

**TERMS AND CONDITIONS FOR  
CONTRACT REFERENCE: WSPT/902**

**FOR THE SUPPLY OF LEGAL SERVICES IN RELATION TO  
THE FUTURE MARITIME SUPPORT PROGRAMME (FMSP)**

**between**

**THE SECRETARY OF STATE FOR DEFENCE**

**and**

**DENTONS UK AND MIDDLE EAST LLP**

## CONTENTS

---

### CLAUSES

1	DEFINITIONS AND INTERPRETATION .....	3
2	THE ORDERED PANEL SERVICES .....	4
3	DELIVERY AND MANAGEMENT OF THE ORDERED PANEL SERVICES .....	4
4	VARIATION AND EXTENSION.....	8
5	PERSONNEL.....	9
6	CHARGES AND INVOICING .....	16
7	LIABILITY AND INSURANCE.....	17
8	INTELLECTUAL PROPERTY RIGHTS.....	19
9	PROTECTION OF INFORMATION.....	20
10	CONFIDENTIALITY .....	22
11	WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS .....	25
12	TERMINATION.....	27
13	CONSEQUENCES OF EXPIRY OR TERMINATION AND EXIT MANAGEMENT...	29
14	PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES .....	31
15	PREVENTION OF FRAUD AND BRIBERY .....	31
16	NON-DISCRIMINATION .....	32
17	ASSIGNMENT AND NOVATION.....	33
18	WAIVER AND CUMULATIVE REMEDIES.....	34
19	FURTHER ASSURANCES.....	34
20	SEVERABILITY .....	34
21	RELATIONSHIP OF THE PARTIES .....	34
22	ENTIRE AGREEMENT .....	35
23	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT .....	35
24	NOTICES .....	35
25	DISPUTES AND LAW .....	36

### SCHEDULES

SCHEDULE 1	ORDER FORM .....	38
SCHEDULE 2	DEFINITIONS .....	45
SCHEDULE 3	STAFF TRANSFER .....	55

## THIS AGREEMENT IS DATED G

### PARTIES

- (1) **THE SECRETARY OF STATE FOR DEFENCE OF THE UNITED KINGDOM** (the **Customer**).
- (2) **DENTONS UK AND MIDDLE EAST LLP**, whose registered office is at One Fleet Place, London, EC4M 7WS (the **Supplier**).

### BACKGROUND

- (1) The Customer has followed the call off procedure set out in paragraph 1.3 of Panel Schedule 5 (Ordering Procedure) and has awarded this Legal Services Contract to the Supplier by way of the Further Competition Procedure.
- (2) The Customer issued its Statement of Requirements for the provision of the Ordered Panel Services on 23<sup>rd</sup> January 2018.
- (3) In response to the Statement of Requirements the Supplier submitted a Tender to the Customer on 20<sup>th</sup> February 2019 through which it provided to the Customer its solution for providing the Ordered Panel Services.
- (4) On the basis of the Tender the Customer selected the Supplier to provide the Ordered Panel Services to the Customer in accordance with the terms of this Legal Service Contract.

### AGREED TERMS

#### 1 DEFINITIONS AND INTERPRETATION

##### Definitions

- 1.1 In this Legal Services Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 2 or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in Schedule 2 or the relevant Schedule, it shall have the meaning given to it in the Panel Agreement. If no meaning is given to it in the Panel Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry (where appropriate). Otherwise, it shall be interpreted in accordance with the dictionary meaning.

##### Interpretation

- 1.3 The interpretation and construction of this Legal Services Contract shall be subject to the following provisions:
  - (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - (b) words importing the masculine include the feminine and the neuter;
  - (c) the words "**include**", "**includes**" and "**including**", "**for example**" and "**in particular**" and words of similar effect are to be construed as if they were immediately followed by the words "**without limitation**" and shall not limit the general effect of the words which precede them;

- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown;
- (e) references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of this Legal Services Contract);
- (f) headings are included in this Legal Services Contract for ease of reference only and shall not affect the interpretation or construction of this Legal Services Contract;
- (g) references to "**Clauses**" and the "**Schedules**" are, unless otherwise provided, references to (respectively) the clauses of and the schedules to this Legal Services Contract and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs annexes and tables of the Schedule in which these references appear; and
- (h) a reference to a Clause is a reference to the whole of that clause, unless stated otherwise.

1.4 In the event of and only to the extent of any conflict between the Order Form, these Terms and Conditions and the provisions of the Panel Agreement, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Panel Agreement (excluding Panel Schedule 4 (Template Order Form and Template Terms and Conditions));
- (b) the Order Form;
- (c) these Terms and Conditions;
- (d) any other document referred to in this Legal Services Contract; and
- (e) Panel Schedule 21 (Tender).

## **2 THE ORDERED PANEL SERVICES**

- 2.1 This Legal Services Contract shall commence on the Commencement Date set out in the Order Form and expire on the later of the Scheduled Expiry Date set out in the Order Form and the date of the completion of the Ordered Panel Services (such later date being the "**Expiry Date**").
- 2.2 The Supplier shall supply the Ordered Panel Services set out in the Order Form (as the same may be amended or updated in accordance with this Legal Services Contract) to the Customer in accordance with the provisions of this Legal Services Contract.

## **3 DELIVERY AND MANAGEMENT OF THE ORDERED PANEL SERVICES**

- 3.1 Within a reasonable period of time after the Commencement Date (having regard to the circumstances), the Supplier shall take proactive steps to plan and agree the Ordered Panel Services to be provided with the Customer to clarify and document (to the extent that the above have not been done prior to or at the Commencement Date and included in the Order Form):
  - (a) the legal advice required;

- (b) how legal input will be structured to minimise costs and maximise efficiency;
  - (c) whether and how work previously undertaken for central Government can be re-used to reduce cost;
  - (d) the levels and names of Supplier Personnel working on performing the Ordered Panel Services, including the Key Personnel identified in the Order Form and/or pursuant to Clause 5 (below);
  - (e) which of the Customer's Personnel can provide instructions and authorise additional work; and
  - (f) the general management of the Ordered Panel Services and the provision by the Supplier thereof.
- 3.2 During the performance of the Ordered Panel Services the Supplier shall conduct reviews at intervals specified in the Order Form (if so specified), but in any event no less than once every three (3) Months to:
- (a) review adherence to the plans (whether original plans or plans as subsequently amended under this Clause 3.2, as the case may be) for the Ordered Panel Services prepared pursuant to Clause 3.1 (above); and
  - (b) ensure optimisation of efficiency and value for money in provision of the Ordered Panel Services.
- 3.3 The Supplier shall:
- (a) confirm to the Customer that any review required has, in each case, been completed;
  - (b) report to the Customer on the outcome of the review (including documenting the same in such form as the Customer may reasonably require); and
  - (c) make and apply such adjustments to the plans for the delivery of the Ordered Panel Services as the Customer may direct.
- 3.4 The Supplier shall:
- (a) comply with all reasonable instructions given to the Supplier and the Supplier Personnel by the Customer in relation to the Ordered Panel Services from time to time, including reasonable instructions to reschedule or alter the Ordered Panel Services;
  - (b) without prejudice to Clause 3.4(a), immediately report to the Customer's Representative any matters which involve or could potentially involve an actual or potential Conflict of Interest or any breach of Clause 10 and shall follow any direction made by the Customer in respect of the proper management and mitigation of the same;
  - (c) co-operate in a timely and prompt manner with the Customer and the Customer's other professional advisers in relation to the Ordered Panel Services as required by the Customer; and
  - (d) comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Supplier in writing by the Customer.
- 3.5 The Supplier shall not:

- (a) knowingly act at any time during the term of this Legal Services Contract in any capacity for any person, firm or company in circumstances where a Conflict of Interest between such person, firm or company and the Customer will thereby arise or exist in relation to the Ordered Panel Services; or
  - (b) incur any expenditure which would result in any estimated figure for any element of the Ordered Panel Services being exceeded without the Customer's written agreement; or
  - (c) without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Ordered Panel Services; or
  - (d) pledge the credit of the Customer in any way; or
  - (e) engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer, the Authority or the Crown.
- 3.6 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.
- 3.7 Where the Supplier is more than one firm or organisation acting as a Group of Economic Operators, each firm or organisation that is a member of the Group of Economic Operators shall be jointly and severally liable for performance of the Supplier's obligations under this Legal Services Contract.
- 3.8 Upon early termination or expiry of this Legal Services Contract, or as the Ordered Panel Services to be performed under it near completion, as seems appropriate to the Customer under the circumstances, the Supplier shall conduct a knowledge transfer exercise where requested to do so by the Customer. This exercise shall:
- (a) document, collate and transfer to the Customer any significant know-how, learning and/or practices generated, developed and/or used by the Supplier during this Legal Services Contract;
  - (b) compile and transfer to the Customer a document bible(s) (including electronic versions of the same if the Customer so requires) comprising the contractual and/or other documents and/or advice generated, developed and/or used by the Supplier during this Legal Services Contract;
  - (c) be completed within one (1) Month of the later of completion of the relevant Ordered Panel Services; or the request to conduct the exercise made by the Customer, or the expiry of this Legal Services Contract; and
  - (d) be performed at no additional cost or charge to the Customer.

The Supplier shall furthermore (if the Customer so requests in writing) upon such termination or expiry or as the Ordered Panel Services to be performed under it near completion deliver to the Customer a contract guide or separate contract guides in respect of all or (at the Customer's option notified to the Supplier and specified in the Customer's request notice) some only of the contract documentation prepared by or on behalf of the Supplier as part of the Ordered Panel Services, such guide(s) to profile the key features and areas of risk and risk transfer under such contracts and to be prepared and delivered for an additional, fixed, aggregate fee payable by the Customer to the Supplier to be agreed in advance between the Parties (acting reasonably) and (where no such fee is agreed, notwithstanding such reasonable efforts) no more than 50% of its applicable rates identified in the Order Form for such fee earner time (which shall be reasonable in the circumstances) engaged in the preparation and delivery of such guides (solely to the extent that any work carried out in

connection with such task does not replicate any work falling within the scope of the exercise carried out or to be carried out by or on behalf of the Supplier under Clause 3.8(a) to (d)(inclusive)).

