

Schedule 5 – Call-off Terms and Conditions**Contents**

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Introduction

- A The Authority placed a contract notice [REFERENCE] on [DATE] on the UK e-notification service under the open procedure inviting providers (including the Provider) to submit tenders for the provision of Services to itself and Contracting Bodies identified in the contract notice under a framework agreement for the Appointment of Office Holders in Criminal Confiscation and Civil Recovery Cases.
- B The Provider submitted a tender.
- C On the basis of the Provider's tender, the Authority selected the Provider to enter a framework agreement to provide services to those Customers who issue Contracts in accordance with the Framework Agreement.
- D The Framework Agreement sets out the procedure for ordering Services, the main terms and conditions for the provision of Services and the obligations of the Provider under the Framework Agreement.
- E The Customer is a Contracting Body, as specified in the contract notice. It has selected the Provider to provide the Services and the Provider is willing and able to provide the Services in accordance with the terms and conditions of the Contract.

1 Definitions

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

Appointment	the appointment of an Office Holder in accordance with the Court Order incorporating the terms set out in the Contract (and Appointed shall be construed accordingly).
Appointment Commencement Date	the date on which the Office Holder takes office as specified by and in accordance with the Court Order.
Approval	the prior written approval of the Customer.
Assumptions	the assumptions specified by the Customer in Part 1 of the Order Form which the Provider shall take into account when proposing the Contract Price.
Audit	an audit carried out pursuant to clause 32.
Auditor	the Customer's internal and external auditors, including statutory or regulatory auditors and Cost Draftsman, the Comptroller and Auditor General, their staff or any appointed representatives of the National Audit Office, HM Treasury or the Cabinet Office, the Northern Ireland Audit Office, or any party formally appointed by the Customer to carry out audit or similar review functions and the successors or assigns of any Auditor.
Authorised Costs	has the meaning given in clause 16.4.

Authorised Representative		the persons respectively designated as such by the Customer and the Provider in the Order Form.
Authority		The Crown Prosecution Service, being the Contracting Authority that established the Framework Agreement.
Business Continuity Plan		the business continuity and disaster recovery plan for the supply of Services to minimise the effect of any unplanned interruption or event that would significantly impact on the ability of the Provider to supply the Services, in whole or in part, in accordance with the Framework Agreement or the Contract, as such plan is prepared by the Provider and agreed with the Authority pursuant to the requirements of the Framework Agreement.
Capewell Guidelines		the guidelines from <i>Robert Capewell v (1) Customs & Excise Commissioners and (2) Nigel Heath Sinclair, Court Appointed Receiver</i> [2004] EWCA Civ 1628 which are set out in Schedule 10 <u>9</u> of the Framework Agreement.
Capped Price		a price which shall apply to the Contract, or part of the Contract, as specified by the Provider in Part 2 of the Order Form, where the Provider shall (subject to clause 17.11) only be able to recover their reasonable actual costs (including but not limited to, direct costs, sub-contractor costs, overheads and profit) up to the maximum sum which shall, unless a Price Variation Clause applies, never be exceeded.
Change Control	of	a change of control within the meaning of section 1124 of the Corporation Tax Act 2010.
Civil Order	Recovery	a recovery order made pursuant to section 266 of POCA and Article 177 POCA ERO.
CJA		the Criminal Justice Act 1988 and any amendment thereof and any subordinate legislation made under such Act from time to time.
CJCNIO		the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (<i>SI 1990/2588</i>) and any amendment or re-enactment thereof.
Confidential Information		means any information of either Party, however it is conveyed, that relates to the business, assets, affairs, developments, trade secrets, operations, processes, product information, know-how, designs or software, personnel and customers, clients, suppliers of the Parties, including Personal Data, Intellectual Property Rights, together with all information derived from the above, any information developed by the Parties in the course of carrying out the Contract, the terms of the Contract and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.

Confiscation Order	a confiscation order made pursuant to s 71(9) CJA , Articles 4 or 5 CJCNIIO, section 2(9) DTA, Articles 17,18 or 24 POCNIO, sections 6 and 156 POCA.
Contingency Fee Pricing	a price which shall apply to the Contract, or part of the Contract, based on a percentage (%), as specified by the Provider in Part 2 of the Order Form, of the value of each asset forming a part or the whole of the Receivership Estate realised by the Provider under the Contract and such percentage (%) shall, unless a Price Variation Clause applies, never be increased.
Contract	this legally binding agreement (made pursuant to the provisions of the Framework Agreement) for the provision of Services made between the Customer and the Provider comprising the Order Form, its appendices, the Court Order, the Letter of Nomination, the Letter of Acceptance of Appointment and these terms and conditions (except that, for the purposes of clause 53.5 <u>54.5</u> (Order of Precedence) only, reference to "Contract" shall not include the Order Form) as may be varied from time to time.
Contract Period	the period from the Appointment Commencement Date to: <ul style="list-style-type: none"> (a) the date of expiry set out in clause 3 (Contract Period); or (b) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract.
Contract Price	the total price for the Contract (exclusive of any applicable VAT but inclusive of disbursements (including Subcontractors' fees)), payable to the Provider under the Contract, as set by the Provider in Part 2 of the Order Form, for the full and proper performance by the Provider of its obligations under the Contract.
Contracting Authority	any contracting authority as defined in regulation 2 of the Public Contracts Regulations 2015 (<i>SI 2015/102</i>).
Contracting Body	a Contracting Authority identified in the contract notice as a potential purchaser of Services under the Framework Agreement.
Controller	as defined in the Data Protection Legislation.
Costs Template	the costs template set out at Appendix 1 to Annex DC .
Court	means whatever court is exercising the power to appoint a Management Receiver, an Enforcement Receiver, an NCA Receiver, an Interim Receiver, a RICIFO, a RICPFO, a RICPO or a Trustee for Civil Recovery.

Court Order	means an order made by a court of competent jurisdiction appointing the Office Holder as a Receiver or Trustee for Civil Recovery.
CPS Security Management Policy	the Authority's security management policy as notified to the Provider and may be amended by the Authority from time to time.
Data Protection Legislation	means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.
Data Subject	shall have the same meaning as set out in the Data Protection Legislation.
Default	any breach of the obligations of the relevant Party under the Contract (including fundamental breach or breach of a fundamental term) or Material Breach or any other default, act, omission, negligence or negligent statement of the relevant Party or the Provider Personnel in connection with or in relation to the subject matter of the Contract and in respect of which such Party is liable to the other.
Dispute Resolution Procedure	the dispute resolution procedure <u>has the meaning given in clause 52.9.</u>
Developed Vetting	<u>Developed Vetting clearance in accordance with the UK National Security Vetting requirements, which may be updated from time to time. Further information can be obtained at the following link: National security vetting: clearance levels - GOV.UK (www.gov.uk).</u>
Dispute Resolution Procedure	<u>the dispute resolution procedure in clause 53.</u>
Domestic Law	the law of the United Kingdom or a part of the United Kingdom.
DTA	Drug Trafficking Act 1994 and any amendment thereof and any subordinate legislation made under such Act from time to time.
EIRs	the Environmental Information Regulations 2004 (SI 2004/3391), together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Enforcement Receiver	an enforcement receiver appointed pursuant to section 80 CJA, Article 16 CJCNI, section 29 DTA, Article 34 POCNI, sections 50 and 198 POCA and Articles 27 and 113 POCA ERO.
Enforcement Receivership Order	an enforcement receivership order made pursuant to section 80 CJA, Article 16 CJCNI, section 29 DTA, Article 34 POCNI, sections 50 and 198 POCA and Articles 27 and 113 POCA ERO.
Estimated Price	a price for the Contract, or part of the Contract, proposed by the Provider which is based on the Provider's estimated costs for delivering the Services being requested by the Customer in Part 1 of the Order Form as such price shall be specified by the Provider in Part 2 of the Order Form and calculated on the basis of the prices set out in the Pricing Matrices (provided such prices may be lowered by the Provider for this specific Contract) and governed throughout the Contract Period in accordance with clause 14 (Estimated Price) and shall only be subject to change in accordance with that clause or where a Price Variation Clause applies.
FOIA	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
Framework Agreement	the framework agreement for the Appointment of Office Holders in Criminal Confiscation and Civil Recovery Cases between the Authority and the Provider (Reference PR 2022 112).
Framework Specification	the description of the Services to be delivered by the Provider under the Contract as set out in Schedule 1 to the Framework Agreement (as may be supplemented by the Order Form).
Good Industry Practice	using the standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
IA 1986	the Insolvency Act 1986.
Information	has the meaning given under section 84 of the FOIA.
Intellectual Property Rights	patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade

secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Interim Freezing Order	an interim freezing order made pursuant to section 362N POCA and Article 21L POCA EIO 2013 and Article 34L POCA EIO 2014.
Interim Receiver	an interim receiver appointed pursuant to section 246 POCA and Article 151 POCA ERO.
Interim Receiving Order	an interim receiving order made pursuant to section 246 POCA and Article 151 POCA ERO.
Invitation	the invitation to the Provider to submit its Supplemental Tender made by the Customer completing Part 1 of the Order Form which sets out the Customer's requirements for Services.
Invoice Submission Default	has the meaning given in clause 17.9.
Invoice Submission Default Rate	the amount specified in the Order Form that the Customer may deduct from the Provider's relevant invoice amount which shall be applied on a daily basis for each day an Invoice Submission Default subsists.
Law	the laws of England and Wales and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Provider is bound to comply.
Letter of Acceptance Appointment	of the letter of acceptance of appointment substantially in the form set out at Part 2 of Schedule 13 <u>12</u> of the Framework Agreement sent by the Provider to the Customer confirming their acceptance of the Letter of Nomination and accompanying the completed Order Form with Part 3 signed by both the Customer and the Provider.
Letter Nomination	of the letter of nomination seeking the Appointment of an Office Holder substantially in the form set out at Part 1 of Schedule 13 <u>12</u> of the Framework Agreement sent by the Customer to the Provider and accompanying the completed Order Form with Part 3 signed by the Customer.
Management Receiver	a management receiver appointed pursuant to section 77 CJA, Article 13(8) CJCNI, section 26 DTA, Article 31(8) POCNIO, sections 48 and 196 POCA and Articles 15 and 101 POCA ERO.

Management Receivership Order	a management receivership order made pursuant to section 77 CJA, Article 13(8) CJCNI, section 26 DTA, Article 31(8) POCNI, sections 48 and 196 POCA and Articles 15 and 101 POCA ERO.
Material Breach	a breach of the Contract which is material and/or persistent (provided that, in the case of a persistent breach, the breach by reason of the persistence has become material) in each case having regard to all relevant circumstances including the nature of the relationship between the Parties to the Contract and the need for each such Party to maintain the confidence of the others, the nature of the breach (and in particular whether it be intentional, negligent or otherwise), the regularity with which the obligation which has been breached fails to be performed under the Contract and the consequences of the breach.
Month	a calendar month.
NCA	the National Crime Agency.
NCA Receiver	an NCA receiver appointed pursuant to sections 52 and 200 POCA (as saved) and Articles 30 and 116 of POCA ERO (as saved). NCA Receivers (formerly Director of the Assets Recovery Agency's Receivers) – these were saved as follows: (a) Domestic Confiscation Orders - by the Serious Crime Act 2007 (Commencement No. 2 and Transitional and Transitory Provisions and Savings) Order 2008 (SI 2008/755) for actions done prior to 1 April 2008; and (b) External Orders – by Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 (SI 2008/302) for actions done prior to 6 April 2008.
NCA Receivership Order	an NCA receivership order made pursuant to sections 52 and 200 POCA (as saved) and Articles 30 and 116 of POCA ERO (as saved).
Office Holder	a person (or persons where joint Office Holders are Appointed as may be specified in the Order Form) named in Schedule 7 of the Framework Agreement who is a partner, member, trustee, employee or Subcontractor of the Provider and is qualified to act as a Management Receiver, Enforcement Receiver, NCA Receiver, Interim Receiver, Receiver in Connection with a Property Freezing Order, Receiver in Connection with a Prohibition Order, Receiver in Connection with an Interim Freezing Order or Trustee for Civil Recovery as specified in the Contract.
Order Form	means the document exchanged between and completed by the Customer and the Provider in accordance with the Framework Agreement (and based on Schedule 4 of the Framework Agreement (Order Form)) seeking the Appointment of a person named in Schedule 7 of the Framework Agreement which sets out a description of the

Services to be supplied as an Office Holder including, where appropriate, the Provider's Supplemental Tender and Quality Standards.

