimum, where requested by the Customer in writing the Supplier shall ensure that:

- (i) **professional indemnity insurance** is held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Goods and/or Services has a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time;
- (ii) **public liability insurance** adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of five million pounds sterling (£5,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and
- (iii) **employers' liability insurance** with a minimum limit of indemnity of such amount as may reasonably be required by Law from time to time.
- (iv) **product liability insurance** adequate to cover all risks in the performance of this Lease Agreement from time to time with a minimum limit of five million pounds sterling (£5,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

Call-Off Terms

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SCHEDULE 1 SERVICE LEVELS AND SERVICE CREDITS

SCHEDULE 2 IMPLEMENTION PLAN AND MILESTONES

BETWEEN

- (1) The Customer identified in the Order Form (“Customer”); and
- (2) The company identified in the Order Form (the “Supplier”).

WHEREAS

- A. The Eastern Shires Purchasing Organisation (“ESPO”) selected Framework Providers, including the Supplier, to provide Goods and/or Services;
- B. the Supplier undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 774 (the “Framework Agreement”);
- C. ESPO established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies.
- D. ESPO and the Supplier agree that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Supplier for the Supplier to supply Goods and/or Services;
- E. the Customer is granted rights by ESPO in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a Contract under the Framework Agreement pursuant to an Order Form served by the Customer on the Supplier;
- F. the Customer served an Order Form for Goods and/or Services on the Supplier; and
- G. the Supplier confirmed its agreement to the terms of this Contract by its acceptance of the Order Form

1. GENERAL PROVISIONS

1.1 Definitions

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

- | | |
|-------------------------|--|
| "Affiliates" | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| "Affected Party" | means the party seeking to claim relief in respect of a Force Majeure; |

"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in paragraph 2.8 of the Order Form;
"Call-off Terms"	means these terms and conditions in respect of the provision of the Goods and/or Services, together with the schedules hereto;
"Change in Law"	means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-off Terms which comes into force after the Commencement Date;
"Commencement Date"	means the date set out in paragraph 1.1 of the Order Form;
"Commercially Sensitive Information"	means the Confidential information set out in the ITT Response comprising of a commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Supplier's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of Available Services and/or reducing the charges produced by the Supplier pursuant to schedule 6 of the Framework Agreement;
"Contract"	Means the Contract Document, this agreement, the schedules hereto and the Order Form pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement;
"Contract Period"	means the period from the Commencement Date to: (a) the Expiry Date; or (b) such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;

- "Contract Charges"** means the prices (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in paragraph 6.1 of the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract less any Service Credits;
- "Contracting Authority"** means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Customer;
- "Control"** Means control as defined in section 1124 Corporation Tax Act 2010 and **"Controls"** and **"Controlled"** shall be interpreted accordingly;
- "Conviction"** means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
- "Critical Service Failure"** shall have the meaning given in paragraph 4.3 of the Order Form;
- "Crown"** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
- "Customer"** means the customer(s) identified in the Order Form;
- "Customer Data"** means:
- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which:
 - (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; or

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

"Customer Pre-Existing IPR"	shall mean 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 Premises"	the premises identified in the Order Form and which are to be made available for use by the Supplier for the provision of the Goods and/or Services on the terms set out in this Contract;
"Customer Responsibilities"	means the responsibilities of the Customer set out in the Order Form;
"Customer Representative"	means the representative appointed by the Customer from time to time in relation to the Contract;
"Customer's Confidential Information"	means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the 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;
"Data Controller"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Protection Legislation"	means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;

"Default"	means any breach of the obligations of the Supplier (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or Supplier's Staff in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Customer;
"Deliverables"	means those deliverables listed in the Order Form (if any);
"Delivery"	means the time at which the Goods and/or Services have been installed by the Supplier and the Customer has issued the Supplier with confirmation in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in clause 43.2;
"Documentation"	means the technical specifications, user manuals, operating manuals, operating manuals, process definitions and procedures;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;
"Equality Legislation"	means the Equality Act 2010 and such other acts and legislation to ensure, among others; equality of access to the Goods and/or Services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws;
"Equipment"	means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods;
"ESPO"	means the Eastern Shires Purchasing Organisation of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES;
"Expiry Date"	means the date set out in paragraph 1.2 of the Order

Form;

- "FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
- "Force Majeure"** means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:
- a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
 - b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
 - c) acts of government, local government or Regulatory Bodies;
 - d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
 - e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
 - i) any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and
 - ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
- "Framework Agreement"** means the framework agreement between ESPO and the Supplier referred to in the Order Form;
- "Fraud"** means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer;
- "Good Industry Practice"** means standards, practices, methods and procedures conforming to the Law and the exercise of 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 within the relevant industry or business sector;
- "Goods and/or"** means the goods and/or services to be supplied as

"Services"	specified in paragraph 2.1 of the Order Form;
"Guarantee Period"	Means the period specified and/or agreed in the Order Form
"Holding Company"	shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;
"Implementation Plan"	means the plan referred to in the Order Form;
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights" or "IPRs"	means: <ul style="list-style-type: none">a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; andc) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
[ITT Response	means the response submitted by the Supplier to the Invitation to Tender issued by the Customer on [insert date];]
"Key Personnel"	means the individuals (if any) identified in paragraph 3.2 of the Order Form;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Supplier's or the Customer's possession before the Commencement Date;
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the

Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;

“Management Information”	means the management information specified in Framework Schedule 7 (Management Information Requirements);
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
“Material Breach”	means a material breach of this Call-Off Agreement [and/or, breach by the Supplier of any of the following clauses: Clause 19 (Warranties and Representations), Clause 18.9 (Protection of Personal Data), Clause 7 (Monitoring of Contract Performance), Clause 27 (Records and Audits Access), Clause 29 (Transfer and Sub-Contracting), Clause 26 (Prevention of Bribery and Corruption), Clause 28 (Prevention of Fraud), shall be a material breach.
"Order"	means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement;
"Order Form"	means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Goods and/or Services to be supplied;

- "Parent Company"** means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term **"Holding or Parent Company"** shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
- "Party"** means the Supplier or the Customer and **"Parties"** shall mean both of them;
- "Personal Data"** shall have the same meaning as set out in the Data Protection Act 1998;
- "Premises"** means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in paragraph 2.3 of the Order Form;
- "Process"** has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing) , and **"Process"** and **"Processed"** shall be interpreted accordingly;
- "Prohibited Act"** means:
- 1) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO a financial or other advantage to:
 - a) induce that person to perform improperly a relevant function or activity; or
 - b) reward that person for improper performance of a relevant function or activity; or
 - 2) committing any offence:
 - a) under the Bribery Act 2010; or
 - b) under legislation creating offences concerning fraudulent acts; or
 - c) at common law concerning fraudulent acts relating to this Contract any other contract with ESPO and/or Customer and/or any other Contracting Body; or
 - d) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the

Customer any other Contracting Body.

"Project Specific IPRs"	means: (a) IPRs in the Services, Deliverables and/or Goods provided by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or (b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Supplier (or by a third party on behalf of the Supplier) under the Contract, including the rights in or to any database developed and supplied by the Supplier to the Customer in accordance with the terms of this Contract;
"Property"	means the property, other than real property and IPR, issued or made available to the Supplier by the Customer in connection with the Contract;
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other applicable quality standards, Government codes of practice and guidance;
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;
"Related Supplier "	means any person who provides services to the Customer which are related to the Services from time to time;
"Relevant Transfer Date"	means the date upon which the Relevant Transfer takes place;]
"Relevant Transfer"	means a transfer of employment to which TUPE applies or is treated as applying;]

"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided or as specified in the Order Form;
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Customer from time to time;
"Replacement Service"	any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
"Request for Information"	means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Service Credits"	means the sums referred to in paragraph 4.2 of the Order Form as being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to in the Order Form;
"Services"	means the services to be supplied as referred to in paragraph 2.1 of the Order Form;
"Sites"	means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services;
"Staff"	means all persons employed by the Supplier and/or any Sub-contractor to perform its 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 its obligations under the Contract;
"Sub-contract"	means any contract or agreement or proposed contract or agreement between the Supplier and any third party whereby that third party agrees to provide to the Supplier the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or

any part thereof;

"Sub-contractor"	means the third party with whom the Supplier enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents;
"Supplier"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form;
"Supplier Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Supplier prior to or independently of the performance by the Customer 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;]
"Supplier's Representative"	means the representative appointed by the Supplier from time to time in relation to the Contract;
"Supplier Solution"	means the Supplier's solution for the provision of the Goods and/or Services as referred to in paragraph 3.1 of the Order Form;
"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 IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Technical Standards"	means the technical standards set out in paragraph 2.4 of the Order Form;
"Tender"	means the tender submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;
"Transferring Goods"	means Goods, title to which transfers between the Parties in accordance with clause 4.6.1;
"Undelivered Goods"	shall have the meaning given in clause 4.5.7;
"Undisputed Sums Time Period"	has the meaning given in clause 11.2.6;

"Valid Invoice"	means an invoice issued by the Supplier to the Customer that complies with clause 11.2.2;
"Variation Procedure"	means the procedure set out in clause 34;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales.

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" and "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 schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the schedules;
- 1.2.6 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.7 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 "schedules" are, unless otherwise provided, references to the clauses of and schedules to this

Contract. References to “paragraphs” are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;

- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.11 references to Framework Schedules refer to those schedules which form part of the Framework Agreement which are replicated in Appendix 1
- 1.2.12 in the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract, any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.12.1 the Framework Agreement;
 - 1.2.12.2 the clauses of the Contract (excluding the Order Form);
 - 1.2.12.3 the Order Form; and
 - 1.2.12.4 any other document referred to in the clauses of the Contract.

2. DUE DILIGENCE

- 2.1 The Supplier acknowledges that it:
 - 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
 - 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
 - 2.1.3 has entered into this Contract in reliance on its own due diligence alone.

3. CONTRACT PERIOD

- 3.1 This Contract shall take effect on the Effective Date and shall either expire on the date specified in the Order Form unless terminated earlier pursuant to clause 21.
- 3.2 For the purposes of this Contract, the initial period and any extensions thereof shall be referred to as the "Term".

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

- 4.1.1 The Supplier shall supply the Goods and/or Services in accordance with the Implementation Plan.
- 4.1.2 The Supplier shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Supplier supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.
- 4.1.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods and/or Services does not meet the requirements of the Contract or differs in any way from those requirements, the Supplier shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 4.1.4 The Supplier accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:
 - 4.1.4.1 the same is notified in writing to the Supplier within three (3) Working Days of receipt of the Ordered Goods by the Customer; and
 - 4.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Supplier's instructions.
- 4.1.5 Where the Supplier accepts responsibility under clause 4.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof), which have been proven, to the Supplier's reasonable satisfaction, to have been lost or damaged in transit.
- 4.1.6 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier in the supply of the Goods and/or

Services and the performance of its obligations under the Contract.

