

# Letter of Appointment and Order Schedules

## Letter of Appointment

This Letter of Appointment is issued in accordance with the provisions of the DPS Contract (RM6124 Communications Marketplace) between CCS and the Agency, dated 6 September 2021.

Capitalised terms and expressions used in this letter have the same meanings as in the Order Incorporated Terms unless the context otherwise requires.

### ORDER:

<b>Order Number:</b>	CPD4124061
<b>From:</b>	Department for Levelling Up, Housing & Communities
<b>To:</b>	APS Group (Allied Publicity Services)

<b>Order Start Date:</b>	19 June 2023
<b>Order Expiry Date:</b>	18 June 2025
<b>Order Initial Period:</b>	2 Years
<b>Order Optional Extension Period:</b>	2 further periods of 1 Year (1+1)

<b>Services required:</b>	<p>Services required are set out in DPS Schedule 1 of the DPS Agreement and the relevant Brief and are to be delivered in line with the accepted Proposal as detailed in Order Schedule 4 (Proposal).</p> <p>Subsequent calls for Goods or Services shall be priced and agreed using the Statement of Works form as per Annex B of this Letter of Appointment.</p>
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<b>Key Staff</b>	<b>For the Client:</b> <REDACTED> <REDACTED> <REDACTED>  <b>For the Agency:</b> <REDACTED>
<b>Guarantor(s)</b>	Not applicable.

<b>Order Contract Charges (including any applicable discount(s), but excluding VAT):</b>	<b>£1,500,000 to £2,000,000 (excluding VAT)</b> for the initial order period. <i>This figure is based on estimated volumes only. The Call-Off Contract is demand-led and therefore this figure may vary.</i> <i>In the event of the Call-Off Period being extended the maximum value of the Contract will be amended, pro-rata for the proposed extended period.</i>
<b>Liability</b>	See Clause 11 of the Core Terms Estimated Year 1 Charges: £750,000 (excluding VAT).
<b>Additional Insurance Requirements</b>	None.
<b>Client billing address for invoicing:</b>	<a href="mailto:clginvoices@levellingup.gov.uk">clginvoices@levellingup.gov.uk</a> CP2P Team, DLUHC, 4th Floor, High Trees, Hillfield Road, Hemel Hempstead, HP2 4XN

<b>Special Terms</b>	None.
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**PROGRESS REPORT FREQUENCY**

On the first Working Day of each week when a project is commissioned.

**PROGRESS MEETING FREQUENCY**

Quarterly on the first Working Day of each quarter.

**KEY SUBCONTRACTOR(S)**

None.

**COMMERCIALLY SENSITIVE INFORMATION**

As set out in Joint Schedule 4 (Commercially Sensitive Information).

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### SOCIAL VALUE COMMITMENT

The Agency agrees, in providing the Goods or Services and performing its obligations under the Order Contract, that it will comply with the social value commitments in Order Schedule 4 (Order Proposal)

### SERVICE CREDIT CAP

Not applicable.

### ORDER INCORPORATED TERMS

The following documents are incorporated into this Order Contract. Where numbers are missing we are not using those schedules. If the documents conflict, the following order of precedence applies:

1. This Letter of Appointment including the Order Special Terms and Order Special Schedules.
2. *Joint Schedule 1 (Definitions and Interpretation) RM6124*
3. *The following Schedules in equal order of precedence:*
  - *Joint Schedules for RM6124*
    - *Joint Schedule 2 (Variation Form)*
    - *Joint Schedule 3 (Insurance Requirements)*
    - *Joint Schedule 4 (Commercially Sensitive Information)*
    - *Joint Schedule 6 (Key Subcontractors)*
    - *Joint Schedule 7 (Financial Difficulties)*
    - *Joint Schedule 10 (Rectification Plan)*
    - *Joint Schedule 11 (Processing Data)*
  - *Order Schedules for CPD4124061*
    - *Order Schedule 1 (Transparency Reports)*
    - *Order Schedule 2 (Staff Transfer)*
    - *Order Schedule 3 (Continuous Improvement)*
    - *Order Schedule 5 (Pricing Details)*
    - *Order Schedule 6 (ICT Services)*
    - *Order Schedule 7 (Key Supplier Staff)*
    - *Order Schedule 8 (Business Continuity and Disaster Recovery)*
    - *Order Schedule 9 (Security)*
    - *Order Schedule 10 (Exit Management)*
    - *Order Schedule 14 (Service Levels)*
    - *Order Schedule 15 (Order Contract Management)*
    - *Order Schedule 16 (Benchmarking)*
    - *Order Schedule 20 (Order Specification)*
4. CCS Core Terms
5. *Joint Schedule 5 (Corporate Social Responsibility) RM6124*
6. *Order Schedule 4 (Proposal)* as long as any parts of the Order Proposal that offer a better commercial position for the Client (as decided by the Client) take precedence over the documents above.