Parent Company	any company which is the ultimate Holding Company of the Provider and which is either responsible directly or indirectly for the business activities of the Provider or which is engaged in the same or similar business to the Provider and Holding Company shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto.
Party	the Provider or the Customer and Parties shall mean both the Provider and the Customer.
Personal Data	shall have the same meaning as set out in the Data Protection Legislation.
Personal Data Breach	shall have the same meaning as set out in the Data Protection Legislation.
POCA	the Proceeds of Crime Act 2002 and any amendment or re-enactment thereof and any subordinate legislation made under such Act from time to time.
POCA EIO 2013	the Proceeds of Crime Act (External Investigations) Order 2013 (SI 2013/2605) and any amendment or re-enactment thereof.
POCA EIO 2014	the Proceeds of Crime Act (External Investigations) Order 2014 (SI 2014/1893) and any amendment or re-enactment thereof.
POCA ERO	Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 and any amendment or re-enactment thereof.
POCNIO	Proceeds of Crime (Northern Ireland) Order 1996 (SI 1996/1299) and any amendment or re-enactment thereof.
Price Variation Clause	<p>(a) clause 11 (Changes to the Contract Price in genuine unforeseen circumstances);</p> <p>(b) clause 12 (Changes to the Contract Price in the event that the Assumptions are not correct); and</p> <p>(c) clause 13 (Exceptional changes to the Contract Price for longer Contract Periods).</p>
Pricing Matrices	the pricing matrices set out in Schedule 3 to the Framework Agreement.
Processor	as defined in the Data Protection Legislation.
Prohibited Act	the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage as an inducement or reward for any 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 Framework Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts relating to the Contract or any other contract with the Customer;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Customer; or
 - (iv) of defrauding attempting to defraud or conspiring to defraud the Customer (including offences by the Provider under Part 3 of the Criminal Finances Act 2017).
- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) if such activity, practice or conduct had been carried out in the UK.

Prohibition Order a prohibition order made pursuant to Article 141D POCA ERO.

Property Freezing Order a property freezing order made pursuant to section 245A POCA and Article 147 POCA ERO.

Provider Personnel means all employees, Staff, other workers, agents and consultants of the Provider and of any Subcontractors who are engaged in the provision of the Services from time to time including Office Holders.

Quality Standards the quality standards (or equivalent) published by BSI, the British Standards Institution, ISO, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form).

Reasonably Diligent Provider	a provider with the knowledge, skill and expertise expected of a professional person in the Provider's position and acting in accordance with Good Industry Practice.
Receiver	an individual appointed by a Court for the interim protection of property (and the income of the property). The Receiver is an officer of the Court. Their duty is to act impartially, and in accordance with the directions of the Court, in administering the property to which the receivership extends.
Receivership Estate	the assets which are the subject of the relevant Court Order.
Receivers in Connection with Interim Freezing Orders	receivers in connection with Interim Freezing Orders appointed pursuant to Section 362N POCA and Article 21L POCA EIO 2013 and Article 34L POCA EIO 2014.
Receivers in Connection with Prohibition Orders	receivers in connection with Prohibition Orders appointed pursuant to Article 141I POCA ERO.
Receivers in Connection with Property Freezing Orders	receivers in connection with Property Freezing Orders appointed pursuant to ss 245E POCA and Article 150A POCA ERO.
Recovery Order	a recovery order made pursuant to s 266 POCA and Article 177 POCA ERO.
Regulatory Bodies	those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer.
Relevant Requirements	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.
Remediation Notice	a written notice given by the Customer to the Provider pursuant to clause 45 (Remediation Plan Process) to initiate the Remediation Plan Process.
Remediation Plan	the plan agreed in accordance with clause 45 (Remediation Plan Process) for the resolution of the Provider's Default.
Remediation Plan Process	the process for resolving certain of the Provider's Defaults as set out in clause 45 (Remediation Plan Process).

Replacement Office Holder	any Office Holder appointed to replace a discharged Office Holder and continue those Appointments being delivered by the discharged Office Holder immediately prior to their discharge.
Replacement Provider	any third party service provider appointed by the Customer to supply any services that are substantially the same as or similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.
Request for Information	a request for information or an apparent request under the FOIA or the EIRs.
Requesting Party	shall have the meaning given in paragraph 4 of Part 3 of Annex D <u>C</u> (Contract Management, Reporting and Accounts).
Retention Period	<p>(a) for any Court Order which is the sum of £1 million or less either: i) seven years following the date of the Order; or ii) where the Order is longer than seven years, the length of the Order;</p> <p>(b) for any Court Order over the sum of £1 million either: i) ten years following the date of the Court Order; or ii) where the Court Order is longer than ten years, the length of the Court Order.</p>
Review Date	shall have the meaning given in clause 13.1.
SC Clearance	Security Check clearance in accordance with the UK National Security Vetting requirements, which may be updated from time to time. Further information can be obtained at the following link: National security vetting: clearance levels - GOV.UK (www.gov.uk) .
Security Guidance	the Data Protection and Security Requirements set out at Schedule 11 <u>10</u> of the Framework Agreement.
Service Levels	the service levels for all and each part of the Services which shall apply to the Contract as specified in the Order Form.
Services	the services to be supplied as specified in the Contract.
Specified Court	the Court that issues the relevant Court Order in respect of the Appointment as specified in the Order Form.
SQ Response	the response to the selection questionnaire issued by the Authority and submitted by the Provider on [DATE].
Staff	all persons employed by the Provider together with the Provider's servants, agents and suppliers used in the performance of its obligations under the Contract.
Status Report	the report to be produced by the Provider and provided to the Customer in accordance with clause 50 (Exit Plan) which shall

	include the provision of a final report and, if appropriate, any and all information that a Replacement Office Holder would need to conduct the receivership or trusteeship.
Subcontract	any contract between the Provider and a third party under which the Provider agrees to source the provision of any of the Services from that third party.
Subcontractor	the contractors or service providers that enter into a Subcontract with the Provider.
Supplemental Tender	the information submitted by the Provider to the Customer set out in Part 2 of the Order Form (including any response by the Provider in respect of weighted evaluation which may be included as an appendix to the Order Form) in response to the Invitation.
Tender	the document(s) submitted by the Provider to the Authority for admission onto the Framework Agreement.
Termination Notice	any notice to terminate the Contract which is given by the Customer to the Provider in accordance with clause 45 (Remediation Plan Process).
Third Party Processors	shall have the meaning give in clause 28.7 28.5 .
Trustee for Civil Recovery	a trustee for civil recovery appointed pursuant to section 266 POCA or Article 177 POCA ERO.
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.
Uninsurable Assets	assets the risk of losing which would either be uninsurable or insurance would be unobtainable in accordance with Good Industry Practice.
Variation	has the meaning given to it in clause 37.
Variation Form	the variation form attached at Annex A (Variation Form) to be completed by the Parties pursuant to clause 37 (Variation).
VAT	value added tax chargeable in the UK.
Working Day	any day other than a Saturday or Sunday or public holiday in England and Wales.

2 Interpretation

- 2.1 The interpretation and construction of the Contract shall be subject to the following provisions:
- 2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;

- 2.1.2 words importing the masculine include the feminine and the neuter;
- 2.1.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 2.1.4 unless expressly provided otherwise in the Contract, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted and includes any subordinate legislation made under it, in each case from time to time;
- 2.1.5 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 2.1.6 reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 2.1.7 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 2.1.8 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 2.1.9 the ~~Schedules~~ Annexes form part of the Contract and shall have effect as if set out in full in the body of the Contract and any reference to the Contract shall include the ~~Schedules~~ Annexes;
- 2.1.10 references in the Contract to any clause or sub-clause ~~or Schedule~~ Annex without further designation shall be construed as a reference to the clause or sub-clause or ~~Schedule~~ Annex to the Contract so numbered; and
- 2.1.11 references in the Contract to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant ~~Schedule~~ Annex to the Contract so numbered;
- 2.1.12 reference to writing or written excludes fax but includes email;
- 2.1.13 any obligation on a party not to do something includes an obligation not to allow that thing to be done.

3 **Contract Period**

- 3.1 The Contract shall take effect on the Appointment Commencement Date and, unless it is otherwise terminated in accordance with the provisions of the Contract, shall expire:
 - 3.1.1 in the case of an Appointment of a Management Receiver, Enforcement Receiver, or NCA Receiver, on the date when the Office Holder is discharged by the Court; or

- 3.1.2 in the case of an Appointment of an Interim Receiver, Trustee for Civil Recovery, Receiver in Connection with a Prohibition Order, Receiver in Connection with a Property Freezing Order or Receiver in Connection with an Interim Freezing Order, on the date when the Customer notifies the Provider in writing that no further Services are required.

4 Provider's status

At all times during the Contract Period the Provider shall be an independent service provider and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party except as expressly permitted by the terms of the Contract.

5 Customer's obligations

Except as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation on, or in any other way fetter or constrain, the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Customer to the Provider.

Supply of services

6 Services

- 6.1 The Provider shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Provider acknowledges that Payment of the Contract Price is subject to clause 17.11 (Customer not liable to the Provider for payment of the Contract Price).
- 6.2 The Provider shall:
- 6.2.1 at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body; and
 - 6.2.2 at all times perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 6.3 The Provider shall ensure that all Provider Personnel supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 6.4 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

7 Service Levels

7.1 This clause 7 shall only apply to the Contract when specified by the Customer as applying in the Order Form. Where this clause 7 is specified in the Order Form as applying to the Contract:

7.1.1 the Customer shall provide details of the Service Levels (and associated requirements) which shall apply to the Contract by appending such details to the Order Form, substantially in the form of the template set out at Annex ~~C~~B (Service Levels);

7.1.2 the Provider shall provide the Services in accordance with the Service Levels and associated requirements as detailed in the Order Form.

8 **Provider Personnel**

The Provider warrants that it has complied with the requirements of the Framework Agreement in respect of all Provider Personnel employed or engaged by the Provider at the Appointment Commencement Date and that it shall not employ or engage any person in the provision of the Services who is barred from, or whose previous conduct or records indicate that they would not be suitable to carry out the Services.

9 **Appointment of Subcontractors**

9.1 The Provider shall ensure that all Subcontractors appointed by them or Office Holders in provision of the Services shall be:

9.1.1 suitably experienced and professionally qualified;

9.1.2 hold all necessary professional accreditations and authorisations; and

9.1.3 meet all relevant regulatory requirements and requirements of the Contract,

commensurate to the role for which they are engaged to ensure they can properly undertake any and all activities which may be Subcontracted to them in accordance with the Contract and all applicable Law.

9.2 The Provider shall ensure that the Customer is informed where a Subcontractor is instructed unless it is not practicable or not in the interests of justice to do so.

9.3 The Provider shall (and procure that the Office Holder shall) keep close control on all Subcontractors' fees to ensure that all costs are reasonable and proportionate in the circumstances.

9.4 The Provider shall be responsible for the performance of their Subcontractors.

Payment and Contract Price

10 **Contract Price**

10.1 In consideration of the Provider's performance of its obligations under the Contract, and subject to clause 17.11 (Customer not liable to the Provider for payment of the Contract Price), the Provider shall be paid the Contract Price out of the value which may be realised from the Receivership Estate.

10.2 The Contract Price shall be either:

- 10.2.1 a Capped Price;
- 10.2.2 an Estimated Price; or
- 10.2.3 Contingency Fee Pricing,

as such pricing type is specified in the Order Form as applying to the whole Contract or part of the Contract and may be a combination of the above with different pricing types applying to different assets and/or aspects of the Services to be delivered under the Contract.