Records, Audit Access and Open Book Data

- 3.9 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Legal Services Contract including the Ordered Panel Services provided under it, any Sub-Contracts and the amounts paid by the Customer.
- 3.10 The Supplier shall:
- (a) keep the records and accounts referred to in Clause 3.9 in accordance with Good Industry Practice and Law; and
  - (b) afford any Auditor access to the records and accounts referred to in Clause 3.9 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 3.9, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Legal Services Contract including in order to:
    - a. verify the accuracy of the Charges and any other amounts payable by the Customer under this Legal Services Contract (and proposed or actual variations to them in accordance with this Legal Services Contract);
    - b. verify the costs of the Supplier (including the costs of all Sub-Contractors and any third-party suppliers) in connection with the provision of the Ordered Panel Services;
    - c. verify the Open Book Data;
    - d. verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
    - e. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
    - f. identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Panel Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Ordered Panel Services;
    - g. obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
    - h. review any books of account and the internal contract management accounts kept by the Supplier about this Legal Services Contract;
    - i. carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;

- j. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
  - k. verify the accuracy and completeness of any information delivered or required by this Legal Services Contract;
  - l. review the Supplier's quality management systems (including any quality manuals and procedures);
  - m. review the Supplier's compliance with the Standards;
  - n. inspect the Customer assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer assets are secure and that any register of assets is up to date; and/or
  - o. review the integrity, confidentiality and security of the Customer Data.
- 3.11 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Ordered Panel Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 3.12 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
- (a) all reasonable information requested by the Customer within the scope of the audit;
  - (b) reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Ordered Panel Services; and
  - (c) access to the Supplier Personnel.
- 3.13 The Parties agree that they shall each bear their own respective costs and expenses incurred in respect of compliance with their obligations in respect of records, audit access and open book data, unless the audit reveals a breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

#### **4 VARIATION AND EXTENSION**

- 4.1 The Customer may request:
- (a) a variation to the Ordered Panel Services;
  - (b) an extension to the Term specified in the Order Form; and/or
  - (c) a variation to any other part of the Order Form; and/or
  - (d) a variation to any other term of these Terms and Conditions,
- at any time during the Term.
- 4.2 Any request by the Customer for a variation to the Ordered Panel Services shall be by written notice to the Supplier:

- (a) giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred (where any element of the Charges is composed of a fixed price or a capped price); and
  - (b) specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable and the Supplier shall respond to such request within such timeframe.
- 4.3 In the event that the Supplier and the Customer are unable to agree any change to the Charges in connection with any requested variation to the Ordered Panel Services, the Customer may agree that the Supplier should continue to perform its obligations under this Legal Services Contract without the variation or may terminate this Legal Services Contract in accordance with Clause 12.10.

## **5 PERSONNEL**

### Key Personnel

- 5.1 Where Key Personnel have been specified in the Order Form this Clause 5 and the following provisions shall apply:
- (a) the Order Form lists the Key Personnel who the Supplier shall appoint to fill the Key Roles (where identified) at the Commencement Date;
  - (b) the Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term; and
  - (c) the Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 5.2 The Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Schedule 3), unless:
- (a) requested to do so by the Customer;
  - (b) the relevant person concerned resigns, retires or dies or takes any extended absences such as maternity leave or long-term sick leave;
  - (c) the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
  - (d) the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 5.3 The Supplier shall:
- (a) notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - (b) ensure that any Key Role is not vacant for any longer than five (5) Working Days;
  - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;

- (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Ordered Panel Services;
- (e) ensure that any replacement for a Key Role:
  - a. has a level of qualifications and experience appropriate to the relevant Key Role; and
  - b. is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced;
- (f) shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Term without Approval; and
- (g) the Supplier shall not charge, and the Customer shall have no liability to pay, for any additional costs incurred by the Supplier in respect of reading-in time by any replacement Key Personnel.

5.4 The Customer may direct the Supplier to end the involvement in the provision of the Ordered Panel Services of any of the Supplier Personnel:

- (a) whom the Customer believes does not have the required levels of training and expertise; or
- (b) whose performance, in the Customer's opinion, has been unsatisfactory; or
- (c) where the Customer has other reasonable grounds for doing so.

5.5 The Customer will consult with and provide reasons to the Supplier where the Customer is able to and where it is appropriate for the Customer to do so, provided that the decision of the Customer shall be final and it shall not be obliged to provide any reasons. The Customer shall not be liable for the cost of replacing any such Key Personnel.

Supplier Personnel

5.6 The Supplier shall:

- (a) provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
- (b) ensure that all Supplier Personnel:
  - a. are appropriately qualified, trained and experienced to provide the Ordered Panel Services with all reasonable skill, care and diligence;
  - b. are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
  - c. obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Ordered Panel Services to the reasonable satisfaction of the Customer; and

- d. comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the any security requirements as notified to the Supplier by the Customer from time to time;
  - (c) subject to Schedule 3, retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
  - (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a breach under this Legal Services Contract shall be a breach by the Supplier;
  - (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel is/are or has/have been removed or are unavailable for any reason whatsoever;
  - (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - (h) procure that the Supplier Personnel shall vacate any Customer Premises immediately upon the Expiry Date.
- 5.7 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Legal Services Contract, it may:
- (a) refuse admission to the relevant person(s) to the Customer Premises; and/or
  - (b) direct the Supplier to end the involvement in the provision of the Ordered Panel Services of the relevant person(s).
- 5.8 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

#### Staff Transfer

- 5.9 The Parties agree that:
- (a) where the commencement of the provision of the Ordered Panel Services or any part of the Ordered Panel Services results in one or more Relevant Transfers, Schedule 3 shall apply as follows:
    - a. where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Schedule 3 shall apply;
    - b. where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 3 shall apply;
    - c. where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 3 shall apply; and
    - d. Part C of Schedule 3 shall not apply;

- (b) where commencement of the provision of the Ordered Panel Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 3 shall apply and Parts A and B of Schedule 3 shall not apply; and
  - (c) Part D of Schedule 3 shall apply on the expiry or termination of the Ordered Panel Services or any part of the Ordered Panel Services;
- 5.10 The Supplier shall both during and after the Term indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

#### Appointment of Sub-Contractors

- 5.11 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- (a) manage any Sub-Contractors in accordance with Good Industry Practice;
  - (b) comply with its obligations under this Legal Services Contract in the provision of the Ordered Panel Services; and
  - (c) assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Legal Services Contract.
- 5.12 Prior to sub-contacting any of its obligations under this Legal Services Contract, the Supplier shall notify the Customer and provide the Customer with:
- (a) the proposed Sub-Contractor's name, registered office and company registration number;
  - (b) the scope of any Ordered Panel Services to be provided by the proposed Sub-Contractor; and
  - (c) where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 5.13 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 5.12, the Supplier shall also provide:
- (a) a copy of the proposed Sub-Contract; and
  - (b) any further information reasonably requested by the Customer.
- 5.14 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 5.12 (or, if later, receipt of any further information requested pursuant to Clause 5.13), object to the appointment of the relevant Sub-Contractor, if the Customer considers that:
- (a) the appointment of a proposed Sub-Contractor may prejudice the provision of the Ordered Panel Services or may be contrary to the interests respectively of the Customer under this Legal Services Contract;
  - (b) the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or

(c) the proposed Sub-Contractor employs unfit persons,  
in which case the Supplier shall not proceed with the proposed appointment.

5.15 If:

- (a) the Customer has not notified the Supplier that the Customer objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
  - a. the Supplier's notice issued pursuant to Clause 5.12; and
  - b. any further information requested by the Customer pursuant to Clause 5.13; and
- (b) the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer,

the Supplier may proceed with the proposed appointment.

#### Appointment of Key Sub-Contractors

5.16 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Panel Schedule 7 (Key Sub-Contractors).

5.17 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Ordered Panel Services or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

5.18 Except where the Authority and the Customer have given their prior written consent under Clause 5.17, the Supplier shall ensure that each Key Sub-Contract shall include:

- (d) provisions which will enable the Supplier to discharge its obligations under this Legal Services Contract;
- (e) a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
- (f) a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
- (g) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
- (h) obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Legal Services Contract in respect of:
  - a. data protection requirements set out in Clause 9;

- b. FOIA requirements set out in Clause 10;
  - c. the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 14.3;
  - d. the keeping of records in respect of the Ordered Panel Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
  - e. the conduct of audits set out in Clause 3 under the heading of Records, Audit Access & Open Book Data;
- (i) provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clause 12 (Termination) and Clause 13 (Consequences of Expiry or Termination) of this Legal Services Contract;
  - (j) a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Ordered Panel Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer; and
  - (k) a provision, where a provision in Schedule 3 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier (as the case may be).

#### Appointment of Key Sub-Contractors

- 5.19 The Supplier shall ensure that all Sub-Contracts contain a provision:
- (a) requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
  - (b) requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
  - (c) requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and
  - (d) conferring a right to the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 5.20 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
- 5.21 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 5.22 Notwithstanding any provision of Clauses 10 and 14, if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on Government websites and in the press).

### Termination of Sub-Contracts

5.23 The Customer may require the Supplier to terminate:

(a) a Sub-Contract where:

- a. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 12 (Termination) except Clauses 12.6 and 12.7 (Termination on Notice); and/or
- b. the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Ordered Panel Services or otherwise; and/or

(b) a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:

- a. the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
- b. the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

### Competitive Terms

5.24 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Ordered Panel Services, then the Customer may:

- (a) require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item(s); or
- (b) enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item(s).

5.25 If the Customer exercises the option pursuant to Clause 5.24, then the Charges shall be reduced by an amount that is agreed in accordance with Clause 4.

5.26 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:

- (a) the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Ordered Panel Services; and
- (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

### Retention of Legal Obligations

- 5.27 Notwithstanding the Supplier's right to Sub-Contract, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

## **6 CHARGES AND INVOICING**

### Charges and VAT

- 6.1 In consideration of the Supplier's performance of its obligations under this Legal Services Contract, the Customer shall pay the undisputed Charges in accordance with this Clause 6. The Supplier acknowledges and agrees that:
- (a) in relation to any matter which is specified in the Order Form as being free of all Fees it shall not be entitled to be paid any Fees in respect of such matter; and
  - (b) in relation to any matter subject to an estimate of Fees specified in the Order Form it shall use reasonable endeavours to ensure that the Fees payable in respect of such matter do not materially exceed the value of such estimate.
- 6.2 The Customer shall, in addition to the Charges and following receipt of a valid invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Ordered Panel Services supplied.
- 6.3 The provisions of Panel Schedule 3 (Panel Prices and Charging Structure) of the Panel Agreement shall apply in relation to the Ordered Panel Services.
- 6.4 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Legal Services Contract. Any amounts due under this Clause 6.4 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.