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No other Agency terms are part of the Order Contract. That includes any terms written on the back of, or added to this Order Form, or presented at the time of delivery. For the avoidance of doubt, the relationship between the Parties is non-exclusive. The Client is entitled to appoint any other agency to perform services and produce goods which are the same or similar to the Goods or Services.

**FORMATION OF ORDER CONTRACT**

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT (which may be done by electronic means) the Agency agrees to enter into an Order Contract with the Client to provide the Goods or Services in accordance with the terms of this letter and the Order Incorporated Terms.

The Parties hereby acknowledge and agree that they have read this letter and the Order Incorporated Terms. The Parties hereby acknowledge and agree that this Order Contract shall be formed when the Client acknowledges (which may be done by electronic means) the receipt of the signed copy of this letter from the Agency within two (2) Working Days from such receipt.

<b>For and on behalf of the Agency:</b>		<b>For and on behalf of the Client:</b>	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:		Date:	

**ANNEX A**

**Agency Proposal - see Order Schedule 4 (Proposal) <REDACTED>**

## Annex B

### Statement of Work

**This Statement of Work will be issued under and in accordance with the Order Contract entered into between the parties dated July 2023.**

Any schedule attached to this Statement of Work will describe in detail the different types of Services to be provided under that Statement of Work. A schedule attached to this Statement of Work only applies to the relevant project to be delivered under that Statement of Work, and not to any other Statement of Work, or to the provision of the Services as a whole.

1.1 Where a Statement of Work would result in:

- a variation of the Services procured under this Order Contract;
- an increase in the Charges agreed under this Order Contract; or
- a change in the economic balance between the Parties to the detriment of the Client that is not provided for in this Order Contract, the relevant term(s) will be dealt with as a proposed Variation to this Order Contract in accordance with the Variation procedure set out in Clause 24.

<b>Project:</b>	<i>Set out a short description of the Project.</i>
<b>Project start Date</b> <b>Notice period for cancellation</b> <b>[Project Notice Period]:</b>	<i>Set out the start date for this Project and its duration and the likely end date if known– state whether for a fixed term or an initial term with extension periods</i> <i>Where the parties are agreeing a Project Notice Period for cancellation of Project, specify the notice period</i>
<b>Overarching Brand/Campaign</b>	<i>If this campaign is part of a wider overarching campaign, or uses specific Government owned brands (such as the GREAT Britain brand for example) please state them and what the relationship of this campaign will be to them.</i>
<b>Goods or Services</b>	<i>Set out a description of the Goods or Services to be supplied by the Agency for this Project.</i>

*State any specific activities agreed in the pitch that are to be delivered as part of this campaign.*

*Ensure you capture any work across distinct specialisms or channels, for example if you were working on an integrated campaign you may write:*

- *Creative for campaigns (service)*
- *Development and testing of creative propositions (deliverables)*
- *Creative assets for use on social media*
- *Delivery of creative assets for “Above the Line” media*
- *Seamless working with the client’s media buyer to deliver assets in the correct format to required deadlines*
- *PR*
- *PR strategy that compliments the “Above the Line” approach*
- *Development and delivery of PR hooks/stunts in agreement with the client*
- *Development of three Op eds, case studies and three feature articles*
- *Management of media at up to seven events, working with departmental press office*
- *Evaluation in accordance with the OASIS framework*

*State if you require any specific requirements and ways of working such as third-party consents, licences, clearances that Agency needs to obtain and products or purchases.*

*State that Client’s use of the Goods or Services will be “subject to any third-party usage rights which are notified to the Client in accordance with this Order Contract “.*

**Project Plan:**

*Set out the timing of each phase of the project, any key dates and/ or delivery of the Services and/or the Goods or Services (if known)*