- 10.3 The Contract Price shall be based on the Assumptions. With the exception of an Estimated Price (which shall be governed by clause 14 (Estimated Price)), the Provider agrees that the Contract Price shall not be increased save for where changes may be permitted by the Customer under a Price Variation Clause. The Provider acknowledges that the circumstances in which the Contract Price may be changed are limited in nature and any increase to the Contract Price shall be at the Customer's sole discretion.
- 10.4 In addition to the Contract Price and following evidence of a valid VAT invoice, the Provider shall be paid (out of the value which may be realised from the Receivership Estate) a sum equal to the VAT chargeable on the value of the Authorised Costs in accordance with clause 16 (Authorisation of Provider's Costs) and 17 (Payment and Invoicing).

11 Changes to the Contract Price as a result of genuine unforeseen circumstances

- 11.1 This clause 11 shall only apply to the whole or part of the Contract to the extent that the Contract Price for that whole or part is:

- 11.1.1 a Capped Price; or
- 11.1.2 Contingency Fee Pricing.

- 11.2 Subject to clause 11.3, if in the reasonable opinion of the Provider the Provider considers that there are genuine unforeseen circumstances which necessitate an increase to the Contract Price, and provided that such circumstances could not have been foreseen by a Reasonably Diligent Provider at the time the Provider submitted the Contract Price to the Customer, the Provider shall:

- 11.2.1 notify the Customer in writing as soon as reasonably practicable but in any event within 5 Working Days of the Provider becoming aware of the circumstances which they reasonably consider necessitate the increase in the Contract Price; and
- 11.2.2 ensure that Approval is secured before incurring any additional costs.

Any increase in the Contract Price which may be agreed between the Parties pursuant to this clause 11.2 shall be at the discretion of the Customer and shall be considered a Variation which shall be effected in accordance with clause 37 (Variation).

- 11.3 Where there are:

11.3.1 genuinely unforeseen circumstances which a Reasonably Diligent Provider could not have foreseen at the time the Provider submitted the Contract Price to the Customer; and

11.3.2 the urgency of a situation is such that it does not permit the Provider to seek Approval pursuant to clause 11.2,

provided the Provider notifies the Customer immediately in writing setting out in sufficient detail (as shall be determined by the Customer acting reasonably) the reasons why an increase to Contract Price is necessary, the Provider may incur additional costs without first seeking Approval. This clause 11.3 shall only apply to those costs which must be incurred urgently by the Provider and the Provider shall keep such costs to a minimum, any related additional costs shall be dealt with in accordance with clause 11.2.

12 Changes to the Contract Price in the event that the Assumptions are not correct

12.1 Subject to clause 12.2, where the Provider reasonably believes that one or more of the Assumptions are not correct the Provider shall, as soon as reasonably practicable but in any event within 5 Working Days of the Provider becoming aware of the circumstances, notify the Customer in writing setting out:

12.1.1 which Assumption or Assumptions are not correct;

12.1.2 any information which evidences that the Assumption or Assumptions are not correct;

12.1.3 proposed alternative Assumptions; and

12.1.4 any changes to the Contract Price they reasonably believe may be necessary if the proposed alternative Assumptions are taken into account instead of those the Provider reasonably believes are not correct.

12.2 The Provider shall not be able to rely on this clause 12 where they were aware, or should have been aware, that the Assumption (or Assumptions) was (or were) not correct at the time of submitting their Supplemental Tender.

12.3 Within 20 Working Days of the Customer's receipt of a notification pursuant to clause 12.1, the Customer shall notify the Provider in writing that either:

12.3.1 it accepts the alternative Assumptions and any changes to the Contract price being proposed by the Provider (and such changes shall be considered a Variation and shall be effected in accordance clause 37 (Variation); or

12.3.2 it wishes to meet with the Provider to discuss the matter further (in which case clause 12.4 shall apply);

12.3.3 it wishes to terminate the Contract pursuant to clause 47 (Termination for convenience); or

12.3.4 it requires further information from the Provider to make a decision, in which case the Provider shall provide such further information within

5 Working Days and the process under this clause 12.3 shall recommence.

- 12.4 No later than 10 Working Days (or an alternative timescale that may be mutually agreed by the Parties) following the Provider's receipt of the Customer's notification pursuant to clause 12.3.2 the Parties' Authorised Representatives shall meet and negotiate in good faith to agree the Assumptions and, if applicable, any changes to the Contract Price which may be required. Any changes agreed between the Parties shall be effected in accordance with clause 37 (Variation). Should the Parties fail to reach agreement the matter shall be resolved in accordance with the Dispute Resolution Procedure.

13 **Exceptional changes to the Contract Price for longer Contract Periods**

- 13.1 On or after the fourth anniversary of the Appointment Commencement Date and each four year anniversary thereafter (each being a "**Review Date**") the Provider may seek to agree an adjustment to the Contract Price with the Customer in accordance with this clause 13.1. Following a Review Date, where the Provider is seeking to adjust the Contract Price, the Provider shall give the Customer written notice which shall include:

13.1.1 details of the part or parts of the Contract Price they are seeking to adjust; and

13.1.2 written evidence of the justification for the requested adjustment including:

- (a) a breakdown of the profit and cost components (including current and proposed future costs) that comprise the relevant price;
- (b) details of the movement in the different identified cost components of the relevant price;
- (c) reasons for the movement in the different identified cost components of the relevant price;
- (d) evidence that the Provider has attempted to mitigate against the increase in the relevant cost components;
- (e) details of the Provider's profit component of the relevant price and evidence that the proposed price adjustment does not result in a greater profit; and
- (f) a signed statement from the Provider's Finance Director (or equivalent role within the Provider's organisation) confirming that all the information provided under this clause 13.1 is accurate.

- 13.2 Any notice sent by the Provider to the Customer pursuant to clause 13.1 must be received by the Customer within 3 Months of a Review Date to be effective. Any notices received after this time shall only be considered by the Customer at their sole discretion and if the Customer does not consider the notice then the Provider shall only be able to request an adjustment to the Contract Price at the next Review Date.

- 13.3 The Customer shall consider the Provider's request set out in the relevant notice and shall take into account such factors as the Customer considers necessary in the circumstances (which may include but not be limited to the effects of inflation and any changes to the National Living Wage). Acceptance of any adjustments being proposed by the Provider in the relevant notice shall be at the sole discretion of the Customer. Where such changes are accepted by the Customer, these shall be implemented on a date to be determined by the Customer and effected in accordance with clause 37 (Variation). If the Customer declines the Provider's request for a price adjustment, the Provider shall perform the Contract obligations with no increase to the Contract Price.
- 13.4 Any adjustment to the Contract Price made pursuant to this clause 13 shall be limited to a maximum of an amount equal to the % change in SPPI (HQTl) index calculated from the Appointment Commencement Date (or previous Review Date, as applicable) to the relevant Review Date.

14 **Estimated Price**

- 14.1 This clause 14 shall only apply to the whole or part of the Contract to the extent that the Contract Price for that whole or part is an Estimated Price.
- 14.2 The Provider shall report (to the Customer, the Specified Court and the defendant/respondent) regularly (which shall at a minimum be on a Monthly basis) in respect of an Estimated Price and shall provide details of:
- 14.2.1 any and all fees incurred up to the date of the report;
 - 14.2.2 an indication of fees they expect to incur within the forthcoming Month; and
 - 14.2.3 an indication of fees they expect to incur to the end of the receivership/trusteeship (if known).
- 14.3 The Provider shall not exceed the Estimated Price without Approval. The Provider shall notify the Customer as soon as reasonably practicable (and in any event within 5 Working Days) of becoming aware that they are not going to be able to complete the receivership/trusteeship for the agreed Estimated Price. At the time of such notification the Provider shall submit the following to the Customer:
- 14.3.1 a proposed a new Estimated Price;
 - 14.3.2 a written explanation as to why they cannot complete the receivership/trusteeship for the agreed Estimated Price; and
 - 14.3.3 such supporting information as the Customer may reasonably require and considers necessary to sufficiently justify the price increase.
- 14.4 Any increase to an Estimated Price shall be at the sole discretion of the Customer and shall not act as a change or variation to the underlying hourly rates upon which the initial Estimated Price was based as stated in the Order Form. Any change agreed by the Customer pursuant to this clause 14 shall be considered a Variation which shall be effected in accordance with clause 37 (Variation). Where the Customer does not agree to the new Estimated Price

being proposed by the Provider, the Customer may terminate the Contract in accordance with clause 47 (Termination for convenience).

15 Office Holder accounting

15.1 The Office Holder shall account for:

15.1.1 in the case of an Interim Receiver, any Property which is subject to the Interim Receiving Order as required by section 255(1) of POCA;

15.1.2 in the case of a Receivers in Connection with Property Freezing Orders, Receivers in Connection with Prohibition Orders and Receivers in Connection with Interim Freezing Orders, any property to which the Receivership applies;

15.1.3 in the case of a Management Receiver, any realisable property to which the Management Receivership Order applies save for any property necessary to meet the Office Holder's remuneration and expenses to the Court and pay as directed by the Court;

15.1.4 in the case of an Enforcement Receiver, the full amount realised from the property subject to the Enforcement Receivership Order which shall be paid to the justices' clerk or proper officer, chief clerk or designated officer, or the Customer, as required by section 81 CJA, Article 18 CJNIO, section 30 DTA 1994, Article 35 POCNIO, section 54 and 202 POCA or Articles 33 and 119 POCA ERO, as appropriate;

15.1.5 in the case of a NCA Receiver:

(a) exercising the functions of a Management Receiver, any realisable property to which the NCA Receivership Order applies save for any property necessary to meet the Office Holder's remuneration and expenses;

(b) exercising the functions of an Enforcement Receiver, the full amount realised from the property subject to the NCA Receivership Order which shall be paid to the NCA,

as required by section 56 and 204 POCA (as saved) and Articles 35 and 121 POCA ERO (as saved); and

15.1.6 in the case of a Trustee for Civil Recovery, the full amount realised from the property vested by the Recovery Order which shall be paid to the Customer as required by section 280 POCA and Article 191 POCA ERO.

15.2 The Provider shall pay all funds recovered from the Receivership Estate to the Customer or HM Courts and Tribunals Service (as appropriate) within 30 days (or other period as may be agreed in writing between the Parties) of the Provider receiving such funds. Where the Provider fails to meet this obligation, they shall promptly (and in any event within 14 days of such failure) provide a written explanation signed by their finance director (or equivalent) stating:

15.2.1 the reasons for such failure; and

15.2.2 a date by which the recovered funds will be paid,

which shall be served by the Office Holder upon the Court, the Customer and the parties to the relevant Court Order under which the Office Holder is Appointed.

16 Authorisation of Provider's costs

16.1 All requests for authorisation of the Provider's costs submitted by the Provider to the Customer shall be in accordance with this clause 16.

16.2 The Provider shall only be entitled to request authorisation of costs from the Customer:

16.2.1 if they are managing an asset, when they report on their progress; or

16.2.2 when enforcing a Confiscation Order or a Civil Recovery Order, only once the asset to which those costs relate has been recovered.

16.3 Where the Provider is requesting authorisation of costs from the Customer they shall:

16.3.1 clearly specify the costs requiring authorisation;

16.3.2 provide a full breakdown how such costs were incurred. Such breakdown shall be as agreed with the Customer and be in sufficient detail to enable the Customer to determine whether to authorise pursuant to clause 16.4 and also comply with:

(a) Civil Procedure Rules Part 69 and the Practice Direction 69, in the case of:

(i) Interim Receivers;

(ii) Receivers in Connection with Interim Freezing Orders;

(iii) Receivers in Connection with Property Freezing Orders;

(iv) Receivers in Connection with Prohibition Orders; and

(v) Trustees for Civil Recovery; or

(b) Rule 33.2 of the Criminal Procedure Rules, in the case of:

(i) Management Receivers;

(ii) Enforcement Receivers; and

(iii) NCA Receivers,

together with details of any previously Authorised Costs and evidence that this request for authorisation of costs will not exceed the Contract Price;

- 16.3.3 account for the Receivership Estate in accordance with clause 15 (Office Holder accounting);
 - 16.3.4 include an amount for VAT at the prevailing rate, as may be applicable; and
 - 16.3.5 provide to the Customer any other documents and information the Customer may reasonably require and request from the Provider to enable the Customer to substantiate the request for authorisation of costs.
- 16.4 The Customer shall have due regard to all relevant legislation and case law when determining whether to authorise any costs pursuant to this clause 16. The Customer shall notify the Provider in writing as soon as reasonably practicable once such costs are authorised and any such costs shall be deemed **Authorised Costs**. Where the Customer considers it reasonably necessary, the Customer may seek an assessment of the costs the Provider is requesting to be authorised pursuant to this clause 16.

