

SCHEDULE 5

CALL-OFF TERMS AND CONDITIONS

(FOR USE BETWEEN THE CUSTOMER AND THE SUPPLIER)

CONTENT

1. INTERPRETATION
2. INITIAL CONTRACT PERIOD
3. EXTENSION OF INITIAL CONTRACT PERIOD
4. SUPPLIER STATUS
5. PROVISION OF MANAGEMENT INFORMATION
6. CUSTOMER OBLIGATIONS
7. ENTIRE AGREEMENT
8. NOTICES
9. MISTAKES IN INFORMATION
10. CONFLICTS OF INTEREST
11. PREVENTION OF FRAUD

SUPPLY OF SERVICES

12. MANNER OF PROVIDING SERVICES
13. CONTRACT PERFORMANCE
14. KEY PERSONNEL
15. OFFERS OF EMPLOYMENT

PAYMENT AND CONTRACT PRICE

16. CONTRACT PRICE/ PAYMENT AND VAT

STATUORY OBLIGATIONS AND REGULATIONS

17. PREVENTION OF BRIBERY AND CORRUPTION
18. DISCRIMINATION
19. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

PROTECTION OF INFORMATION

20. DATA PROTECTION
21. FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS

- 22. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989
- 23. CONFIDENTIAL INFORMATION
- 24. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES
- 25. INTELLECTUAL PROPERTY RIGHTS
- 26. RECORDS AND AUDIT ACCESS

CONTROL OF CONTRACT

- 27. TRANSFER AND SUB CONTRACTING
- 28. WAIVER
- 29. VARIATION
- 30. SEVERABILITY
- 31. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES
- 32. CUMULATIVE REMEDIES
- 33. MONITORING OF CONTRACT PERFORMANCE

LIABILITIES

- 34. LIABILITY, INDEMNITY AND INSURANCE
- 35. PROFESSIONAL INDEMNITY
- 36. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY
- 37. WARRANTIES AND REPRESENTATIONS

DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION

- 38. SUSPENSION
- 39. TERMINATION
- 40. CONSEQUENCES OF EXPIRY OR TERMINATION
- 41. DISRUPTION
- 42. RECOVERY UPON TERMINATION
- 43. FORCE MAJEURE

DISPUTES AND LAW

- 44. GOVERNING LAW
- 45. DISPUTE RESOLUTION

APPENDIX 1 – LETTER OF APPOINTMENT

APPENDIX 2 – TERMS OF BUSINESS AGREEMENT

APPENDIX 3 – PRICES FOR SERVICES

APPENDIX 4 - VARIATION FORM

APPENDIX 5 – DATA PROTECTION AND PRIVACY PROVISIONS

ANNEX A – RESTRICTED TRANSFERS

1. INTERPRETATION

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

"Appointment/Appoint"	means to appoint or the appointment of the Supplier for Services served by the Customer on the Supplier in accordance with the Appointment Procedures
"Appointment Procedure"	means the appointment and award procedures specified in the Framework Agreement
"Approval" and "Approved"	means the written consent of the Customer not to be unreasonably withheld or delayed
"Auditor"	means the National Audit Office or an auditor appointed by the National Audit Office or the Customer as the context requires or such other auditor as may have been appointed in relation to the Customer
"Broker"	means a person or company registered with the FCA as an advisor on matters of insurance and as an arranger of insurance cover and associated services with an Insurer on behalf of the Customer
"Broker Fee"	means the fee payable by the Customer to the Broker for their Services
"Broker Only Insurer"	means an Insurer who will only provide the Services to the Customer via a Broker
"Broker Remuneration"	means any type of earning received by the Supplier or the Broker from the Insurer which is directly linked to the Customer's insurance placement
"Commencement Date"	means the date set out in the Letter of Appointment
"Commercially Sensitive Information"	means the Confidential Information listed in the Letter of Appointment comprised of information which is provided by the Supplier and designated as commercially sensitive information by the Customer for the period set out in that Letter of Appointment
"Confidential Information"	means: - (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party; and (b) the Commercially Sensitive Information,

and does not include any information: -

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 23);
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

"Contract"

means the written agreement between the Customer and the Supplier consisting of the Letter of Appointment and these clauses save that for the purposes of clause interpretation only, reference to Contract shall not include the Letter of Appointment

"Contract Period"

means the period from the Commencement Date to:
-

- (a) the date of expiry set out in the Letter of Appointment; or
- (b) following an extension pursuant to Clause 3, the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract

"Contract Price"

means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Letter of Appointment, for the full and proper performance by the Supplier of its obligations under the Contract

"Contracting Authority"

means YPO and any Contracting Authority for the purposes of the Public Contracts Regulations 2015

"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 authorities, persons, commissions or agencies from time to time carrying out functions on its behalf

"Customer"

means the Contracting Authority identified in the Letter of Appointment

“Data Controller”	has the meaning given to it in the Data Protection Legislation, as amended from time to time
“Data Loss Event”	means any event that results, or may result, in unauthorised access to Personal Data held by the Parties under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
“Data Processor”	has the meaning given to it in the Data Protection Legislation, as amended from time to time
“Data Protection Legislation” or “DPA”	means: (i) all applicable UK Law relating to the processing of Personal Data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of Personal Data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR
“Data Subject”	has the meaning given to it in the Data Protection Legislation, as amended from time to time;
“Data Subject Request”	means a request made by or on behalf of a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Default"	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other
"Deliverables"	means those deliverables listed in the Letter of Appointment
"EIR"	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
"Equipment"	means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract
“FCA”	means the Financial Conduct Authority, an independent body corporate with statutory powers derived from the Financial Services and Markets Act 2000, and its successors in title
“FCA Handbook”	means the document which sets out the FCA's legislative and other provisions made under powers given to them by the Financial Services and Markets Act 2000
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time

to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

"Force Majeure"

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

- (a) any industrial action occurring within the Supplier's or any Key Sub-Contractor's organisation; or
- (b) the failure by any Key Sub-Contractor to perform its obligations under any Key Sub-Contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);
- (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

"Framework Agreement"

means the framework agreement for the provision Services between YPO and the Supplier

"Fraud"

means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud YPO, a Contracting Authority or the Customer

"Good Industry Practice"

means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Contracting Authority engaged in a similar type of undertaking under the same or similar circumstances

"Improvement Notice"

means a notice issued on the Supplier to improve Minor Defaults of the Framework Agreement, the Contract or the Letter of Appointment instructing the Supplier to improve or remedy any Minor Defaults in the provision of the Services