### Invoicing

- 6.5 The Customer will make payment of any amount due under this Clause 6 by electronic transfer and prior to submitting any claims for any such payment the Supplier shall register its details (supplier on-boarding) on the Contracting, Purchasing and Finance electronic procurement tool.
- 6.6 Where the Supplier submits an invoice to the Customer in accordance with Clause 6.5, the Customer will consider and verify that invoice in a timely fashion.
- 6.7 The Customer shall pay all undisputed sums properly due and payable to the Supplier in respect of the Ordered Panel Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.
- 6.8 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Ordered Panel Services provided and any Reimbursable Expenses and/or Disbursements and/or any other costs (where the Customer has indicated in the Order Form that these are payable) and that it is supported by Supporting Documentation.
- 6.9 The Supplier shall ensure that all invoices submitted to the Customer for the Ordered Panel Services are exclusive of the Management Charge payable to the Authority in respect of the

Ordered Panel Services. The Supplier shall not be entitled to increase the Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.

- 6.10 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 6.11 Subject always to the provisions of Clause 17, if the Supplier enters into a Sub-Contract in respect of the Ordered Panel Services (or any part of them), it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Supplier to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 6.12 The Supplier shall not suspend the supply of the Ordered Panel Services, unless:
- (a) the Supplier is entitled to terminate this Legal Services Contract under Clause 12.3 on the grounds of the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Services; and
  - (b) the Supplier has provided ten (10) Working Days' notice of its intention to suspend the provision of the Ordered Panel Services.
- 6.13 The Supplier shall accept the Government Procurement Card as a means of payment for the Ordered Panel Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 6.14 All payments due hereunder shall be made in cleared funds to such bank or building society account specified in the Order Form or otherwise as the recipient Party may from time to time direct by notice in writing.

#### Recovery of Sums Due

- 6.15 Wherever under this Legal Services Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of this Legal Services Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under this Legal Services Contract.
- 6.16 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

## **7 LIABILITY AND INSURANCE**

- 7.1 Neither Party excludes or limits its liability under this Legal Services Contract for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors; or
  - (b) bribery or Fraud by it or its employees or agents; or

(c) any other liability than cannot be excluded or limited under Law.

7.2 The Parties agree that:

- (a) (other than in relation to any fraud he or she commits or any death or personal injury caused by his or her negligence) no individual of the Supplier shall have any personal liability to the Customer for the Ordered Panel Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under this Legal Services Contract against that individual in respect of the Ordered Panel Services; and
- (b) nothing in Clause 7.2(a) shall in any way limit or exclude any liability of the Supplier in respect of the preparation and delivery of any work as part of the Ordered Panel Services and such liability shall be uncapped.

7.3 The Parties further agree that, subject to Clause 7.1, the total aggregate liability of the Customer under this Legal Services Contract shall be limited to one hundred per cent (100%) of the aggregate of (a) all Charges properly invoiced; and (b) Charges properly and reasonably incurred, but not invoiced pursuant to Clause 6.

7.4 The Supplier shall, subject to Clause 7.5, fully indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Ordered Panel Services or the performance or non-performance by the Supplier of its obligations under the Panel Agreement and the Customer's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier.

7.5 Subject to Clauses 7.1 and 7.6, in no event shall either Party be liable to the other for any:

- (a) loss of profits;
- (b) loss of business;
- (c) loss of revenue;
- (d) loss of or damage to goodwill;
- (e) loss of anticipated savings; and/or
- (f) any indirect, special or consequential loss or damage.

7.6 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:

- (a) any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of any Material Breach;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring, implementing and operating any alternative or replacement services to the Services which shall include any incremental costs associated with the replacement of such services above those which would have been payable under this Legal Services Contract;

- (d) any compensation or interest paid to a third party by the Customer; and
- (e) any regulatory losses, fines, penalties, expenses or other losses incurred by the Customer pursuant to any Law.

- 7.7 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional Supplier employed in a customer/supplier relationship.
- 7.8 Save as otherwise expressly provided in this Legal Services Contract, the obligations of the Customer under this Legal Services Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in this Legal Services 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 this Legal Services Contract (howsoever arising) on the part of the Customer to the Supplier.

#### Insurance

- 7.9 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in clause 31 (Insurance) of the Panel Agreement, the Supplier shall effect and maintain further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Panel Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Legal Services Contract. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Supplier under this Legal Services Contract or otherwise in connection with the provision of the Ordered Panel Services. Such insurance shall be maintained for so long as the Supplier may have any liability to the Customer hereunder.
- 7.10 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 7.9.
- 7.11 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 7.9, the Customer may make alternative arrangements to protect its interests and may set-off the costs of such arrangements against the Charges.
- 7.12 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Legal Services Contract.
- 7.13 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **8 INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All Intellectual Property Rights in the output of the Ordered Panel Services (including any contractual and/or other document(s) and/or advice) provided by the Supplier to the Customer during this Legal Services Contract shall vest in and be the property of the

Customer. The Supplier hereby assigns to the Customer (by way of present assignment of future rights) all its rights in any such output. The Customer grants to the Supplier a non-exclusive, free of charge, unlimited, transferable, irrevocable perpetual licence to use, exploit and sub-license the output referred to in this Clause 8.1.

- 8.2 The Supplier shall on demand fully indemnify and keep fully indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Ordered Panel Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").
- 8.3 If a Claim arises, the Customer shall notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim, provided always that the Supplier:
- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the Customer;
  - (c) shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
  - (d) shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
- 8.4 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the Approval of the Customer, which the Customer shall have the absolute right to grant or deny.

## **9 PROTECTION OF INFORMATION**

### Protection of Personal Data

- 9.1 With respect to the Parties' rights and obligations under this Legal Services Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer's Personal Data. The Parties further agree to incorporate such amendments into this Clause 9 and this Legal Services Contract to give effect in full to all terms agreed between the Supplier and the Authority on or after the date of this Legal Services Contract with regard to the application of the Revised DP Legislation in connection with the respective subject matter of the Panel Agreement and this Legal Services Contract.
- 9.2 The Supplier shall:
- (a) Process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Legal Services Contract or as otherwise notified by the Customer to the Supplier during the Term of this Legal Services Contract);
  - (b) Process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Panel Services or as is required by Law or any regulatory body;

- (c) implement appropriate technical and organisational measures to protect the Customer's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;
- (d) take reasonable steps to ensure the reliability of all members of the Supplier's Personnel who have access to the Customer's Personal Data;
- (e) obtain Approval in order to transfer all or any of the Customer's Personal Data to any Sub-Contractors for the provision of the Services;
- (f) ensure that all members of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in Clause 9.2;
- (g) ensure that none of the Supplier's Personnel publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
- (h) notify the Customer within five (5) Working Days if the Supplier receives:
  - a. a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
  - b. a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- (i) provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
  - a. providing the Customer with full details of the complaint or request;
  - b. complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - c. providing the Customer with any Customer's Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - d. providing the Customer with any information requested by the Customer;
- (j) permit or procure permission for the Customer or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Legal Services Contract;
- (k) provide a written description of the technical and organisational methods employed by the Supplier for Processing the Customer's Personal Data (within the timescales required by the Customer); and
- (l) not Process or otherwise transfer any Customer's Personal Data outside the European Economic Area without the prior written consent of the Customer which shall have the absolute right to grant (whether conditionally or otherwise) or deny.

- 9.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Legal Services Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 9.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Customer's Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 9.5 In the event that through any failure by the Supplier to comply with its obligations under this Legal Services Contract, Customer's Personal Data transmitted or Processed in connection with this Legal Services Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

## **10 CONFIDENTIALITY**

- 10.1 Except to the extent set out in Clause 10.2 or where disclosure is expressly permitted elsewhere in this Legal Services Contract, each Party shall:
- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 10.2 Each Party's obligations provided in Clause 10.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clauses 10.13 to 10.19 (inclusive)(Freedom of Information); or
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
  - (c) such information was obtained from a third party without obligation of confidentiality; or
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Legal Services Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- 10.3 The Supplier may only disclose the Customer's Confidential Information to Supplier Personnel, who are directly involved in the provision of the Ordered Panel Services and who need to know such information, and on the following terms:
- (a) the Supplier shall ensure that, save where the Customer notifies the Supplier in writing that the prohibition contained in this Clause 10.3(a) shall no longer apply (such relief (which shall operate without prejudice to the other provisions of this Clause 10) to take effect solely on and from the date of such notice and to continue unless and until the Customer notifies the Supplier in writing reinstating such prohibition), no such person receives or otherwise accesses or shall receive or otherwise access any Confidential Information, who is not a Relevant Named Individual;

- (b) procure from each such person receiving or otherwise accessing or likely to receive or otherwise access any Confidential Information a legally binding undertaking on terms no less stringent than those contained in this Legal Services Contract; and
  - (c) procure that each of such personnel complies at all times with the terms of such undertaking.
- 10.4 The Supplier shall be liable for the actions or omissions of all Supplier Personnel in relation to the Confidential Information as if they were the actions or omissions of the Supplier.
- 10.5 The Supplier shall not, and shall procure that the Supplier Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Legal Services Contract.
- 10.6 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Personnel identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Legal Services Contract.
- 10.7 Nothing in this Legal Services Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to clause 27 of the Panel Agreement):
  - (a) to any Crown body, or any Other Panel Customer 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 Other Panel Customer save as required by Law;
  - (b) to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with this Legal Services Contract or the Panel Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
  - (c) for the purpose of the examination and certification of the Customer's accounts; or
  - (d) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 10.8 The Customer shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 10.7 is made aware of the Customer's obligations of confidentiality.
- 10.9 Nothing in this Clause 10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of this Legal Services Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 10.10 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of this Legal Services Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 10.11 The Supplier shall, at all times during and after the performance of this Legal Services Contract, indemnify the Customer and keep the Customer fully indemnified on demand against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach

of the Supplier's obligations under this Clause 10 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

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

- 10.12 The Supplier shall comply with and shall ensure that the Supplier Personnel comply with, the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) section 182 of the Finance Act 1989.

Freedom of Information

- 10.13 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 10.14 The Supplier shall and shall procure that its Sub-Contractors shall:
- (a) 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;
  - (b) provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
  - (c) provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 10.15 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Legal Services Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 10.16 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 10.17 The Supplier acknowledges and agrees that (notwithstanding the provisions of Clause 10.1) the Customer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the Ordered Panel Services:
- (a) in certain circumstances without consulting the Supplier; or
  - (b) following consultation with the Supplier and having taken the Supplier's views into account,

provided always that, where Clause 10.17(a) applies, the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

- 10.18 The Supplier shall ensure that all information is retained for disclosure in accordance with the provisions of this Legal Services Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.
- 10.19 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 10.17.

#### Transparency

- 10.20 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations, the content of this Legal Services Contract is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein. The Customer shall determine whether any of the content of this Legal Services Contract is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations.

