

May 2023

Appendix A to Annex 6 – The Terms and Conditions

DATED 10/10/2023

COMPETITION AND MARKETS AUTHORITY (CMA)

and

CAMPBELL TICKELL LTD

**AGREEMENT FOR THE PROVISION OF BOARD EFFECTIVENESS REVIEW -
CMA**

AGREEMENT REFERENCE
PROC-654-2023

AGREEMENT FOR THE PROVISION OF CONSULTANCY SERVICES

DATE: 10/10/2023

BETWEEN

- (1) **Competition and Markets Authority ("CMA")** The Cabot, 25 Cabot Square, London, E14 4QZ.
- (2) **Campbell Tickell Ltd** Laystall House (2nd and 3rd Floor), 8 Rosebery Avenue, London, EC1R 4TD **(the Supplier as defined below)**

each a "**Party**" and together the "**Parties**".

RECITALS

- (A) On the basis of the CMA's ITT and the Consultant's Proposal, the CMA awarded a contract to the Consultant on the terms and conditions set out below.

NOW IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the following words and expressions shall have the following meanings save where the context provides otherwise:

Affected Party	has the meaning set out in Clause 24.2 (Force Majeure)
Agreement	means any Agreement between the CMA and the Consultant for the provision of Services pursuant to an Award Letter and/or Order Form incorporating these terms and Schedules attached to it
Annex	means an annex to the Award Letter/Order Form
Applicable Laws	means all applicable laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time
Associated Person	has the meaning set out in Clause 15.17(a) (Compliance)
Authority Data	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are

	embodied in any electronic, magnetic, optical or tangible media and which: (a) are supplied to the Consultant by or on behalf of the CMA; or (b) the Consultant is required to generate, process, store or transmit pursuant to this Agreement, including any of the CMA's Confidential Information and any Personal Data for which the CMA is the Controller
Award Letter	means the letter sent to the Supplier forming part of this Agreement.
Bribery Offence	has the meaning set out in Clause 15.16(a) (Compliance)
Cap	has the meaning set out in Clause 6.6 (Fees and payment)
CMA	means the Competition and Markets Authority
Contracting Authority	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the CMA
Contract Manager	means the appointed CMA representative
Commencement Date	means the date of signature of the Consultant on the Award Letter / Order Form forming part of this Agreement
Confidential Information	means all information, including any information obtained by the Consultant from any department, agency or office of His Majesty's Government relating to and connected with this Agreement, which is secret or otherwise not publicly available (in both cases either in its entirety or in part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Agreement
Conflict of Interest	a conflict between the financial or personal interests of the Consultant or any Key Personnel and the Consultant's duties owed to the CMA under this Agreement, in each case as assessed in the reasonable opinion of the CMA
Consultant	means the consultant or expert with whom the CMA is entering into this Agreement
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) and the guidance and codes of practice issued by the

	<p>Information Commissioner or other relevant regulatory authority and applicable to a Party</p> <p>Controller, Data Subject, Personal Data, Personal Data Breach, Processor and Processing shall each have the meaning given to them in the Data Protection Legislation</p>
Deliverables	means all of the reports, documents, work products, data and other materials which are generated or acquired by the Consultant (or any Key Personnel) in the performance of the Services
DPA 2018	means the Data Protection Act 2018
Employee Liabilities	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments b) unfair, wrongful or constructive dismissal compensation c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay d) compensation for less favourable treatment of part-time workers or fixed term employees e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the CMA or the New Supplier to a Transferring Consultant Employee which would have been payable by the Consultant or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions f) claims whether in tort, contract or statute or otherwise g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation

Environmental Policy	means the CMA's environmental policy as updated by the CMA and notified to the Consultant from time to time
EU References	has the meaning set out in Clause 1.2(g)(i) (Definitions and interpretation)
Fees	means the Suppliers fees for the services as set out in Schedule 2 (Payment Schedule) / the Order Form
Force Majeure Event	means any event outside the reasonable control of the Consultant affecting its ability to perform any of its obligations under this Agreement including fires, strikes (excluding strikes by its own employees), floods, war, acts of God, catastrophic or partial failure of any part of the telecommunications or power supply network, insurrection or riots, embargoes, or regulations of any civil or military authority
ICT Environment	means the CMA's IT system and the Consultant's IT system
Independent Controller	means a Party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data
Information Commissioner	means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies
Intellectual Property Rights	means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world in each case whether registered or not and including any application for registration of the foregoing
Joint Controller	means where two or more Controllers jointly determine the purpose and meaning of processing
Key Personnel	means the Consultant's personnel appointed to provide the effective delivery of the Services as detailed at Clause 9 (Key Personnel and right to provide a Substitute) and set out in the Order Form
LED	means the Law Enforcement Directive (Directive (EU) 2016/680)

Malicious Software	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
MSA Offence	has the meaning set out in Clause 15.20 (Compliance)
New Supplier	means any person that provides services in replacement of any of the Services whether those services are the same as or similar to any or all of the Services
Non-Affected Party	has the meaning set out in Clause 24.2 (Force Majeure)
Order Form	means the order form signed by the CMA and the Consultant printed above these terms
Premises	means The Cabot, 25 Cabot Square, London E14 4QZ or any other Premises that the CMA shall occupy as notified to the Consultant from time to time
Purchase Order Number	means the purchase order number which is required to be included on any invoice which the Consultant provides the CMA
Rate(s)	means the daily / hourly rates for the consultancy services set out at Clause 6.2(a) (Fees and Payment) or Schedule 2 (Payment Schedule) / the Order Form
Reimbursable Expenses	means those expenses as listed in the Award Letter / the Order Form / Schedule 2 (Payment Schedule).
Removable Media	means all physical items and devices that can carry and transfer electronic information. Examples include but are not limited to DVDs, CDs, floppy disks, portable hard disk drives, USB memory sticks, flash drives, portable music and video players including mobile phones, hand held devices such as Blackberries and Personal Digital Assistants and laptop computers
Security Policy	means the CMA's security policy as updated from time to time
Services	means the services to be provided by the consultant to the CMA under this agreement as more particularly described in the Award Letter / the Order Form / Schedule 1 (Description of the Services) together with any other services which the Consultant provides or agrees to provide the CMA

Specification	means CMA's specifications or stipulations for the Services notified in writing to the Consultant in the applicable Award Letter / Order Form / Schedule 1 (Description of the Services)
Subcontract	any contract or agreement (or proposed contract or agreement), other than this Agreement, pursuant to which a third party: a) provides the Deliverables (or any part of them); b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them)
Sub-contractor	any person other than the Contractor, who is a party to a Subcontract and the servants or agents of that person
Substitute	has the meaning set out in Clause 9.6 (Key Personnel and right to provide a Substitute)
Term	means the term of this Agreement as described in Clause 3 (Agreement Term)
Termination Date	has the meaning set out in Clause 3.1 (Agreement Term)
Transfer Regulations	means the Transfer of Undertakings (Protection of Employment) Regulations 2006
Travel Expense Policy	means the CMA's policy on travel expenses as updated from time to time
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018
Working Day	means a day which is not a Saturday, a Sunday or a bank or public holiday in England

1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:

- (a) the headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- (b) references to Clauses and Schedules are to the clauses and schedules in this Agreement unless stated otherwise;
- (c) words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity;

- (e) the words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;
 - (f) references to any legislation or legislative provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification);
 - (g) any reference which, immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.
- 1.3 Any reference to 'Consultant' in this Agreement shall mean, where applicable, the 'Consultant and the Key Personnel'.
- 2 BASIS OF AGREEMENT**
- 2.1 The CMA hereby confirms the appointment of the Consultant from the Commencement Date upon the terms and conditions contained in this Agreement.
- 2.2 The Consultant shall appoint Key Personnel to provide the Services under this Agreement in accordance with Clause 9 (Key Personnel and right to provide a Substitute).
- 2.3 The relationship of the Consultant to the CMA will be that of independent Consultant and at no time will the Consultant or its Key Personnel hold itself out as being an employee of the CMA.
- 2.4 Nothing in this Agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Term of this Agreement provided that such activity does not cause a breach of any of the Consultant's obligations under this Agreement.
- 2.5 The Consultant acknowledges that the ability of the CMA to use the services of the Consultant depends on the requirements of the CMA. The purchase of the Services by the CMA is non-exclusive and nothing in this Agreement will place a requirement on the CMA to order Services from the Consultant or prevent it from purchasing similar services from any other person or

organisation. Unless otherwise expressly agreed by the CMA in this Agreement, the CMA is not subject to any minimum volume or minimum purchase commitment when engaging the Services of the Consultant from time to time.

- 2.6 The CMA shall not provide any equipment for the Consultant to carry out the Services. When the CMA makes a request for Services, it shall confirm whether the Consultant is required to supply the Key Personnel with any equipment to carry out the Services.
- 2.7 In the event of a conflict or ambiguity the order of preference for this Agreement and the documents attached to or referred to in this Agreement are as follows:
- (a) the Award Letter / Order Form; then
 - (b) the Schedules to these terms; then
 - (c) these terms.

3 AGREEMENT TERM

- 3.1 This Agreement shall come into force on the Commencement Date and shall (subject to the provisions for earlier termination set out in this Agreement) terminate automatically as detailed in the order form
- 3.2 This Agreement may only be extended if agreed in writing and signed by both the CMA and the Consultant.