"Information"

has the meaning given under section 84 of the FOIA

“Insurance Act 2015”	means the legislation which applies to all commercial contracts of insurance
“Insurance Brokerage %”	means the percentage (%) paid by the Insurer to a Broker for placement of work which directly relates to the premium paid and is on top of standard policy commission. This is capped at 3.5%
“Insurance Placement”	means the placing of an insurance policy with an Insurer
“Insurer”	means the company or organisation who provides the insurance cover to the Customer
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Key Personnel"	means any individual identified in the Letter of Appointment as being key personnel
“Key Sub-Contract”	means any contract or arrangement between the Supplier and a third party, the sole purpose of which is: <ul style="list-style-type: none"> (a) the provision of the Services (or any part of them) to the Customer; (b) the provision of any facilities and services necessary for the provision of the Services by such third party; and/or (c) the delegation to such third-party of the management, direction or control of the provision of the Services
"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, the Insurance Act 2015, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory authority of which the Parties are bound to comply
“Legal Representative”	means a solicitor, barrister or other individual qualified to provide legal advice
“Letter of Appointment”	means the document submitted to the Supplier by the Customer in accordance with the Framework Agreement and in the letter and form set out at

Appendix 1. The Letter of Appointment sets out the description of the Appointment

“Material Default”	means any breach of Clauses 10 (Conflict of Interest), 17 (Prevention of Bribery and Corruption), 20 (Data Protection Act), 21 (Freedom of Information Act and Environmental Information Regulations), 22 (Official Secrets Act), 26 (Records and Audit Access), 27 (Transfer and Sub-Contracting), 37 (Warranties and Representations)
“Minor Default”	means any breach of the Contract or the Letter of Appointment which may be either a partial breach or a breach not so severe as to warrant a Material Default
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company 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 Company" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto
"Party"	means the Supplier or the Customer
“Personal Data”	has the meaning given to it in the Data Protection Legislation as amended from time to time
“Personal Data Breach”	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Pre-Existing IPR"	means any Intellectual Property Rights vested in or licensed to the Customer or the Supplier prior to or independent of the performance by the Customer or the Supplier of their obligations under the Contract and in respect of the Customer includes guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs
“Processing”	has the meaning given to it in the Data Protection Legislation but, for the purposes of this Contract, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
“Prohibited Act”	means: (a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer or another Contracting Authority a financial or other advantage to: (i) induce that person to perform improperly a relevant function or activity; or

- (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under Law creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract; or

defrauding, attempting to defraud or conspiring to defraud the Customer or any other Contracting Authority.

"Property"	means the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract
"Quality Standards"	means the quality standards 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 Letter of Appointment) and any other quality standards set out in the Letter of Appointment
"Regulations"	means the Public Contracts Regulations 2015 including any re-enactments
"Replacement Supplier"	means any third-party supplier appointed by the Customer, to supply substantially similar Services, and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract
"Request for Information"	shall have the meaning set out in the FOIA or the EIRs as relevant (where the meaning set out for the term "Request" shall apply)
"Restricted Transfer"	means a transfer of Personal Data to a third party which in the absence of the UK IDTA, would be unlawful under the Data Protection Legislation
"Services"	means the Services to be provided as specified in the Letter of Appointment
"Staff"	means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents, suppliers and

	sub-contractors used in the performance of its obligations under the Contract
“Supplier”	means the person, firm or company or organisation whom executes this Contract and includes any employee, agent, servant, Key Sub-Contractor or representative of the Supplier or person employed by on or on behalf of the Supplier to provide the Services
“Supplier’s Contract Manager”	means the person appointed by the Supplier to manage the Contract
"Tender"	means the document(s) submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Services
“Term”	means the period commencing on the Commencement Date and ending on 14th January 2025 or on earlier termination of this Contract
“Terms of Business Agreement”	means the Supplier’s terms of business agreement included at Appendix 2
“UK IDTA”	means either: (i) the International Data Transfer Agreement (“ IDTA ”) or; (ii) the International Data Transfer Addendum to the EU Commission Standard Contractual Clauses (“ UK Addendum ”) issued under Section 119A of the Data Protection Act 2018
"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
“YPO”	means YPO, any employee, agent servant or representative of YPO or any other public authority or person employed on behalf of YPO

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

- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;

- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.8 Reference to any employees of the Supplier shall be deemed to include the Supplier's agents and Key Sub-Contractors unless expressly stated otherwise; and
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

2. INITIAL CONTRACT PERIOD

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Letter of Appointment, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3.

3. EXTENSION OF INITIAL CONTRACT PERIOD

- 3.1 Subject to satisfactory performance of its obligations under the Contract by the Supplier during the Initial Contract Period, the Customer may, by giving written notice to the Supplier not less than three (3) months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Letter of Appointment. The provisions of the Contract will apply throughout any such extended period.

4. SUPPLIER STATUS

- 4.1 At all times during the Contract Period the Supplier shall be an independent supplier and nothing in the Contract shall create a contract of employment, 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.

5. PROVISION OF MANAGEMENT INFORMATION

- 5.1 The Supplier shall submit management information to the Customer in such form as may be specified, throughout the Term on the last day of every month and thereafter in respect of the Contract.
- 5.2 The Customer may share the management information provided by the Supplier with any Contracting Authority.
- 5.3 The Customer may make reasonable changes to the management information which the Supplier is required to supply and shall give the Supplier at least one (1) month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the Supplier.

6. CUSTOMER OBLIGATIONS

- 6.1 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Supplier.
- 6.2 The Customer will endeavour to have their Letters of Appointment annotated with the relevant contract reference number, but this cannot be guaranteed on all Letters of Appointment.

- 6.3 The Customer shall respond to any reasonable request for information from the Supplier.
- 6.4 The Customer will assign an authorised representative who will liaise with the Supplier's Contract Manager, to ensure both Parties use reasonable endeavours to meet their contractual obligations.
- 6.5 The Customer shall ensure that all Appointments are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).
- 6.6 The Customer shall ensure that they are aware of and comply fully with their obligations under the Insurance Act 2015. These shall include, but are not limited to:
 - 6.6.1 making a fair presentation of risk. This means one which makes the disclosure required by the Insurance Act 2015 in a reasonably clear and accessible manner to a prudent supplier. All disclosures must be substantially correct and made in good faith; and
 - 6.6.2 disclosure of every material circumstance that the Customer knows or should know or supplying the Supplier with sufficient information.

7. ENTIRE AGREEMENT

- 7.1 Subject to the provisions of the Framework Agreement relating to Call-Off Contracts and the Letter of Appointment incorporating the Terms of Business Agreement, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledge and agree that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Letter of Appointment, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence: -
 - 7.4.1 applicable Law and/or code of practice;
 - 7.4.2 the Letter of Appointment;
 - 7.4.3 the Terms of Business Agreement;
 - 7.4.4 the clauses of the Contract; and
 - 7.4.5 any other document referred to in the clauses of the Contract
- 7.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one agreement.

8. NOTICES

- 8.1 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.
- 8.2 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 electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. 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 (except where deemed receipt of an item of electronic mail falls outside of a Working Day, in which case it will be deemed received on the next Working Day) or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.
- 8.3 For the purposes of Clause 8.2, the address of each Party shall be as set out in the Letter of Appointment.
- 8.4 Either Party may change its address for service by serving a notice in accordance with this Clause 8

9. MISTAKES IN INFORMATION

- 9.1 The Supplier shall be responsible for the accuracy of all documentation and information supplied to the Customer by the Supplier in connection with the supply of the Services and subject to Clause 9.2 shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.
- 9.2 The Supplier shall not be responsible for any losses suffered as a result of the Customer providing inaccurate or incomplete information to the Supplier.