- 10.21 Notwithstanding any other term of this Legal Services Contract, the Supplier hereby gives consent to the Customer to publish this Legal Services Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations), including any changes to this Legal Services Contract agreed from time to time.
- 10.22 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 10.23 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Legal Services Contract.

### **11 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

- 11.1 The Supplier warrants, represents and undertakes to the Customer that:

- (a) the Supplier has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under this Legal Services Contract;
- (b) this Legal Services Contract is executed by a duly authorised representative of the Supplier;
- (c) in entering this Legal Services Contract it has not committed any Fraud;
- (d) it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- (e) all information, statements and representations contained in the Supplier's tender or other submission to the Customer for the award of this Legal Services Contract (if applicable) are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of this Legal Services Contract and the Supplier 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;

- (f) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against the Supplier or its assets which will or might affect its ability to perform its obligations under this Legal Services Contract;
- (g) the Supplier 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 this Legal Services Contract;
- (h) the Supplier 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 this Legal Services Contract;
- (i) no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- (j) the Supplier has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer; and
- (k) the Supplier 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 this Legal Services Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Ordered Panel Services.

11.2 The Supplier warrants, represents and undertakes to the Customer that:

- (a) the Supplier has read and fully understood the Order Form and these Terms and Conditions and is capable of performing the Ordered Panel Services in all respects in accordance with this Legal Services Contract;
- (b) the Supplier and each of its Sub-Contractors has all personnel, equipment and experience necessary for the proper performance of the Ordered Panel Services; and
- (c) the Supplier will at all times:
  - a. perform its obligations under this Legal Services Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
  - b. carry out the Ordered Panel Services within the timeframe agreed with the Customer; and
  - c. without prejudice to its obligations under Clause 5, ensure to the satisfaction of the Customer that the Ordered Panel Services are provided and carried out by such appropriately qualified, skilled and experienced personnel as are necessary for the proper performance of the Ordered Panel Services.

11.3 The Supplier shall promptly notify the Customer in writing:

- (a) of any material detrimental change in the financial standing and/or credit rating of the Supplier;
  - (b) if the Supplier undergoes a Change of Control; and
  - (c) provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 11.4 For the avoidance of doubt, the fact that any provision within this Legal Services Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.
- 11.5 The Supplier acknowledges and agrees that:
- (a) the warranties, representations and undertakings contained in this Legal Services Contract are material and are designed to induce the Customer into entering into this Legal Services Contract; and
  - (b) the Customer has been induced into entering into this Legal Services Contract and in doing so has relied upon the warranties, representations and undertakings contained in this Legal Services Contract.

## **12 TERMINATION**

### Termination on Insolvency

- 12.1 The Customer may terminate this Legal Services Contract with immediate effect by giving notice in writing where:
- (a) an Insolvency Event affecting the Supplier occurs; or
  - (b) the Supplier demerges into two or more firms, merges with another form, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier.

### Termination on Material Breach

- 12.2 The Customer may terminate this Legal Services Contract with immediate effect by giving written notice to the Supplier, if:
- (a) the Supplier commits a Material Breach and if (A) the Supplier has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Supplier specifying the Material Breach and requesting it to be remedied:
    - a. remedied the Material Breach; and
    - b. put in place measures to ensure that such Material Breach does not recur,in each case to the satisfaction of the Customer; or if (B) the Material Breach is not, in the opinion of the Customer, capable of remedy; or
  - (b) in the event of an investigation by the Solicitors Regulation Authority into the Supplier's organisation; or

(c) in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms), which conviction might reasonably be expected to lead to the striking off from the Roll of the individual(s) concerned.

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

#### Termination on Change of Control

12.4 The Customer may terminate this Legal Services Contract by notice in writing with immediate effect within six (6) Months of:

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

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

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

#### Termination for breach of Regulations

12.5 The Customer may terminate this Legal Services Contract by notice in writing to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73(1)(a) to (c).

#### Termination on Notice

12.6 The Customer shall have the right to suspend this Legal Services Contract (whether with immediate effect or otherwise) at any time by giving written notice (which shall include the date on which the suspension is to take effect) to the Supplier.

12.7 The Customer shall have the right to terminate this Legal Services Contract (whether with immediate effect or otherwise) at any time by giving written notice of the termination to the Supplier, which shall include the date on which termination is to take effect. The Customer shall:

(a) where such Charges are calculated by reference to rates or a capped price, pay the undisputed Charges properly incurred, invoiced and due hereunder up till the date of termination; or

(b) where such Charges are calculated as a fixed price, pay a pro rata proportion of the fixed price reflecting the degree to which the Ordered Panel Services relating to the relevant fixed price have been performed as at the date of termination.

#### Termination in Relation to Panel Agreement

12.8 The Customer may terminate this Legal Services Contract with immediate effect by giving written notice to the Supplier if the Panel Agreement is terminated for any reason whatsoever.

#### Termination in Relation to Benchmarking

- 12.9 The Customer may terminate this Legal Services Contract with immediate effect by giving written notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Panel Schedule 12 (Continuous Improvement and Benchmarking).

Termination in Relation to Variation

- 12.10 The Customer may terminate this Legal Services Contract with immediate effect by giving written notice to the Supplier for failure of the Parties to agree or the Supplier to implement a variation pursuant to Clause 4.3.

Partial Termination

- 12.11 Where the Customer is entitled to terminate this Legal Services Contract pursuant to this Clause 12, the Customer shall be entitled to terminate all or part of this Legal Services Contract provided always that the parts of this Legal Services Contract not terminated can operate effectively to deliver the intended purpose of this Legal Services Contract or a part thereof.

**13 CONSEQUENCES OF EXPIRY OR TERMINATION AND EXIT MANAGEMENT**

- 13.1 Subject to Clause 13.2, where the Customer terminates this Legal Services Contract pursuant to Clause 12 and then makes other arrangements for the supply of the Services:

- (a) the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Services in accordance with the requirements of this Legal Services Contract;
- (b) the Customer shall take all reasonable steps to mitigate such additional expenditure; and
- (c) no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.

- 13.2 Clause 13.1 shall not apply where the Customer terminates this Legal Services Contract:

- (a) solely pursuant to Clause 12.3 or Clause 12.5; or
- (b) solely pursuant to Clause 12.8, if termination pursuant to Clause occurs as a result of termination of the Panel Agreement pursuant to the provisions of clauses 19.1.4, 33.5 or 33.7 thereof.

- 13.3 On the termination for any reason or expiry of this Legal Services Contract at the request of the Customer and at the Supplier's cost and in addition to its obligations provided in Clause 3.8 the Supplier shall:

- (a) immediately return to the Customer all Confidential Information and the Customer's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Ordered Panel Services;
- (b) except where the retention of Customer's Personal Data is required by Law, promptly destroy all copies of the Customer Data and provide written confirmation to the Customer that the Customer Data has been destroyed;

- (c) immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Customer in connection with this Legal Services Contract provided to the Supplier;
- (d) vacate, and procure that the Supplier's Personnel vacate, any premises of the Customer occupied for the purposes of providing the Ordered Panel Services;
- (e) return to the Customer any sums prepaid in respect of the Ordered Panel Services not provided by the date of expiry or termination (howsoever arising); and
- (f) promptly provide all further information concerning the provision of the Ordered Panel Services which may reasonably be requested by the Customer for the purposes of properly understanding the manner in which the Ordered Panel Services have been provided or for the purpose of allowing the Customer or any replacement Supplier to conduct due diligence.

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

- (a) at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Ordered Panel Services together with any damage resulting from such defect or failure (where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of this Legal Services Contract are fulfilled, in accordance with the Customer's instructions;
- (b) without terminating this Legal Services Contract, itself supply or procure the supply of all or part of this Legal Services Contract 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 this Legal Services Contract in accordance with this Legal Services Contract;
- (c) without terminating the whole of this Legal Services Contract, terminate this Legal Services Contract in respect of part of the Ordered Panel Services only and thereafter itself supply or procure a third party to supply such part of the Ordered Panel Services; and/or
- (d) charge the Supplier for, whereupon the Supplier shall on demand pay, any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the 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 Ordered Panel Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Ordered Panel Services.

13.5 Save as otherwise expressly provided in this Legal Services Contract:

- (a) termination or expiry of this Legal Services Contract shall be without prejudice to any rights, remedies or obligations accrued under this Legal Services Contract prior to termination or expiration and nothing in this Legal Services Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

- (b) termination of this Legal Services Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses: Clause 6 (Charges and Invoicing); Clause 7 (Liability and Insurance); Clause 8 (Intellectual Property Rights); Clause 9 (Protection of Information); Clause 10 (Confidentiality); Clause 15 (Prevention of Fraud and Bribery); Clause 23 (Contracts (Rights of Third Parties) Act); Clause 25.1 (Governing Law and Jurisdiction) and, without limitation to the foregoing, any other provision or Schedule of this Legal Services Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of this Legal Services Contract.

#### **14 PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

- 14.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise this Legal Services Contract in any way without Approval and shall take reasonable steps to ensure that the Supplier's Personnel and professional advisors comply with this Clause 14. Any such press announcements or publicity proposed under this Clause 14 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.
- 14.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise this Legal Services Contract in accordance with any legal obligation upon the Customer including any examination of this Legal Services Contract by the Auditors.
- 14.3 The Supplier shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

#### **15 PREVENTION OF FRAUD AND BRIBERY**

- 15.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 15.2 The Supplier shall not during the Term:
- (a) commit a Prohibited Act; and/or
  - (b) do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 15.3 The Supplier shall during the Term:
- (a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - (b) keep appropriate records of its compliance with its obligations under Clause 15.3(a) and make such records available to the Customer on request;

- (c) if so required by the Customer, within twenty (20) Working Days after the Commencement Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Ordered Panel Services in connection with this Legal Services Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
  - (d) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 15.4 The Supplier shall immediately notify the Customer in writing if the Supplier becomes aware of any breach of Clause 15.1, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Legal Services Contract or otherwise suspects that any person or Party directly or indirectly connected with this Legal Services Contract has committed or attempted to commit a Prohibited Act.
- 15.5 If the Supplier makes a notification to the Customer pursuant to Clause 15.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation.
- 15.6 If the Supplier breaches Clause 15.3, the Customer may by notice:
- (a) require the Supplier to remove from performance of this Legal Services Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
  - (b) immediately terminate this Legal Services Contract.
- 15.7 Any notice served by the Customer under Clause 15.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Legal Services Contract shall terminate).