<b>Contract Charges:</b>	<p><i>Set out the calculation of the Contract Charges [(including rules for the recovery of expenses where applicable)] payable to Agency for this Project e.g. details of any fixed price, time and materials in which case Agency's Rate Card should be attached, together with invoice dates or milestones that trigger payment.</i></p> <p><i>Set out any payment terms specific to the Project.</i></p> <p><i>Examples of different wording for Contract Charges:</i></p> <p><i>The Client shall pay the Agency the sum of £[...] for delivery of these Services, payable in monthly instalments. For the avoidance of doubt, the Contract Charges shall be inclusive of all third-party costs</i></p> <p><i>OR</i></p> <p><i>The Contract Charges shall be calculated using the hourly charge out rates shown in[the Tender], [provided that the total Contract Charges shall not exceed £ [...].] For the avoidance of doubt, the Contract Charges shall be inclusive of all third-party costs.</i></p>
<b>Client Assets:</b>	<i>Set out details of the materials or information to be provided to the Agency.</i>
<b>International locations:</b>	<i>If Services are to be supplied outside the UK, specify additional territories here</i>
<b>Client Affiliates:</b>	<i>If relevant, set out any Client Affiliates which will be using Goods or Services</i>
<b>Special Terms:</b>	<i>Set out any special terms that are intended to take precedence over the Order Terms and/or the Schedules to the Order Terms such as, security requirements, warranties, specific insurance requirements, any specific data reporting requirements etc.</i>
<b>Key Individuals:</b>	<i>Set out details of the key personnel from the Agency for this Project if relevant.</i>
<b>Authorised Agency Approver:</b>	<i>Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Agency for this project.</i>



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**Authorised Client  
Approver:**

*Set out details of the person(s) who have the authority to agree day to day decisions on behalf of Client for this Project.*

Signed by:.....

by (print name):.....

As Agency Authorised Approver for and on behalf of  
[Agency]

Date.....

Signed by:.....

by (print name):.....

As Client Authorised Approver for and on behalf of  
[Client]

Date.....

## Annex B1 - Processing Personal Data

### <TO BE COMPLETED AS REQUIRED FOR EACH PROJECT>

This Annex shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Annex shall be with the Relevant Authority at its absolute discretion.

- 1.1.1.1 The contact details of the Relevant Authority's Data Protection Officer are: [dataprotection@levellingup.gov.uk](mailto:dataprotection@levellingup.gov.uk)
- 1.1.1.2 The contact details of the Agency's Data Protection Officer are: **[Insert Contact details]**
- 1.1.1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
- 1.1.1.4 Any such further instructions shall be incorporated into this Annex.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Relevant Authority is Controller and the Agency is Processor</b></p> <p>The Parties acknowledge that in accordance with paragraph 2 to paragraph 15 and for the purposes of the Data Protection Legislation, the Relevant Authority is the Controller and the Agency is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>• <b>[Insert]</b> <i>the scope of Personal Data which the purposes and means of the Processing by the Agency is determined by the Relevant Authority]</i></li></ul>

	<p><b>The Agency is Controller and the Relevant Authority is Processor</b></p> <p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Agency is the Controller and the Relevant Authority is the Processor in accordance with paragraph 2 to paragraph 15 of the following Personal Data:</i></p> <ul style="list-style-type: none"><li>• <b>[Insert]</b> <i>the scope of Personal Data which the purposes and means of the Processing by the Relevant Authority is determined by the Agency]</i></li></ul>
	<p><b>The Parties are Joint Controllers</b></p> <p><i>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"><li>• <b>[Insert]</b> <i>the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together]</i></li></ul>
	<p><b>The Parties are Independent Controllers of Personal Data</b></p> <p><i>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</i></p> <ul style="list-style-type: none"><li>• <i>Business contact details of Agency Personnel for which the Agency is the Controller,</i></li><li>• <i>Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority (excluding the Agency Personnel) engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller,</i></li></ul>

	<ul style="list-style-type: none"> <li>• <b>[Insert]</b> <i>the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Agency has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Relevant Authority cannot dictate the way in which Personal Data is processed by the Agency, or (3) where the Agency comes to the transaction with Personal Data for which it is already Controller for use by the Relevant Authority]</i></li> </ul> <p><b>[Guidance]</b> <i>where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</i></p>
Duration of the Processing	<i>[Clearly set out the duration of the Processing including dates]</i>
Nature and purposes of the Processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of Personal Data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>

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Categories of Data Subject	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under Union or Member State law to preserve that type of data	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