10. CONFLICTS OF INTEREST

- 10.1 The Parties shall take appropriate steps to ensure that neither it nor any of its Staff are placed in a position where (in the reasonable opinion of the other Party), there is or may be an actual conflict between the pecuniary or personal interests of the other Party and the duties owed to it under the provisions of the Contract.
- 10.2 The Parties shall promptly notify the other Party (and provide full particulars to the other Party) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
- 10.3 The Supplier may be considered to have a conflict of interest if the Supplier:
- (a) directly or indirectly controls, is controlled by or is under common control with another supplier;
 - (b) receives or has received any direct or indirect subsidy from another supplier;
 - (c) has the same Legal Representative as another supplier;
 - (d) has a relationship with another supplier, directly or through common third parties, that puts it in a position to influence another supplier regarding the provision of Services under this Contract;
 - (e) has a close business or family relationship with an employee of the Customer involved in the tendering of this Contract; and/or
 - (f) is advising YPO and/or a Contracting Authority under the Framework Agreement or any Call-Off Contract and provides services relating to the submission of a bid to Insurers.

- 10.4 Either Party reserves the right to terminate the Contract immediately by giving notice in writing to the other Party and/or to take such other steps it deems necessary where, in its reasonable opinion, there is or may be an actual conflict between the pecuniary or personal interests of the other Party and the duties owed to it under the provisions of the Contract. The actions of either Party pursuant to this Clause 10 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the other Party.

11. PREVENTION OF FRAUD

- 11.1 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.
- 11.2 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.
- 11.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Customer, the Customer may: -
- 11.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing and, subject to Clause 34.3, recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
 - 11.3.2 subject to Clause 34.3, recover from the Supplier any other loss sustained by the Customer in consequence of any breach of this Clause 11.

12. MANNER OF PROVIDING SERVICES

- 12.1 The Supplier shall at all times comply with the relevant Law, codes of conduct and regulations governing the provision of Services.
- 12.2 Where applicable the Supplier shall maintain and shall ensure that any Staff utilised in the provision of the Services maintain accreditation and certification with the relevant authorised body. To the extent that the standard of Services has not been specified in the Contract the Supplier shall agree the relevant standard of the Services with the Customer prior to the provision of the Services, and in any event the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 12.3 The Supplier shall ensure that all Staff providing the Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper provision of the Services.
- 12.4 The Supplier must, at all times, make regulatory disclosures to the Customer prior to acting for them. This includes but is not limited to requirements under the FCA.

13. CONTRACT PERFORMANCE

- 13.1 In supplying the Services, the Supplier shall perform its obligations under the Contract:
- 13.1.1 with appropriately experienced, accredited, qualified and trained Staff with all due care and attention;
 - 13.1.2 in a timely manner; and
 - 13.1.3 in compliance with applicable Laws, including any obligations under the Insurance Act 2015.

13.2 The Supplier shall ensure that:

13.2.1 the Services conform in all respects with the specifications and requirements set out, in either the Letter of Appointment, the Terms of Business Agreement, or where applicable the Framework Agreement; and

13.2.2 the Services conform in all respects with all applicable Laws.

13.3 The Supplier shall discharge its obligations hereunder with all due skill, care and diligence including Good Industry Practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

14. KEY PERSONNEL

14.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall inform the Customer within ten (10) Working Days or as soon as reasonably possible of any changes to their Key Personnel and shall ensure that a meeting is arranged between the Parties to establish a good working relationship with the new Key Personnel.

14.2 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the 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 or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.

14.3 The Customer may also require the Supplier to remove any Key Personnel that the Customer (acting reasonably at all times) considers in any respect unsatisfactory. The Customer shall not be liable for the cost of removing and/or replacing any Key Personnel.

15. OFFERS OF EMPLOYMENT

15.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without the other Party's prior written consent.

15.2 For the avoidance of doubt, neither Party's staff shall be prevented from applying for any publicly advertised roles at the other Party.

PAYMENT AND CONTRACT PRICE

16. CONTRACT PRICE / PAYMENT AND VAT

16.1 Supplementary information regarding Contract Price, payment, set-off and recovery of sums is covered in the Letter of Appointment and/or the Terms of Business Agreement.

16.2 All invoices regarding the Customer's insurance must, as a minimum, contain the following information:

16.2.1 Insurer's name and additional details;

16.2.2 policy number;

16.2.3 type or class of insurance;

16.2.4 insurance premium;

16.2.5 Insurance Premium Tax; and

16.2.6 VAT (if applicable)

All amounts should be in pounds sterling and must be inclusive of Management Charge. An invoice should be issued per type or class of insurance.

16.3 Where the invoices relates to Broker service only, such invoices must, as a minimum, contain the following information:

16.3.1 a brief description of the Services provided;

16.3.2 the period covered by the Services;

16.3.3 a breakdown of all Broker Fees; and

16.3.4 VAT (if applicable)

All amounts should be in pounds sterling and must be inclusive of Management Charge.

16.4 As a minimum:

16.4.1 the Customer shall pay all sums due to the Supplier in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile set out in the Letter of Appointment.

16.4.2 where the Supplier enters into a Key Sub-Contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in the Key Sub-Contract that requires payment to be made of all sums due by the Supplier to the Key Sub-Contractor within a specified period not exceeding thirty (30) days of a valid undisputed invoice, as defined by the Key Sub-Contract requirements.

16.4.3 the Supplier shall add VAT to the Contract Price at the prevailing rate as applicable;

16.4.4 subject to Clause 34.3 and 34.4, the Supplier shall indemnify YPO and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating payments made to the Supplier under the Contract. Any amounts due under this Clause 16 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.

16.5 YPO or any Contracting Authority may at any time during the life of the Framework Agreement and any Call-Off Contract request details of all Broker Fees and Broker Remuneration. YPO and Contracting Authorities are entitled to see and understand any commission which the Supplier may have received as a result of their Appointment of the Supplier and which can be specifically derived from the Customer.

16.6 Full disclosure of all earnings relating to the Contract must be submitted to YPO and Contracting Authorities on an annual basis, or as and when reasonably requested. Each fee or commission must be detailed separately.

16.7 For each fee or commission, the service it relates to must be specified and the Supplier shall provide further detail on request.

16.8 For the avoidance of doubt, Insurance Premium Tax applies to all commission.

16.9 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Contract under Clause 39.8 for failure to pay undisputed sums of money.

STATUTORY OBLIGATIONS AND REGULATIONS

17. PREVENTION OF BRIBERY AND CORRUPTION

17.1 The Supplier warrants and represents that it:

17.1.1 has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Contract;

17.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010; and

17.1.3 is not aware of any financial or other advantage being given to any person working for or engaged by YPO or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Customer, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Customer prior to the execution of this Contract

17.2 The Supplier will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act 2010, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Supplier arising as a result.