4.2 Provision and Removal of Equipment

- 4.2.1 Unless otherwise stated in the Order Form, the Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 4.2.2 The Supplier shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 4.2.3 All Equipment brought onto the Premises shall be at the Supplier's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Supplier's sole cost. Unless otherwise stated in this Contract, Equipment brought onto the Premises will remain the property of the Supplier.
- 4.2.4 The Supplier shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 4.2.5 The Supplier shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
 - 4.2.5.1 remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - 4.2.5.2 replace such item with a suitable substitute item of Equipment.
- 4.2.6 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier or Supplier's Staff.

4.3 Quality

- 4.3.1 The Supplier shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and/or Services must be provided has not been

specified in the Contract, the Supplier shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the supply of the Goods and/or Services commencing and in any event, the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

4.3.2 The Supplier shall ensure that the Staff shall at all times during the Contract Period:

4.3.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and/or Services;

4.3.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and

4.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.

4.3.3 The Supplier shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.

4.3.4 The Supplier shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any), the Order Form and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.

4.3.5 The Supplier shall at all times during the Contract Period ensure that:

4.3.5.1 the Goods and/or Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;

4.3.5.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Order Form;

4.3.5.3 the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;

4.3.5.4 the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Supplier by the Customer; and

4.3.5.5 the Goods and/or Services are supplied in accordance with the Supplier Solution.

4.4 **Delivery (Goods only)**

Without prejudice to the content of clause 4.5 (Delivery) the Supplier shall make delivery of the Goods specified in the Order Form at the times and in the manner stated therein and as a minimum meet the requirements stated in the Response to the ITT. Delivery shall be at no cost to the Customer and shall be at the sole risk of the Supplier.

Property and risk in the Goods shall pass to the Customer when the Goods have been delivered as specified in the Order Form.

4.5 **Delivery**

4.5.1 The Supplier shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.

4.5.2 The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.

4.5.3 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Supplier fails to deliver the Goods and/or Services within the time specified in accordance with clause 4.1.1 and paragraph 4.1 of the Order Form and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.

4.5.4 Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-contractors at such place or places as set out in paragraph 2.3 of the Order Form.

4.5.5 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.

4.5.6 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.

4.5.7 In the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan ("**Undelivered Goods and/or Services**") then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and/or Services that were not

Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and/or Services are Delivered.

- 4.5.8 The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in paragraph 2 of the Order Form. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Supplier.

4.6 Ownership and Risk

- 4.6.1 Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to the Order.
- 4.6.2 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been satisfactorily delivered.

4.7 Guarantee

The Supplier hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

5. 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 Services to a Replacement Supplier.

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

The Supplier shall maintain in place throughout the Contract Period business continuity arrangements and will review those arrangements at appropriate intervals and if necessary update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Supplier's organisation, delivery of the Goods and/or Services to the Customer is subject to a minimum of disruption

7. MONITORING OF CONTRACT PERFORMANCE

- 7.1 The Supplier shall comply with the monitoring arrangements referred to in the Order Form including, but not limited to, providing such data and information as the Supplier may be required to produce under the Contract
- 7.2 Where requested by the Customer, the Supplier shall supply the Management Information to the Customer in the form and periodically as specified in the Order Form.

8. DISRUPTION

- 8.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 8.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.
- 8.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.
- 8.4 If the Supplier's proposals referred to in clause 8.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

9. SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS

- 9.1 The Supplier shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of schedule 3 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier.
- 9.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 9.3 Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or 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 Goods and/or Services have been Delivered) do any of the following:

- 9.3.1 at the Customer's option, give the Supplier the opportunity at the Supplier's expense to either remedy any defect in the Goods and/or failure in the performance of the 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 Goods and/or 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;
- 9.3.2 reject the Goods (in whole or in part) and require the Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;
- 9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;
- 9.3.4 if paragraph 4.1 of the Order Form provides for the payment of Delay Payments, then the Supplier shall pay such amounts (calculated in accordance with paragraph 4.1 of the Order Form) 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 met;
- 9.3.5 carry out at the Supplier's expense any work necessary to make the Goods and/or Services comply with the Contract;
- 9.3.6 without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or 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 Goods and/or Services in accordance with the Contract;
- 9.3.7 without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or 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 Goods and/or Services; and/or
- 9.3.8 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 Goods and/or 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 Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

9.4 In the event that the Supplier:

9.4.1 fails to comply with clause 9.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

9.4.2 persistently fails to comply with clause 9.3 above,

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

10. PREMISES

10.1 Inspection of Premises

10.1.1 The Supplier acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the Goods and/or Services and that the specified actions to remedy the unsuitable aspects of the Customer's Premises, together with a timetable for and the costs of those actions, have been specified in paragraph 3.8 of the Order Form.

10.1.2 If the Supplier has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with clause 10.1.1 then the Supplier shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises. The onus shall be on the Supplier to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Supplier shall not incur such additional costs or charges without obtaining Approval.