## Annex B2 - Joint Controller Agreement

### 1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of paragraphs 2-15 of Joint Schedule 11 (Where one Party is Controller and the other Party is Processor) and paragraphs 7-27 of Joint Schedule 11 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the [Agency/Relevant Authority]:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Goods or Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the [Agency's/Relevant Authority's] privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

## **2. Undertakings of both Parties**

1.1.2.1 The Agency and the Relevant Authority each undertake that they shall:

(a) report to the other Party every **[x]** months on:

- (i) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of the Contract during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1(a)(i) to (v);
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant time-scales set out in the Data Protection Legislation;

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- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Goods or Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- (e) request from the Data Subject only the minimum information necessary to provide the Goods or Services and treat such extracted information as Confidential Information;
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

- (i) are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information;
- (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so; and
- (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;

- (h) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:



- (i) nature of the data to be protected;
- (ii) harm that might result from a Personal Data Breach;
- (iii) state of technological development; and
- (iv) cost of implementing any measures;

- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
- (j) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

1.1.2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

### **3. Data Protection Breach**

1.1.3.1 Without prejudice to clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (a) sufficient information and in a timescale, which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation; and

(b) all reasonable assistance, including:

- (i) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
- (ii) co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
- (iii) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
- (iv) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

1.1.3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (a) the nature of the Personal Data Breach;
- (b) the nature of Personal Data affected;
- (c) the categories and number of Data Subjects concerned;
- (d) the name and contact details of the Agency's Data Protection Officer or other relevant contact from whom more information may be obtained;

- (e) measures taken or proposed to be taken to address the Personal Data Breach; and
- (f) describe the likely consequences of the Personal Data Breach.

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#### **4. Audit**

##### **1.1.4.1 The Agency shall permit:**

- (a) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, to conduct, at the Relevant Authority's cost, data privacy and security audits, assessments and inspections concerning the Agency's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- (b) the Relevant Authority, or a third-party auditor acting under the Relevant Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 UK GDPR by the Agency so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Agency to assist in the provision of the Goods or Services.

##### **1.1.4.2 The Relevant Authority may, in its sole discretion, require the Agency to provide evidence of the Agency's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.**

#### **5. Impact Assessments**

##### **1.1.5.1 The Parties shall:**

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed

information and assessments in relation to Processing operations, risks and measures); and

- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 UK GDPR.

## 6. **ICO Guidance**

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Relevant Authority may on not less than thirty (30) Working Days' notice to the Agency amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

## 7. **Liabilities for Data Protection Breach**

- 1.1.7.1 If financial penalties are imposed by the Information Commissioner on either the Relevant Authority or the Agency for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

- (a) if in the view of the Information Commissioner, the Relevant Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Relevant Authority, its employees, agents, contractors (other than the Agency) or systems and procedures controlled by the Relevant Authority, then the Relevant Authority shall be responsible for the payment of such Financial Penalties. In this case, the Relevant Authority will conduct an internal audit and engage at its reasonable cost when necessary,

an independent third party to conduct an audit of any such Personal Data Breach. The Agency shall provide to the Relevant Authority and its third party investigators and auditors, on request and at the Agency's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

- (b) if in the view of the Information Commissioner, the Agency is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Relevant Authority is responsible for, then the Agency shall be responsible for the payment of these Financial Penalties. The Agency will provide to the Relevant Authority and its auditors, on request and at the Agency's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
- (c) if no view as to responsibility is expressed by the Information Commissioner, then the Relevant Authority and the Agency shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 34 of the Core Terms (Resolving disputes).

1.1.7.2 If either the Relevant Authority or the Agency is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

1.1.7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "Claim Losses"):

- (a) if the Relevant Authority is responsible for the relevant Personal Data Breach, then the Relevant Authority shall be responsible for the Claim Losses;
- (b) if the Agency is responsible for the relevant Personal Data Breach, then the Agency shall be responsible for the Claim Losses: and

- (c) if responsibility for the relevant Personal Data Breach is unclear, then the Relevant Authority and the Agency shall be responsible for the Claim Losses equally.

1.1.7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Relevant Authority and the Agency reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Relevant Authority.

## **8. Termination**

If the Agency is in material Default under any of its obligations under this Annex 2 (*Joint Controller Agreement*), the Relevant Authority shall be entitled to terminate the Contract by issuing a Termination Notice to the Agency in accordance with Clause 10 of the Core Terms (*Ending the contract*).

## **9. Sub-Processing**

1.1.9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- (a) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by the Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (b) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. **Data Retention**

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by the Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.