4 CONSULTANTS OBLIGATIONS

- 4.1 In consideration of the due payment of the Fees by the CMA, the Consultant warrants that it will and (where appropriate) will procure that the Key Personnel shall:
- (a) use its best endeavours to perform and observe all its obligations under this Agreement;
 - (b) provide the Services with reasonable skill and care;
 - (c) co-operate with the CMA in all matters relating to the Services, and comply with all reasonable instructions of the CMA;
 - (d) use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Consultant's obligations are fulfilled in accordance with this Agreement;
 - (e) remain available to undertake the Services for the duration of this Agreement;
 - (f) ensure that the Services will conform with the Specification, including all descriptions and performance dates, and that any Deliverables shall be fit for any purpose expressly or impliedly made known to the Consultant by the CMA;

- (g) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - (h) use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to the CMA, will be free from defects in workmanship, installation and design;
 - (i) obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws;
 - (j) comply with any reasonable instructions and guidelines issued by the CMA from time to time;
 - (k) promptly give to the CMA all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services or the business of the CMA; and
 - (l) report to the Contract Manager, or such other person nominated by the CMA, and agree with this person the precise timing of the delivery of the Services.
- 4.2 Time of performance of the Services is of the essence of this Agreement. The Services shall be provided so as to meet the dates set out in the Award Letter / the Order Form / Schedule 1 (Description of the Services).
- 4.3 The Consultant will not:
- (a) have the authority to commit the CMA to any legally binding agreements;
 - (b) incur expenditure in the name or for the account of the CMA; or
 - (c) sign any document, bring any proceedings or make and promise on behalf of the CMA.
- 4.4 The Consultant shall have the right to make any changes to the Services which are necessary to comply with any Applicable Law or safety requirement at no cost to the CMA and the Consultant shall notify the CMA in any such event within 7 days of such change.

5 CMA OBLIGATIONS

- 5.1 The CMA shall:
- (a) co-operate with the Consultant in matters relating to the Services and appoint a Contract Manager in relation to the Services, who shall have the authority to contractually bind the CMA on matters relating to the Services;
 - (b) in a timely manner provide the Consultant with access to the CMA's Premises, office accommodation, Authority Data and other facilities;

- (c) prepare and maintain the Premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its Premises in accordance with all Applicable Laws, before and during the supply of the Services at those Premises, and informing the Consultant of all the CMA's obligations under this Clause 5.1(c); and
- (d) inform the Consultant of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the CMA's Premises.

6 FEES AND PAYMENT

- 6.1 The Fees will be exclusive of any VAT which may be payable in connection with the supply of the Services by the Consultant and the Consultant will, if applicable, notify the CMA of its registration for VAT and provide VAT invoices in respect of the Services.
- 6.2 In consideration of the Services to be rendered by the Consultant under this Agreement, the CMA will:
 - (a) pay the Consultant the Fees which will be based on a daily or hourly rate (the “**Rate**”) as set out in Schedule 2 (Payment Schedule) **OR** the Order Form; and
 - (b) pay for any agreed Reimbursable Expenses as set out in Schedule 2 **OR** the Order Form.
- 6.3 For the avoidance of doubt, the CMA will not pay more than sums detailed in order form for the provision of the Services.
- 6.4 The Rates are not subject to alternation without the prior written consent of the CMA.
- 6.5 Any Reimbursable Expense in relation to travel claimed under this Agreement must be consistent with the allowances and restrictions set out in the CMA's Travel Expense Policy.
- 6.6 During the Term of this Agreement, the CMA shall pay the Fees up to a maximum cap as detailed in the ITT and shall not be liable for any expenditure that exceeds this Cap, unless otherwise agreed in writing between the CMA and the Consultant.
- 6.7 The Consultant shall submit electronic itemised invoices within 28 Working Days of supplying the Services to the satisfaction of the CMA, setting out:
 - (a) the name of the Contract Manager;
 - (b) all work satisfactorily completed as reviewed by the Contract Manager;
 - (c) the total amount of Fees and, if applicable, Reimbursable Expenses for such work as detailed in Clause 6.2(b) above;
 - (d) the VAT payable; and

- (e) the relevant Purchase Order Number and Agreement reference number (if applicable).
- 6.8 Electronic invoices must be sent to the CMA Accounts Payable at the following email address: invoices@cma.gov.uk. In the event of a query regarding an outstanding payment the Consultant should contact CMA's Finance Team either by email to Finance.Team@cma.gov.uk or by telephone on 020 3738 6908 / 6284.
- 6.9 The Consultant will provide all relevant documentation required by the CMA to certify and approve any agreed Reimbursable Expense on the same Working Day that electronic invoices are submitted. Such relevant documentation shall be emailed to supplier representative details as per the order form .
- 6.10 Invoices submitted early shall be deemed received on the date of completion of the performance of the Services.
- 6.11 The CMA will pay all undisputed invoices within 30 days of receipt.
- 6.12 All payments shall be in pound sterling by electronic transfer to the Consultant's bank account as set out in this Agreement, or such other bank account as the Consultant may from time to time notify to the CMA with any applicable charges on such payments being at the Consultant's expense.
- 6.13 If the Consultant does not for any reason carry out the Services it has agreed to carry out in accordance with Schedule 1 (Description of the Services) / the Order Form, no fee shall be payable by the CMA in respect of those Services.
- 6.14 Wherever under this Agreement any sum of money is recoverable from or payable by the Consultant, that amount may be deducted from any sum then due, or which at any later time may become due, to the Consultant under this Agreement or under any other contract with the CMA or with any agency or office of His Majesty's Government. If sufficient monies are not due to the Consultant then the Consultant will make good the deficit within 30 Working Days of notice being given.
- 6.15 If the Fee is stated in the Award Letter / the Order Form / Schedule 2 (Payment Schedule) to be on a "time and materials" or "cost plus" basis or similar the Consultant shall give the CMA access to all documents and information in the Consultant's possession or under its control to enable the CMA to satisfy itself that the amount charged by the Consultant is properly and correctly charged in accordance with this Agreement and in default the CMA shall be entitled to withhold payment in whole or in part until such default is rectified to the satisfaction of the CMA.
- 6.16 If any sum due from the CMA to the Consultant under this Agreement is not paid on or before the due date for payment (and which has not been disputed by the CMA in good faith) then all sums then owing by the CMA to the Consultant shall become due and payable immediately and the Consultant shall be entitled to charge the CMA interest on the overdue amount from the due date until payment is made in full both before and after any judgement at 2% per annum over the Bank of England's base lending rate from time to time (accruing on a daily basis and compounded quarterly).

- 6.17 On termination of this Agreement, the Fee payable by the CMA to the Consultant will become due within 30 days of termination.

7 TAX STATUS AND LIABILITIES

- 7.1 The Consultant shall be responsible for paying any relevant remuneration or fees to the Key Personnel and for the deduction of any payment of all income tax liabilities and national insurance contributions or other similar contributions in respect of the Key Personnel as required by law, including any interest, penalties or costs in respect thereof.
- 7.2 By entering into this Agreement, the Consultant provides assurance to the CMA that they have made appropriate and legitimate arrangements with His Majesty's Revenue and Customs (HMRC) for dealing with income tax and national insurance contribution obligations of its Key Personnel. Furthermore, the Consultant agrees, as a condition of this Agreement to:
- (a) provide documentary evidence to this effect should the CMA request it; and
 - (b) provide this evidence to the CMA within 3 Working Days of the request being made.

If the Consultant fails to provide this evidence, the CMA may terminate this Agreement with immediate effect.

- 7.3 The CMA reserves the right to pass relevant information to HMRC or other public bodies about payments under this Agreement.
- 7.4 The Consultant shall indemnify the CMA against:
- (a) any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services by its personnel, where the recovery is not prohibited by law. The Consultant shall further indemnify the CMA against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the CMA in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and
 - (b) any employment related claim or any claim based on worker status (including reasonable costs and expenses) brought by its personnel against the CMA arising out of or in connection with the provision of the Services.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The CMA owns, and shall continue to own all right, title and interest in and to any Intellectual Property Rights or proprietary interest that it owned prior to the Commencement Date of this Agreement ("**Retained Rights**") and grants the Consultant a non-exclusive, non-transferable right to use the Retained Rights for the sole purpose of performing the Consultant's obligations under this Agreement.
- 8.2 Subject to any pre-existing rights of third parties and of the Consultant, the Intellectual Property Rights in the Deliverables shall belong to and be vested automatically in the CMA

and the CMA hereby grants to the Consultant a non-exclusive, non-transferable licence to such Intellectual Property Rights in the Deliverables for the sole purpose of performing its obligations under this Agreement.

- 8.3 The Consultant waives all moral rights relating to the Deliverables.
- 8.4 Where a Party acquires ownership of Intellectual Property Rights incorrectly under this Agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
- 8.5 If the Consultant in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its Key Personnel or third parties, it shall itself provide, or procure from such Key Personnel or third party a non-exclusive, licence for, or, if the Consultant is itself a licensee of those Intellectual Property Rights, it shall grant a sub-licence to, the CMA to use, reproduce, modify, adapt and enhance the material as the CMA sees fit. Such licence or sub-licence shall be perpetual and irrevocable and granted at no cost to the CMA.
- 8.6 The CMA shall have the sole right to use any information collected or collated pursuant to this Agreement (excluding any information which in the opinion of the CMA is confidential to the Consultant or which has been communicated to the Consultant under a condition that it shall be confidential to the Consultant), and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the CMA.
- 8.7 Nothing in this Agreement or done under this Agreement shall be taken to diminish any copyright, patent rights or any other Intellectual Property Rights which would, apart from this Agreement, vest in the CMA.
- 8.8 The Consultant shall ensure that all royalties, licence fees or similar expenses in respect of Intellectual Property Rights in materials used in connection with this Agreement have been paid and are included in the Fees.
- 8.9 If an IPR claim is made or anticipated the Consultant must at its own expense and the CMA's sole option, either:
- (a) obtain for the CMA the rights in Clauses 8.1 and 8.2 without infringing any third party Intellectual Property Rights; and
 - (b) replace or modify the relevant item with substitutes that don't infringe Intellectual Property Rights without adversely affecting the performance of the Services.