10.1.3 Any disputes relating to due diligence as set out in clause 2 or this clause 10 shall be resolved in accordance with the Dispute Resolution Procedure.

10.2 Licence to occupy Premises

10.2.1 Any Customer's Premises made available from time to time to the Supplier by the Customer in connection with the Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under the Contract. The Supplier shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.

- 10.2.2 The Supplier shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 10.2.3 Save in relation to such actions identified by the Supplier in accordance with clause 10.2.1 and set out in paragraph 3.8 of the Order Form, should the Supplier require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Supplier's expense. The Customer shall undertake any modification work which it approves pursuant to this clause 10.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.
- 10.2.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- 10.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

10.3 **Property**

- 10.3.1 Where the Customer issues Property free of charge to the Supplier such Property shall be and remain the property of the Customer and the Supplier irrevocably licences the Customer and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such Property. The Supplier shall not in any circumstances have a lien or any other interest on the Property and at all times the Supplier shall possess the Property as fiduciary agent and bailee of the Customer. The Supplier shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 10.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Customer otherwise within five (5) Working Days of receipt.
- 10.3.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.
- 10.3.4 The Supplier shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 10.3.5 The Supplier shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Supplier shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.

11. PAYMENT AND CONTRACT CHARGES

11.1 Contract Charges

- 11.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).
- 11.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Supplier of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 11.1.3 If at any time during the Contract Period the Supplier reduces its Rates of Charges for any Goods and/or Services which is provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Supplier shall immediately reduce the Contract Price for such Goods and/or Services under this Contract by the same amount.
- 11.1.4 The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement which is specifically commissioned from the Supplier by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and/or Services or to facilitate their delivery shall be offered by the Supplier to the Customer at no charge.

11.2 Payment and VAT

- 11.2.1 The Customer shall pay all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice.
- 11.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 11.2.3 Where the Supplier enters into a Sub-contract 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) Working Days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-contract.
- 11.2.4 The Supplier shall add VAT to the Contract Charges at the prevailing rate as applicable.
- 11.2.5 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 11.2.5 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.
- 11.2.6 The Supplier shall not suspend the supply of the Services and/or Goods (as applicable) unless the Supplier is entitled to terminate the Contract under clause 21.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

11.3 Recovery of Sums Due

- 11.3.1 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 or under any other agreement or contract with the Customer.
- 11.3.2 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.

11.3.3 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.

11.3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

11.4 Euro

11.4.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Supplier free of charge to the Customer.

11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Supplier.

12. KEY PERSONNEL

12.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any Sub-contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.

12.2 The Supplier shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.

12.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Supplier or Sub-contractor.

12.4 The Supplier acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and/or Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

12.5 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel].

13. SUPPLIER'S STAFF

- 13.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:
- 13.1.1 any member of the Staff; or
 - 13.1.2 any person employed or engaged by any member of the Staff,
- whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 13.2 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.
- 13.3 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.
- 13.4 If the Supplier fails to comply with clause 13.2 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.
- 13.5 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 13.2 shall be final and conclusive.

14. CHILDREN AND VULNERABLE ADULTS

- 14.1 Where the provision of the Goods and/or Services requires any of the Supplier's employees or Sub-Contractors to work in a Regulated Activity with children, the Supplier will make checks in respect of such employees and volunteers with the Disclosure and Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Childrens Barred List relating to the protection of children
- 14.2 The Supplier will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees, volunteers and Sub-Contractors
- 14.3 The Supplier will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years
- 14.4 The Supplier will (and shall ensure its Sub-Contractors will) not employ any person or continue to employ any person to provide the Goods and/or Services who appears unsuitable as a result of information received from the checks, and

will notify the Customer immediately of any decision to employ such a person in any role connected with the Contract or any other agreement or arrangement with the Customer.

15. TUPE

- 15.1 The Parties hereby acknowledge that, pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"), there shall be a relevant transfer on the Commencement Date and the contracts of employment of those employees who are wholly or mainly assigned in the Services immediately before the Commencement Date ("the Transferring Employees") shall take effect as if originally made between the Supplier and the employees (save for those who object pursuant to Regulation 4(7) of TUPE.
- 15.2 The Supplier shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement date but which are attributable in whole or in part to the period after the Commencement Date.
- 15.3 Not later than twelve months prior to the end of the Contract Period, the Supplier shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Supplier's Staff including the following:
- (a) the total number of the Supplier's Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and
 - (b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pension entitlements of the Supplier's Staff referred to in Clause 15.3(a); and
 - (c) the terms and conditions of the employment/engagement of the Supplier's Staff referred to in Clause 15.3(a), their job titles and qualifications; and
 - (d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and
 - (e) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.
- 15.4 At intervals to be stipulated by the Customer (which shall not be more frequent than every thirty days) immediately prior to the end of the Contract Period the Supplier shall deliver to the Customer a complete update of all such information which shall be disclosable pursuant to Clause 15.3
- 15.5 At the time of providing the disclosed information pursuant to Clauses 15.3 and 15.4, the Supplier shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Supplier.