17 **Payment and Invoicing**

- 17.1 The Provider may recover Authorised Costs as follows:
- 17.1.1 in the case of a Management Receiver, NCA Receiver (exercising the powers of a Management Receiver), Interim Receiver, a Receiver in Connection with a Prohibition Order, a Receiver in Connection with a Property Freezing Order and a Receiver in Connection with an Interim Freezing Order: from the Receivership Estate, in accordance with the relevant legislation and case law.
 - 17.1.2 in the case of an Enforcement Receiver, NCA Receiver (exercising the powers of an Enforcement Receiver) and a Trustee for Civil Recovery: from the Receivership Estate as realised, in accordance with the process at clause 17.2 below.
- 17.2 Subject to clause 17.3, in the case of 17.1.2, the Provider shall invoice as follows:
- 17.2.1 where the Provider will be paying the proceeds of realisation of the Receivership Estate to the Customer, the Provider shall invoice the Customer for the Authorised Costs within 30 days of receiving such authorisation;
 - 17.2.2 where the Provider will be paying the proceeds of realisation of the Receivership Estate to HM Courts and Tribunals Service, the Provider shall invoice HM Courts and Tribunals Service in accordance with the relevant legislation and case law;
 - 17.2.3 where the Provider will be paying the proceeds of realisation of the Receivership Estate to the NCA, the Provider shall invoice the NCA in accordance with the relevant legislation and case law;
- 17.3 Clause 17.2 shall not apply where the Provider has realised more than is needed to pay the Confiscation Order. In such an event, the Provider may deduct the Authorised Costs from the surplus funds that they hold. If the surplus

funds are insufficient to cover the Authorised Costs, the Provider will invoice for the remaining amount in accordance with clause 17.2.

- 17.4 Where the Provider submits an electronic invoice pursuant to clause 17.2 it must comply with the standard on electronic invoicing. For these purposes “electronic invoice” means an invoice which has been issued transmitted and received in a structured electronic format which allows for its automatic and electronic processing. An electronic invoice complies with the standard on electronic invoicing where it complies with the standard and any of the syntaxes published in the UK version of Commission Implementing Decision (EU) 2017/1870 as it forms part of English law under the European Union (Withdrawal) Act 2018.
- 17.5 Where the Provider submits an invoice (including an electronic invoice) pursuant to clause 17.2, subject to relevant provisions of the Contract, the Customer shall make payment to the Provider within 30 days of verifying that the invoice is valid and undisputed.
- 17.6 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
- 17.7 If the Customer fails to pay any undisputed charges properly invoiced under the Contract in accordance with clause 17.5, the Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 17.8 Unless agreed otherwise by the Parties in writing, all Provider invoices shall be paid in sterling by electronic transfer of funds to the bank account specified by the Provider on their invoice.
- 17.9 Any failure by the Provider to submit its invoice to the Customer pursuant to clause 17.2.1 within the 30 day period required by that clause shall be an **Invoice Submission Default**.
- 17.10 If the Provider commits an Invoice Submission Default the Customer shall be entitled to make deductions from the amount of the relevant invoice (net of VAT) at the Invoice Submission Default Rate which shall be applied on a daily basis for each day that an Invoice Submission Default subsists.
- 17.11 The Customer shall not be liable to the Provider or the Office Holder (nor shall it indemnify the Provider or the Office Holder) for payment of the Contract Price nor any fees, expenses, disbursements or other costs incurred by the Provider or Office Holder. Where the Provider realises insufficient value from the Receivership Estate to cover the Contract Price and any fees, expenses, disbursements or other costs incurred by the Provider, the Customer shall not be liable to the Provider or the Office Holder (nor shall it indemnify the Provider or the Office Holder) for any such shortfall. Should the Provider become aware at any time that there is insufficient value within the Receivership Estate to cover the Contract Price including any fees, expenses, disbursements or other costs, the Provider must immediately notify the Customer in writing.
- 17.12 The Provider shall have in place and maintain such systems to ensure accurate invoicing and to enable them to fully comply with the requirements of this clause 17.

17.13 The Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause 17.13 shall be paid by the Provider to the Customer not less than 5 Working Days before the date on which the tax or other liability is payable by the Customer.

17.14 Where:

17.14.1 the Contract is terminated; and

17.14.2 the Office Holder is discharged by the Court from their Appointment under the Contract,

then provided that there is sufficient value in the relevant Receivership Estate(s) which can be realised at the point of such termination and discharge or in the future, the Office Holder shall be remunerated in accordance with relevant legislation and case law for any Services delivered up to and including the date on which the Contract is terminated and the Office Holder discharged.

18 **Security Bond**

18.1 The Provider shall provide such security as the Court may direct in accordance with Rule 33.60 of the Criminal Procedure Rules or Rule 69.5 of the Civil Procedure Rules.

18.2 The Customer shall specify its intentions regarding the requirement of a security bond in Part 3 of the Order Form. The Customer may, at its sole discretion:

18.2.1 ask the Court to exercise its discretion under Rule 33.60 of the Criminal Procedure Rules or Rule 69.5 of the Civil Procedure Rules, not to order security; or

18.2.2 recommend to the Court that a Security Bond is required.

19 **Recovery of sums due**

19.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due from the Customer to the Provider, or which at any later time may become due to the Provider from the Customer under the Contract. For the avoidance of doubt, for the purposes of this clause 19.1, the reference to any sum of money being recoverable or payable by the Provider does not include the proceeds of realisation of the Receivership Estate that the Provider has or may recover.

19.2 Any overpayment by either Party, whether of the Contract Price 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.

19.3 The Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or

otherwise unless the Provider has a valid Court Order requiring an amount equal to such deduction to be paid by the Customer to the Provider.

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

Court Directions, Statutory obligations and regulations

20 Response Time to Court

- 20.1 The Provider shall take appropriate steps and undertake such actions to ensure that the Customer can meet all directions of the Court within the required time scales. Where the Provider reasonably considers that a direction of the Court is not achievable, it shall inform the Customer immediately and provide such support and assistance as may be reasonably required by the Customer to agree an alternative time scale with the Court.
- 20.2 Where the Provider is unable to comply with clause 20.1 they shall immediately provide the Court, the Customer and the parties to the relevant Court Order under which the Office Holder is Appointed a written explanation as to why they are unable to meet the directions of the Court.

21 Conflicts of interest

- 21.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any Provider Personnel are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider, the Provider Personnel and the duties owed to the Customer under the provisions of the Contract.
- 21.2 The Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 21.1 arises or is reasonably foreseeable.
- 21.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer under this clause 21 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

22 Prevention of bribery

- 22.1 The Provider shall (and shall procure that the Provider Personnel and Subcontractor(s) shall):
- 22.1.1 not, in connection with the Contract, commit a Prohibited Act;
- 22.1.2 not do, suffer or omit to do anything that would cause the Customer or the Provider Personnel and Subcontractor(s) to contravene any of the

Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements;

- 22.1.3 have and maintain in place its own policies and procedures to ensure compliance with the Relevant Requirements and prevent occurrence of a Prohibited Act;
- 22.1.4 notify the Customer (in writing) if it becomes aware of any breach of clause 22.1.1 or clause 22.1.2 or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage.
- 22.2 The Provider shall maintain appropriate and up to date records showing all payments made by the Provider in connection with the Contract and the steps taken to comply with its obligations under clause 22.1.
- 22.3 The Provider shall allow the Customer and its Auditor to audit any of the Provider's records and any other relevant documentation in accordance with clause 32 (Records and audit access).
- 22.4 If the Provider, Provider Personnel or Subcontractor(s) breach this clause 22, the Customer may by notice:
 - 22.4.1 require the Provider to remove from performance of the Contract any Provider Personnel or Subcontractor(s) whose acts or omissions have caused the breach; or
 - 22.4.2 immediately terminate the Contract.
- 22.5 Any notice served by the Customer under clause 22.4 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 the Contract shall terminate).
- 22.6 Despite clause ~~52~~53 (Dispute resolution), any dispute relating to:
 - 22.6.1 the interpretation of this clause 22; or
 - 22.6.2 the amount or value of any gift, consideration or commission,
 shall be determined by the Customer and its decision shall be final, binding and conclusive.
- 22.7 Any termination under this clause 22 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer.

23 **Non-discrimination**

- 23.1 The Provider shall (and shall procure that the Provider Personnel and Subcontractor(s) shall) perform its obligations under the Contract (including those in relation to the Services) in accordance with:
 - 23.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and

- 23.1.2 any 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.

24 Legal proceedings and employment of agents

The Provider shall inform the Customer in writing when instructing lawyers or other agents (including, but not limited to solicitors, counsel, estate agents, surveyors or valuers) or commencing, defending or comprising any legal proceedings in connection with the Contract.

Security and Information

25 Security

- 25.1 The Provider shall obtain and maintain for the Contract Period:

25.1.1 ISO27001 certification (or equivalent as may be agreed with the Authority at the Authority's discretion); and

25.1.2 Cyber Essentials + certification (or equivalent as may be agreed with the Authority at the Authority's discretion).

- 25.2 The Provider shall comply with (and shall procure that the Provider Personnel comply with):

25.2.1 the Security Guidance;

25.2.2 the CPS Security Management Policy;

25.2.3 all matters relating to security set out in the Framework Specification; and

25.2.4 any enhanced security requirements specified in the Order Form or other notification provided by the Authority or Customer to the Provider from time to time.

- 25.3 The Provider shall ensure that the Office Holder maintains SC Clearance for the Contract Period and that it has effective systems and processes in place so that only those Provider Personnel with SC Clearance are permitted access to casework material.

[25.4](#) ~~If requested by the Customer, the Provider shall ensure that the Office Holder has current and valid Developed Vetting which it shall maintain for the Contract Period and that it has effective systems and processes in place so that only those Provider Personnel with Developed Vetting are permitted access to casework material.~~

[25.5](#) ~~25.4~~ In addition to those rights of audit and access which may be exercised pursuant to clause 32 (Records and audit access), the Customer may conduct unannounced inspections and audits of those areas which are under the control of the Provider to ensure that any security obligations contained in the Contract are being or have been complied with.

26 Confidentiality

- 26.1 Subject to clause 26.2, the Parties shall keep confidential the Confidential Information of the Parties and the Provider shall use all reasonable endeavours to prevent Provider Personnel and Subcontractors from making any disclosure to any person of any matters relating thereto.
- 26.2 Clause 26.1 shall not apply to any disclosure of information:
- 26.2.1 required by any applicable law, a court of competent jurisdiction or regulatory authority, or to any disclosures required under the FOIA or the EIRs or which was available to the receiving party on a non-confidential basis before disclosure;
 - 26.2.2 where the need for the disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Customer arising out of or in connection with the Contract;
 - (b) the examination and certification of the Customer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer is making use of any Services provided under the Contract;
 - (c) the conduct of a central government body review in respect of the Contract;
 - (d) the Customer has reasonable grounds to believe that the Provider is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;
 - 26.2.3 that is reasonably required by persons engaged by a Party in the performance of that Party's obligations under the Contract (including to Subcontractors);
 - 26.2.4 that is reasonably required by the Authority or Other Contracting Bodies;
 - 26.2.5 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of clause 26.1;
 - 26.2.6 a disclosure by the Customer of any document to which it is a party and which the Parties to the Contract have agreed contains no Confidential Information;
 - 26.2.7 to enable a determination to be made under clause ~~52~~ 53 (Dispute resolution);
 - 26.2.8 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party, and the disclosing party is not under any obligation of confidence in respect of that information;

- 26.2.9 a disclosure by the Customer to any other department, office or agency of the government, provided that the Customer informs the recipient of any duty of confidence owed in respect of the information;
 - 26.2.10 a disclosure by the Customer to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - 26.2.11 a disclosure by the Customer to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 26.2.12 a disclosure by either Party on a confidential basis for the purpose of the exercise of their rights under the Contract;
 - 26.2.13 a disclosure by the Customer to a proposed transferee, assignee or novatee of, or successor in title to the Customer; and
 - 26.2.14 a disclosure by the Customer relating to the Contract and in respect of which the Provider has given its prior written consent to disclosure.
- 26.3 The Parties shall not use the Confidential Information of the Parties for any purpose other than to exercise their rights and perform their obligations under or in connection with the Contract.
- 26.4 Nothing in this clause 26 shall prevent a Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of another Party's Confidential Information or an infringement of Intellectual Property Rights.
- 26.5 In the event that the Provider fails to comply with this clause 26, the Customer reserves the right to terminate the Contract with immediate effect by giving notice in writing to the Provider in which case the Customer shall apply to the Court for the discharge of the Office Holder.