17.3 The Supplier will provide to the Customer certification (if requested to do so), in writing in such form as may be provided by the Customer, to be signed by an officer of the Supplier, of the compliance with this Clause 17 by:

17.3.1 the Supplier;

17.3.2 all persons associated with the Supplier; and

17.3.3 any other persons who are supplying Services in connection with this Contract.

17.4 Certification (if requested) will be provided by the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Contract Period. The Supplier will provide any evidence of compliance as may reasonably be requested by the Customer.

17.5 The Supplier will have in place, maintain and where appropriate enforce an anti-bribery policy for the purpose of preventing any of its Staff or any person acting on the Supplier's behalf from committing any Prohibited Act. The Supplier on request from YPO or the Customer, provide an anti-bribery statement containing details about the Supplier's anti-bribery policy.

17.6 Should the Supplier become aware of or suspect any breach of Clause 17.1 it will, subject to applicable Law, notify the Customer as soon as reasonably possible.

17.7 Following notification under Clause 17.6, the Supplier will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 17.7 shall survive the expiry or termination of this Contract for a further period of seven (7) years.

17.8 Subject to Clause 34.3 and 34.4, the Customer may recover in full from the Supplier and the Supplier shall indemnify the Customer in full from and against any other loss sustained by the

Customer in consequence of any breach of this Clause 17, whether or not the Contract has been terminated.

- 17.9 The Customer may terminate this Contract and any Letter of Appointment immediately upon serving written notice if the Supplier or its Staff whether or not acting with the Supplier's knowledge, breaches Clause 17. Before exercising its right of termination under this Clause 17.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:

17.9.1 the Supplier or a senior officer of the Supplier; or

17.9.2 a member of Staff who is not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier or its Staff) means and shall be construed as acting;

(a) with the authority of; or

(b) with the actual knowledge; of any one or more of the Supplier's or Staff (as applicable) directors or partners or

(c) in circumstances where any one or more of the directors (or partners) of the Supplier or its Staff (as applicable) ought reasonably to have had knowledge.

- 17.10 Any notice of termination by the Customer under Clause 17.9 must specify:

17.10.1 the nature of the Prohibited Act; and

17.10.2 the identity of the person whom the Customer believes has committed the Prohibited Act; and

17.10.3 the date on which the Contract will terminate.

- 17.11 In the event of any breach of Clause 17 the Customer is entitled to recover from the Supplier the value of any gift, consideration or commission.

- 17.12 Termination under Clause 17.9 will:

17.12.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract;

17.12.2 prohibit the Supplier from claiming any damages for early termination;

17.12.3 subject to Clause 34.3, allow the Customer to recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; and

17.12.4 subject to Clause 34.3, entitle the Customer to be indemnified by the Supplier for any additional costs, losses, damages or expenses incurred in re-procuring and obtaining the Services from another party.

18. DISCRIMINATION

- 18.1 The Parties shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

- 18.2 The Parties shall take all reasonable steps to secure the observance of Clause 18.1 by all its staff and servants, employees, or agents of the Parties and all suppliers and staff employed in the execution of the Contract.

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

- 19.1 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 them, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

PROTECTION OF INFORMATION

20. DATA PROTECTION

- 20.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. Clause 20 is in addition to, and does not relieve, remove, or replace a Party's obligations or rights under the Data Protection Legislation.
- 20.2 Where Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Contract, the Parties acknowledge that in respect of such Personal Data each Party is a separate and independent Data Controller and each Party agrees to comply with Appendix 5 in respect of such Personal Data.

21. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

- 21.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations
- 21.2 The Supplier shall and shall procure that its Staff shall:
- 21.2.1 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;
 - 21.2.2 provide the Customer with a copy of all Information in its possession or power 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
 - 21.2.3 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 EIR.
- 21.3 The Customer will consult with the Supplier regarding any of the Supplier's Commercially Sensitive Information, however the Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 21.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 21.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 21.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (the "**Code**"), be obliged under the FOIA, or the EIR to disclose information concerning the Supplier of the Services:
- 21.5.1 in certain circumstances without consulting the Supplier; or
 - 21.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where Clause 21.2 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.

21.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.

21.7 The Supplier acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 21.5.

22. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

22.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:

22.1.1 the Official Secrets Acts 1911 to 1989; and

22.1.2 Section 182 of the Finance Act 1989

22.2 In the event that the Supplier or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

23. CONFIDENTIAL INFORMATION

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

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

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

23.2 Clause 23.1 shall not apply to the extent that:

23.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 36;

23.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

23.2.3 such information was obtained from a third party without obligation of confidentiality;

23.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or

23.2.5 it is independently developed without access to the other Party's Confidential Information.

23.3 The Supplier may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Services or the Supplier's affiliates, officers, auditors, directors or board or executive members, potential reinsurers, Insurers, or regulators who have a business need to know the information. The Supplier shall at all times ensure that such Staff, affiliates, officers, auditors, directors or board or executive members, potential reinsurers, Insurers, or regulators are aware of and shall comply with these obligations as to confidentiality.

- 23.4 The Supplier shall not, and shall procure that its Staff, affiliates, officers, auditors, directors or board or executive, potential reinsurers, Insurers, or regulators do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract
- 23.5 At the written request of the Customer, the Supplier shall confirm that all members of Staff, affiliates, officers, auditors, directors or board or executive members, potential reinsurers, or Insurers who will have Confidential Information disclosed to them have confidentiality obligations as standard with the Supplier.
- 23.6 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:
- 23.6.1 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;
 - 23.6.2 to any consultant, supplier or other person engaged by the Customer or any person conducting a gateway review;
 - 23.6.3 for the purpose of the examination and certification of the Customer's accounts;
 - 23.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 23.7 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 23.6 is made aware of the Customer's obligations of confidentiality.
- 23.8 Nothing in this Clause 23 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 Intellectual Property Rights.
- 23.9 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Contract or any Letter of Appointment or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.
- 23.10 In the event that the Supplier fails to comply with this Clause 23 the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.
- 23.11 The provisions of this Clause 23 shall survive termination or expiry of this Contract for a period of five (5) years.

24. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 24.1 Neither Party shall make any press announcements or publicise the Contract in any way without approval from the other Party and shall take reasonable steps to ensure that its staff comply with this Clause 24.1.
- 24.2 Either Party shall be entitled to publicise the Contract in accordance with any legal, regulatory or disclosure obligation upon the Party, including any examination of the Contract by an auditor.