9 KEY PERSONNEL AND RIGHT TO PROVIDE A SUBSTITUTE

- 9.1 The Consultant warrants that prior to the execution of this Agreement, it has provided the following personal documentation to the CMA in respect of the Key Personnel:
- (a) full name, home address, email address and telephone numbers;

- (b) proof of identification in the form of a copy of the Passport or Driving Licence;
 - (c) accurate, complete and up-to-date curriculum vitae (CV);
 - (d) a copy of visa/work permits if required;
 - (e) a Baseline Personnel Security Standard (BPSS) check at basic level, dated within the past 12 months. If no certificate is available, the Consultant agrees to obtain such a certificate at its own expense.
- 9.2 The Consultant acknowledges that the Key Personnel are essential to the proper provision of the Services to the CMA and will perform the Services as detailed in this Agreement.
- 9.3 The Consultant must provide a list of Key Personnel needing to access the Premises and say why access is required.
- 9.4 The Consultant shall take the steps reasonably required by the CMA to prevent unauthorised persons being admitted to the Premises.
- 9.5 If the CMA gives the Consultant notice that any person is not to be admitted to or is to be removed from its Premises or is not to become involved in or is to be removed from involvement in the performance of this Agreement, the Consultant shall take all reasonable steps to comply with such notice.
- 9.6 The Consultant may at any time, with the prior written approval of the CMA, appoint a substitute with equivalent skill and expertise to perform the Services instead of the Key Personnel (the "**Substitute**").
- 9.7 Prior to approval by the CMA of a proposed substitute and on request by the CMA, the Consultant shall provide such evidence as the CMA requests to show that the Consultant has entered into an undertaking with the proposed substitute in the manner required in Clause 20.11 (Confidentiality)..
- 9.8 If the CMA accepts a Substitute, the Consultant will provide an overlap period of up to 10 Working Days during which time the Key Personnel will ensure that the Substitute fully understands the requirements of the CMA and the work involved in the provision of the Services. The Consultant will not charge the CMA any extra sum for this overlap period.
- 9.9 The Consultant will continue to invoice the CMA in accordance with the provisions in this Agreement and will be responsible for the remuneration of any Substitute.
- 9.10 Any reference in this Agreement to the Key Personnel will include any Substitute appointed in accordance with this Clause 9, except where stated to the contrary.
- 9.11 The Consultant agrees that the Key Personnel shall not be entitled to any pension, bonus, holiday, sickness or other fringe benefit from the CMA during the Term of this Agreement.

- 9.12 The Consultant indemnifies the CMA against all claims brought by any person employed or engaged by the Consultant caused by an act or omission of the Consultant or any Key Personnel.
- 9.13 During the Term and for so long as the Consultant continues to provide some or all of the Services, all Key Personnel shall at all times be and be deemed to be employed or engaged by the Consultant and not of the CMA. The Consultant shall be responsible for the taking of all disciplinary action and hearing of grievances in respect of the Key Personnel and for paying any salaries, taxes, contributions and charges payable in respect of the Key Personnel.
- 9.14 If the Consultant fails to comply with its obligations under this Clause 9 and the CMA decides that such failure is prejudicial to its interests, the CMA may immediately terminate this Agreement by notice in writing to the Consultant, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to the CMA.

10 WARRANTIES

- 10.1 The Consultant warrants and represents that:
- (a) it has fully informed itself by all such tests and examinations as are reasonably necessary of any conditions and limitations that might affect its ability to perform the Services in accordance with the terms of this Agreement;
 - (b) it has the experience, qualifications, staff and capability to and will execute the Services efficiently and expeditiously to the CMA in accordance with the Specification, best professional standards and the terms of this Agreement;
 - (c) it has the power to enter into and perform its obligations under this Agreement, and its obligations under this Agreement constitute its legal, valid and binding obligations enforceable in accordance with its terms;
 - (d) it will inform the CMA promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Consultant or its Key Personnel which may prevent the Consultant fulfilling its obligations in accordance with this Agreement;
 - (e) it will comply with any other reasonable confidentiality or Conflict of Interest obligations imposed on it;
 - (f) it has, will retain and will keep in force all titles, permits, licences, and certificates necessary for it to perform its obligations and duties under this Agreement and shall comply with all Applicable Laws, rules and regulations relating to the Services; and
 - (g) the CMA's use and, if applicable, possession of the Services or any part thereof in accordance with the terms of this Agreement shall not infringe any Intellectual Property Rights of any third party.

10.2 Where: (i) there is any breach of the Consultant's warranty, obligation or requirement imposed by, given or stated in this Agreement in respect of the Services; or (ii) the Services are not performed at the specified time, the CMA shall be entitled at its sole discretion without liability to the Consultant (arising out of such action) and without prejudice to any other right or remedy the CMA may have to take one or more of the following actions to:

- (a) cancel this Agreement in whole or in part;
- (b) refuse to accept any subsequent performance of the Services;
- (c) recover from the Consultant any costs reasonably incurred by the CMA in obtaining substitute services from a New Supplier;
- (d) require the Consultant at its sole cost to re-execute the Services in accordance with the Award Letter / Order Form, Agreement and Specification within 7 days;
- (e) treat this Agreement as terminated by the Consultant's breach and:
 - (i) delay payment of the Fees for the Services until the requirements of the Award Letter / Order Form, Agreement and any Specification are entirely fulfilled;
 - (ii) refuse to make payment of the Fee for the Services; or
 - (iii) require the repayment of any part of the Fee for the Services which the CMA has paid whether or not the CMA has previously required the Consultant to re-execute the Services; and/or
- (f) claim such damages as may have been incurred by the CMA as a result of the Consultant's breach of this Agreement.

10.3 If the CMA claims that the Award Letter / Order Form, Agreement or Specification has not been fulfilled or has been incorrectly fulfilled the Consultant shall be deemed to accept the validity of the claim unless it serves written notice on the CMA disputing the said claim and stating the reasons for its dispute within 7 days of the date of the said claim.

10.4 The CMA's rights under these terms are in addition to any statutory remedies available to the CMA

11 INDEMNITY

11.1 In addition to any other remedy available to the CMA, the Consultant shall indemnify and defend the CMA and their respective directors, officers and employees in full and on demand, from and against any and all direct or indirect liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of this Agreement:

- (a) any claim made against the CMA by a third party for any other loss, destruction or damage including but not limited to financial losses which are caused, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Consultant or Key Personnel save where such breach is a direct result of a failure of the CMA;
 - (b) wilful misconduct of the Consultant or any of its Key Personnel that impacts this Agreement;
 - (c) non-payment by the Consultant of any tax or National Insurance
 - (d) any claim made against the CMA by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Consultant or Key Personnel; and
 - (e) any claim made against the CMA for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the receipt, use or supply of the Services.
- 11.2 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with this Agreement, including any indemnities.
- 11.3 The Consultant shall provide all facilities, assistance and advice required by the CMA or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Consultant's performance, or purported performance of, or failure to perform, this Agreement.

12 LIABILITY

- 12.1 Nothing in this Agreement excludes or limits either Party's liability for:
- (a) death or personal injury caused by either Party's negligence;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any liability which cannot be legally excluded or limited.
- 12.2 Nothing in this Agreement excludes or limits the Consultant's liability for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 12.3 Subject to Clause 12.1 each Party's total aggregate liability under or in connection with this Agreement (whether in tort, contract or otherwise) shall be capped at an aggregate amount of one hundred and twenty-five percent (125%) of the Fee under this Agreement.
- 12.4 Nothing in this Agreement shall impose any liability on any member of the CMA staff or its representatives in their personal capacity.

- 12.5 All third party indemnities covering the Services must be assigned for the CMA's benefit by the Consultant.

13 INSURANCE

- 13.1 The Consultant will maintain in force at all times during the Term of this Agreement comprehensive insurance to cover the Consultant's potential liability to the CMA under, or in connection with the Agreement to include:
- (a) [employers liability insurance for the minimum amount of £5m for claims arising from a single event or series of related events in a single calendar year;
 - (b) professional indemnity insurance for the minimum amount of £5m per event; and
 - (c) public liability insurance for the minimum amount of £2m per event.
- 13.2 The Consultant will provide to the CMA prior to commencement of this Agreement confirmation of their Insurance Policies and will ensure that on each renewal date of such Insurance Policies the CMA is provided with up to date copies of such documentation.
- 13.3 The Consultant shall do nothing to invalidate any of the policies maintained in force in accordance with this Clause 13.