- 15.6 The Customer may use the information it receives from the Supplier pursuant to Clauses 15.3 and 15.4 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Supplier shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- 15.7 The Supplier shall indemnify and keep indemnified and hold the Customer (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or any Replacement Contractor may suffer or incur as a result of or in connection with:
- (a) the provision of information pursuant to Clause 15; and
 - (b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Supplier or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period; and
 - (c) any failure by the Supplier or any Sub-Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Contractor to comply with its duties under Regulation 13 of the Regulations; and
 - (d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and
 - (e) any claim by any person who is transferred by the Supplier to the Customer and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 15.8 If the Supplier becomes aware that the information it provided pursuant to Clause 15.3 has become untrue, inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date information.
- 15.9 This Clause 15 applies during the Contract Period and indefinitely thereafter.
- 15.10 The Supplier undertakes to the Customer that, during the twelve months prior to the end of the Contract Period the Supplier shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):
- (a) amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any of the Staff (other than where such amendment or variation has previously been agreed between the Supplier and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

- (b) terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);
- (c) transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual's career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Supplier, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;
- (d) recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

16. TRAINING

- 16.1 The Supplier shall provide training to the Customer's personnel in accordance with paragraph 3.5 of the Order Form (if any) in respect of the use and maintenance of the Goods.
- 16.2 The Contract Charges shall include the cost of any training and instruction of the Customer's personnel in the use and maintenance of the Goods.

17. STAFFING SECURITY – NOT USED

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1 Save as granted under this Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights.
- 18.2 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Supplier's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 18.3 With respect to the Suppliers obligations under this Contract, the Supplier warrants and represents that:
 - 18.3.1 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;
 - 18.3.2 it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer's Confidential Information (held in electronic form (owned by or under the control of, or used by the Customer;
- 18.4 The Supplier shall during and after the Contract Period of this Contract indemnify and keep indemnified the Customer on demand in full from and

against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:

- 18.4.1 availability, provision or use of the Goods and/or Services (or any parts thereof); and
 - 18.4.2 performance of the Supplier's responsibilities and obligations hereunder.
- 18.5 The Supplier shall promptly notify the Customer if any claim or demand is made or action brought against the Supplier for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Supplier's responsibilities and obligations hereunder.
- 18.6 If a claim or demand is made or action brought to which Clause 18.3 and/or 18.4 may apply, or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier may at its own expense and within a reasonable time either:
- 18.6.1 modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services; or
 - 18.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and
 - 18.6.3 in relation to the performance of the Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 18.7 **Security of Premises**
- 18.7.1 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 Staff comply with such requirements.
 - 18.7.2 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.

18.8 Customer Data

- 18.8.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 18.8.2 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.
- 18.8.3 To the extent that 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.
- 18.8.4 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.
- 18.8.5 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 reasonably requested by the Customer.
- 18.8.6 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:
 - 18.8.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of 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
 - 18.8.6.2 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.
- 18.8.7 If at any time the Supplier suspects or has reason to believe that 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.

18.9 Protection of Personal Data

- 18.9.1 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.

18.9.2 The Supplier shall:

- 18.9.2.1 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 Contract Period);
- 18.9.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Goods and/or Services or as is required by Law or any Regulatory Body;
- 18.9.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 18.9.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 18.9.2.5 obtain Approval in order to transfer the Personal Data to any Sub-contractors or Affiliates for the provision of the Services and Goods;
- 18.9.2.6 ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 18.9;
- 18.9.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 18.9.2.8 notify the Customer (within five (5) Working Days) if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;

- 18.9.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
- (a) providing the Customer with full details of the complaint or request;
 - (b) 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;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
- 18.9.2.10 permit the Customer or the Customer 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;
- 18.9.2.11 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
- 18.9.2.12 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:
- (a) 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;
 - (b) the Supplier shall set out in its request for a Variation details of the following:
 - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;

- (ii) 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;
 - (iii) any Sub-contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (iv) 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;
- (c) 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
- (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) 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
 - (ii) 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).

- 18.9.3 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.
- 18.9.4 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).
- 17.9.5 The Supplier shall, at all times during and after the Contract Period, indemnify the Customer and keep the Customer 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 19 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

18.10 Confidentiality

- 18.10.1 Except to the extent set out in this clause 18.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 18.10.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 18.10.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 18.10.2 Clause 18.10.1 shall not apply to the extent that:
 - 18.10.2.1 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 18.11 (Freedom of Information);

- 18.10.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 18.10.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 18.10.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 18.10.2.5 it is independently developed without access to the other Party's Confidential Information.
- 18.10.3 The Supplier may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or 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.
- 18.10.4 The Supplier shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.
- 18.10.5 At the written request of the Customer, the Supplier shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 18.10.6 In the event that any default, act or omission of any 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 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 Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

- 18.10.7 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained under clause 7.2):
- 18.10.7.1 to any Crown body or any other Contracting Authority. All Crown bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;
 - 18.10.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;
 - 18.10.7.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 18.10.7.4 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.
- 18.10.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Supplier's Confidential Information is disclosed pursuant to clause 18.10.7 is made aware of the Customer's obligations of confidentiality.
- 18.10.9 Nothing in this clause 18.10 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.
- 18.10.10 In the event that the Supplier fails to comply with clause 18.6.1 to clause 18.6.6, the Customer reserves the right to terminate this Contract with immediate effect by notice in writing.
- 18.10.11 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.

18.11 Freedom of Information

- 18.11.1 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.

18.11.2 The Supplier shall and shall procure that its Sub-contractors shall:

18.11.2.1 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;

18.11.2.2 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

18.11.2.3 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.

18.11.3 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.