## **16 NON-DISCRIMINATION**

16.1 The Supplier shall:

- (a) perform its obligations under this Panel Agreement (including those in relation to the provision of the Panel Services) in accordance with:
  - a. all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

- b. other requirements and instructions which the Customer reasonably imposes in connection with any equality obligations imposed on the Customer at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Customer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);
- (c) have in place plans and policies which shall:
- a. promote a diverse and inclusive workforce and working environment;
  - b. seek to effectively prevent discrimination, bullying and harassment of underrepresented groups (including those with caring responsibilities); and
  - c. promote recruitment from the widest pool of individuals,
- and these plans and policies shall be robustly monitored using management information;
- (d) ensure that all managers and those involved in recruitment undertake unconscious bias training; and
- (e) where possible, avoid the use of single sex recruitment panels.

## 17 ASSIGNMENT AND NOVATION

17.1 The Supplier shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Legal Services Contract or any part of it without Approval.

17.2 The Customer may assign, novate or otherwise dispose of its rights and obligations under this Legal Services Contract or any part thereof to:

- (a) any other Panel Customer; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
- (c) any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 17.2. Any change in the legal status of the Customer such that it ceases to be a Panel Customer shall not, subject to Clause 17.3, affect the validity of this Legal Services Contract. In such circumstances, this Legal Services Contract shall bind and inure to the benefit of any successor body to the Customer.

17.3 If the rights and obligations under this Legal Services Contract are assigned, novated or otherwise disposed of pursuant to Clause 17.2 to a body which is not a Panel Customer or a Central Government Body or if there is a change in the legal status of the Customer such that it ceases to be a Panel Customer or Central Government Body (in the remainder of this Clause any such body being referred to as a "**Transferee**"):

- (a) the rights of termination of the Customer in Clause 12 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

(b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Legal Services Contract or any part thereof with the previous consent in writing of the Supplier, which shall not be unreasonably withheld or delayed.

17.4 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under this Legal Services 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 this Legal Services Contract and for no other purposes and shall take reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

17.5 For the purposes of Clause 17.3 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 this Legal Services Contract.

## **18 WAIVER AND CUMULATIVE REMEDIES**

18.1 The rights and remedies under this Legal Services Contract may be waived only by notice in accordance with Clause 24 and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Legal Services Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.

18.2 Unless otherwise provided in this Legal Services Contract, rights and remedies under this Legal Services Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

## **19 FURTHER ASSURANCES**

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

## **20 SEVERABILITY**

20.1 If any provision of this Legal Services Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Legal Services Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Legal Services Contract shall not be affected.

20.2 In the event that any deemed deletion under Clause 20.1 is so fundamental as to prevent the accomplishment of the purpose of this Legal Services Contract or materially alters the balance of risks and rewards in this Legal Services Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Legal Services Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Legal Services Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

## **21 RELATIONSHIP OF THE PARTIES**

21.1 Except as expressly provided otherwise in this Legal Services Contract, nothing in this Legal Services Contract, nor any actions taken by the Parties pursuant to this Legal Services Contract, shall create a partnership, joint venture or relationship of employer and employee

or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

## **22 ENTIRE AGREEMENT**

- 22.1 The Legal Services Contract, together with a completed, signed and dated Panel Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.
- 22.2 Each of the Parties acknowledges and agrees that in entering into this Legal Services 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 this Legal Services Contract.
- 22.3 The Supplier acknowledges and agrees that it has:
- (a) entered into this Legal Services Contract in reliance on its own due diligence alone; and
  - (b) received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of this Legal Services Contract.
- 22.4 Nothing in Clauses 22.1 and 22.2 shall operate to exclude liability for Fraud or fraudulent misrepresentation.

## **23 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 23.1 A person who is not a party to this Legal Services Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 23.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 23.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Legal Services Contract or any one or more Clauses of it.
- 23.3 The Supplier agrees that the Customer may enforce any of the provisions of the Panel Agreement as if they were terms of this Legal Services Contract (reading references in those provisions to Panel Customer and the Supplier as references to the Customer and the Supplier respectively).

## **24 NOTICES**

- 24.1 Except as otherwise expressly provided in this Legal Services Contract, no notice or other communication from one Party to the other shall have any validity under this Legal Services Contract unless given or made in writing by or on behalf of the Party sending the communication.
- 24.2 Any notice or other communication given or made by either Party to the other shall:
- (a) be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
  - (b) unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:

- a. if delivered personally, at the time of delivery;
- b. if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;
- c. if sent by electronic mail, upon receipt of a read receipt; and
- d. if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 9:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error-free transmission report is received by the Party sending the communication.

24.3 For the purposes of Clause 24.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Order Form.

24.4 Either Party may change its address for service by serving a notice in accordance with this Clause 24.

## 25 DISPUTES AND LAW

### Governing Law and Jurisdiction

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

### Dispute Resolution

25.2 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Legal Services Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.

25.3 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.

25.4 If the dispute cannot be resolved by the Parties pursuant to Clause 25.2, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 25.6 unless:

- (a) the Customer considers that the dispute is not suitable for resolution by mediation; or
- (b) the Supplier does not agree to mediation.

25.5 The obligations of the Parties under this Legal Services Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Supplier's Personnel shall comply fully with the requirements of this Legal Services Contract at all times.

25.6 The procedure for mediation is as follows:

- (a) a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working

Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;

- (b) the Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
- (c) 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;
- (d) 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;
- (e) failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
- (f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

**Schedule 1      Order Form**

**1. General**

Commencement Date	Deemed to be 15th May 2018.
Scheduled Expiry Date	23.59 (London time) on 31 <sup>st</sup> March 2020.
Panel Services	<p>The scope of the anticipated legal support is described below. However, this may change as the FMSP solution and procurement strategies mature. The Supplier shall provide the legal support services requested by the Customer in relation to FMSP regardless of whether the requested services are described below or not.</p> <p>Redacted -Commercial Information</p>
Management and review of the Ordered Panel Services	(a) The Supplier shall, within one calendar month of award of the Ordered Panel Services, submit for the Customer's approval a Legal Services Delivery Manual which shall be consistent with the Supplier's Tender for the work. The Legal Services Delivery

	<p>Manual shall include as a minimum the information detailed in the Supplier's Tender, the information detailed in Clause 3.1 of this Legal Services Contract and the following:</p> <ul style="list-style-type: none"> <li>a. the Supplier's Key Personnel with contact details;</li> <li>b. the Supplier's organisation structure, including team make-up and location of the respective teams and team members;</li> <li>c. the Supplier's method for project management of the Supplier's Performance of the Ordered Panel Services;</li> <li>d. the Supplier's method for controlling, recording and reporting chargeable and non-chargeable elements of the Ordered Panel Services;</li> <li>e. the Supplier's method for communicating with the Customer, including but not limited to frequency, media, reporting templates, etc.;</li> <li>f. a description of the Supplier's resources, tools and systems for performing the Ordered Panel Services, such as but not limited to project management tools, data room, document register, etc.;</li> <li>g. the Supplier's method for document and data control, including but not limited to authoring, revision control, document numbering and naming conventions, drafting templates, quality and consistency control, storage and retrieval, security, retention period, reporting, etc.;</li> <li>h. details of how and when the Supplier will fix or cap fees; and</li> <li>i. details of how and when the Supplier will deliver free of charge and reduced price services to the Customer in accordance with the Supplier's Tender for the work.</li> </ul> <p>(b) The Supplier will collaborate with the Customer to revise and update the Legal Services Delivery Manual throughout the Suppliers Performance of the Ordered Panel Services.</p> <p>(c) The Customer intends to instruct the Supplier to perform aspects of the Ordered Panel Services by issuing discrete task orders, with each task order describing work to be performed by the Supplier.</p> <p>(d) Unless otherwise instructed by the Customer, the Supplier shall promptly submit an estimate to the Customer detailing the costs, time and resources that the Supplier believes will be required to complete each task order received. The Supplier's estimates shall contain, as a minimum:</p> <ul style="list-style-type: none"> <li>a. the total number of chargeable hours needed to complete the task order, and a breakdown of chargeable hours per fee earner rate;</li> <li>b. the expected time needed to complete the task order;</li> </ul>
--	--

- c. any disbursements or other chargeable costs that the Supplier anticipates incurring in relation to the task order;
- d. for task orders expected to take more than a week to complete, the information in a. and c. above shall be further broken down into weekly subtotals; and
- e. details of any fee arrangements that Supplier is willing to accept in line with the Supplier's Tender for the work (such as fixed or capped fees). The Customer may accept or decline these fee arrangements at its absolute discretion.

(c) The Supplier shall at all times satisfy the Customer that the Supplier's estimates demonstrate both effective performance of the Ordered Panel Services and value for money. The Supplier shall collaborate with the Customer to amend estimates to achieve this objective to the Customer's satisfaction.

(d) The Supplier shall not start work on a task order until instructed in writing (including by e-mail without a confirming letter) to do so by the Customer.

(e) On the first and fifteenth day of each calendar month (or the first working day respectively thereafter), the Supplier shall submit to the Customer a report containing the following information as a minimum (unless the Parties agree to modify the frequency or content of such reports):

**Summary of Work Performed and Planned**

- a. a brief narrative report, typically no more than one page of A4 in total, summarising the work performed by the Supplier since the previous report, and summarising the work that the Supplier expects to perform up to issue of the next report;

**Key Issues**

- b. early warnings, risks and mitigations, areas of concern, constraints and other matters that Supplier wishes to summarise as key issues for the Customer's attention. The Supplier shall draw such matters to the Customer's attention as they arise during the course of business;

**Deliverables**

- c. a document index listing the title, description, document number (if applicable), version number, issue date, and update/revision status of all documents produced or provided by the Supplier in the course of performing the Ordered Panel Services;

**Cost**

- d. the estimated chargeable hours of work, and a

breakdown of estimated chargeable hours per fee earner rate, in each reporting period since commencement of the Ordered Panel Services. A reporting period is half a calendar month;

- e. the actual chargeable hours of work performed, and a breakdown of actual chargeable hours of work performed per fee earner rate, in each reporting period since commencement of the Ordered Panel Services;
- f. an analysis of the differences between d. and e. above to explain any significant differences between estimated and actual figures;
- g. the estimated disbursements or other chargeable costs in each reporting period since commencement of the Ordered Panel Services;
- h. the actual disbursements or other chargeable costs incurred in each reporting period since commencement of the Ordered Panel Services; and
- i. an analysis of the differences between g. and h. above to explain any significant differences between estimated and actual figures;

**Schedule**

- j. an analysis of the progress towards completion of each task with an explanation of any significant differences between estimated progress and actual progress;

**Invoicing and Payments**

- a. a summary of all Supplier invoices issued including invoice number, date, net value (excluding VAT), gross value (including VAT), payment receipt date (if paid), and total invoiced net and gross values since commencement of the Ordered Panel Services;

**Resources**

- a. a summary of all persons engaged by the Supplier to perform work related to the Ordered Panel Services and for each person their normal work location, chargeable rate category, SC clearance status, SC clearance reference number, SC clearance expiry date; and
- b. advance notification of planned non-availability of Key Personnel (for example due to vacation or planned work on other matters), if it may impact on the Ordered Panel Services.