- 24.3 Neither Party shall do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

25. INTELLECTUAL PROPERTY RIGHTS

- 25.1 Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's IPR.
- 25.2 The Parties shall not, and shall procure that their staff shall not, (except when necessary for the performance of the Contract) without prior approval, use or disclose any of the other Party's IPR to any third party.
- 25.3 The Customer hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use the Customer's IPR during the Contract Period for the sole purpose of enabling the Supplier to supply the Services and/or supply the Deliverables.
- 25.4 The Supplier hereby grants to the Customer a non-exclusive, revocable, non-assignable licence to use the Supplier's IPR during the Contract Period for the sole purpose of enabling the Customer to receive the Services and/or the Deliverables.
- 25.5 Prior to using any third party Intellectual Property Rights, the Supplier shall ensure that they have all necessary third party licences to enable the Supplier to use the third-party Intellectual Property Rights to carry out its obligations under the Contract.
- 25.6 Subject to Clause 34.3, the Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Supplier of the Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 25.6.1 items or materials based upon designs supplied by the Customer; or
- 25.6.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 25.7 The Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 25.7.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- 25.7.2 shall take due and proper account of the interests of the Customer; and
- 25.7.3 shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
- 25.8 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to: -
- 25.8.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall

apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

25.8.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

25.9 In the event that the Supplier is unable to comply with Clauses 25.8.1 or 25.8.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

26. RECORDS AND AUDIT ACCESS

26.1 The Supplier and the Supplier's Key Sub-Contractors shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties or as otherwise required under applicable Law), full and accurate records and accounts of the operation of the Contract including, the Services supplied under it, the Call-Off Contracts entered into with YPO and any Contracting Authority and the amounts paid by each Contracting Authority.

26.2 The Supplier and the Supplier's Key Sub-Contractors shall keep the records and accounts referred to in Clause 26.1 above in accordance with good accountancy practice.

26.3 The Supplier shall afford the Customer and/or the Auditor access to such records and accounts relating to the operation of this Contract as may be required from time to time.

26.4 The Supplier and their Key Sub-Contractors shall on request provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of seven (7) years after the expiry of the Contract Period to the Customer, the Customer's representatives and/or the Auditor as may be required from time to time.

26.5 The Customer shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Supplier or delay the provision or supply of Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

26.6 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including: -

26.6.1 all information requested by the Customer within the scope of the audit;

26.6.2 reasonable access to sites controlled by the Supplier; and

26.6.3 access to the Staff.

26.7 The Customer shall, where applicable, in respect of audits conducted under this Clause 26:

26.7.1 provide such notice to the Supplier as is reasonable in the circumstances;

26.7.2 be subject to reasonable confidentiality undertakings, where so notified in writing by the Supplier;

26.7.3 use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provisions of the Services pursuant to the Contract; and/or

26.7.4 use reasonable endeavours to ensure that audits are carried out on Working Days during normal business hours

save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

26.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 26, unless the audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

CONTROL OF THE CONTRACT

27. TRANSFER AND SUB-CONTRACTING

27.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.

27.2 The Supplier shall be responsible for the acts and omissions of its Key Sub-Contractors as though they are the actions and or omissions of its own Staff.

27.3 Where the Customer has consented to the placing of sub-contracts, copies of each Key Sub-Contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.

27.4 Subject to Clause 27.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

27.4.1 any Contracting Authority; or

27.4.2 any other authority established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

27.4.3 any private sector authority which substantially performs the functions of the Customer;

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

27.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 27.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor authority to the Customer.

27.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 27.4 to an authority which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this Clause both such authorities being referred to as the "**Transferee**"):

27.6.1 the rights of termination of the Customer in Clause 39 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

27.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

- 27.7 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 27.8 Each Party shall at its own cost and expense carry out or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Contract.

28. WAIVER

- 28.1 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.
- 28.2 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 8.
- 28.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

29. VARIATION

- 29.1 Subject to the provisions of this Clause 29.1, the Customer may request a variation to Services ordered provided that such variation does not amount to a material change to the Appointment. Such a change is hereinafter called a "**Variation**".
- 29.2 The Customer may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 (the "**Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Appointment.
- 29.3 In the event that the Supplier is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Broker Fee, Broker's Remuneration and/or Contract Price, the Customer may:
- 29.3.1 agree to allow the Supplier to continue to perform their obligations under the Contract without the Variation; or
- 29.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Appointment in accordance with the Letter of Appointment or where the Supplier can show evidence of substantial work being carried out to fulfil the Appointment, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 45.
- 29.4 If the Parties agree the Variation and any variation in the Broker Fee, Broker's Remuneration and/or Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

30. SEVERABILITY

- 30.1 If any provision (or any part thereof) of the Contract is held to be invalid, illegal or unenforceable for any reason, such provision (or any part thereof) 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.
- 30.2 If any provision (or any part thereof) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision (or any part thereof) shall apply with such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion, the Parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision in place of the provision so deleted.
- 30.3 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.

31. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 31.1 Where a complaint is received about the manner in which any Services or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 39 of the Contract.
- 31.2 In the event that the Customer is of the reasonable opinion that there has been a Material Default of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 39, do any of the following:
 - 31.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the 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 Services in accordance with the Contract;
 - 31.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - 31.2.3 terminate, in accordance with Clause 39, the whole of the Contract; and/or
 - 31.2.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the 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 Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- 31.3 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.
- 31.4 In the event that the Supplier
 - 31.4.1 fails to comply with Clause 31.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

31.4.2 persistently fails to comply with Clause 31.3 above

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

32. CUMULATIVE REMEDIES

32.1 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. MONITORING OF CONTRACT PERFORMANCE

33.1 The Supplier shall comply with the monitoring arrangements set out in the Letter of Appointment including, providing such data and information as the Supplier may be required to produce under the Contract.

LIABILITIES

34. LIABILITY, INDEMNITY AND INSURANCE

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

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

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

34.1.3 any liability that cannot be legally limited or excluded.

34.2 Subject to Clause 34.3 and Clause 34.4, the Supplier shall 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 supply, of the Services 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 by any act or omission of the Supplier. 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.

34.3 Subject always to Clause 34.1, 34.4 and Clause 34.5, the liability of either Party for defaults shall be subject to the following financial limits:

34.3.1 the aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed 100% of the contract price; and

34.3.2 the annual aggregate liability under the Contract of either Party for all defaults shall in no event exceed the greater of 100% of the contract price payable by the Customer to the Supplier in the year in which the liability arises.

34.4 Subject to Clause 34.1, in no event shall either Party be liable to the other for any:

34.4.1 loss of profits;

34.4.2 loss of business;

34.4.3 loss of revenue;

34.4.4 loss of or damage to goodwill;

34.4.5 loss of savings (whether anticipated or otherwise); and/or

34.4.6 any indirect or consequential loss or damage

34.5 The Customer may, amongst other things, recover as a direct loss:

34.5.1 any additional operational and/or administrative expenses arising from the Supplier's default;

34.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's default; and

34.5.3 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.

34.6 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 by the Customer or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

34.7 Where the Customer has or may have any claim against the Supplier under this Contract (including under any indemnity), the Customer shall use reasonable endeavours to mitigate its losses.