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

18.11.5 The Supplier acknowledges that (notwithstanding the provisions of clause 18.10) the Customer may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Goods and Services:

18.11.5.1 in certain circumstances without consulting the Supplier; or

18.11.5.2 following consultation with the Supplier and having taken their views into account,

provided always that where clause 18.11.5 applies the Customer shall, in accordance with any recommendations of the Code, 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.

- 18.11.6 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.
- 18.11.7 The Supplier acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 18.11.5.

18.12 Transparency

- 18.12.1 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.
- 18.12.2 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 Agreement, to the general public.
- 18.12.3 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.
- 18.12.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

19. WARRANTIES AND REPRESENTATIONS

- 19.1 The Supplier warrants, represents and undertakes to the Customer that:
 - 19.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
 - 19.1.2 the Contract is executed by a duly authorised representative of the Supplier;
 - 19.1.3 in entering the Contract it has not committed any Fraud;
 - 19.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

- 19.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
 - 19.1.6 as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or Services are true, accurate and not misleading save as may have been 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 and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
 - 19.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
 - 19.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
 - 19.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
 - 19.1.10 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;
- 19.2 The Supplier warrants represents and undertakes to the Customer that:
- 19.2.1 the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
 - 19.2.2 it shall discharge its obligations hereunder (including the provision of the Goods and/or Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
 - 19.2.3 the Goods and/or Services are and will continue to be during the Contract Period:
 - 19.2.3.1 of satisfactory quality; and
 - 19.2.3.2 in conformance with the relevant specifications set out in this Contract, the

relevant Order and (if applicable) the manufacturer's specifications and documentation;

19.2.4 in the three (3) Years prior to the Commencement Date:

19.2.4.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

19.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

19.2.4.3 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; and

19.2.4.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

19.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Supplier.

19.4 The Supplier acknowledges and agrees that:

19.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

19.4.2 the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

20. LIABILITIES

20.1 Liability

20.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

20.1.1.1 death or personal injury caused by its negligence or that of its Staff;

20.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;

20.1.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

- 20.1.1.4 any claim under clause 19.1;
 - 20.1.1.5 any claim under the indemnity in clauses 11.2.5, 15, 18.4, 18.9.5 in respect or a breach of clause 18.10; or
 - 20.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 20.1.2 Subject to clause 20.1.4 and clause 20.1.5 the Supplier shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non supply, of the Goods and/or Services or the performance or non-performance by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.
- 20.1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.
- 20.1.4 Subject always to clause 20.1.1 and clause 22.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:
- 20.1.4.1 all defaults resulting in direct loss to the property of the other Party shall be subject to the financial limits set out in paragraph 8.1 of the Order Form; and
 - 20.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed ten million pounds sterling (£10,000,000.00) and shall not be less than 125% of the aggregate value of the contract over the entire Contract Period.
- 20.1.5 Subject to clauses 20.1.1 and 20.1.6, in no event shall either Party be liable to the other for any:
- 20.1.5.1 loss of profits;
 - 20.1.5.2 loss of business;
 - 20.1.5.3 loss of revenue;
 - 20.1.5.4 loss of or damage to goodwill;

- 20.1.5.5 loss of savings (whether anticipated or otherwise); and/or
- 20.1.5.6 any indirect, special or consequential loss or damage.
- 20.1.6 Subject always to the provisions of clauses 20.1, 20.2, 20.1.4 and 20.1.5, the provisions of 20.1.7 shall not be taken as limiting the right of the Customer to recover as a direct loss:
 - 20.1.6.1 any additional operational and/or administrative expenses arising from the Supplier's Default;
 - 20.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's Default;
 - 20.1.6.3 the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Supplier; and
 - 20.1.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Supplier.
- 20.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

20.2 Insurance

- 20.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing 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 policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the Contract Period and for the Minimum Insurance Period.
- 20.2.2 The Supplier shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000.00) for each individual claim.
- 20.2.3 The Supplier shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from

time to time with a minimum limit of five million pounds sterling (£5,000,000.00) for each individual claim.

- 20.2.4 The Supplier shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of two million pounds sterling (£2,000,000.00) for each individual claim, or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period.
- 20.2.5 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 20.2.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 20.2.7 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. 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 referred to in clause 20.
- 20.2.8 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 avoided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) 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 to, 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.

20.3 Taxation, National Insurance and Employment Liability

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

during the Contract Period or arising from termination or expiry of the Contract.

21. TERMINATION

21.1 Termination on insolvency

21.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Supplier where the Supplier is a company and in respect of the Supplier:

21.1.1.1 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, its creditors; or

21.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

21.1.1.3 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

21.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

21.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

21.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or

21.1.1.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

21.1.1.8 any event similar to those listed in clause 21.1.1.1 to 21.1.1.7 occurs under the law of any other jurisdiction.

21.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:

21.1.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or

arrangement with, or assignment for the benefit of, the Supplier's creditors; or

- 21.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
- 21.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 21.1.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
- 21.1.2.5 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 14 days; or
- 21.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 21.1.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

21.2 Termination on Change of Control

21.2.1 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

- 21.2.1.1 being notified that a Change of Control has occurred or is planned or in contemplation; or
- 21.2.1.2 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 an Approval was granted prior to the Change of Control.

For the purposes of clause 21.2.1, the following shall be disregarded any transfer of shares or of any interest in shares by a

person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring.