(f) Unless otherwise agreed by the Customer, the Supplier may submit no more than one invoice per calendar month.

(g) Prior to submitting any invoice, the Supplier shall submit to the



	Supplier's Legal Project Manager in connection with this agreement (the commencement date of such monthly period to be confirmed by the Customer in writing further to discussions between the Parties on or about the Commencement Date).
Estimate of Charges Redacted -Commercial Information	Redacted -Commercial Information
Estimate of Charges Redacted -Commercial Information	Redacted -Commercial Information
Estimate of Charges	Redacted -Commercial Information
Estimate of Charges Redacted -Commercial Information	Redacted -Commercial Information
Work to be performed by the Supplier free of all Fees	<p>The Supplier shall not charge Fees for work which would otherwise be payable by the Customer to the Supplier pursuant to this Legal Services Contract, up to a fee earner, time costs aggregate value of Redacted -Commercial Information (excluding (i) VAT and (ii) (for clarity) travel and other disbursements), the Parties agreeing that the assessment of whether or not such value threshold has been exceeded shall be made solely with reference to its fee earner time and the relevant rates specified in this Order Form (excluding VAT) applicable (or which would, but for this provision, be applicable) to any combination of, in whole or part, (a) Work A, (b) Work B and (c) any other work performed by the Supplier pursuant to this Legal Services Contract as directed by the Customer.</p> <p>This free of all Fees work is in addition to the first month of fully effective work performed by the Supplier's Legal Project Manager (which is also free of Fees).</p>
Total Estimate of the Charges listed above after deduction of free of all Fees work (excluding expenses, disbursements and VAT)	£4,120,228.00
Fixed Fees and Capped Charges	To be agreed case by case for each task issued during the Ordered Panel Services.
Other Costs:	
(a) Reimbursable Expenses Payable	The Supplier's necessary and reasonable expenses incurred in relation to the Ordered Panel Services to the extent permitted under the Panel Agreement and in line with the Customer's expenses policy and guidance on maximum allowable costs.
(b) Expenses Not Payable	Meals, unless the Supplier's personnel are away from home overnight in relation to FMSP.
(c) Disbursements Payable	Bulk copying or printing of batches of over 50 sheets per batch to be charged at Redacted - Commercial Information. The Supplier shall collaborate with the Customer to agree alternative charging arrangements for significant

Reimbursable Expenses and Disbursements shall only be payable where the Customer has authorised that the Disbursements may be incurred in advance.	volumes of copying or printing.
Additional Training	To be agreed during the Term, if required.
Secondment Charge	To be agreed during the Term, if required.

### 3. Miscellaneous

Customer Representative	Redacted -Personal Information MailPoint #3030, Cedar 0 MOD DE&S Abbey Wood Bristol BS34 8JH
Supplier Representative	Redacted-Personal Information
Key Personnel	Redacted-Personal Information
Notices	To be sent to the Supplier as follows:  Dentons UK and Middle East LLP One Fleet Place London EC4M 7WS Email: hmgrelationshipteam@dentons.com  To be sent to the Customer as follows:  DES Ships FMSP-Comcrl-1b1a MailPoint #3030, Cedar 0 MOD DE&S Abbey Wood Bristol BS34 8JH
Customer Billing Address	To be advised to the Supplier through the Customer's Contracting, Purchasing and Finance electronic procurement tool in accordance with Clause 6.5.
Supplier Bank Details	Redacted Commercial Information  The same to be recorded by the Supplier on the Customer's Contracting, Purchasing and Finance electronic procurement tool in accordance with Clause 6.5.
Customer's Purchase Order Number	WSPT/902
Approved Sub-Contractors	None
BCDR	As per the Panel Agreement

## Schedule 2 Definitions

In accordance with Clause 1 (Definitions and Interpretation) of this Legal Services Contract including its recitals the following expressions shall have the following meanings:

- "Affiliates"** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; and **"Affiliate"** shall be construed accordingly;
- "Approval"** means the prior written consent of the Customer and **"Approve"**, **"Approves"** and **"Approved"** shall be construed accordingly;
- "Audit"** means an audit carried out pursuant to the provisions set out in Clause 3;
- "Auditor"** means:
- a) the Customer's internal and external auditors;
  - b) the Customer's statutory or regulatory auditors;
  - c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
  - d) HM Treasury or the Cabinet Office;
  - e) any party formally appointed by the Customer to carry out audit or similar review functions; and
  - f) successors or assigns of any of the above;
- "Authority"** means THE MINISTER FOR THE CABINET OFFICE ("**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
- "Central Government Body"** means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- a) Government Department;
  - b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
  - c) Non-Ministerial Department; or
  - d) Executive Agency;

<b>"Change of Control"</b>	means either:
	<ul style="list-style-type: none"> <li>a) a change of control within the meaning of Section 450 of the Corporation Tax Act 2010; or</li> <li>b) any instance where the Supplier demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form;</li> </ul>
<b>"Charges"</b>	means:
	<ul style="list-style-type: none"> <li>a) the Fees (exclusive of any applicable VAT and, where relevant, inclusive of any milestone payments); and</li> <li>b) any Secondment Charges, Disbursements, Reimbursable Expenses and any other costs payable to the Supplier by the Customer under this Legal Services Contract, as set out in the Order Form, for the full and proper performance by the Supplier of the Ordered Panel Services,</li> </ul>
	less any deductions;
<b>"Crown"</b>	means the Government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, Government ministers and Government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>"Commencement Date"</b>	means the date of commencement of this Legal Services Contract set out in the Order Form;
<b>"Commercially Sensitive Information"</b>	means the Supplier's Confidential Information comprised of commercially sensitive information:
	<ul style="list-style-type: none"> <li>a) relating to the Supplier, its IPR or its business or information which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss; and</li> <li>b) that constitutes a trade secret;</li> </ul>
<b>"Confidential Information"</b>	means the Customer's Confidential Information and/or the Suppliers Confidential Information, as the context requires;
<b>"Conflict of Interest"</b>	shall have the meaning set out in the SRA Handbook, as amended from time to time;
<b>"Contract Mediator"</b>	has the meaning set out in Clause 25;

<b>"Customer"</b>	means the Party identified as the "Customer" at the head of this Legal Services Contract;
<b>"Customer's Confidential Information"</b>	means: <ul style="list-style-type: none"> <li>a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How and IPR of the Customer;</li> <li>b) all information derived from any of the above; and</li> <li>c) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential which comes (or has come) to the Supplier's attention or possession in connection with this Legal Services Contract;</li> </ul>
<b>"Customer Data"</b>	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Customer's Confidential Information, and which: (a) are supplied to the Supplier by or on behalf of the Customer; or (b) the Supplier is required to generate, process, store or transmit pursuant to this Legal Services Contract; or (c) any Personal Data for which the Customer is the Data Controller;
<b>"Customer Personnel"</b>	means all persons employed or engaged by the Customer together with the Customer's servants, agents, suppliers and consultants;
<b>"Customer Premises"</b>	means premises owned, controlled or occupied by the Customer which are made available for use by the Supplier or its Sub-Contractors for the provision of the Ordered Panel Services (or any of them);
<b>"Customer Representative"</b>	means the representative of the Customer appointed by the Customer from time to time in relation to this Legal Services Contract and identified as such in the Order Form;
<b>"Data Subject"</b>	shall have the same meaning as set out in the Data Protection Act 1998;
<b>"Data Protection Legislation" or "DPA"</b>	means: (a) in respect of the Processing of any Personal Data prior to 25 <sup>th</sup> May 2018 the Data Protection Act 1998 as amended from time to time and (b) in respect of any Processing of any Personal Data on and/or after 25 <sup>th</sup> May 2018 (i) the General Data Protection Regulation (Regulation (EU) 2016/679), the Law Enforcement Directive (Directive (EU) 2016/680) and any applicable

national implementing Law as amended from time to time; (ii) the Data Protection Act 2018 (as amended from time to time) to the extent that it relates to Processing of Personal Data and privacy; and (iii) all applicable Law about the Processing of Personal Data and privacy (such Laws as are identified in (b)(i) to (iii) (inclusive) being the **"Revised DP Legislation"**);

**"Disbursement"**

shall bear the meaning ascribed to it in the SRA Handbook from time to time;

**"Employee Liabilities"**

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- d) compensation for less favourable treatment of part-time workers or fixed term employees;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- f) claims whether in tort, contract or statute or otherwise;
- g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

**"Environmental Information Regulations" or "EIRs"**

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;

**"Expiry Date"**

has the meaning given in Clause 2.1;

**"Fees"**

means the fees payable by the Customer to the Supplier which shall be based on:

- a) the relevant rates set out in the Order Form; or
- b) the capped price set out in the Order Form; or
- c) the fixed price set out in the Order Form; or
- d) any combination of the above;

**"FOIA"**

means the Freedom of Information Act 2000;

**"Fraud"**

means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

**"Good Industry Practice"**

means Standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

**"Group of Economic Operators"**

means a group of economic operators acting jointly and severally to provide the Panel Services;

**"Insolvency Event"**

means, in respect of the Supplier or Panel Guarantor or Call Off Guarantor (as applicable):

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the

appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- h) where the Supplier or Panel Guarantor or Call Off Guarantor is an individual or partnership, any event analogous to those listed in limbs (a) to (g) (inclusive) occurs in relation to that individual or partnership; or
- i) any event analogous to those listed in limbs (a) to (h) (inclusive) occurs under the law of any other jurisdiction;

**"Intellectual Rights" or "IPR"**

**Property**

means

- a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, designs, Know-How, trade secrets and other rights in Confidential Information;
- b) applications for registration, and the right to apply for registration, for any of the rights listed at a) that are capable of being registered in any country or jurisdiction; and
- c) all other rights having equivalent or similar effect in any country or jurisdiction;

**"Key Personnel"**

means any individuals identified as such in the Order Form and any of their replacements that may be agreed between the Parties from time to time;

**"Key Roles"**

means those roles identified in the Order Form and which are carried out by the relevant Key Personnel;

**"Key Sub-Contractor"**

means any Sub-Contractor which is listed in Panel Schedule 7 (Key Sub-Contractors), that, in the opinion of the Customer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Panel Services;

**"Know How"**

means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Ordered Panel Services but excluding know-how already in the other Party's possession before the Commencement Date;

**"Law"**

means any law, subordinate legislation within the

meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply;