27 **Official Secrets Acts**

- 27.1 The Provider shall comply with, and shall ensure that the Office Holder(s), Provider Personnel and Subcontractors comply with, the provisions of:
- 27.1.1 the Official Secrets Acts 1911 to 1989; and
 - 27.1.2 section 182 of the Finance Act 1989.
- 27.2 In the event that the Provider, the Office Holder(s), the Provider Personnel or Subcontractors fail to comply with this clause 27, the Customer reserves the right to terminate the Contract with immediate effect by giving notice in writing to the Provider.

28 **Data Protection**

- 28.1 Both Parties will comply with all applicable requirements of ~~the Data Protection Legislation. The Provider shall notify the Customer immediately if it considers that any of the Customer's instructions infringe~~ the Data Protection Legislation.

This clause 28 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

- 28.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, ~~the Customer is the Controller and the Provider is the Processor. Annex B (Data Processing) sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of each~~ is acting as independent Controller when processing Personal Data ~~and categories of Data Subject.~~
- 28.3 Without prejudice to the generality of clause 28.1, ~~the Customer will ensure that it has all necessary appropriate consents and notices (or other grounds as applicable) in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of the Contract.~~ each Party shall, in relation to any Personal Data processed in connection with the performance of its obligations under the Contract:
- ~~28.4 Without prejudice to the generality of clause 28.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Contract:~~
- ~~28.4.1 process that Personal Data only on the written instructions of the Customer (as set out in Annex B (Data Processing)), unless the Provider is required by Domestic Law to otherwise process the Personal Data. Where the Provider is relying on Domestic Law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by Domestic Law unless the Domestic Law prohibits the Provider from so notifying the Customer;~~
- 28.3.1 ~~28.4.2~~ ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), ~~reviewed and approved by the Customer~~, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 28.3.2 ensure that all personnel who have access to and/or process Personal Data ~~:(a) do not process that data except on the written instructions of the Customer (such instructions to include the terms of the Contract, and in particular Annex B (Data Processing));~~ take all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that the Provider Personnel:

- (a) ~~(i)~~are aware of and comply with the ~~Provider's~~ Party's duties under this clause 28;
- (b) ~~(ii)~~are subject to appropriate confidentiality undertakings ~~with the Provider~~ which are no less onerous than those imposed by the Contract;
- (c) ~~(iii)~~are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless ~~directed in writing to do so by the Customer or as otherwise~~ permitted by the Contract; and
- (d) ~~(iv)~~have undergone adequate training in the use, care, protection and handling of Personal Data.

28.3.3 ~~28.4.4~~not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

- (a) the Customer or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or as may be required in respect of Law Enforcement Processing under Part 3 of the Data Protection Act 2018);
- (b) the Data Subject has enforceable rights and effective remedies;
- (c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (d) the Provider complies with the reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

28.3.4 ~~28.4.5~~notify the ~~Customer~~ other Party immediately if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data;
- (b) a request to rectify, block or erase any Personal Data;
- (c) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- (d) ~~receives~~ a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (e) ~~receives~~ any Regulator Correspondence or any other ~~any~~ communication from the Information Commissioner or any

other regulatory authority in connection with Personal Data processed under ~~this Framework Agreement~~ the Contract;

28.3.5 ~~28.4.6~~ assist the ~~Customer~~ other Party in responding to any request from a Data Subject and in ensuring compliance with the ~~Customer's~~ other Party's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators, in accordance with Article 28(3) (e) and (f) of the UK GDPR;

28.3.6 ~~28.4.7~~ notify (including providing full details and copies of the relevant complaint, communication or request, as applicable) the ~~Customer~~ other Party without undue delay, and in any event, within 24 hours on becoming aware of a Personal Data Breach;

28.3.7 ~~28.4.8~~ assist the ~~Customer~~ other Party in meeting its obligations under the Data Protection Legislation to notify any Data Subject of any Personal Data Breach or other breach of the Contract, where the Customer determines, at its discretion, that the event or breach is likely to result in a high risk to the rights and freedoms of the Data Subject;

28.3.8 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on ~~termination or expiry of the Contract unless required by Domestic Law~~ the earlier of:

(a) termination or expiry of the Contract; and

(b) notification of return or deletion of Personal Data being received by the Provider from the Authority in any circumstances.

~~28.4.9~~ unless required by Domestic Law or regulatory requirements to store the Personal Data. In carrying out its obligations under this clause, the Provider shall be permitted to retain copies of the Personal Data where:

(a) required by Domestic Law or regulatory requirements to store the Personal Data; or

(b) such Personal Data is maintained on tapes, discs, servers or other storage devices provided that in each case it is put beyond use;

28.3.9 ~~28.4.10~~ maintain complete and accurate records and information to demonstrate ~~its compliance with Article 28 of the UK GDPR and this clause 28 and allow for audits by the Authority or the Auditor pursuant to clause 32 (Records and audit access) and immediately inform the Customer if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation. The records kept by the Provider pursuant to this clause 28.4.10 shall contain all of the information required in Article 30(2) of the UK GDPR, namely:~~ this clause 28

~~(a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is~~

~~acting and where applicable of the controllers or the processors representatives, and the Data Protection Officer;~~

~~(b) the categories of processing carried out on behalf of the controller;~~

~~(c) with prior, specific or general written authorisation of the controller, where applicable transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, where applicable, the documentation of suitable safeguards;~~

~~(d) where possible a general description of the applicable technical and organisational security measures;~~

28.3.10 ~~28.4.14~~ indemnify the ~~Customer~~ other Party against any losses, damages, costs or expenses incurred by the ~~Customer~~ other Party arising from, or in connection with, any breach of ~~the Provider's~~ their obligations under this clause 28.

~~28.5 Where the Provider does not already employ or otherwise benefit from the services of a Data Protection Officer, and the Data Protection Legislation requires that it must do so prior to processing any Personal Data under the Contract, the Provider shall appoint and maintain in post a Data Protection Officer in accordance with the Data Protection Legislation and shall notify the Customer of that person's contact details.~~

28.4 Each Party shall provide the other Party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.

28.5 ~~28.6~~ The Provider shall ensure that any third parties which process Personal Data on its behalf and may process Personal Data under the Contract (**Third Party Processors**) are only provided with such Personal Data where it is necessary to do so to enable such Third Party Processors to undertake the work required of them. In such circumstances the Provider shall ensure that the Personal Data shared with the Third Party Processor is kept to the minimum required. The Provider shall ensure that any Third Party Processors enter into a written agreement with it prior to processing any Personal Data under the Contract incorporating terms which are substantially similar to those set out in this clause 28, with the effect that the obligations set out in the Contract and required by the Data Protection Legislation, shall apply to any such Third Party Processor.

28.6 ~~28.7~~ As between the Customer and the Provider, the Provider shall remain fully liable for all acts or omissions of any Third Party Processor appointed by it pursuant to this clause 28.

28.7 ~~28.8~~ Either Party may, at any time on not less than 30 Working Days' written notice to the other Party, revise this clause 28 by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an

applicable certification scheme. Any such changes shall be implemented through clause 37 (Variation).

28.8 ~~28.9~~ The provisions of this clause 28 shall apply throughout the Contract Period and indefinitely after its expiry or termination.

28.9 Where the either Party determines (**Determining Party**) that the processing, taking into account its nature, scope, context and purposes, is likely to result in a high risk to the rights and freedoms of natural persons, the Determining Party shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of Personal Data (the Data Protection Impact Assessment).

28.10 Taking account of the information reasonably available to it, the other Party shall provide reasonable assistance to the Determining Party in the preparation of the Data Protection Impact Assessment prior to commencing the processing. Such assistance may, at the discretion of the Determining Party, include:

28.10.1 a systematic description of the envisaged processing operations and the purpose of the processing;

28.10.2 an assessment of the necessity and proportionality on the processing operations in relation to the Services;

28.10.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

28.10.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

28.11 The Determining Party shall notify the Information Commissioner's Office in the event that the Data Protection Impact Assessment indicates that the processing to be carried out under the Contract would result in a high risk to Data Subjects in the absence of measures taken by the other Party to mitigate the risk.

29 **Freedom of Information**

29.1 The Provider acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs. The Provider shall:

29.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

29.1.2 transfer to the Customer all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

29.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and

29.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

29.2 The Provider acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Provider. The Customer shall take reasonable steps to notify the Provider of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issued under section 45 of FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the Customer shall be responsible for determining in its absolute discretion whether any Confidential Information and any other Information is exempt from disclosure in accordance with FOIA and the EIRs.

30 **Publicity, media and official enquiries**

30.1 Unless otherwise directed by the Customer, the Provider shall not make any press announcements or publicise the Contract in any way without Approval.

30.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation on the Customer or otherwise, including any examination of the Contract by the Auditor.

30.3 The Provider shall not do anything, or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

31 **Intellectual Property Rights**

31.1 In the absence of prior written agreement between the Parties to the contrary, all Intellectual Property Rights created by the Provider, the Provider Personnel or Subcontractors:

31.1.1 in the course of performing the Services; or

31.1.2 exclusively for the purpose of performing the Services,

shall vest in the Provider on creation.

31.2 The Provider grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty free perpetual and irrevocable licence to use, copy and modify all Intellectual Property Rights created by the Provider pursuant to clause 31.1.

31.3 The Provider:

31.3.1 warrants that the receipt and use of the Intellectual Property Rights by the Customer pursuant to this clause 31 shall not infringe the rights, including Intellectual Property Rights, of any third party;

31.3.2 shall indemnify the Customer against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Rights arising out of, or in connection with, the use and supply of the

Services and any Intellectual Property Rights made available to the Customer pursuant to this clause 31, except to the extent that they have been caused by or contributed to by the Customer's acts or omissions.

32 **Records and audit access**

- 32.1 The Provider shall keep and maintain until the expiry of the Retention Period, full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Contracts entered into with the Customer and sums received out of value realised from the Receivership Estate.
- 32.2 The Provider shall keep the records and accounts referred to in clause 32.1 in accordance with good accountancy practice.
- 32.3 The Provider shall maintain on a day-to-day basis:
 - 32.3.1 an account of the receipts and payments arising in connection with the Appointment;
 - 32.3.2 such records as are necessary to explain the account, including the source of any receipts and the destination of any payments; and
 - 32.3.3 an account of their fees, disbursements and expenses.
- 32.4 The Provider shall on request afford the Customer, the Customer's representatives and the Auditor such access to such records, books, accounts, financial or administrative documents kept in relation to the Appointment as they may require from time to time.
- 32.5 The Provider shall permit the Customer and the Customer's Representative access to premises or elsewhere to inspect, remove, or take copies of any books, accounts, financial or administrative documents kept in relation to the Appointment.
- 32.6 The Provider shall provide such records books, accounts, financial or administrative documents (together with copies of the Provider's published accounts) during the Contract Period and for the Retention Period to the Customer, the Customer's representatives and the Auditor.
- 32.7 The Customer shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Provider or delay the provision of the Services, except insofar as the Provider accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of the Customer.
- 32.8 Subject to the Customer's rights of confidentiality, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:
 - 32.8.1 all information requested by the Auditor within the scope of the Audit;
 - 32.8.2 reasonable access to sites controlled by the Provider and to Equipment used in the provision of the Services; and

32.8.3 access to Provider Personnel.