14 DATA PROTECTION

- 14.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation and allow the other Party to comply with the obligations imposed upon it by providing it with all necessary information. This Clause 14 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation. Where the optional Schedule 3 (Data Protection) has been applied in the Award Letter / Order Form, Clauses 14.2 to 14.9 will be disappplied, and the Consultant must Process Personal Data and ensure that Key Personnel Process Personal Data only in accordance with Schedule 33.
- 14.2 The Parties acknowledge and agree that any data which is provided by the Consultant to the CMA for the purposes of complying with the reporting obligations under this Agreement shall not contain Personal Data.
- 14.3 The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives (in their respective capacities as Independent Controllers) in order to ensure the effective management and performance of this Agreement. The Parties will only provide such Personal Data to each other to the extent necessary to perform their respective obligations under this Agreement.
- 14.4 For the avoidance of doubt, the scope of Personal Data referred to in Clause 14.3 will be as follows:
- (a) **Personal Data:** first and last name, email address, business telephone number, office location and position/job title/role of the Key Personnel (for which the Consultant is the Controller) and of the CMA staff (for which the CMA is the Controller).

- (b) **Permitted Purpose:** the performance of this Agreement or compliance with an obligation imposed under Applicable Law.
 - (c) **Permitted Recipients:** Key Personnel and CMA staff engaged in the performance of this Agreement.
- 14.5 Each Party shall Process such Personal Data in accordance with its respective privacy policy and Data Protection Legislation. Each Party shall be responsible for its own compliance with Articles 13 and 14 of the UK GDPR in respect of the Processing of Personal Data for the Permitted Purpose.
- 14.6 The Parties undertake not to:
 - (a) Process the Personal Data other than in accordance with the Permitted Purpose;
 - (b) retain or Process Personal Data for longer than is necessary for the Permitted Purpose;
 - (c) do anything to cause the other Party to be in breach of Data Protection Legislation.
- 14.7 Where one Party has provided the other Party with Personal Data, the recipient of the Personal Data:
 - (a) will provide all such relevant documents and information relating to its data protection policies and procedures as the disclosing Party may reasonably require (including its record of Processing activities maintained in accordance with Article 30 of the UK GDPR);
 - (b) will not transfer Personal Data to a third party located outside of the UK unless it has obtained the prior written consent of the disclosing Party and such transfer:
 - (i) is necessary to achieve the Permitted Purpose;
 - (ii) is protected with appropriate supplementary measures; and
 - (iii) complies with the transfer restrictions set out under Chapter V of the UK GDPR;
 - (c) will promptly notify the disclosing Party upon it becoming aware of any Personal Data Breach relating to the Personal Data provided by the disclosing Party and:
 - (i) do all such things as reasonably necessary to assist the disclosing Party in mitigating the effects of the Personal Data Breach;
 - (ii) implement any measures necessary to restore the security of any compromised Personal Data;

- (iii) work with the disclosing Party to make any required notifications to the Information Commissioner or any other regulatory authority and affected Data Subjects in accordance with Data Protection Legislation; and
 - (iv) not do anything which may damage the reputation of the disclosing Party or that Party's relationship with the relevant Data Subjects, save as required by law.
- 14.8 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity to the rights and freedoms of natural persons, each Party shall implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 14.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party:
 - (a) the other Party shall provide, at the cost of the request recipient, any information and/or assistance as reasonably requested by the request recipient to help it respond; or
 - (b) where the request is directed to the other Party and/or relates to that other Party's Processing, the request recipient will promptly (and in any event within 5 Working Days of receipt) forward such request to the other Party and provide any information and/or assistance as reasonably requested by the other Party to help it respond.

15 COMPLIANCE

Environmental requirements

- 15.1 In performing this Agreement the Consultant shall comply with the CMA's Environmental Policy as updated from time to time, which is to conserve energy, water and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 15.2 The paper for all written outputs, including reports, produced in connection with this Agreement shall (unless otherwise specified) be produced on recycled paper containing 100% post-consumer waste and used on both sides where appropriate.

Health and safety

- 15.3 When working within the boundaries of the CMA's Premises the Consultant shall:
 - (a) comply with all health and safety rules and regulations;
 - (b) comply with the CMA's health, safety and security procedures and instructions; and

- (c) complete any additional security clearance procedures required by the CMA.

Data handling

- 15.4 The Consultant shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Consultant of its obligations under this Agreement or as otherwise expressly authorised in writing by the CMA.
- 15.5 To the extent that Authority Data is held and/or processed by the Consultant, the Consultant shall supply that Authority Data to the CMA as requested by the CMA in the format specified.
- 15.6 Where the Consultant is obligated to provide computer equipment for the provision of the Services, it is a condition of this Agreement that (i) such computer equipment is free of any virus and malware; and (ii) the Consultant will make such equipment available for audit by the CMA.
- 15.7 Where the Consultant uses Removable Media, this must be encrypted and approved or issued by the CMA when connected to the CMA's IT network and all use must be in strict accordance with the rules about sensitivity and risks of information. In particular, encrypted memory sticks may only be used for data marked up to and including the protective marking of 'Official'.
- 15.8 Floppy disks must not be used in the delivery of this Agreement.
- 15.9 The Consultant shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 15.10 The Consultant shall be responsible for the accuracy of all documentation and information provided to the CMA by the Consultant in connection with the provision of the Services and the CMA shall have no liability for any extra costs occasioned by any discrepancies, errors or omissions therein.
- 15.11 The Consultant shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Consultant shall ensure that such back-ups are available to the CMA at all times upon request.
- 15.12 The Consultant shall ensure that any system on which the Consultant holds any Authority Data, including back-up data, is a secure system that complies with HM Government's Minimum Cyber Security Standard or any replacement / updates.
- 15.13 The Consultant shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 15.14 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Consultant's default so as to be unusable, the CMA may:
 - (a) require the Consultant (at the Consultant's expense) to restore or procure the restoration of Authority Data to the extent required by the CMA and the Consultant shall do so as soon as practicable; and/or

- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Consultant any reasonable expenses incurred in doing so.

15.15 If at any time the Consultant suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Consultant shall notify the CMA immediately and inform the CMA of the remedial action the Consultant proposes to take. Any theft of Removable Media must be reported to the police within 24 hours of becoming aware of the theft and a crime/incident number obtained.

Anti-bribery

15.16 The Consultant undertakes that it:

- (a) has not committed an offence under Sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "**Bribery Offence**");
- (b) has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;
- (c) is not aware of any circumstances that could give rise to an investigation relating to an alleged Bribery Offence or prosecution under the Bribery Act 2010.

15.17 The Consultant agrees that it:

- (a) has in place, and shall maintain until termination of this Agreement, adequate documented procedures designed to prevent persons associated with the Consultant (including an employee, Sub-contractor or agent or other third party working on behalf of the Consultant) (an "**Associated Person**") from committing a Bribery Offence;
- (b) shall comply with the Bribery Act 2010 and shall not, and shall procure that no Associated Person shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;
- (c) shall not do or permit anything to be done which would cause the CMA or any of CMA's employees, Sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and
- (d) shall notify the CMA immediately in writing if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Consultant's obligations under Clause 15.16 or 15.17. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Consultant's obligations.

Official Secrets Act

15.18 The Consultant shall take all reasonable steps to ensure that all persons employed by it or by any Sub-contractor in connection with this Agreement are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any work under or in connection with this Agreement.

Discrimination

- 15.19 The Consultant shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Consultant shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Employment Equality (Sexual Orientation) (Religion or Belief) (Age) Regulations 2006, the Employment Equality (Age) Regulations 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

Modern slavery

- 15.20 The Consultant undertakes, warrants and represents that:

- (a) neither the Consultant nor any of its Key Personnel:
 - (i) has committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**"); or
 - (ii) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- (b) it shall comply with the Modern Slavery Act 2015;
- (c) it shall notify the CMA immediately in writing if it becomes aware or has reason to believe that it, or its Key Personnel have, breached or potentially breached any of Consultant's obligations under this Clause 15.20. Such notice to set out full details of the circumstances concerning the breach or potential breach of Consultant's obligations.

- 15.21 Any breach of this Clause 15.20 by the Consultant shall be deemed a material breach of this Agreement and shall entitle the CMA to terminate this Agreement in accordance with Clause 16 (Termination).

16 TERMINATION

- 16.1 The CMA may immediately terminate this Agreement either wholly or in part without payment of compensation by giving notice in writing to the Consultant if:
- (a) the Consultant commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
 - (b) the Consultant commits a breach of its obligations under this Agreement which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist;

- (c) the Consultant:
- (i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
 - (ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up or dissolution of that Party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
 - (iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
 - (iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;
 - (v) calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that Party;
 - (vi) takes any steps in connection with proposing a reorganisation of the Party (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
 - (vii) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
 - (viii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within 14 days of it being levied;
 - (ix) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Clause 16.1(c); and/or
- (d) the Consultant ceases, or appears in the reasonable opinion of the CMA likely or is threatening to cease, to carry on all or a substantial part of its business.

16.2 In addition to the CMA's rights of termination under Clause 16.1, the CMA shall be entitled to terminate this Agreement by giving to the Consultant not less than 30 days' notice to that effect.

17 BREAK

- 17.1 The CMA shall at any time have the right to terminate this Agreement or reduce the quantity of Services to be provided by the Consultant in each case by giving to the Consultant one month's written notice. During the period of notice the CMA may direct the Consultant to perform all or any of the work under this Agreement.

18 CONSEQUENCES OF TERMINATION

- 18.1 The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.