**"Legal Services Contract"**

means this written agreement between the Customer and the Supplier (entered into pursuant to the provisions of the Panel Agreement), which consists of the Terms and Conditions and the Order Form;

**"Material Breach"**

means a breach of the provisions of Clause 2 (The Ordered Panel Services); Clause 3 (Delivery and Management of the Ordered Panel Services); Clause 5 (Personnel); Clause 7 (Liability and Insurance); Clause 8 (Intellectual Property Rights); Clause 9 (Protection of Information); Clause 11 (Warranties, Representations and Undertakings); Clause 14 (Publicity, Media and Official Enquiries), and or Clause 15 (Prevention of Fraud and Bribery);

**"OJEU Notice"**

means the notice published in the OJEU with the reference 2016/S 174-313246;

**"Open Book Data"**

means complete and accurate financial and non-financial information which is sufficient to enable the Customer to verify the Charges already paid or payable and Charges forecast to be paid during the Panel Period and term of any Legal Services Contracts, including details and all assumptions relating thereto;

**"Order Form"**

means the order form set out in Schedule 1;

**"Ordered Panel Services"**

means the services to be provided or provided by the Supplier to the Customer as set out in the Order Form;

**"Panel Agreement"**

means the panel agreement between the Authority and the Supplier (Agreement reference RM3786);

**"Panel Customers"**

means the Authority, the Customer and any other bodies listed in the OJEU Notice;

**"Party"**

means the Supplier or the Customer and "**Parties**" shall mean both of them;

**"Personal Data"**

shall have the same meaning as set out in the Data Protection Legislation;

**"Processing"**

has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "**Process**" and "**Processed**" shall be interpreted accordingly;

**"Prohibited Act"**

means any of the following:

- a) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority or other Panel Customer or any other public body a financial or other advantage to: (a) induce that person to perform improperly a relevant function or activity; or (b) reward that person for improper performance of a relevant function or activity;
- 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 Legal Services Contract;
- c) committing any offence: (a) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or (b) under legislation or common law concerning fraudulent acts; or (c) defrauding, attempting to defraud or conspiring to defraud the Customer; or
- d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

**"Reimbursable Expenses"**

means reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Ordered Panel Services, calculated at the rates and in accordance with the Customer's expenses policy current from time to time, but not including:

- a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Ordered Panel Services are principally to be performed, unless the Panel Customer otherwise agrees in advance in writing; and
- b) subsistence expenses incurred by Supplier Personnel whilst performing the Ordered Panel Services at their usual place of work, or to and from the premises at which the Ordered Panel Services are principally to be performed;

**"Relevant Named Personnel"**

(in connection with the operation of Clause 10.3(a)) any and all (i) personnel employed directly by the Supplier to perform any secretarial (including any document proof reading and/or preparation) function from time to time within the Supplier's business in connection with the performance and delivery of the Ordered Panel Services and (ii) personnel identified in a written register of Relevant Named Personnel issued by the Supplier to the Customer on or about the Commencement Date and updated by the Parties through joint agreement (such

agreement (in the case of the Customer) not to be unreasonably withheld or delayed) from time to time during the Term;

**"Relevant Requirements"**

means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

**"Standards"**

means:

- a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;
- b) any standards detailed in the specification in Panel Schedule 2 (Panel Services and Key Performance Indicators);
- c) any standards detailed by the Customer in this Legal Services Contract;
- d) any relevant Government codes of practice and guidance applicable from time to time; and
- e) any standards or quality assurance principles set out in Principle 5 of the SRA Handbook as amended from time to time;

**"Sub-Contract"**

means any contract or agreement (or proposed contract or agreement), other than this Legal Services Contract or the Panel Agreement, pursuant to which a third party:

- a) provides the Ordered Panel Services (or any part of them);
- b) provides facilities or services necessary for the provision of the Ordered Panel Services (or any part of them); and/or
- c) is responsible for the management, direction or control of the provision of the Ordered Panel Services (or any part of them);

**"Sub-Contractor"**

means any person other than the Supplier who is a party to a Sub-Contract and the servants or agents of that person;

**"Supplier"**

means the person, firm or company as the "Supplier" at the head of this Legal Services Contract;

**"Supplier's Confidential Information"**

means:

- a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How and IPR of the Supplier;
- b) all information derived from any of the above; and
- c) any other information clearly designated as being confidential;

**"Supplier Equipment"**

means the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Customer) in the performance of its obligations under this Legal Services Contract;

**"Supplier Personnel"**

means all persons employed or engaged by the Supplier together with the Suppliers servants, agents, suppliers, consultants and Sub-Contractors (and all persons employed by any Sub-Contractor together with the Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors) used in the performance of its obligations under this Legal Services Contract;

**"Supporting Documentation"**

means sufficient information in writing to enable the Customer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Customer under this Legal Services Contract are properly payable;

**"Term"**

means the term of this Legal Services Contract from the Commencement Date until the Expiry Date (subject to its earlier termination in accordance with its terms);

**"Terms and Conditions"**

means these terms and conditions set out in this Legal Services Contract;

**"VAT"**

means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

**"Working Day"**

means any day other than a Saturday, Sunday or public holiday in England and Wales, and **"Working Days"** shall be construed accordingly.

## Schedule 3 Staff Transfer

### 1 DEFINITIONS

1.1 In this Schedule 3 the following definitions shall apply:

- "Admission Agreement"** an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Ordered Panel Services;
- "Eligible Employee"** any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
- "Fair Deal Employees"** those Transferring Customer Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 3 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
- "Former Supplier"** a supplier supplying services to the Customer before the Relevant Transfer Date that are the same as or substantially similar to the Ordered Panel Services (or any part of the Ordered Panel Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
- "New Fair Deal"** the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for staff pensions: staff transfer from central government"* issued in October 2013 including any amendments to that document immediately prior to the Relevant Transfer Date;
- "Notified Sub-Contractor"** a Sub-Contractor identified in the Annex to this Schedule 3 to whom Transferring Customer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
- "Replacement Sub-Contractor"** a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
- "Replacement Services"** means any services which are substantially similar to any of the Ordered Panel Services and which the Customer receives in substitution for any of the Ordered Panel Services following the Expiry Date, whether those services are provided by the Customer internally and/or by any third party;

<b>"Replacement Supplier"</b>	means any third party provider of Replacement Services appointed by or at the direction of the Customer from time to time or where the Customer is providing Replacement Services for its own account, shall also include the Customer;
<b>"Relevant Transfer"</b>	a transfer of employment to which the Employment Regulations applies;
<b>"Relevant Transfer Date"</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>"Schemes"</b>	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; and the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
<b>"Service Transfer"</b>	any transfer of the Ordered Panel Services (or any part of the Ordered Panel Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-Contractor;
<b>"Service Transfer Date"</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>"Staffing Information"</b>	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Customer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> <li>(a) their ages, dates of commencement of employment or engagement, gender and place of work;</li> <li>(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;</li> <li>(c) the identity of the employer or relevant contracting party;</li> <li>(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;</li> <li>(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;</li> <li>(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance,</li> </ul>

pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

**"Supplier's Final Supplier Personnel List"**

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

**"Supplier's Provisional Supplier Personnel List"**

a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Ordered Panel Services or any relevant part of the Ordered Panel Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;

**"Transferring Customer Employees"**

those employees of the Customer to whom the Employment Regulations will apply on the Relevant Transfer Date;

**"Transferring Former Supplier Employees"**

in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and

**"Transferring Supplier Employees"**

those employees of the Supplier and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date.

## **2 INTERPRETATION**

- 2.1 Where a provision in this Schedule 3 imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-Contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Customer, Former Supplier, Replacement Supplier or Replacement Sub-Contractor, as the case may be.

**Part A**  
**Transferring Customer Employees**  
**at commencement of the Ordered Panel Services**

**1 RELEVANT TRANSFERS**

1.1 The Customer and the Supplier agree that:

1.1.1 the commencement of the provision of the Ordered Panel Services or of each relevant part of the Ordered Panel Services will be a Relevant Transfer in relation to the Transferring Customer Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-Contractor and each such Transferring Customer Employee.

1.2 The Customer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Customer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Customer; and (ii) the Supplier and/or any Notified Sub-Contractor (as appropriate).

**2 CUSTOMER INDEMNITIES**

2.1 Subject to paragraph 2.2, the Customer shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Customer in respect of any Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee occurring before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Customer before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Customer Employees; and/or

(ii) any custom or practice in respect of any Transferring Customer Employees which the Customer is contractually bound to honour;

2.1.3 any claim by any trade union or other body or person representing the Transferring Customer Employees arising from or connected with any failure by the Customer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Customer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date;
- 2.1.5 a failure of the Customer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.7 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Customer Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Customer Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Customer Employee, that his/her contract of employment has been transferred from the Customer to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer; and
- 2.3.2 the Customer may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-Contractor, or take such other reasonable steps as the Customer considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 (inclusive) and in accordance with all applicable proper employment procedures set out in applicable Law, the Customer shall indemnify the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
- 2.7.1 shall not apply to:
- (i) any claim for:
1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer within 6 months of the Commencement Date.

2.8 If any such person as is referred to in paragraph 2.3 is neither re-employed by the Customer nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Supplier and/or any Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to paragraph 3.2, the Supplier shall indemnify the Customer against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Customer Employees; and/or

(ii) any custom or practice in respect of any Transferring Customer Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Customer Employees arising from or connected with any failure by the Supplier or any Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-Contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Customer Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Customer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-Contractor to, or in respect of, any Transferring Customer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing;

- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Customer to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Customer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Customer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Customer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Customer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of the Transferring Customer Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Customer and the Supplier.

#### **4 INFORMATION**

- 4.1 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer in writing such information as is necessary to enable the Customer to carry out its duties under regulation 13 of the Employment Regulations. The Customer shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.2.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.2.3 HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.2.4 the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

#### **6 PENSIONS**

- 6.1 The Supplier shall, and/or shall procure that each of its Sub-Contractors shall, comply with the pensions provisions in the following Annex.

## **ANNEX A TO PART A: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Customer if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that the Customer may terminate this Legal Services Contract in the event that the Supplier breaches the Admission Agreement:
    - (i) and that breach is not capable of being remedied; or
    - (ii) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Customer giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 The Supplier shall procure that the Fair Deal Employees shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.
- 2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4 PROVISION OF INFORMATION**

- 4.1 The Supplier and the Customer respectively undertake to each other:
- 4.1.1 to provide all information which the other Party may reasonably request concerning matters referred to in this Annex and set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5 INDEMNITY**

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **6 EMPLOYER OBLIGATION**

- 6.1 The Supplier shall comply with the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

### **7 SUBSEQUENT TRANSFERS**

- 7.1 The Supplier shall:
- 7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and
- 7.1.3 for the applicable period either:

- (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Contract, to terminate the Admission Agreement or any part of the Ordered Panel Services; or
- (ii) after the date which is two (2) years prior to the date of expiry of this Legal Services Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8 BULK TRANSFER**

8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

- 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
- 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
- 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service (the "**Shortfall**"), the Supplier agrees to pay the Shortfall to the Schemes; and
- 8.1.4 indemnify the Customer on demand for any failure to pay the Shortfall as required under paragraph 8.1.3.