34.8 The Supplier shall affect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Where the insurances are on a claims made basis, such insurances shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

34.9 The Supplier shall affect and maintain, where required, the following insurances for the Contract Period in relation to performance of this Contract:

34.9.1 public liability insurance with cover (for a single event or a series of related events) of not less one million pounds (£1,000,000); and

34.9.2 employer's liability insurance with cover (for a single event or a series of related events) of not less than five million pounds (£5,000,000) or such higher limit as YPO may reasonably require (and as required by Law) from time to time.

34.10 The Supplier shall give the Customer, on request, evidence of the insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place.

34.11 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, following written notice to the Supplier make arrangements for the required insurances set out in Clause 34 and recover the premium and other reasonable costs incurred from the Supplier.

34.12 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 34.

35. PROFESSIONAL INDEMNITY

- 35.1 The Supplier shall affect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and Key Sub-Contractors involved in the supply of the Services affect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, Key Sub-Contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than five million pounds (£5,000,000) and for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of the Contract.

36. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

- 36.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. Subject to Clause 34.3 and 34.4, 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 and Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

37. WARRANTIES AND REPRESENTATIONS

- 37.1 The Supplier warrants and represents that:
- 37.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
 - 37.1.2 all obligations of the Supplier pursuant to this Contract shall be performed by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
 - 37.1.3 the Supplier and its Staff, agents, Key Sub-Contractors, self-employed staff or personnel employed by the Supplier in connection with the Services will comply with the relevant Quality Standards, Law, codes of conduct and regulations governing the provision of the Services;
 - 37.1.4 it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligation under this Contract;
 - 37.1.5 it shall discharge its obligations under this Contract with all due skill, care and diligence including Good Industry Practice and (without limiting the generality of this Clause 37) in accordance with its own established internal procedures;
 - 37.1.6 the Contract is executed by a duly authorised representative of the Supplier;
 - 37.1.7 in entering the Contract it has not committed any Fraud;
 - 37.1.8 as at the Commencement Date, all information, statements and representations contained in the Supplier's Tender response for the 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;

- 37.1.9 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of the Contract;
- 37.1.10 it has not caused or induced any person or organisation to enter such agreement referred to in Clause 37.1.9 above;
- 37.1.11 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Services under the Contract;
- 37.1.12 it has not committed any offence under the Prevention of Corruption Act 1889 to 1916 or the Bribery Act 2010;
- 37.1.13 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;
- 37.1.14 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
- 37.1.15 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;
- 37.1.16 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;
- 37.1.17 the Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 37.1.18 it shall at all times meet the relevant Security Level as set out in the Invitation to Tender;
- 37.1.19 it will at all times comply with their obligations under the FCA Handbook, as updated from time to time, which includes but is not limited to their obligations under the Client Assets Sourcebook ("**CASS**") and the Conduct of Business Sourcebook ("**COBS**") as updated from time to time;
- 37.1.20 it is not subject to any live proceedings or penalties from the FCA;
- 37.1.21 it will at all times continue to remain licensed by the FCA to carry out the regulated activities;
- 37.1.22 it shall provide the Services in a conscientious and timely manner in accordance with the contract standard as described in the Framework Agreement or as reasonably required by the Customer;
- 37.1.23 it shall notify the Customer immediately of any circumstances relating to the Supplier concerning the provision of the Services of which the Supplier is aware or anticipates which may justify the Customer taking action to protect its interests (including its reputation and standing).

37.1.24 in the three (3) years prior to the date of the Contract:

- (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
- (b) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (c) 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.

37.2 The Supplier warrants and represents the statements in Clause 37.1 above to each of the Contracting Authorities. If at any point any of the above statements changes the Supplier must inform the Customer as soon as reasonably possible and in any event no later than five (5) Working Days of the change.

DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION

38. SUSPENSION

- 38.1 Where the Customer has a right to terminate the Contract and without prejudice to the Customer's right to terminate the Contract in Clause 39 below, the Customer may suspend the Supplier's appointment to supply Services by giving notice in writing to the Supplier. If the Customer gives notice to the Supplier in accordance with this Clause 38, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Customer in writing from time to time.
- 38.2 The Supplier's appointment may be suspended to allow YPO and/or a Contracting Authority the opportunity to investigate any incidents or complaints that have arisen relating to the provision of Services under this Contract. Should this occur the Supplier will be suspended (at no cost to YPO or the Contracting Authority) whilst investigations take place. Any Letter of Appointment already made during this period shall be put on hold pending the outcome.
- 38.3 Following suspension of the Supplier's appointment under this Clause 38, the Supplier will be informed of the outcome as soon as possible and be advised whether or not the Contract has been terminated with immediate effect.

39. TERMINATION

Termination - Insolvency and Change of Control

- 39.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier:
- 39.1.1 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;
 - 39.1.2 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);

- 39.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (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;
 - 39.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
 - 39.1.5 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;
 - 39.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
 - 39.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 39.1.8 any event similar to those listed in Clause 39.1 occurs under the law of any other jurisdiction.
- 39.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
- 39.2.1 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;
 - 39.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy;
 - 39.2.3 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;
 - 39.2.4 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;
 - 39.2.5 a creditor or encumbrance 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 fourteen (14) days;
 - 39.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - 39.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 39.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:
- 39.3.1 being notified that a Change of Control has occurred; or
 - 39.3.2 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.

39.4 The Customer may terminate the Contract with immediate effect by notice in writing where:

39.4.1 the Supplier are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Services;

39.4.2 the Supplier and its Staff employed in connection with the Services have failed to comply with the relevant Law governing the delivery of Services, provided that such non-compliance with the relevant Law is material and irremediable.

Termination on Default – Minor Defaults

39.5 Where the Supplier commits a Minor Default of the Contract, the Customer shall issue the Supplier with an Improvement Notice. Such Improvement Notice shall state the nature of the Minor Default and give the Supplier a minimum of ten (10) Working Days to remedy the Minor Default.

39.6 If the Supplier commits three (3) Minor Defaults in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated by the Customer in accordance with Clause 39.7.3.

Termination on Default – Material Default

39.7 The Customer may terminate the Contract by serving written notice on the Supplier with effect from the date specified in such notice, where:

39.7.1 the Supplier commits a Material Default and has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied;

39.7.2 the Supplier commits a Material Default and the Material Default is not, in the reasonable opinion of the Customer, capable of remedy;

39.7.3 the Supplier has committed three (3) or more Minor Defaults within a twelve (12) month rolling period;

39.7.4 any Contracting Authority terminates a Call-Off Contract awarded to the Supplier under the Framework Agreement as a consequence of a default by the Supplier;

39.7.5 the Supplier has been suspended in accordance with Clause 38 and the outcome following such suspension shows the Supplier to be at fault, to have provided Services not to the required specification or that the Supplier has acted in breach of this Contract and/or the Framework Agreement; or

39.7.6 any of the provisions in Regulation 73(1) of the Regulations apply.