- 18.2 Upon termination of this Agreement for any reason whatsoever:

- (a) all sums of money that were then due or accruing from the CMA to the Consultant in respect of this Agreement shall cease to be due or accruing to the extent of the termination;
- (b) the CMA shall have the right to recover from the Consultant all prices paid in respect of work which has not yet been delivered;
- (c) subject to Clause 20.1 (Confidentiality) the relationship of the Parties shall cease save as (and to the extent) expressly provided for in this Clause 18;
- (d) the Parties shall immediately return all of the other Party's property and equipment in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information;
- (e) the Consultant shall co-operate with the CMA and/or any new provider of the Services appointed by the CMA in ensuring the smooth handover and continued running of the Services during such handover;
- (f) the Consultant is responsible for the CMA's reasonable costs of procuring replacement Services for the rest of the term of this Agreement; and
- (g) if the Consultant is required by any law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy by Clause 20.2 (Confidentiality), it shall notify the CMA in writing of such retention, giving details of the documents or materials that it must retain.

- 18.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement including 7 (Tax status and liabilities), 8 (Intellectual Property Rights), 9.1 and 9.12 (Key Personnel and right to provide a substitute), 10 (Warranties), 11 (Indemnity), 12 (Liability), 13 (Insurance), 14 (Data Protection), 15.4-15.15 (Compliance), 18 (Consequences of termination), 20 (Confidentiality), 21 (Freedom of information), 22 (Transparency and publicity), 27 (Rights of third parties), 32 (Entire Agreement) and 34 (Law and Jurisdiction) shall remain in full force and effect.

19 TRANSFER REGULATIONS

- 19.1 This Clause 19 will be disapplied where the optional Schedule 4 (Staff Transfer) is applied.
- 19.2 It is the Parties' intention that neither the commencement nor the termination of this Agreement or of any of the Services will give rise to a relevant transfer pursuant to the Transfer Regulations.
- 19.3 In addition to any other remedy available to the CMA, the Consultant shall indemnify and defend the CMA and any New Supplier and their respective directors, officers and employees in full and on demand, from and against any and all Employee Liabilities howsoever arising whether wholly or in part arising directly or indirectly foreseeable or not, which are or which may be incurred, suffered or paid by the CMA or any New Supplier in relation to any individual who claims that their employment or liabilities in connection with their employment transfer to the CMA, any of CMA's companies or a New Supplier under the Transfer Regulations including any Employee Liabilities relating to the termination of employment of any such individual.

20 CONFIDENTIALITY

- 20.1 The Consultant undertakes to abide by, and procures that all Key Personnel abide by all of the sections of legislation set out in the CMA's Security Policy.
- 20.2 Except to the extent set out in this Clause 20, or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- (a) keep all Confidential Information it receives confidential and secure;
 - (b) not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent;
 - (c) immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 20.3 The Consultant may only disclose the CMA's Confidential Information to Key Personnel to the extent necessary for the performance of this Agreement provided such disclosure is subject to obligations equivalent to those set out in this Agreement. The Consultant shall use its best endeavours to procure that any such Key Personnel complies with such obligations. The Consultant will be responsible to the CMA in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 20.4 The Consultant shall procure that those members of the Key Personnel engaged in the provision of the Services sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 20.5 The obligations of confidentiality in this Clause 20 do not extend to any Confidential Information which the Parties can show:
- (a) is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under this Agreement;

- (b) was in its written records prior to the date of this Agreement and not subject to any confidentiality obligations;
- (c) was or is disclosed to it by a third party entitled to do so;
- (d) was independently developed without access to the disclosing Party's Confidential Information;
- (e) the Parties agree in writing is not Confidential Information or may be disclosed; or
- (f) is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction.

20.6 Nothing in this Agreement shall prevent the CMA from disclosing the Consultant's Confidential Information:

- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- (b) to any consultant, contractor or other person engaged by a Contracting Authority or any person conducting a Cabinet Office gateway review;
- (c) for the purpose of the examination and certification of the CMA's accounts; or
- (d) for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CMA has used its resources.

20.7 Either Party may disclose Confidential Information which it receives from the other Party to the Serious Fraud Office where the receiving Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010.

20.8 The CMA shall use all reasonable endeavours to ensure that any government department, Contracting Authority or Key Personnel to whom the Consultant's Confidential Information is disclosed pursuant to Clause 20.6 is made aware of the CMA's obligations of confidentiality.

20.9 Nothing in this Clause 20 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of any Intellectual Property Rights.

20.10 The Consultant and any Key Personnel shall not comment on the conclusions of any CMA report, nor on the reasons for those conclusions, contained in any such report, in respect of which the Consultant and any Key Personnel rendered services under a contract with the CMA.

- 20.11 The Consultant shall use its best endeavours to incorporate conditions in all sub-contracts or other business arrangements into which it may enter in the course of providing the Services so as to ensure that all persons concerned with the provision of the Services are bound by provisions replicating the intent and effect of this Clause 20.

21 FREEDOM OF INFORMATION

- 21.1 The Consultant acknowledges the CMA's responsibilities under the Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with the CMA to ensure it complies with its information disclosure obligations.
- 21.2 The Consultant shall assist the CMA at no additional charge in meeting any requests for information in relation to this Agreement which are made to the CMA in connection with the FOIA/EIR and/or any statutory modification or re-enactment thereof or any related guidelines or codes of practice.

22 TRANSPARENCY AND PUBLICITY

- 22.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement (including, but not limited to, any documents subsequently developed to monitor delivery and performance of this Agreement) is not Confidential Information. The CMA shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 22.2 Notwithstanding any other term of this Agreement, the Consultant hereby gives their consent for the CMA to publish this Agreement (and any documents subsequently produced by either Party as part of management of this Agreement – including, but not limited to, performance against key performance indicators and plans to rectify the same etc.) in their entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Agreement, to the general public.
- 22.3 The CMA may consult with the Consultant to inform its decision regarding any redactions that may be required to keep information which is exempt from disclosure under the FOIA from being disclosed but the CMA shall have the final decision in its absolute discretion. The Consultant shall assist and cooperate with the CMA to enable the CMA to publish this Agreement.
- 22.4 The Consultant agrees not to disclose the identity of the CMA as a client of the Consultant, nor to use the CMA's name nor refer to the CMA directly or indirectly in any advertisement or other publication without receiving the CMA's prior written approval for such use or reference and to the form and context in which the reference to the CMA is to appear. The Consultant shall abide by any conditions or limitations imposed by the CMA in such approval, if given.
- 22.5 The Consultant further agrees not to disclose the existence of this Agreement, or the nature of the relationship established by this Agreement.

23 CONFLICTS OF INTEREST

- 23.1 The Consultant must take action to ensure that neither the Consultant nor Key Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.
- 23.2 The Consultant must promptly, or within 5 days of becoming aware, notify and provide details to the CMA if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 23.3 Where the CMA is of the opinion that the Conflict of Interest notified to it under Clause 23.2 above is capable of being avoided or removed, the CMA may require the Consultant to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and if the Consultant fails to comply with the CMA's requirements in this respect, or if, in the opinion of the CMA compliance does not avoid or remove the conflict, the CMA may terminate this Agreement and recover from the Consultant the amount of any loss resulting from such termination.
- 23.4 Where the CMA is of the reasonable opinion that the Conflict of Interest which existed at the time of the award of this Agreement could have been discovered by the Consultant's due diligence and ought to have been disclosed as required prior to the Commencement Date, the CMA may terminate this Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Consultant the amount of any loss resulting from such determination.
- 23.5 Notwithstanding the above, the CMA reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the CMA, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the CMA under the provisions of this Agreement. The actions of the CMA pursuant to this Clause 23 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the CMA.

24 FORCE MAJEURE

- 24.1 Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control.
- 24.2 A Party suffering a Force Majeure Event ("**Affected Party**") shall notify the other Party ("**Non-Affected Party**") in writing as soon as reasonably practicable specifying the cause of the event, the scope of commitments under this Agreement affected by the event, and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the notice of a Force Majeure Event, the Affected Party shall not be relieved of its responsibility to fully perform as to all other commitments in this Agreement.
- 24.3 An Affected Party must use all reasonable measures practical to reduce the impact of the Force Majeure Event.

- 24.4 If the Force Majeure Event continues for a period of more than 30 days from the date of the notice of Force Majeure Event, the Non-Affected Party shall be entitled, at its sole discretion, to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event.

25 SUB-CONTRACTING AND ASSIGNMENT

- 25.1 This Agreement is personal to the Consultant. The Consultant shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without the prior written consent of the CMA.
- 25.2 Where the Consultant enters into a contract with a Sub-contractor for the purpose of performing this Agreement or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Consultant to the Sub-contractor within a period not exceeding 30 days from receipt of a valid invoice as defined by the contract requirements. The CMA reserves the right to ask for information about payment performance and will provide a facility for Sub-contractors to report poor performance to the CMA and the Cabinet Office.
- 25.3 Sub-contracting any portion of this Agreement shall not relieve the Consultant of any obligation or duty attributable to it under this Agreement.
- 25.4 The CMA may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement at any time without the prior written consent of the Consultant.

26 NON-SOLICITATION

- 26.1 For the duration of this Agreement and for a period of 6 months thereafter, the Consultant shall not directly or indirectly employ, engage or enter into any contract for works or services with any employee of the CMA with whom the Consultant has had contact during this Agreement without the prior written consent of the CMA.
- 26.2 The Consultant acknowledges that breach of Clause 26.1 shall give rise to considerable cost being incurred by the CMA. In the event of any such breach (and for the avoidance of doubt and without limitation), the Consultant agrees to make the following payments to the CMA:
- (a) the full recruitment costs associated with the recruitment of a replacement for the CMA employee including but not limited to advertising, agency fees and reasonable internal management time;
 - (b) any additional costs incurred by the CMA in the employment of temporary staff to provide cover in whole or in part for the said employee during any recruitment period; and
 - (c) where in the reasonable opinion of the CMA the employee has received special training funded by the CMA, the Consultant shall pay the reasonable costs associated with providing additional training to any new employee.