32.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 32, unless the Audit reveals a Default by the Provider in which case the Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the Audit.

Reporting and Control of the contract

33 Provision of information and meetings

The Provider shall comply with the contract management, reporting and accounts obligations as set out at Annex ~~D~~C (Contract Management, Reporting and Accounts).

34 Rights and remedies

The rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

35 Transfer and Subcontracting

35.1 Subject to clause 35.2 neither Party shall be entitled to assign, novate, transfer, mortgage, charge or otherwise deal in any other manner with or dispose of any or all of its rights and obligations under the Contract without the prior written consent of the other Party.

35.2 The Customer shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Customer. Prior to any novation the Customer will notify the Provider of the identity of the relevant party or parties in order that the Provider can comply with its obligations in relation to conflict pursuant to clause 32.1 of the Framework Agreement.

35.3 The Provider shall ensure that all Subcontractors appointed by them or Office Holders in provision of the Services shall be:

35.3.1 suitably experienced and professionally qualified;

35.3.2 hold all necessary professional accreditations and authorisations; and

35.3.3 meet all relevant regulatory requirements and requirements of the Contract,

commensurate to the role for which they are engaged to ensure they can properly undertake any and all activities which may be Subcontracted to them in accordance with the Contract and all applicable Law.

36 Waiver

36.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

- 36.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

37 **Variation**

- 37.1 Subject to the provisions of this clause 37, either party may request a variation to the Contract provided that such variation does not amount to a material change to the Contract or is not in contravention of any Law. Such a change is hereinafter called a "**Variation**".
- 37.2 Either Party may request a Variation by completing and sending the Variation Form to the other Party, giving sufficient information for that Party to assess the extent of the Variation and, in the case of the Provider, any additional cost that may be incurred. Any additional cost which may be proposed by the Provider shall be based on the prices set out in the Pricing Matrices (provided that the Provider may calculate such additional costs on lower prices but not higher prices than those set out in the Pricing Matrices) and must be accompanied by sufficient evidence and justification in support of the proposal (as determined by the Customer acting reasonably) to allow the Customer to properly assess the cost increase being proposed. The Party receiving the request for a Variation shall respond to the request within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Contract.
- 37.3 If the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree the Variation or a change to the Contract Price, the Customer may:
- 37.3.1 agree that the Parties continue to perform their obligations under the Contract without the Variation; or
- 37.3.2 seek directions from the Court to determine how the matter should be resolved.
- 37.4 If the Parties agree the Variation (including a variation to the Contract Price, if applicable) the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.
- 37.5 Where a Variation made pursuant to this clause 37 requires Court approval, the Variation shall only take effect once the Court has provided such approval.

38 **The Contracts (Rights of Third Parties) Act 1999**

- 38.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 38.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any other person.

39 **Severance**

- 39.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, the relevant provision or part-provision shall be deemed deleted. Any deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 39.2 If any provision or part-provision of the Contract is deemed deleted under clause 39.1 the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

Liabilities

40 Liability, indemnity and insurance

- 40.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 40.1.1 death or personal injury caused by its negligence;
 - 40.1.2 fraud or fraudulent misrepresentation;
 - 40.1.3 any breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - 40.1.4 any claim under clause 17.13 (VAT indemnity);
 - 40.1.5 any claim under clause 42 (Taxation, National Insurance and employment liability); or
 - 40.1.6 any claim under the indemnity in clause 31.3 (Intellectual Property indemnity);
 - 40.1.7 any claim under the indemnity in clause ~~28.4.11~~ 28.3.10 (Data Protection indemnity); and
 - 40.1.8 any claim for which the Provider is insured for in accordance with clause 41 (Insurances) or would have been so insured had the Provider complied with that clause, in which case the Provider's limit of liability shall be at the level specified against the applicable insurance.
- 40.2 Subject to clause 40.3 and clause 40.4, the Provider shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Contract, including in respect of any death or personal injury, fraud or fraudulent misrepresentation, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Provider, or any other loss which is caused directly or indirectly by any act or omission of the Provider. The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

- 40.3 Subject always to clause 40.1 and clause 40.4, the aggregate liability of either Party for all Defaults including those resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed the higher of:
- 40.3.1 £1,000,000 (one million pounds); and
 - 40.3.2 the total value of the Receivership Estate.
- 40.4 Subject to clause 40.1, in no event shall either Party be liable to the other for any:
- 40.4.1 loss of profits;
 - 40.4.2 loss of sales or business;
 - 40.4.3 loss of agreements or contracts;
 - 40.4.4 loss of revenue;
 - 40.4.5 loss of or damage to goodwill;
 - 40.4.6 loss of savings (whether anticipated or otherwise); or
 - 40.4.7 any indirect or consequential loss or damage.
- 40.5 The Customer may, among other things, recover as a direct loss:
- 40.5.1 any additional operational and/or administrative expenses arising from the Provider 's Default;
 - 40.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Provider 's Default;
 - 40.5.3 sums paid by the Customer to the Provider pursuant to the Contract in respect of any Services not provided in accordance with the Contract;
 - 40.5.4 the additional cost of any replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider;
 - 40.5.5 additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include consultancy costs and additional costs of management time.
- 40.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

41 Insurances

41.1 Subject to any amendment to the levels of cover listed in this clause 41.1 as may be specified in the Order Form, the Provider shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:

41.1.1 public liability insurance with a minimum limit of indemnity of £5 million for ~~each individual claim~~ a single event or a series of related events and in the aggregate;

41.1.2 employers' liability insurance with a minimum limit of indemnity of £5 million ~~(or such higher limit as required by law from time to time; and)~~ for a single event or a series of related events and in the aggregate;

41.1.3 professional indemnity insurance with a minimum limit of indemnity of £5 million ~~for each individual claim (or such higher limit as the Customer may reasonably require (either in the Contract or as may be required by Law or as the Customer may reasonably require from time to time))~~ for a single event or a series of related events and in the aggregate;

41.1.4 adequate insurance to cover the replacement value of the Receivership Estate excluding any Uninsurable Assets; and

41.1.5 any additional insurances as may be specified by the Customer in the Order Form,

(the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider.

41.2 The Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

41.3 If, for whatever reason, the Provider fails to give effect to and maintain the Required Insurances, the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

41.4 The terms of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract.

41.5 Subject to clause 41.6, the Provider shall hold and maintain the Required Insurances for a minimum of the ~~later~~ longer of:

41.5.1 the Retention Period; ~~or~~ and

41.5.2 six years following the expiry or earlier termination of the Contract.

- 41.6 The Provider shall only be required to hold insurance to cover the replacement value of the Receivership Estate pursuant to clause 41.1.4 throughout the Contract Period.

42 **Taxation, National Insurance and employment liability**

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

43 **Warranties and representations**

43.1 The Provider warrants and represents to the Customer that:

- 43.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- 43.1.2 the Contract is executed by a duly authorised representative of the Provider;
- 43.1.3 in entering the Contract the Provider, the Provider Personnel and Subcontractor(s) have not committed any Prohibited Act;
- 43.1.4 to the best of its knowledge, the Provider, the Provider Personnel and Subcontractor(s) have not been nor are subject to any investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act;
- 43.1.5 the Provider, the Provider Personnel and Subcontractor(s) have not been nor are 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 other government contracts on the grounds of a Prohibited Act;
- 43.1.6 as at the Appointment Commencement Date, all information, statements and representations contained in the Tender and the SQ Response for the Services are true, accurate and not misleading except as may have been specifically disclosed in writing to the Customer before execution of the Contract and it will promptly advise the Customer of any fact, matter or circumstance of which it may become aware during the Contract Period which would render any such information, statement or representation to be false or misleading;

- 43.1.7 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
 - 43.1.8 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the Contract;
 - 43.1.9 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider 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 Provider's assets or revenue;
 - 43.1.10 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
 - 43.1.11 the Services shall be provided and carried out by appropriately experienced, qualified and trained Provider Personnel with all due skill, care and diligence.
- 43.2 The Provider shall promptly notify the Customer if, at any time during the Contract Period, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 43.1 at the relevant time.

Business Continuity, Remediation, Default, disruption and termination

44 Business Continuity

- 44.1 The Provider shall provide a copy of the latest Business Continuity Plan to the Customer on request.
- 44.2 The Provider shall implement the Business Continuity Plan if notified by the Customer to do so.

45 Remediation Plan Process

- 45.1 Subject to clause 45.2, if the Provider is in Default and the Default is capable of remedy, the Customer shall not terminate the Contract without first operating the Remediation Plan Process. If the Provider commits such a Default, the Customer shall give a Remediation Notice to the Provider which shall specify the Default in outline and the actions the Provider needs to take to remedy the Default.
- 45.2 The Customer shall be under no obligation to initiate the Remediation Plan Process if it issues a notice to terminate in the circumstances set out in clause 21 (Conflicts of interest), clause 22 (Prevention of Bribery), clause 27 (Official Secrets Acts), clause 46 (Termination on insolvency and Change of Control), clause 48 (Termination on Default) and clause 47 (Termination for convenience).

- 45.3 Within 5 Working Days of receipt of a Remediation Notice, the Provider shall:
- 45.3.1 submit a draft Remediation Plan, even if it disputes that it is responsible for the matters which are the subject of the Remediation Notice; or
 - 45.3.2 inform the Customer that it does not intend to submit a Remediation Plan, in which event the Customer shall be entitled to serve a Termination Notice.
- 45.4 The Customer shall either approve the draft Remediation Plan within 20 Working Days of its receipt pursuant to clause 45.3.1, or it shall inform the Provider why it cannot accept the draft Remediation Plan. In such circumstances, the Provider shall address all such concerns in a revised Remediation Plan, which it shall submit to the Customer within 5 Working Days of its receipt of the Customer's comments. If no such notice is given, the Provider's draft Remediation Plan shall be deemed to be agreed.
- 45.5 Once agreed, the Provider shall immediately start work on the actions set out in the Remediation Plan.
- 45.6 If, despite the measures taken under clause 45.4, a Remediation Plan cannot be agreed within 20 Working Days then the Customer may elect to end the Remediation Plan Process and serve a Termination Notice.
- 45.7 If a Remediation Plan is agreed between the parties, but the Provider fails to implement or successfully complete the Remediation Plan by the required completion date, the Customer may:
- 45.7.1 terminate the Contract by serving a Termination Notice; or
 - 45.7.2 give the Provider a further opportunity to resume full implementation of the Remediation Plan.
- 45.8 If, despite the measures taken under clause 45.7, the Provider fails to implement the Remediation Plan in accordance with its terms, the Customer may elect to end the Remediation Plan Process and refer the matter for resolution by the Dispute Resolution Procedure or serve a Termination Notice.
- 45.9 The Customer shall not be obliged to follow the Remediation Plan Process if there is a repetition of substantially the same Default by the Provider as had previously been addressed in a Remediation Plan within a period of three Months following the conclusion of such previous Remediation Plan. In such event, the Customer may serve a Termination Notice.
- 45.10 Where the Customer considers that the Office Holder's performance is in any respect unsatisfactory, the Customer shall notify the Provider in writing and the Customer and Provider shall meet (at a date and time to be determined by the Customer) to discuss the matter with the view to resolving the issue. Following such meeting the Customer may:
- 45.10.1 issue a Remediation Notice pursuant to this clause 45;
 - 45.10.2 request that the Provider replaces the relevant Office Holder; and/or

- 45.10.3 seek directions from the Court and, if required, a Court Order requiring the Provider to replace such Office Holder.