21.3 Termination on Default

21.3.1 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier commits a Default and if:

21.3.1.1 the Supplier has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

21.3.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or

21.3.1.3 the Default is a Material Breach of the Contract.

21.3.2 In the event that through any Default of the Supplier, data 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 Default of the Supplier.

21.3.3 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 the Undisputed Sums Time Period, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 11.3 (Recovery of Sums Due).

21.4 Termination without Cause

The Customer shall have the right to terminate the Contract by giving not less than twelve (12) months written notice to the Supplier. Such notice shall only be effective and run from one of the following dates 24/04/17; or 24/04/18; or 24/04/19 or 24/04/20.

21.5 Termination of Framework Agreement

The Customer may terminate the Contract by giving written notice to the Supplier with immediate effect if the Framework Agreement is fully or partly terminated for any reason whatsoever other than the termination of the Framework Agreement by ESPO under Clause 26.14 of the Framework Agreement.

21.6 Termination on Financial Standing

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice where (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:

21.6.1 adversely impacts on the Supplier's ability to supply the Goods and/or Services under this Contract; or

21.6.2 could reasonably be expected to have an adverse impact on the Suppliers ability to supply the Goods and/or Services under this Contract.

21.7 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Supplier commits a Default of clauses 27.1 to and 27.5 and clause 27.7 (Records and Audit Access).

21.8 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Supplier in writing with effect from the date specified in such notice if the Supplier refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Continuous Improvement and Benchmarking).

21.9 Partial Termination

If the Customer is entitled to terminate this Contract pursuant to this clause 21, it may (at its sole discretion) terminate all or part of this Contract.

22. CONSEQUENCES OF EXPIRY OR TERMINATION

22.1 Where the Customer terminates the Contract under clauses 21.3 (Termination on Default), 21.6 (Financial Standing), 21.7 (Audit), 21.8 (Benchmarking) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 21.3, 21.7, 21.8 and 21.9, 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.

- 22.2 Not used
- 22.3 The Customer shall not be liable under clause 22.2 **Error! Reference source not found.** to pay any sum which:
- 22.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
 - 22.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.
- 22.4 On the termination of the Contract for any reason, the Supplier shall:
- 22.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPRs and the Project Specific IPRs 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 Goods and/or Services;
 - 22.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Supplier;
 - 22.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.
 - 22.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under clause 4.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);
 - 22.4.5 transfer to the Customer and/or the Replacement Supplier (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Supplier in respect of such Licensed Goods and/or contracts and/or any other items of relevance;
 - 22.4.6 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or provide all such assistance and co-operation as the Customer may reasonably require;

- 22.4.7 return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and
 - 22.4.8 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.
- 22.5 If the Supplier fails to comply with clause 22.4.1 and 22.4.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted agents or Sub-contractors where any such items may be held.
- 22.6 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under clause 22.4.5 and 22.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 22.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 10.2.1 shall automatically terminate without the need to serve notice.
- 22.8 Save as otherwise expressly provided in the Contract:
- 22.8.1 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
 - 22.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 18 (Intellectual Property Rights), 18.9 (Protection of Personal Data), 18.10 (Confidentiality), 18.11 (Freedom of Information), 20 (Liabilities), 22 (Consequences of Expiry or Termination), 26 (Prevention of Bribery and Corruption), 27 (Records and Audit Access), 32 (Cumulative Remedies), 38 (Conflicts of Interest), 28 (Prevention of Fraud), 40 (The Contracts (Rights of Third parties Act 1999) and 43.1 (Governing Law and Jurisdiction).

23. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 23.1 The Supplier shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, sub-contractors, suppliers, professional advisors and consultants comply with this clause 23. Any such

press announcements or publicity proposed under this clause 23.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,

- 23.2 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 Auditor.
- 23.3 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.

24. HEALTH AND SAFETY

- 24.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Supplier in the performance of its obligations under the Contract.
- 24.2 While on the Customer's Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 24.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 24.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.
- 24.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

25. ENVIRONMENTAL & ANTI – DISCRIMINATION REQUIREMENTS

- 25.1 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy (where provided), which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 25.2 The Supplier shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

- 25.3 The Supplier shall take all reasonable steps to secure the observance of Clause 24.2 by all Staff employed in performance of this Framework Agreement.
- 25.4 The Supplier shall notify ESPO forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier under Equality Legislation or any other law, enactment, order or regulation.
- 25.5 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connect with any matter relating to the Supplier's performance of this Framework Agreement being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Supplier's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Supplier and any of the Supplier's Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 25.6 Where any investigation is conducted or proceedings are brought under Equality Legislation or any other law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Supplier, its agents or Sub-Contractors, or the Supplier's Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify ESPO with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connect with any such investigation or proceedings and such other financial redress to cover any payment ESPO may have been ordered or required to pay to a third party.
- 25.7 The Supplier shall ensure that all written information produced or used in connection with this Framework Agreement is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.
- 25.8 The Supplier acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Goods and/or Services and the Supplier shall provide all necessary assistance and information to ESPO as may be required in relation to the performance of an impact analysis by ESPO. The Supplier shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by ESPO.
- 25.9 The Supplier shall ensure that all employees of the Supplier are eligible to work in the United Kingdom.