- 26.3 If the CMA gives its consent to the employment of any of its employees by the Consultant such consent shall not vary or amend the duties of confidentiality owed by the said employee to the CMA or the Consultant's obligations under this Agreement.

27 RIGHTS OF THIRD PARTIES

- 27.1 A person who is not a Party to this Agreement has no rights (whether under the Contracts (Right of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement.
- 27.2 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

28 SEVERABILITY OF PROVISIONS

- 28.1 If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.

29 WAIVER

- 29.1 The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that Party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies.
- 29.2 Any waiver of any breach of this Agreement shall be in writing.
- 29.3 The waiver by either Party of any breach of this Agreement shall not prevent the subsequent enforcement of that provision and shall not be deemed to be a waiver of any subsequent breach of that or any other provision.

30 VARIATION

- 30.1 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is signed by a duly authorised representative of each of the Parties to this Agreement.

31 NOTICES

- 31.1 Any notices sent under this Agreement must be in writing. Notice by email is deemed to be in writing.
- 31.2 Notices may be served in the ways set out below at the relevant Party's registered office (if it is a company) or its principal place of business (in any other case) or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement and, the following table sets out the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day	properly addressed and delivered
Prepaid first class recorded delivery domestic postal service	9.00am on the second Working Day after posting or at the time and date recorded by the delivery service	properly addressed prepaid and posted
Email	9.00am on the first Working Day after sending	despatched in a legible and complete form to the correct email address without any error message provided that a confirmation copy of the email is sent to the recipient by prepaid first class domestic postal service in the manner set out above. Failure to send a confirmation copy will invalidate the service of any email transmission

32 ENTIRE AGREEMENT

- 32.1 This Agreement contains the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding, written or oral agreements between the Parties in relation to such subject matter.

33 GENERAL

- 33.1 The CMA and the Consultant will each pay their own legal, professional and other costs in connection with the preparation and completion of this Agreement.
- 33.2 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 33.3 The Consultant shall not exercise any right of lien, general or otherwise and howsoever arising, over any materials relating to the Services or any other property of the CMA's in the Consultant's possession, in respect of any sums owed by the CMA to the Consultant under this Agreement or otherwise.

- 33.4 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute an original of this Agreement, but all the counterparts together constitute the same Agreement. No counterpart shall be effective until each Party has executed at least one counterpart.

34 LAW AND JURISDICTION

- 34.1 This Agreement, these terms and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.

- 34.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the Parties irrevocably submit

THIS AGREEMENT has been entered into the date of signature of the Award Letter / Order Form by the Consultant.

SIGNED by

Name:

for and on behalf of

CMA

SIGNED by

Name:

for and on behalf of

Consultant

SCHEDULE 1

Description of the Services

Background to Requirement

In order to enable the CMA to deliver effectively on its expanded function and responsibilities, the Board will change significantly in membership over the next year with 2-3 Non-Executive Directors (NEDs) stepping down and 2 – 3 Executive Directors (EDs), and up to 5 new NEDs joining.

The CMA Board Rules of Procedure provides that the Chair should 'ensure that a Board effectiveness review is performed annually, with independent input at least every three years, and that results are acted upon'.

In the Corporate governance in central government departments: [The Corporate governance in central government departments: Code of good practice](#), the Cabinet Office recommends that 'a formal and rigorous annual evaluation of the Board's performance and that of its committees' takes place every year, with one every third year being external. Any review should also be conducted in line with this code and should be objective and rigorous.

The CMA conducts regular internal and external Board Evaluations, and previous evaluations should be taken into account in so far as they still have relevance.

This review will cover the CMA's Board, its Audit and Risk Assurance Committee (ARAC), Remunerations Committee (RemCo), Nominations Committee (NomCo) and Subsidy Advice Committee (SAU). The review will not cover the CMA's Open Banking Committee.

This review should also be set in the wider context:

External and Internal Environment

- The addition to the CMA of new functions and responsibilities, that are underway and planned, including major mergers and acquisitions review responsibilities for cases previously reserved for the EU; the OIM; the SAU; and the expanded Consumer and Digital Markets functions defined in the anticipated DMCC Bill.
- A recognition that there is already a significant amount of change and development underway, with the CMA, the Board and its committees on a continuing and evolving journey.
- A significant transformation programme, that is nearing completion, called 'Shaping the Future', which was conducted to strengthen the strategy, operating model and organisation, and values of the CMA to enable the CMA to fulfil its duties effectively in the future.

- An ongoing wide-ranging review of people policies and practices, including a programme to further strengthen the employee experience.

Ambition

- The CMA's external ambitions and priorities are set out in the latest [Annual Plan](#).
- The aim of the board effectiveness reviews is to ensure that the governance of the CMA is best positioned to continue to improve the impact, effectiveness and the long-term resilience of the CMA.

Board and Executive

- A group of highly skilled individuals across the Board and the Senior Executive Team (SET), with the drive and desire to deliver the purpose of the CMA and the priorities set out in its 2023 Strategic and Annual Plans.
- The Board will change significantly in membership over the next year with 2-3 Non-Executive Directors (NEDs) stepping down and 2-3 Executive Directors (EDs), and up to 5 new NEDs joining.

Scope

The review should be in three stages, as part of one journey for the evolving Board:

1. An initial high-level review of the effectiveness of the current Board and its Committees to provide some learnings for a new Board to address in its development (Autumn 23).
2. A workshop for the new Board to go through the lessons from the initial review and create any relevant action plan for improvement (likely Q2 24)
3. A fuller review of the new Board and its Committees' effectiveness once they have been operating for a period – exact terms of reference to be informed by the initial review (at least 6 months in as a new Board).

The high-level stage 1 of the review should include a retrospective review of the Board's committees to gauge their effectiveness and to increase this in the future.

The NAO Audit and Risk Assurance Committee Effectiveness tool is considered to be a generic tool with good questions and analysis that could be used as part of any evaluation of the Board and its committees, or something similar.

The review should cover all the CMA's non-Executive committees: the Board, the CMA's Audit and Risk Assurance Committee (ARAC), Remunerations Committee (RemCo), Nominations Committee (NomCo) and Subsidy Advice Committee (SAU). (The CMA's Open Banking Committee is out of scope.)

The review should be conducted in a manner recommended by the contractor and agreed with the CMA Board Effectiveness Review (BER) team. The contractor should address the need to be:

- Of minimal burden – our committee members are very busy
- Proportional – many of our committee members are members of more than one committee
- Confidential – our members and staff should be comfortable to express their views in confidence
- Credible – the contractor will be liaising with our most senior Committee members and their staff must be credible in their liaisons.

The review should involve all Executive and Non-Executive Directors and other relevant Committee members who attend meetings and provide advice; staff attending and supporting the Committees could also be involved.

Regular updates are to be made to the Chair and Senior Independent Director (SID).

Those conducting the review should report weekly to the CMA Board Effectiveness Review (BER) team and/or the Chair and the SID to address any issues arising and for general progress checks.

Meetings should be conducted with strict confidentiality and participants should be anonymised in any reporting. Conclusions from the review should also be anonymised.

Any such meetings should be held on CMA premises unless otherwise agreed by the CMA BER team. Any meetings with participants can be virtual/in person but contractors should meet any preferences of the participants in agreement with the CMA BER team.

Detail

The review should look at the who, the what, and the how of the Board (and its Committees). The review should cover but not limited to:

Who:

- Structure
- Committees and their composition
- Members' skills and any capability gaps, noting that NED recruitment is ongoing.

What:

- Strategic and operational oversight and governance
- Agendas, topics, focus of meetings
- Strategy development, policy and risk management
- Operating model and organisation steers
- Board and committee reporting
- Board and committee support

How:

- Dynamics and behaviour, including independence and quality of challenge
- Chairing and inclusiveness of debate
- Effectiveness of decision-making
- Executive/Board Interaction

Outputs

The review should cover the effectiveness of the Board (and its Committees) helping the Board to evolve as it transforms in composition. This could include a clear set of pragmatic recommendations for the Chairs of the Board and Committees, along with a timeframe for the future review of progress against agreed outcomes. It should include a draft proposal for the Stage 2 workshop and proposals for the more comprehensive stage 3 review. The exact timeframes will be agreed with the successful contractor.

The contractor should propose a review with the best methods to meet our objectives. The review should recognise both the seniority of the CMA Executive Team and Board and their busy schedules and should involve staff from the contractor who will be credible in talking with these people. The review should also seek to minimise the impact on any committee members or associated staff who attend more than one type of committee.

You should assume that you may be able to attend committees (in whole, or in part) or to see their papers, subject to appropriate management of confidentiality, such as non-disclosure agreements.

Confidentiality

You will be required to return all materials to us for safe disposal after the successful outcome of the review, and to remove and delete any material relating to this review from your systems on delivery of a success outcome. All material should be treated with the highest confidence.

Data Handling

The CMA endeavours to ensure that its data is treated in accordance with GDPR. Additionally it must maintain and ensure continued access to its data for the purposes of its ongoing business. To this objective, questions 1-5 in the 'Data Handling Assessment', have been provided to determine if the supplier can meet the CMA's data handling requirements. These questions are, 'Pass/fail' and provide the supplier with an opportunity to provide further information on how the CMA's data will be handled.

Key Milestones

The exact timeframes will be agreed with the successful contractor, but should focus on delivery points in Autumn 23 and Qs 2 and 4 2024.