**Part B**  
**Transferring Former Supplier Employees at commencement**  
**of the Ordered Panel Services**

**1 RELEVANT TRANSFERS**

1.1 The Customer and the Supplier agree that:

1.1.1 the commencement of the provision of the Ordered Panel Services or of any relevant part of the Ordered Panel Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations; the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 Subject to paragraph 6, the Customer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Customer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

**2 FORMER SUPPLIER INDEMNITIES**

2.1 Subject to paragraphs 2.2 and 6, the Customer shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

2.1.3 any collective agreement applicable to the Transferring Former Supplier Employees; and/or

2.1.4 any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

2.1.5 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.6 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.7 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Legal Services Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
  - 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
  - 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Customer as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Customer as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Customer, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 (inclusive) and in accordance with all applicable proper employment procedures set out in Law, the Customer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6:
- 2.7.1 shall not apply to:
- (i) any claim for:
1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Customer and, if applicable, the Former Supplier, within 6 months of the Commencement Date.

2.8 If any such person as is described in paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to paragraph 3.2, the Supplier shall indemnify the Customer and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Sub-Contractor on or after the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer and/or the Former Supplier in writing;

- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.
- 3.2 The indemnities in paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

- 4.1 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and/or at the Customer's direction, the Former Supplier, in writing such information as is necessary to enable the Customer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. Subject to paragraph 6, the Customer shall procure that the Former Supplier shall promptly provide to the Supplier and each Notified Sub-Contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
  - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 the New Fair Deal.
- 5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with Clause 4.

#### **6 PROCUREMENT OBLIGATIONS**

- 6.1 Notwithstanding any other provisions of this Part B, where in this Part B the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

#### **7 PENSIONS**

- 7.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with the pensions provisions in the following Annex.

## **ANNEX A TO PART B: PENSIONS**

### **1 PARTICIPATION**

- 1.1 The Supplier undertakes to enter into the Admission Agreement.
- 1.2 The Supplier and the Customer:
- 1.2.1 undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;
  - 1.2.2 agree that the arrangements under paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Customer if the Supplier breaches any obligations it has under the Admission Agreement;
  - 1.2.3 agree, notwithstanding paragraph 1.2.2 of this Annex, the Supplier shall notify the Customer in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and
  - 1.2.4 agree that the Customer may terminate this Legal Services Contract for Material Breach in the event that the Supplier breaches the Admission Agreement:
    - (i) and that breach is not capable of being remedied; or
    - (ii) where such breach is capable of being remedied, the Supplier fails to remedy such breach within a reasonable time and in any event within 28 days of a notice from the Customer giving particulars of the breach and requiring the Supplier to remedy it.
- 1.3 The Supplier shall bear its own costs and all costs that the Customer reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation current civil service pensions administrator on-boarding costs.

### **2 FUTURE SERVICE BENEFITS**

- 2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.
- 2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost

to the Customer, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Customer in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

- 2.4 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

### **3 FUNDING**

- 3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.
- 3.2 The Supplier shall indemnify and keep indemnified the Customer on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

### **4 PROVISION OF INFORMATION**

- 4.1 The Supplier and the Customer respectively undertake to each other:
- 4.1.1 to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and
- 4.1.2 not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

### **5 INDEMNITY**

- 5.1 The Supplier undertakes to the Customer to indemnify and keep indemnified the Customer on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

### **6 EMPLOYER OBLIGATION**

- 6.1 The Supplier shall comply with the requirements of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff.

### **7 SUBSEQUENT TRANSFERS**

- 7.1 The Supplier shall:

- 7.1.1 not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the Service Transfer Date;
- 7.1.2 provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Customer may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and
- 7.1.3 for the applicable period either:
  - (i) after notice (for whatever reason) is given, in accordance with the other provisions of this Legal Services Contract, to terminate the Admission Agreement or any part of the Ordered Panel Services; or
  - (ii) after the date which is two (2) years prior to the date of expiry of this Legal Services Contract,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Customer, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Customer (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

## **8 BULK TRANSFER**

- 8.1 Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:
  - 8.1.1 fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;
  - 8.1.2 instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Customer may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;
  - 8.1.3 allow, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such broadly comparable pension scheme into the Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service (the "**Shortfall**"), the Supplier agrees to pay the Shortfall to the Schemes; and
  - 8.1.4 indemnify the Customer on demand for any failure to pay the Shortfall as required under paragraph 8.1.3.

## **Part C**

### **No Transfer of Employees at Commencement of Ordered Panel Services**

#### **1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Customer and the Supplier agree that the commencement of the provision of the Ordered Panel Services or of any part of the Ordered Panel Services will not be a Relevant Transfer in relation to any employees of the Customer and/or any Former Supplier.
- 1.2 If any employee of the Customer and/or a Former Supplier claims, or it is determined in relation to any employee of the Customer and/or a Former Supplier, that his/her contract of employment has been transferred from the Customer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
  - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer and, where required by the Customer, give notice to the Former Supplier; and
  - 1.2.2 the Customer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Customer or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Customer and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the fifteen (15) Working Day period specified in paragraph 1.2.2:
  - 1.4.1 no such offer of employment has been made;
  - 1.4.2 such offer has been made but not accepted; or
  - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### **2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 (inclusive) and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4, the Customer shall:
  - 2.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Customer referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier

takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.1.2 subject to paragraph 3, procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in paragraph 1.2 made pursuant to the provisions of paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in paragraph 1.2 is neither re-employed by the Customer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (15) Working Day period referred to in paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-Contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-Contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-Contractor pursuant to paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall indemnify the Customer and any Former Supplier, and shall procure that the Sub-Contractor shall indemnify the Customer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-Contractor.

2.4 The indemnities in paragraph 2.1:

2.4.1 shall not apply to:

(i) any claim for:

1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

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

2.4.2 shall apply only where the notification referred to in paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Customer and, if applicable, Former Supplier within 6 months of the Commencement Date.

### **3 PROCUREMENT OBLIGATIONS**

3.1 Where in this Part C the Customer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Customer's contract with the Former Supplier

contains a contractual right in that regard which the Customer may enforce, or otherwise so that it requires only that the Customer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

## **PART D**

### **Employment Exit Provisions**

#### **1 PRE-SERVICE TRANSFER OBLIGATIONS**

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
- 1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Legal Services Contract;
  - 1.1.3 the date which is twelve (12) Months before the end of the Term; and
  - 1.1.4 receipt of a written request of the Customer at any time (provided that the Customer shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Customer.

- 1.2 At least thirty (30) Working Days prior to the Service Transfer Date the Supplier shall provide to the Customer or at the direction of the Customer to any Replacement Supplier and/or any Replacement Sub-Contractor:
- 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Customer shall be permitted to use and disclose information provided by the Supplier under paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-Contractor.
- 1.4 The Supplier warrants, for the benefit of the Customer, any Replacement Supplier, and any Replacement Sub-Contractor that all information provided pursuant to paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in paragraph 1.1 the Supplier agrees that it shall not, and agrees to procure that each Sub-Contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Customer (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Ordered Panel Services (or the relevant part of the Ordered Panel Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Ordered Panel Services (or the relevant part of the Ordered Panel Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Customer or, at the direction of the Customer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to the Customer any information the Customer may reasonably require relating to the manner in which Ordered Panel Services are organised, which shall include:
  - 1.6.1 the numbers of employees engaged in providing the Ordered Panel Services;
  - 1.6.2 the percentage of time spent by each employee engaged in providing the Ordered Panel Services;
  - 1.6.3 the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex A to Part A of this Schedule 3 or paragraph 2.3 of the Annex A to Part B of this Schedule 3 (as appropriate); and
  - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the Customer, any Replacement Supplier and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, to

the Customer or, at the direction of the Customer, to any Replacement Supplier and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

## **2 EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1 The Customer and the Supplier acknowledge that subsequent to the commencement of the provision of the Ordered Panel Services, the identity of the provider of the Ordered Panel Services (or any part of the Ordered Panel Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Ordered Panel Services being undertaken by a Replacement Supplier and/or a Replacement Sub-Contractor. Such change in the identity of the Supplier of such Ordered Panel Services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-Contractor.
- 2.3 Subject to paragraph 2.4, where a Relevant Transfer occurs the Supplier shall indemnify the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor against any Employee Liabilities arising from or as a result of:

- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- 2.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:
- (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Customer and/or Replacement Supplier and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Customer and/or the Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or

omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Customer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or

2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel List that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

2.5.1 the Customer shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Customer shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the fifteen (15) Working Day period specified in paragraph 2.5.2 has elapsed:

2.7.1 no such offer of employment has been made;

2.7.2 such offer has been made but not accepted; or

2.7.3 the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7 (inclusive), and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in paragraph 2.8:
- 2.9.1 shall not apply to:
- (i) any claim for:
1. discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
  2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  3. in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- 2.9.2 shall apply only where the notification referred to in paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) Months of the Service Transfer Date.
- 2.10 If any such person as is described in paragraph 2.5 is neither re-employed by the Supplier or any Sub-Contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-Contractor within the time scales set out in paragraphs 2.5 to 2.7 (inclusive), such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- 2.11.1 the Supplier and/or any Sub-Contractor; and
- 2.11.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

- 2.12 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Customer and any Replacement Supplier and/or Replacement Sub-Contractor, in writing such information as is necessary to enable the Customer, the Replacement Supplier and/or Replacement Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Customer shall procure that the Replacement Supplier and/or Replacement Sub-Contractor, shall promptly provide to the Supplier and each Sub-Contractor in writing such information as is necessary to enable the Supplier and each Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to paragraph 2.14, where a Relevant Transfer occurs the Customer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.13.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - 2.13.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
  - 2.13.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
  - 2.13.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-Contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
  - 2.13.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the

Relevant Transfer which has not been agreed in advance with the Supplier in writing;

2.13.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-Contractor, to the Replacement Supplier or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

2.13.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

2.13.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-Contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

**ANNEX A TO SCHEDULE 3: LIST OF NOTIFIED SUB-CONTRACTORS**