46 **Termination on insolvency and Change of Control**

- 46.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract with immediate effect by giving written notice to the Provider if:
- 46.1.1 the Provider suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the IA 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 or (being an individual) is deemed either unable to pay their debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - 46.1.2 the Provider commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 46.1.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Provider (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of the Provider with one or more other companies or the solvent reconstruction of the Provider;
 - 46.1.4 an application is made to Court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Provider (being a company, partnership or limited liability partnership), or the Provider applies to Court for, or obtains, a moratorium under Part A1 of the IA 1986;
 - 46.1.5 the holder of a qualifying floating charge over the assets of the Provider (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - 46.1.6 a person becomes entitled to appoint a receiver over all or any of the assets of the Provider or a receiver is appointed over all or any of the assets of the Provider;
 - 46.1.7 the Provider (being an individual) is the subject of a bankruptcy petition, application or order;
 - 46.1.8 a creditor or encumbrancer of the Provider attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part

of the Provider's assets and such attachment or process is not discharged within 14 days;

46.1.9 any event occurs, or proceeding is taken, with respect to the Provider in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 46.1.1 to clause 46.1.8 (inclusive); or

46.1.10 the Provider suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

46.2 The Provider shall notify the Customer immediately if the Provider undergoes a Change of Control. The Customer may terminate the Contract by giving notice in writing to the Provider with immediate effect within 6 Months of:

46.2.1 being notified that a Change of Control has occurred; or

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

but shall not be permitted to terminate where an Approval was granted before the Change of Control.

47 Termination for Convenience

47.1 Without affecting any other right or remedy available to it, the Customer may at any time apply to the Court to have the Office Holder discharged from the Appointment (provided the Customer can demonstrate it has reasonable grounds for taking such action, as shall be determined by the Court). Where the Office Holder is discharged by the Court the Contract shall terminate with immediate effect on the date of discharge.

48 Termination on Default

48.1 Without affecting any other right or remedy available to it, the Customer may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a Material Breach and (if such breach is remediable) the Provider fails to remedy that breach to the satisfaction of the Customer within 20 Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Breach and requesting it to be remedied.

48.2 Without affecting any other right or remedy available to it, the Customer may terminate the Contract by giving written notice to the Provider with immediate effect if:

48.2.1 the Provider repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

48.2.2 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;

- 48.2.3 the Authority serves a notice to terminate the Framework Agreement pursuant to the Framework Agreement;
- 48.2.4 the Framework Agreement is terminated for any reason or the relevant Office Holder is removed from the Framework Agreement;
- 48.2.5 the Provider or Office Holder is suspended pending investigation pursuant to clause 34.1 of the Framework Agreement; or
- 48.2.6 any warranty given by the Provider in clause 43 (Warranties and representations) is found to be untrue or misleading.

49 **Consequences of termination or expiry**

- 49.1 Where the Customer terminates the Contract under clause 45 (Remediation Plan process), clause 46 (Termination on insolvency and Change of Control), clause 48 (Termination on Default) and then makes other arrangements for the supply of Services, the Customer may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 45 (Remediation Plan process), clause 46 (Termination on insolvency and Change of Control), clause 48 (Termination on Default), no further payments shall be payable by the Customer to the Provider until the Customer has established the final cost of making those other arrangements.
- 49.2 Subject to clause 40 (Liability, indemnity and insurance) where the Customer terminates the Contract the Customer shall not indemnify the Provider against any commitments, liabilities, costs or expenditure incurred by the Provider by reason of the termination of the Contract.
- 49.3 Except as otherwise expressly provided in the Contract:
 - 49.3.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations of either Party accrued under the Contract before termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
 - 49.3.2 the provisions of clause 10 (Contract Price), clause 17 (Payment and invoicing), clause 21 (Conflicts of interest), clause 22 (Prevention of Bribery), clause 26 (Confidentiality), clause 27 (Official Secrets Acts), clause 28 (Data Protection), clause 29 (Freedom of Information), clause 31 (Intellectual Property Rights), clause 32 (Records and audit access), clause 40 (Liability, indemnity and insurance), clause 41 (Insurances), clause 42 (Taxation, National Insurance and employment liability), clause 43 (Warranties and representations), clause 48 (Consequences of termination or expiry), clause 51 (Recovery on termination), clause ~~52-53~~ (Dispute resolution) and clause ~~55-56~~ (Governing law and jurisdiction) shall remain in full force and effect and survive the termination or expiry of the Contract, together with any other provision which is either expressed to or by implication is intended to survive termination or expiry.

50 Exit Plan

- 50.1 If requested by the Customer, the Provider shall, no later than 10 Working Days following the date of such request, deliver to the Customer an Exit Plan which complies with the requirements set out in clause 50.3 and is otherwise reasonably satisfactory to the Customer.
- 50.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree on the contents of the Exit Plan within 20 Working Days of the latest date for its submission pursuant to clause 50.1 the issue shall be resolved in accordance with the Dispute Resolution Procedure.
- 50.3 The Exit Plan shall set out as a minimum:
 - 50.3.1 a Status Report on the case together with details of any reasonable costs required to a transfer to a Replacement Provider (if needed); and
 - 50.3.2 provide any other information or assistance reasonably required by the Customer or any Replacement Provider.

51 Recovery on termination

- 51.1 On the termination of the Contract for any reason or the expiry of the Contract, the Provider shall:
 - 51.1.1 subject to any express requirements relating to the retention of records contained in the Contract [or to any regulatory requirements in relation to the retention of information to which the Provider is expressly subject](#), immediately return to the Customer all Confidential Information, Personal Data and all information and documents relating to the Customer's Intellectual Property Rights in its possession or in the possession or under the control of any Office Holders, permitted suppliers or Subcontractors, which was obtained or produced in the course of providing the Services;
 - 51.1.2 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to any Replacement Provider and/or the completion of any work in progress; and
 - 51.1.3 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Provider to conduct due diligence.
- 51.2 If the Provider fails to comply with clause 51.1.1, the Customer may recover possession thereof and the Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider, the Office Holders, or its permitted suppliers or Subcontractors where any such items may be held.
- 51.3 The Provider shall provide all assistance under clause 51.1.2 and clause 51.1.3 free of charge.

52 Discharge of the Office Holder

- 52.1 Subject to clause 52.2, where the Contract is terminated for any reason or when the receivership/trusteeship is concluded, the Customer may apply to the Court to seek the discharge of the Office Holder.
- 52.2 Where the Customer serves written notice on the Provider requesting the Provider applies to the Court for the Office Holder's discharge, the Provider shall as soon as reasonably practicable following receipt of such notice apply to the Court for the discharge of the Office Holder. Subject to clause 17.11 (Customer not liable to the Provider for payment of the Contract Price), the Provider may recover any reasonable costs incurred in making the application for discharge pursuant to this clause ~~47.3~~ 52.2 from the Receivership Estate.

53 Dispute resolution

- 53.1 If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in the Contract, the Parties shall follow the procedure set out in this clause ~~52~~53:
- 53.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Parties' Authorised Representatives shall attempt in good faith to resolve the Dispute;
- 53.1.2 if the Parties' Authorised Representatives are for any reason unable to resolve the Dispute, either Party may apply to the Court for directions to resolve the matter.

54 Entire agreement

- 54.1 The Contract, the Annexes and the documents annexed to it or otherwise referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 54.2 Each Party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 54.3 Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 54.4 Nothing in this clause ~~53~~ 54 shall limit or exclude any liability for fraud or fraudulent misstatement.
- 54.5 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
- 54.5.1 the Court Order (including any subsequent Court Order);

- 54.5.2 the Law, the Capewell Guidelines (if applicable) and the Contract (except the Provider's Supplemental Tender);
 - 54.5.3 the Office Holder's general duties;
 - 54.5.4 the terms of the Framework Agreement, the Schedules to the Framework Agreement (except the Provider's Tender);
 - 54.5.5 any other document referred to in the clauses of the Contract;
 - 54.5.6 the Provider's Supplemental Tender;
 - 54.5.7 the Provider's Tender.
- 54.6 The Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

55 Notices

- 55.1 Except as otherwise expressly provided within the Contract, a notice given to a Party under or in connection with the Contract shall be in writing and sent to the Party at the address or email address given in the Order Form.
- 55.2 This clause ~~54.2~~55.2 sets out the delivery methods for sending a notice to a Party under the Contract and, for each delivery method, the date and time when the notice is deemed to have been received:
 - 55.2.1 if delivered by hand, at the time the notice is left at the address;
 - 55.2.2 if sent by pre-paid first class post or other next Working Day delivery service providing proof of delivery, at 9.00am on the 2nd Working Day after posting;
 - 55.2.3 if sent by pre-paid airmail providing proof of delivery, at 9.00am on the 5th Working Day after posting; or
 - 55.2.4 if sent by email, at the time of transmission.
- 55.3 If deemed receipt under clause ~~54.2~~55.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. Business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 55.4 This clause ~~54~~55 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 55.5 For the purposes of clause ~~54.1~~55.1, the address of each Party shall be the addresses for each Party set out in the order Form.
- 55.6 Either Party may change its address for service by serving a notice in accordance with this clause ~~54~~55.

56 Governing law and jurisdiction

- 56.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 56.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

The Contract has been entered into on the date stated on the Order Form.

Annex A. Variation Form**Variation Form – PR 2022 112****Call-off terms and conditions for services**

.....

Contract Details		
This variation is between:	[NAME OF CONTRACTING AUTHORITY] (the Customer) and [NAME OF SERVICE PROVIDER] (the Provider)	
Contract Reference Number:	[insert contract reference number as per the Order Form]	
Variation Form Number:	[insert variation number]	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: Provider/Customer]	
Date variation is raised:	[insert date]	
Proposed variation	[insert details]	
Reason for the variation:	[insert reason]	
An impact assessment shall be provided within:	[insert number] days	
Impact of Proposed Variation		
Likely impact of the proposed variation:	[Provider to insert assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: [Customer to insert details of clauses or paragraphs to be varied]	
Financial variation:	Current Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

1. This Variation must be agreed and signed by both Parties and shall only be effective from the date it is signed by the last of the two Parties.

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Provider

Signature.....

Date.....

Name in capitals.....

Address.....
.....

Authorised to sign for and on behalf of the Customer

Signature.....

Date.....

Name in capitals.....

Address.....
.....

~~Annex B. Data processing~~

~~This Annex B consists of the following Parts:~~

~~Part 1 Processing, Personal Data and Data Subjects~~

~~Part 2 Assistance with Data Protection Impact Assessment~~

~~Part 1 Processing, Personal Data and Data Subjects~~

~~1. The Provider shall comply with any further written instructions in respect of processing by the Customer.~~

~~2. Any such further instructions shall be incorporated into this Annex.~~

Subject matter of the Processing	The services provided under the Contract shall enable the Provider to process, store or transmit Personal Data for the purpose of delivering the Customer's exercise of its criminal confiscation and civil recovery powers and other business functions determined by statute.
Duration of the Processing	Approved as the period in relation to the relevant Customer data, from the Appointment Commencement Date to the end of the Contract Period.
Nature of the processing	<p>The nature shall include but not be limited to the collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means).</p> <p>The purposes shall be the support and management of the Customer's:</p> <p>(i) exercise of its criminal confiscation powers under the Proceeds of Crime Act 2002 and the legislation which preceded it, including any secondary legislation made under that Act and the legislation which preceded it;</p> <p>(ii) exercise of its civil recovery powers under the Proceeds of Crime Act 2002, including any secondary legislation made under that Act.</p>
Types of Personal Data	<p>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 that may contain but not be limited to:</p> <ul style="list-style-type: none"> • Personal contact details • Family, lifestyle and social circumstances • Financial records • Employment and education details • Criminal convictions • Court Orders • Physical or mental health details • Race or racial or ethnic origin

	<ul style="list-style-type: none"> • Witness and Victim Statements • Persons engaged to provide Goods or services
Categories of Data Subject	<ul style="list-style-type: none"> • Offenders/suspected offenders • Relatives, Guardians and associates of Offenders/suspected Offenders • Victims of crime and Witnesses • Advisers, Consultants and other professional Experts • Contracting Body employees and/or contractors • Providers and service providers • Persons working in the Criminal Justice System • Persons working in the Civil Justice System • Legal professionals • Foreign Governments and their prosecuting authorities and agencies • Contacts at other organisations
Plan for return and destruction of the data once the processing is complete UNLESS requirement under Domestic Law to preserve that type of data	<p>Data relating to (i) case progression may be retained during processing and must be keep for seven (7) years from the completion of the work under that Appointment, after which point it must be returned and destroyed by the Provider; and</p> <p>Data relating to (ii) other purposes may be retained during processing and must be returned to the department as determined by the Customer's Authorised Representative in the commission given to the Provider. As a minimum, all copies destroyed within 30 days of the data being returned to the Customer.</p>