Deliverables Date/Duration

Stage 1: High level review Autumn 2023

Final Report presented to CMA by 15 December 2023/Q4 2023

Presentation to CMA Board between Dec 23/Jan 24

Stage 2: Workshop TBC, likely Q2 2024

Stage 3: Board and Committee review TBC, most likely within 6 months following stage 2, and by 31 March 25 at the latest.

Payment

Payments will be made on successful completion of each Key milestone (stage).

All invoices must be sent electronically and shall show the amount of VAT payable and shall detail the Purchase Order Number. Save where an invoice is disputed, the CMA shall pay the Contractor within 30 Days of receipt of an invoice. Invoices must be sent to CMA Accounts Payable at the following e:mail address: invoices@cma.gov.uk. In the event of a query regarding an outstanding payment please contact CMA's Finance Team either by e:mail to Finance.Team@cma.gov.uk or by telephone on 0203 738 6144/6617.

Contract Period

The contract is contingent on three deliverables (stages 1-3), with the progression to each stage being contingent on the satisfactory delivery of appropriate outcomes at each stage. The contract in total is anticipated to run from October 2023 to 30th March 2025, with no options to extend beyond. If the CMA is not satisfied with a stage, milestone, output or deliverable then it shall have the unilateral right, without notice, to not proceed with subsequent stages or milestones. In such a circumstance, the CMA shall only be obligated to pay outstanding contract sums (Activity Costs) for stages or milestones that have been satisfactorily completed.

SCHEDULE 2

Charges Schedule



The Fees shall be calculated in accordance with this Schedule and charged in accordance with the Rate Card.

For the avoidance of doubt, the total Contract Value shall not exceed £100k excluding VAT.

Table B Activity Outputs							
Description of Stage / Delivery	Activity	Name(s)	Staff Grade	Discounted Daily Rate	Max. Number of Days	Total	Total Activity Cost
Stage 1 An initial high-level review of the effectiveness of the current Board and its Committees to provide some learnings for a new Board to address in its development	Inception, survey, interviews, evaluation of findings, all client presentations, Board		Board level		9.5		
	Inception, interviews, evaluation of findings, all client presentations, report writing		Board level		4		
	Risk document review		Category A		0.75		
	Interviews and focus group, board observation		Category B		5.75		
	Document review		Category B		4.25		
	Survey design (with RM) and analysis, focus group support, project support		Category C		4.25		
	Scoping meeting, preparation work, workshop delivery, creation of outputs, next		Board level		5		
Stage 2 A workshop for the new Board to go through the lessons from the initial review and create any relevant action plan for improvement	Scoping meeting, preparation work, workshop delivery, creation of outputs, next		Board level		4		
Stage 3 A fuller review of the new Board and its Committees' effectiveness once they have been operating for a period	Inception, survey, chairs' focus group, evaluation of findings, all client presentations, Inception, NEDs' focus group, evaluation of findings, all client presentations, report writing		Board level		8		
	Document review, committee observation		Board level		2.75		
	Exec focus group, committee observation		Category A		2.75		
	Document review, committee observation		Category B		7.5		
	Document review, committee observation		Category B		4.75		
	Survey design (with RM) and analysis, focus group support, project support		Category C		4.5		
	potential travel costs for Mary Champion (from Bristol) and David Kirby (Surrey)						
Additional Costs							
Total Cost (100% of Contract Cost)							£87,825.00

1.

Rate Card		
Staff Grade	Description	Rate Per Day Offered
Board Level / Chief Executive	As described in Category A roles, with further strategic decision making responsibility and overall accountability within the organisation.	
Category A	Senior member of personnel, e.g. Director having assumed responsibilities in his/her profession through the performance of management and supervision roles. Typically, he/she shall have ten (10) years or more professional experience of which at least four (4) years must be relevant to the type of tasks to be performed under the contract at this level.	

Category B	Certified member of personnel e.g. Senior Consultant or Consultant Manager having received a high-level training in his/her profession and recruited for his/her appreciated skills as regards professional practice. Typically, he/she must have five (5) years professional experience of which at least two (2) years shall be relevant to the type of tasks to be performed under the contract at this level.	
Category C	Member of personnel such as a Consultant Typically, with two (2) to four (4) years experience, with understanding and grounding in research projects and the type of tasks to be performed under the contract at this level.	

Reimbursable Expenses

Not Applicable

SCHEDULE 3
Supplier Bid Response

Please refer to Annex 4 – Quality Response Document submitted at point of tender.



SCHEDULE 4
Staff Transfer

NOT USED

SCHEDULE 5
Commercially Sensitive Information

SCHEDULE 6

Data Protection

1 Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement the definitions in the standard terms:

Agreed Purposes	has the meaning given to it in paragraph 2.3 (Status of the Parties)
Business Contact Details	first and last name, business telephone number, email address, office location and position/job title and/or role
Claim Losses	has the meaning given to it in paragraph 7.3 (Liabilities of Data Protection Breach) of Annex 2 (Joint Controller Agreement) to this Schedule
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
Data Protection Impact Assessment	an assessment by the Controller carried out in accordance with section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018
Data Protection Officer	has the meaning given to it in the UK GDPR
Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
Financial Penalties	has the meaning given to it in paragraph 7.1 (Liabilities of Data Protection Breach) of Annex 2 (Joint Controller Agreement) to this Schedule
Joint Control	where two or more Controllers jointly determine the purposes and means of Processing
Lead Controller	has the meaning given to it in paragraph 1.2 (Joint Controller status and allocation of responsibilities) of Annex 2 (Joint Controller Agreement) to this Schedule
Personnel	all directors, officers, employees, agents, consultants and contractors of a Party engaged in the performance of its obligations under this Agreement

Processor Personnel	all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Agreement
Protective Measures	appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it
Subprocessor	any third party appointed to process Personal Data on behalf of the Processor related to this Agreement

2. Status of the Parties

- 2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement dictates the status of each Party under the DPA 2018. A Party may act as:
- 2.1.1 **“Controller”** in respect of the other Party who is “Processor”;
 - 2.1.2 **“Processor”** in respect of the other Party who is “Controller”;
 - 2.1.3 **“Joint Controller”** with the other Party;
 - 2.1.4 **“Independent Controller”** of the Personal Data where the other Party is also “Controller”,
- in respect of certain Personal Data under this Agreement and will specify in Annex 1 (Processing Personal Data) of this Schedule which scenario they think will apply in each situation.
- 2.2 Each Party must comply with its respective legal obligations under the Data Protection Legislation in accordance with the role it is performing under this Agreement and allow the other Party to comply with its obligations by providing them with all necessary information.
- 2.3 The Parties must Process the Personal Data for the purposes of fulfilling their obligations under this Agreement and pursuant to the terms of this Schedule or in order to comply with an obligation imposed upon them under applicable Law (the **“Agreed Purposes”**).

3. Where one Party is Controller and the other Party its Processor

- 3.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in the applicable table in Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.
- 3.2 The Processor must notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 3.3 The Processor must, at the Processor's cost, provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and must continue to provide reasonable assistance to the Controller to ensure that any such Data Protection Impact Assessment is maintained throughout the duration of this Agreement. Such assistance may, at the discretion of the Controller, include:
- 3.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;

- 3.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;
 - 3.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 3.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 3.4 The Processor must, in relation to any Personal Data Processed in connection with its obligations under this Agreement:
- 3.4.1 Process that Personal Data only in accordance with Annex 1 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor must promptly notify the Controller before Processing the Personal Data unless prohibited by Law;
 - 3.4.2 notwithstanding any other provisions in this Agreement relating to (amongst others) security, ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject will not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:
 - a) nature of the data to be protected;
 - b) harm that might result from a Data Loss Event;
 - c) state of technological development; and
 - d) cost of implementing any measures;
 - 3.4.3 ensure that:
 - a) the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Annex 1 (Processing Personal Data));
 - b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Schedule;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (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 Controller or as otherwise permitted by this Agreement; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 3.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - a) the destination country has been recognised as adequate by the UK Government in accordance with Article 45 of the UK GDPR or section 74 of the DPA 2018;
 - b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or section 75 of the DPA 2018) as determined by the Controller;
 - c) the Data Subject has enforceable rights and effective legal remedies;

- d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and/or
 - e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 3.4.5 at the written direction of the Controller, securely delete or return Personal Data (and any copies of it) to the Controller on termination or expiry of this Agreement, unless the Processor is required by Law to retain the Personal Data.
- 3.5 Subject to paragraph 3.6 of this Schedule, the Processor must notify the Controller immediately if, in relation to Processing Personal Data under or in connection with this Agreement, it:
 - 3.5.1 receives a Data Subject Request (or purported Data Subject Request);
 - 3.5.2 receives a request to rectify, block or erase any Personal Data;
 - 3.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 3.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Agreement;
 - 3.5.5 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
 - 3.5.6 becomes aware of a Data Loss Event.
- 3.6 The Processor's obligation to notify under paragraph 3.5 of this Schedule includes the provision of further information to the Controller, as details become available.
- 3.7 Taking into account the nature of the Processing, the Processor must (at its own expense) provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 3.5 of this Schedule (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
 - 3.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 3.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 3.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 3.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
 - 3.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's or any other regulatory authority.
- 3.8 The Processor must maintain complete and accurate records and information to demonstrate its compliance with this Schedule. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
 - 3.8.1 the Controller determines that the Processing is not occasional;
 - 3.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 3.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 3.9 The Processor must allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 3.10 Each Party must designate its own Data Protection Officer if required by the Data Protection Legislation.
- 3.11 Before allowing any Subprocessor to Process any Personal Data related to this Agreement, the Processor must:
- 3.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
 - 3.11.2 obtain the written consent of the Controller;
 - 3.11.3 enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule such that they apply to the Subprocessor; and
 - 3.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 3.12 The Processor remains fully liable for all acts or omissions of any of its Subprocessors and the Processor must cease to engage a Subprocessor appointed pursuant to paragraph 3.11 upon the Controller's withdrawal of consent where it has reasonable grounds for doing so including where the Controller has concerns regarding the Subprocessor's ability to Process the Personal Data in a manner contemplated by this paragraph 3.
- 3.13 The CMA may, at any time on not less than thirty (30) Working Days' notice, revise this Schedule by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 3.14 The Parties agree to take account of any guidance issued by the Information Commissioner. The CMA may, on not less than 30 Working Days' notice to the Consultant, amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner.