26. PREVENTION OF BRIBERY AND CORRUPTION

- 26.1 The Supplier shall not:
- 26.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or 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 this Contract;

26.1.2 engage in and shall procure that all Supplier's Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf shall not commit, in connection with this 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; and

26.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

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

26.2.1 paid commission or agreed to pay commission to 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; and

26.2.2 entered into this 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 ESPO before execution of this Contract;

26.3 The Supplier shall:

26.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

26.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 26;

26.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 26 and the Supplier shall co-operate with any investigation and allow the Customer to audit Supplier's books, records and any other relevant documentation in connection with the breach;

26.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Supplier and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause 26. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request;

26.3.5 have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-contractors, or any person acting on the Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

26.4 If the Supplier, its Staff, consultants, agents or Sub-contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier's knowledge breaches:

26.4.1 this clause 26; or

26.4.2 the Bribery Act 2010 in relation to this 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 this Contract by written notice with immediate effect.

26.5 Without prejudice to its other rights and remedies under this clause 26, 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:

26.5.1 the amount of value of any such gift, consideration or commission; and

26.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 26.

27. RECORDS AND AUDIT ACCESS

27.1 The Supplier shall keep and maintain for six (6) 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 Goods and/or Services provided under it, and the amounts paid by the Customer.

27.2 The Supplier shall keep the records and accounts referred to in clause 27.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

27.3 The Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in clause 27.2 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:

27.3.1 to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Supplier (including Sub-contractors) of the Services;

- 27.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Supplier;
 - 27.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;
 - 27.3.4 to review the Supplier's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;
 - 27.3.5 to review the Supplier's compliance with its security obligations set out in clause 20;
 - 27.3.6 to review any books of account kept by the Supplier in connection with the provision of the Service;
 - 27.3.7 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;
 - 27.3.8 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
 - 27.3.9 to ensure that the Supplier is complying with its obligations under this Contract.
- 27.4 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.
- 27.5 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) on request during the Contract Period and for a period of six (6) Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.
- 27.6 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for the period specified in the Order Form after the date of termination or expiry of the Contract to the Customer and the Auditor.
- 27.7 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 Services or supply of Goods 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.
- 27.8 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 relation to each audit, including:

- 27.8.1 all reasonable information requested by the Customer within the scope of the audit;
 - 27.8.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and/or Services; and
 - 27.8.3 access to the Staff.
- 27.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 32, 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.

28. PREVENTION OF FRAUD

- 28.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 28.2 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 its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 28.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:
- 28.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing; and/or
 - 28.3.2 recover in full from the Supplier and the Supplier shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 28 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

29. TRANSFER AND SUB-CONTRACTING

- 29.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval.
- 29.2 The Supplier shall not substitute or remove a Sub-contractor or appoint an additional sub-contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted sub-contract in accordance with this clause 29, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

30. FORCE MAJEURE

- 30.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.
- 30.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 30.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 30.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 30.4 If an event of Force Majeure event affects the Services, the Customer may direct the Supplier to procure those Goods and/or Services from a third party service provider in which case the Supplier will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.
- 30.5 The Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to sub-clause 30.4, then the Customer will pay the Supplier (a) the Contract Charges; and (b) the difference between the Contract Price and the new supplier's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new service provider's costs are greater than the Contract Charges.

31. WAIVER

- 31.1 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.
- 31.2 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 41 (Notices).
- 31.3 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.

32. 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.

33. 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 this Contract.

34. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

35. SEVERABILITY

35.1 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.

35.2 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.

36. 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 Goods and/or 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.

37. SUPPLIER'S STATUS

At all times during the Contract Period 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.

38. CONFLICTS OF INTEREST

38.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict,

between the pecuniary or personal interests of the Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.

- 38.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 38.1 above arises or is reasonably foreseeable.
- 38.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 38.4 This clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

39. ENTIRE AGREEMENT

- 39.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 39.2 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.
- 39.3 The Supplier acknowledges that it has:
- 39.3.1 entered into the Contract in reliance on its own due diligence alone; and
 - 39.3.2 received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.
- 39.4 Nothing in clauses 39.1 and 39.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 39.5 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.

40. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

- 40.2 The parties agree that the Contracts (Rights of Third Parties) Act 1999 (CROTPA) shall apply to clauses 15 to the extent necessary that any Former Supplier and Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier and the Replacement Supplier by the Supplier under that clause 15, in its own right pursuant to clause 1(1) of CROTPA.
- 40.3 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 this Contract or any one or more clauses of it.

41. NOTICES

- 41.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 41.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 41.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 41.3 For the purposes of clause 41.2, the address, email address of each Party shall be the address and email address set out in the Order Form.
- 41.4 Either Party may change its address for service by serving a notice in accordance with this clause.

42. LEGISLATIVE CHANGE

The Supplier shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a general change in law.

43. DISPUTES AND LAW

43.1 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.

43.2 Dispute Resolution

- 43.2.1 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 the Customer's Representative and the Supplier's Representative.

43.2.2 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.

43.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 43.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 43.2.5 unless:

43.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

43.2.3.2 the Supplier does not agree to mediation.

43.2.4 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 Staff shall comply fully with the requirements of the Contract at all times.

43.2.5 The procedure for mediation is as follows:

43.2.5.1 a neutral adviser or mediator ("**the Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("**CEDR**") to appoint a Mediator;

43.2.5.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider appointed by CEDR to provide guidance on a suitable procedure;

43.2.5.3 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;

- 43.2.5.4 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;
- 43.2.5.5 failing agreement, either of the Parties may invite the 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
- 43.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.