39.8 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 ninety (90) Working Days of the date of such written notice, 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 **Error! Reference source not found..**

40. CONSEQUENCES OF EXPIRY OR TERMINATION

- 40.1 Where the Customer terminates the Contract under Clause 39 and then makes other arrangements for the supply of 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 Clause 39, 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.
- 40.2 Save as otherwise expressly provided in the Contract:
- 40.2.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiry and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry;
- 40.2.2 within thirty (30) Working Days of the date of termination or expiry of the Contract, the Supplier shall return to the Customer any data and Confidential Information belonging to the Customer that is in the Supplier's possession, power or control, either in its then current format or in a format nominated by Customer, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Customer, to the extent technically practicable, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under this Contract or any applicable Law, or pursuant to any requirements of the FCA, for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such other period approved by the Customer as is reasonably necessary for compliance, such Approval not to be unreasonably withheld ; and
- 40.2.3 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses **Error! Reference source not found.** (Payment and VAT), 17 (Prevention of Bribery and Corruption), 20 (Data Protection Act), 21 (Freedom of Information), 22 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 23 (Confidential Information), 25 (Intellectual Property Rights), 26 (Records and Audit Access), 32 (Cumulative Remedies), 34 (Liability, Indemnity and Insurance), 35 (Professional Indemnity), 40 (Consequences of Expiry or Termination), 42 (Recovery upon Termination) and 44 (Governing Law).

41. DISRUPTION

- 41.1 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 supplier employed by the Customer.
- 41.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 41.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 41.4 If the Supplier's proposals referred to in Clause 41.3 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.
- 41.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of 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.

42. RECOVERY UPON TERMINATION

42.1 On the termination of the Contract for any reason, the Supplier shall:

42.1.1 within thirty (30) Working Days, return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPR's in its possession or in the possession or under the control of any permitted suppliers or Key Sub-Contractors, which was obtained or produced in the course of providing the Services;

42.1.2 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

42.1.3 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and

42.1.4 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

42.2 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 42.1 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.

42.3 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 25 shall automatically terminate without the need to serve notice.

43. FORCE MAJEURE

43.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.

43.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent or Key Sub-Contractor shall be regarded as due to Force Majeure only if that agent or Key Sub-Contractor is itself impeded by Force Majeure from complying with an obligation to the Supplier.

43.3 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 43.1 it shall immediately notify the other Party by the most expeditious method then available and shall inform the other Party of the period during which it is estimated that such failure or delay shall continue.

43.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall

have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm, or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.

- 43.5 For the avoidance of doubt, it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

DISPUTES AND LAW

44. GOVERNING LAW

- 44.1 The Parties agree that the Contract shall be governed exclusively by and interpreted in accordance with English Law, or where otherwise stated in the Letter of Appointment the laws of the country so stated, and the Parties submit to the exclusive jurisdiction of the English courts, or the courts of that chosen country where otherwise stated in the Letter of Appointment.

- 44.2 This Contract is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

45. DISPUTE RESOLUTION

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

- 45.2 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.

- 45.3 If the dispute cannot be resolved by the Parties pursuant to Clause 66.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 45.5 unless:

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

45.3.2 the Supplier does not agree to mediation.

- 45.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

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

45.5.1 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 the (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 Centre for Effective Dispute Resolution to appoint a Mediator;

45.5.2 the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with them 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 Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;

- 45.5.3 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;
- 45.5.4 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;
- 45.5.5 failing agreement, either Party 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
- 45.5.6 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.

APPENDIX 1

LETTER OF APPOINTMENT



Department
for Environment
Food & Rural Affairs

Seacole Building
2 Marsham Street
London
SW1P 4DF

T: 03459 335577
helpline@defra.gov.uk
www.gov.uk/defra

Willis Limited
3 Temple Quay
Temple Back East
Bristol
BS1 6DZ

Your ref: [goes here]
Our ref: [goes here]
Date: 29 November 2023

Dear Sirs,

Contract for the Provision of Insurance Brokerage and Associated Services II (Framework Reference: 001160)

This Letter of Appointment act as an Appointment under this Contract issued in accordance with Clause **Error! Reference source not found.** of the Framework Agreement and the Invitation to Tender. The Supplier in their capacity as a Broker agrees to supply the Services specified below in accordance with this Letter of Appointment, the Terms of Business Agreement and the Contract annexed hereto for the Contract Period specified below.

For the avoidance of doubt, capitalised terms and expressions used in this Letter of Appointment have the meanings given to them in or pursuant to the Contract unless the context otherwise requires. Where capitalised terms and expressions used in this Letter of Appointment or the Contract are not defined in the Contract attached to this Letter of Appointment they shall have the same meanings given to them in the Framework Agreement.

The Supplier shall:

- (i) provide the Services to the Customer in accordance with the provisions of the Contract and the Terms of Business Agreement for the Contract Period
- (ii) comply with all reasonable instructions given to it by the Customer in relation to the provision of the Services and co-operate at all times with the Customer and its staff;
- (iii) immediately report to the Customer any matters which involve or could potentially involve a conflict of interest. The Supplier shall wherever possible ensure that it minimises the risk of conflict within the Supplier's supply chain and subsidiary or associated group companies;
- (iv) ensure that neither it, nor any of its affiliates or Key Sub-Contractors, brings the Customer into disrepute, regardless of whether or not such act or omission is related to the Supplier's obligations under this Contract;
- (v) comply with the Customer's internal policies and procedures in each case as notified to the Supplier in writing by the Customer (or if agreed between the Customer and the Supplier, provide evidence to the Customer of the Supplier's internal policies and procedures for the Customer to confirm that these are adequate); and

- (vi) comply with government and FCA codes and practices in force from time to time (including but not limited to policies, procedures, codes and practices relating to staff vetting, security, equality and diversity, confidentiality undertakings and sustainability)

The Supplier shall not:

- (i) incur any costs that could result in any estimated figure for any element of the Services being exceeded without first gaining Approval from the Customer; and
- (ii) engage in any conduct which in reasonable opinion of the Customer could be potentially detrimental to the reputation of the Customer.

Both Parties shall take all necessary measures to ensure the health and safety of the other Party's staff, employees, consultants and agents visiting their premises.

No variation of this Contract shall be effective unless it is carried out in accordance with Clause 29 of the Contract. For the avoidance of doubt, any variation must be in writing and signed by both Parties or an authorised representative of each Party.

Each Party must comply with Clause 23 of the Contract relating to Confidential Information and acknowledges the importance of this Clause.

Subject to each Party's rights in relation to Confidential Information and Commercially Sensitive Information within the Framework Agreement and Contract, the Customer shall be entitled to publicise this Contract in accordance with any legal obligation placed upon the Customer including any examination of this Contract by an auditor.

The Supplier acknowledges that the Customer is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and shall assist and co-operate with the Customer's reasonable requests to enable the Customer to comply with its obligations as set out in the Framework Agreement and Contract.

The Supplier shall not, and shall procure that its Key Sub-Contractors, affiliates, officers, auditors, directors or board or executive members, potential reinsurers, Insurers or regulators shall not, make any press announcements or publicise this Contract in any way without first obtaining Approval from the Customer.