4. Where the Parties are Joint Controllers of Personal Data

- 4.1 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the terms set out in Annex 2 (Joint Controller Agreement) shall apply in respect of such Processing. The Parties must only provide Personal Data to each other as Joint Controllers where it is recorded in the applicable table under Annex 1 (Processing Personal Data).

5. Where the Parties are Independent Controllers of Personal Data

- 5.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as an Independent Controller.
- 5.2 Each Party must Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 5.3 Where a Party has provided Personal Data to the other Party in accordance with paragraph 5.1 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 5.4 The Parties will be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Agreement.
- 5.5 The Parties must only provide Personal Data to each other:
- 5.5.1 to the extent necessary to perform their respective obligations under this Agreement;
 - 5.5.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and

- 5.5.3 where it is recorded in the applicable table in Annex 1 (Processing Personal Data).
- 5.6 Subject to paragraph 5.5, the Party receiving Personal Data must not transfer that Personal Data to a third party located outside of the UK unless:
- 5.6.1 it has obtained the prior written consent of the other Party; and
- 5.6.2 such transfer is necessary to achieve the Agreed Purposes, protected with appropriate supplementary measures and complies with the transfer restrictions set out under Chapter V of the UK GDPR.
- 5.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party must, with respect to its Processing of Personal Data as Independent Controller, implement and maintain Protective Measures to ensure a level of security appropriate to that risk. The measures must, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 5.8 A Party Processing Personal Data for the purposes of this Agreement must maintain a record of its Processing activities in accordance with Article 30 of the UK GDPR and must make the record available to the other Party upon reasonable request.
- 5.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("**Request Recipient**"):
- 5.9.1 the other Party must provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
- 5.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
- a) promptly, and in any event within 5 Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 5.10 Each Party must promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Agreement and must:
- 5.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
- 5.10.2 implement any measures necessary to restore the security of any compromised Personal Data;
- 5.10.3 work with the other Party to make any required notifications to the Information Commissioner or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 5.10.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 5.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Annex 1 (Processing Personal Data).
- 5.12 Personal Data must not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Agreement which is specified in Annex 1 (Processing Personal Data).

Notwithstanding the general application of paragraphs 3.1 to 3.14 (Where one Party is a Controller and the other Party is a Processor) of this Schedule to Personal Data, where the Consultant is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of that Personal Data in accordance with paragraphs 5.1 to 5.12 of this Schedule.

ANNEX 1

Processing Personal Data

1. This Annex will be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex will be with the CMA at its absolute discretion.
2. The contact details of the CMA's Data Protection Officer are: Gus Cottell
3. The contact details of the Consultant's Data Protection Officer are: [REDACTED]
4. The Processor must comply with any further written instructions with respect to Processing by the Controller. Any such further instructions will be incorporated into this Annex.

Table 1: The CMA is the Controller and the Consultant is the Processor

Description	Details
Category of Personal Data where the CMA is the Controller and the Consultant is the Processor	The Parties acknowledge that for the purposes of the Data Protection Legislation, the CMA is the Controller and the Consultant is the Processor of the following Personal Data.
Duration of the Processing	<i>Throughout the life of the contract</i>
Nature and purposes and subject matter of the Processing	<i>Board Effectiveness Review for the CMA's Executive board.</i>
Type of Personal Data	<i>The scope of Personal Data in which the purposes and means of the Processing by the Consultant is determined as but not limited to:</i> <ul style="list-style-type: none"> • Names • Job Roles/Positions • Address • Date of birth • NI number • Telephone number • Pay • Images • Recordings visual/Audio • Reports
Categories of Data Subject	<i>CMA Executive Members of the Board and CMA Staff.</i>
International transfers and legal gateway	<i>In accordance with IDTA to this Agreement, if relevant.</i>

<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Law to preserve that type of data</p>	<p><i>All data must be returned to the CMA and removed from the suppliers systems following completion of the contract and/or its expiry.</i></p>
<p>Protective Measures that the Consultant and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event</p>	<p>TBC</p>

ANNEX 2

Joint Controller Agreement

1. Joint Controller status and allocation of responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Controller in respect of that Personal Data in accordance with the terms of this Annex 2 in replacement of paragraph 3 (Personal Data Breach) of this Schedule (where one Party is Controller and the other Party is Processor) and paragraph 5 (Impact Assessments) of this Schedule (where the Parties are Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Joint Controllers.
- 1.2 The Parties agree that the Party which has the direct relationship with Data Subjects (the "**Lead Controller**"):
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using all reasonable endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Deliverables where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of this Annex 2 (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Lead Controller's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of paragraph 1.1, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation against the relevant Party as Controller.

2. Undertakings of both Parties

- 2.1 The Consultant and the CMA each undertake that they shall:
- 2.1.1 report to the other Party every 6 months on:
 - a) the volume of Data Subject Requests (or purported Data Subject Requests) from Data Subjects (or third parties on their behalf);
 - b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;

- d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law, that it has received in relation to the subject matter of this Agreement during that period;
- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in paragraphs 2.1.1a) to e);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in paragraphs 2.1.1c) to e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Deliverables and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful Processing of that Personal Data in accordance with Article 6 of the UK GDPR. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Deliverables and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- 2.1.7 use all reasonable endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - a) are aware of and comply with their duties under this Annex 2 and those in respect of Confidential Information;
 - b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so; and
 - c) have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Party holds;
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach; and

- 2.1.11 not transfer Personal Data outside of the UK unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- a) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 section 73;
 - b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 section 75) as agreed with the non-transferring Party which could include the International Data Transfer Agreement, as published by the Information Commissioner from time to time, as well as any additional measures;
 - c) the Data Subject has enforceable rights and effective legal remedies;
 - d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and/or
 - e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the Processing of the Personal Data.
- 2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Joint Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex 2 in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. Personal Data Breach

- 3.1 Without prejudice to paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:
- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
 - 3.1.2 all reasonable assistance, including:
 - a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - b) co-operation with the other Party including using such reasonable endeavours as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
 - d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data

Breach, including, without limitation, the information set out in paragraph 3.2.

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

- 3.2.1 the nature of the Personal Data Breach;
- 3.2.2 the nature of Personal Data affected;
- 3.2.3 the categories and number of Data Subjects concerned;
- 3.2.4 the name and contact details of the Party's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
- 3.2.6 description of the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Consultant shall permit:

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

4.2 The CMA may, in its sole discretion, require the Consultant to provide evidence of the Consultant's compliance with Annex 2 and the Data Protection Legislation in lieu of conducting an audit, assessment or inspection as set out under paragraph 4.1.

5. Impact Assessments

5.1 The Parties shall:

- 5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- 5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Agreement, in accordance with the terms of Article 30 UK GDPR.

6. ICO Guidance

6.1 The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The CMA may on not less than 30 Working

Days' notice to the Consultant amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

- 7.1 If financial penalties are imposed by the Information Commissioner on either the CMA or the Consultant for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:
- 7.1.1 if in the view of the Information Commissioner, the CMA is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the CMA, its employees, agents, contractors (other than the Consultant) or systems and procedures controlled by the CMA, then the CMA shall be responsible for the payment of such Financial Penalties. In this case, the CMA will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Consultant shall provide to the CMA and its third party investigators and auditors, on request and at the Consultant's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;
 - 7.1.2 if in the view of the Information Commissioner, the Consultant is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the CMA is responsible for, then the Consultant shall be responsible for the payment of these Financial Penalties. The Consultant will provide to the CMA and its auditors, on request and at the Consultant's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or
 - 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the CMA and the Consultant shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such dispute shall be referred to the formal dispute resolution procedure agreed in this Agreement.
- 7.2 If either the CMA or the Consultant is the defendant in a legal claim brought before a court of competent jurisdiction by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):
- 7.3.1 if the CMA is responsible for the relevant Personal Data Breach, then the CMA shall be responsible for the Claim Losses;
 - 7.3.2 if the Consultant is responsible for the relevant Personal Data Breach, then the Consultant shall be responsible for the Claim Losses; and
 - 7.3.3 if responsibility for the relevant Personal Data Breach is unclear, then the CMA and the Consultant shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either paragraph 7.2 or 7.3 shall preclude the CMA and the Consultant reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the CMA.

8. Termination

- 8.1 If the Consultant is in material breach of any of its obligations under this Annex 2, the CMA shall be entitled to terminate this Agreement with immediate effect by issuing a termination notice to the Consultant.

9. Sub-Processing

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- 9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested;
 - 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation; and
 - 9.1.3 where the third party is located outside of the UK, obtain the prior written consent of the other Party and comply with the transfer restrictions set out under Chapter V of the UK GDPR.

10. Data Retention

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