Part 2 — Assistance with Data Protection Impact Assessment

- ~~1. Where the Customer determines that the processing, taking into account its nature, scope, context and purposes, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of Personal Data (the Data Protection Impact Assessment).~~
- ~~2. Taking account of the information reasonably available to it, the Provider shall provide reasonable assistance to the Customer in the preparation of the Data Protection Impact Assessment prior to commencing the processing. Such assistance may, at the discretion of the Customer, include:~~
 - ~~2.1 a systematic description of the envisaged processing operations and the purpose of the processing;~~

~~2.2 an assessment of the necessity and proportionality on the processing operations in relation to the Services;~~

~~2.3 an assessment of the risks to the rights and freedoms of Data Subjects; and~~

~~2.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.~~

~~3. The Customer shall notify the Information Commissioner's Office in the event that the Data Protection Impact Assessment indicates that the processing to be carried out under the Contract would result in a high risk to Data Subjects in the absence of measures taken by the Customer to mitigate the risk.~~

Annex B. ~~**Annex C.**~~ **Service Levels**

Part 1 Definitions

1. This Annex C shall only apply if stated as such in the Order Form and a populated version of this Annex C is appended to the Order Form.
2. In this Annex, in addition to the definitions set out at clause 1 (Definitions), the following words shall have the following meanings:

Critical Service Failure	as specified in the Order Form.
Performance Measure	shall be as set out against the relevant Service Level in the table in Part 3 to this Annex C <u>B</u> .
Performance Monitoring Reports	the reports to be provided to the Customer by the Provider for each Service Period which shall include the information set out at Part 5 of this Annex C <u>B</u> .
Service Credits	any service credits specified in Part 4 of this Annex C <u>B</u> as being payable by the Provider to the Customer in respect of any failure by the Provider to meet one or more Service Levels which may be either a Performance Measure Service Credit or a Threshold Service Credit.
Service Credit Cap	the total amount that Service Credits shall not exceed as specified in the Order Form.
Service Level Failure	a failure to meet the Service Level Performance Measure in respect of a Service Level.
Service Period	the period specified in the Order Form.
Threshold	shall be as set out against the relevant Service Level in the table in Part 3 to this Annex C <u>B</u>

Part 2 Meeting the Service Levels

1. The Provider shall ensure that the Services are delivered so that the Service Level Performance Measure for each Service Level is either met or exceeded.
2. The Provider acknowledges that any Service Level Failure shall result in the relevant remedial action being required as set out in paragraphs 2 and 3 of Part 3 of this Annex ~~C~~B including the right to any Service Credit and that any Service Credit shall be an adjustment of the Contract Price (as may be invoiced by the Provider pursuant to clause 17 (Payment and invoicing)).

3. The Provider shall provide the Customer with the Performance Monitoring Reports in accordance with Part 5 of this Annex [CB](#).

Part 3 Service Levels

1. The Service Levels which the Customer has specified that shall be used to measure the performance of the Services by the Provider are contained in the below table.

Performance Criterion	Key Indicator	Performance Measure	Performance Measure Service Credit for each Service Period	Threshold	Threshold Service Credit for each Service Period

2. Where the Provider meets the relevant Threshold for any Performance Criterion but fails to meet the relevant Performance Measure for that Performance Criterion the relevant Performance Measure Service Credit shall apply and the Provider must inform the Customer in writing immediately of the failure, explain what remedial action it intends to take to rectify the situation, and undertake such remedial action without delay.
3. Where the Provider fails to meet the relevant Threshold for any Performance Criterion the relevant Threshold Service Credit shall apply and the Customer may invoke the Remediation Plan Process by issuing a Remediation Notice pursuant to clause 45 (Remediation Plan Process).
4. Where the Provider commits a Critical Service Failure this shall constitute a Material Breach and the Customer may terminate the Contract pursuant to clause 48 (Termination on Default).

Part 4 Service Credits

1. The Customer shall use the Performance Monitoring Reports supplied by the Provider to verify the calculation and accuracy of Service Credits, if any, applicable to the Service Period.
2. Service Credits are a reduction of the amounts payable in respect of the Services and do not include VAT. The Provider shall set-off the value of any Service Credits against the appropriate invoice in accordance with the formula set out at paragraph 3 of this Part 4 of this Annex [CB](#).

3. The Service Credits shall be calculated in accordance with the following formula and shall be subject to the Service Credit Cap:

[Example (to be fully populated at the point of inclusion in Part 1 of the Order Form)]:

Formula: $x\%$ (Performance Measure) - $x\%$ (actual Service Level performance) = $x\%$ of the Provider's costs payable to the Customer as Service Credits to be deducted from the next invoice for costs payable to the Provider.

Worked example: 98% (e.g., Performance Measure requirement) - 75% (e.g., actual performance achieved against this Service Level in a Service Period) = 23% of the Provider's costs payable to the Customer as Service Credits to be deducted from the next invoice for costs payable to the Provider]

Part 5 Performance Monitoring

1. The Performance Monitoring Reports shall include as a minimum:
 - 1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.3 details of any Critical Service Failures;
 - 1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.6 such other details as the Customer may reasonably require from time to time.

[Annex C.](#) ~~Annex D.~~ **Contract Management, Reporting and Accounts**

Part 1 Accounts

1. During the Contract Period, the Provider shall ensure that the Office Holder provides the Customer, the Specified Court and the defendant/respondent with a set of current accounts on a quarterly basis.
2. Upon discharge of the Office Holder from office, the Provide shall ensure that the Office Holder produces and files with the Specified Court, the Customer and the defendant/respondent a summarised final receipts and payments account.
3. When requested by the Customer, the Provider shall forthwith:
 - 3.1 produce all books, accounts, financial or administrative documents kept in relation to the receivership/trusteeship; and
 - 3.2 permit the Customer to visit relevant premises or elsewhere to inspect, remove, or take copies of any books, accounts, financial or administrative documents kept in relation to the receivership/trusteeship.

Part 2 Reporting

1. The Provider shall provide the reports (inclusive of the detail set out at paragraph 2, below) to the Customer, the Specified Court and the defendant/respondent at the frequency specified in Part 1 of the Order Form.
2. Each report must contain, as a minimum, the following:
 - 2.1 the costs incurred to date; the work done; the projected costs until the next report; a summary of how those costs attach to the matters that led to the appointment or to the matters that may have arisen; and, where appropriate, an estimated final outcome statement;
 - 2.2 a statement that the Receiver or Trustee for Civil Recovery believes that their costs are reasonable and proportionate in all the circumstances;
 - 2.3 projected costs to completion;
 - 2.4 a breakdown of costs in accordance with the template at Appendix 1 of this Annex ~~DC~~C;
 - 2.5 a breakdown of the amounts recovered to date from realisation of the assets and whether those sums have been paid to HM Court and Tribunals Service or the Customer or retained by the Office Holder as appropriate. Such breakdown shall be a per asset basis and shall include dates on which the amounts were recovered and held or paid as appropriate;

- 2.6 progress to date against the Receivership or Trusteeship, outlining any issues; and
- 2.7 a performance measurement report in accordance with the template at Appendix 2 of this Annex [DC](#).
- 3. Where the Provider is unable to fulfil any of the above reporting requirements, they shall provide, as soon as reasonably practicable, an explanation, by way of written report to be filed at the Specified Court by the Office Holder and served on the Customer and defendant or respondent, of why this is the case, and those parties shall be at liberty to seek directions from the Specified Court.
- 4. The Provider shall notify the Customer in writing immediately if there are any significant developments in connection with the Contract that occur during the Contract Period.

Part 3 Contract Management Meetings

- 1. At the request of the Customer, the Provider shall attend the following meetings:
 - 1.1 Contract and Performance Board – no more frequently than quarterly and in accordance with Appendix 3 of this Annex [DC](#);
 - 1.2 Strategic Board – no more frequently than bi-annual and in accordance with Appendix 4 of this Annex [DC](#).
- 2. The Customer shall, at their sole discretion, decide whether to hold the meetings pursuant to paragraph 1 above. The Customer shall give at least 10 Working Days' notice of the meeting, if it is to be held.
- 3. Should a meeting not be held, no costs are admissible, unless the Customer gave notice of the meeting in accordance with paragraph 2 above but the meeting was not held and the Provider can show that they incurred unavoidable costs.
- 4. To facilitate such meetings, it may be necessary for either Party, if so requested by the other Party (**Requesting Party**), to provide a list of the names of all persons who may require admission to the Requesting Party's premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Requesting Party may reasonably request. Both Parties shall ensure that they (and any of their personnel) adhere to all relevant security and health & safety requirements of the other Party when visiting the other Party's premises.

Appendix 1 – Costs Template

Please see additional spreadsheet for details of this appendix.

Appendix 2 – Performance Measurement Report

Please see additional spreadsheet for details of this appendix.

Appendix 3 – Contract and Performance Board – Terms of Reference

Purpose of Meeting

To review performance and contract management activity, including: Provider performance, KPI performance (if applicable), resolution of issues, review of risks and opportunities, contractual matters, financial matters, monitoring progress of variations (if applicable), identification of efficiencies and innovation.

Template Agenda

- Provider performance review, including KPI review (if applicable) and any improvement plans
- Resolution of any issues
- Risk and opportunity review
- Commercial / Contractual matters
- Financial matters
- Review of variations (if applicable)
- Efficiencies and innovation
- Changes to Provider business with direct impact on contracted provision (e.g. mergers/ acquisitions/ changes to supply chain)
- Forthcoming key dates and activities

Template Outputs

- Key actions and decisions
- Agreed escalations
- Downward briefings

Proposed Attendees

Customer:
Proceeds of Crime – Unit Head
Lead Commercial Contracts Manager
Case Lawyer
Business Centre Performance Manager (if applicable)
Security Representative (if applicable)

Provider:
Office Holder
Commercial Representative
Account Manager (if applicable)
Finance Representative (if applicable)
Security Representative (if applicable)

Appendix 4 – Strategic Board – Terms of Reference

Purpose of Meeting

Strategic review meeting to ensure contract is meeting ongoing strategic direction and to resolve escalated risks and issues.

Template Agenda

- Provider performance review (by exception)
- Review of escalated issues
- Risk review
- Joint benefits realisation (if applicable)
- Financials and Commercials
- Provider update – including:
 - Market development in the sector
 - Supplier internal technology, business update and organisational priorities
 - Changes to supplier's business – mergers/ acquisitions/changes to supply chain relevant to contracted provision
- Customer update – including:
 - Organisational priorities / changes
 - Wider government priorities and legislation
- Innovation / Improvement / Development Opportunities

Template Outputs

- Key actions
- Strategic decisions
- Downward briefings

Proposed Attendees

Customer:
Senior Responsible Owner (SRO)
Proceeds of Crime – Unit Head
Head of Commercial
Head of Security or authorised representative (if applicable)
Chief Finance Officer or authorised representative (if applicable)
Deputy Director Commercial (if applicable)

Provider:
Director
Office Holder
Commercial Director (if applicable)
Chief Finance Officer (if applicable)
Head of Security (if applicable)

Annex D. ~~Annex E.~~ Northern Ireland Law**Part 1 Application to the Contract**

This Annex shall only apply to the Contract if the Customer has specified in the relevant part of the Order Form that this Annex applies to the Contract.

Part 2 Changes to the Call-off Terms and Conditions

1. Where this Annex has been specified by the Customer in the relevant part of the Order Form as applying to the Contract, the following changes to the provisions of the Contract shall be made:
 - 1.1 Clause 1 Definitions:

“**Working Day**”: reference to “England and Wales” shall be replaced by “Northern Ireland”
 - 1.2 Clause 46: any reference to a Part or section of the IA 1986 shall be deemed to include an alternative reference, if applicable, to the equivalent Part or section of the Insolvency (Northern Ireland) Order 1989.
 - 1.3 Clause ~~55.1~~56.1: shall be amended so reference to “law of England and Wales” shall read “law of Northern Ireland”.
 - 1.4 Clause ~~55.2~~56.2: shall be amended so reference to the “courts of England and Wales” shall read “courts of Northern Ireland”.