FROM

Customer	Animal and Plant Health Agency (APHA)
Address	APHA Commercial Department, APHA, Woodham Lane, Addlestone, Surrey, KT15 3NB
Invoice Address	
Contact Ref:	Ref: Name: Phone: e-mail:

TO

Supplier:	Willis Towers Watson
Address:	Willis Limited 3 Temple Quay Temple Back East Bristol BS1 6DZ
Contact Details	Name: [REDACTED] Phone: [REDACTED] Email: [REDACTED]

1. TERM
1.1 Commencement Date 1.1.1 This Contract shall commence on: 15 th January 2024
1.2 Expiry Date This Contract shall expire on: 14 th January 2025

2. APPLICABLE LAW
The Contracting Authority confirms that the applicable law for this Contract shall be the law of England & Wales

3. KEY SUB-CONTRACTORS
The Customer hereby consents to the appointment of the following Key Sub-Contractor(s) in connection with the provision of the Services: None.

4. SERVICES

The provision of Insurance Brokerage Services and Insurance Advice in respect of Professional Indemnity insurance requirements effective from the 15th January 2024 renewal.

5. SERVICE LEVELS

None

6. AMENDMENTS TO TERMS AND CONDITIONS

None



7. PAYMENT PROVISIONS

Contract Price	£985.60
Funding	Not applicable
Invoicing Arrangements	Frequency: Annually on or around 25 th January. Format: as a PDF attachment to an email



SIGNATORY PAGE:

BY SIGNING AND RETURNING THIS LETTER OF APPOINTMENT THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Services specified in this Letter of Appointment (together with where completed and applicable, the mini-competition order (additional requirements) set out in this Letter of Appointment) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Provider and YPO and the Provider's Terms of Business Agreement.

For and on behalf of the Supplier:

Name and Title:	
Signature:	
Date:	01/12/2023

For and on behalf of the Customer:

Name and Title:	
Signature:	
Date:	29/11/23

APPENDIX 2

TERMS OF BUSINESS AGREEMENT

Please see the below Willis Limited Terms of Business Agreement notwithstanding contained herein contained within to the contrary the Terms and Conditions of the YPO Insurance Framework 1160 will always take precedence:

Our Terms of Business are provided via the following link <https://www.wtwco.com/en-gb/Notices/terms-of-business-agreement-crb-gb>

APPENDIX 3

PRICES FOR SERVICES

Willis Limited is remunerated by way of an annual fee, which is in consideration of the services provided.

Any new placements during the year are considered to be outside of this fee arrangement and commission will be taken in the first year pending the review of our fee at renewal date

However, the insurers for the policies for which we provide services for you will allow a brokerage of up to 3.5% of the total premium payable and we will retain such brokerage in full. We do not receive such brokerage where we earn income from Willis Towers Watson Facilities Administration Charge.

The agreed fee will be £985.60 for the period 15th January 2024 to 14th January 2025.

APPENDIX 4

VARIATION FORM

CALL-OFF TERMS AND CONDITIONS FOR SERVICES

[Name of Lot]

No of Letter of Appointment being varied:.....

Variation Form No:.....

BETWEEN:

[] (the “**Customer**”)

and

[] (the “**Supplier**”)

1. The Letter of Appointment is varied as follows:

[List details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.

3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Customer

Signature

Date

Name in Capitals

Address

Authorised to sign for and on behalf of the Supplier

Signature

Date

Name in Capitals

Address

.....
.....

APPENDIX 5

DATA PROTECTION AND PRIVACY PROVISIONS

1. [The Parties shall:

- 1.1. Process the Personal Data only in order to perform its obligations under this Contract;
- 1.2. ensure that at all times they have in place appropriate measures, including technical and organisational measures to protect against a Data Loss Event;
- 1.3. not disclose or transfer the Personal Data to any third party or staff unless necessary for the provision of the Services. Where the Party is a Processor, for any disclosure or transfer of Personal Data to any third party, it shall obtain the prior written consent of the other Party (save where such disclosure or transfer is specifically authorised under this Contract or is specifically required in order for the Parties to perform their obligations under this Contract);
- 1.4. take reasonable steps to ensure the reliability and integrity of any staff who have access to the Personal Data and ensure that they:
 - 1.4.1. are aware of and comply with each Parties' duties under this Contract;
 - 1.4.2. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Data Controller or as otherwise permitted by this Contract; and
 - 1.4.3. have undergone adequate training in the use, care, protection and handling of Personal Data;
- 1.5. notify the disclosing Party as soon as reasonably practicable if it becomes aware of an event that results, or may result, in unauthorised access to Personal Data held by the other Party under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach, or if it receives:
 - 1.5.1. from a Data Subject (or a third party on their behalf) a Data Subject Request (or purported Data Subject Request);
 - 1.5.2. a request to rectify, block, or erase any Personal Data or any other request, complaint, or communication relating to either Party's obligations under the Data Protection Legislation;
 - 1.5.3. any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - 1.5.4. a request from a third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- 1.6. provide the disclosing Party with full cooperation and assistance (within the timescales reasonably required by the disclosing Party) in relation to any complaint, communication or request made (as referred to in paragraph 1.5) including by promptly providing:
 - 1.6.1. full details and copies of the complaint, communication or request;
 - 1.6.2. where applicable, such assistance as is reasonably requested to enable the disclosing Party to comply with the Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 1.6.3. on request, with any Personal Data it holds in relation to a Data Subject;

- 1.7. if requested by the disclosing Party, provide a written description of the measures it has taken and the technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Appendix and provide copies of all documentation relevant to such compliance. If copies are unable to be provided, then sight of the documents must be provided as a minimum.
2. The Parties agree that it will not make a Restricted Transfer unless the following conditions are fulfilled:
 - 2.1. the destination country has been recognised as adequate in accordance with Article 45 UK GDPR or section 74 Data Protection Act 2018;
 - 2.2. in the absence of an adequacy decision in accordance with paragraph 2.1 above, the transferring Party has provided appropriate safeguards in relation to the Restricted Transfer (whether in accordance with Article 46 UK GDPR or section 75 Data Protection Act 2018) as determined by the transferring Party;
 - 2.3. the Data Subject has enforceable rights and effective legal remedies;
3. With respect to Restricted Transfers, the UK IDTA are hereby incorporated into this Contract by reference and will come into effect upon the commencement of any Restricted Transfer and the terms at Annex A shall also apply.
4. Both Parties shall designate a Data Protection Officer is required by the Data Protection Legislation. Details of each Party's Data Protection Officer (if required) are outlined below:

For the Supplier: -	For the Customer: -

5. Both Parties shall use reasonable endeavours to assist the other Party to comply with any obligations under the Data Protection Legislation and neither Party shall perform its obligations under this Contract in such a way as to cause the other Party to breach any of its obligations under the Data Protection Legislation to the extent it is aware, or ought reasonably be aware, that the same would be a breach of such obligations.]

ANNEX A

RESTRICTED TRANSFERS

Not Applicable