

ANNEX A

AGREEMENT

FOR

THE PROVISION OF EX- POST Evaluation of Vertical Mergers

PROC 308-2021

TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES AND/OR THE DELIVERY OF GOODS TO THE COMPETITION & MARKETS AUTHORITY (CMA)

Clause no Clause subject

1. Definitions and interpretations
2. Duration of Agreement and Commencement of Services
3. Supply of Goods and/or Services
4. Delivery of the Goods
5. Acceptance
6. Passing of legal title and risk
7. Provision of Services
8. Service Provider's Status
9. Authorisation
10. Warranties and Representations of the Quality of Goods and Services
11. Service Provider's Personnel
12. Payment
13. Prices
14. Value Added Tax
15. Audit and Accounts
16. Failures in Performance
17. Use of CMA's Equipment
18. Corrupt Gifts or Payments
19. Publicity
20. Secrecy and Confidentiality
21. Authority Data
22. Data Protection
23. Freedom of Information
24. Transparency
25. Indemnities and Insurance
26. Conflicts of Interest
27. Intellectual Property Rights
28. Contract and Service Management
29. Termination
30. Consequences of termination
31. Assignment and Sub-contracting
32. Force Majeure
33. Notices
34. Headings
35. Working Time Directive
36. Observance of Statutory Requirements
37. Equal Opportunities and Harassment
38. Invalidity and Severability
39. Rights of Third Parties
40. Variations and Cancellation
41. Survival of the Agreement
42. Non-Solicitation
43. Entire Agreement
44. Waiver
45. General
46. Environmental Requirements
47. Anti-Bribery
48. Governing Law and Jurisdiction

Schedule 1 A Description of Services and Service Levels

Schedule 1 B Description of the Goods and specifications

Schedule 2 Charges

Schedule 3 Contract and Service Management
Schedule 4 The CMA's Equipment
Schedule 5 Commercially Sensitive Information
Schedule 6 Processing, Personal Data and Data Subjects

1. Definitions and interpretations

1.1 In these Conditions:

Agreement	means these terms and conditions, the Schedules attached to it and the Award Letter (including any Annexes)
Annex	means an annex to the Award Letter
Applicable Laws	Means, if applicable, all national, supranational, foreign or local laws (including case law), legislation, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, enforceable right within the meaning of Section 2 of the European Communities Act 1972, European regulations, 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
Authority Data	means a) 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 are supplied to the Service Provider by or on behalf of the CMA or which the Service Provider is required to generate, process, store or transmit pursuant to this Agreement; or b) any Personal Data for which the CMA is the Controller
Award Letter	means the letter sent to the Service Provider on 30.09.2021 forming part of the Agreement
Business Continuity and Disaster Recovery Plan	means the CMA's Business Continuity and Disaster Recovery Plan as provided by the CMA to the Service Provider as updated from time to time
Charges	means the charges specified in Schedule 2 (The Charges)
CMA	means the Competition & Markets Authority
Commercially Sensitive Information	means the information (a) listed in Schedule 5 (Commercially Sensitive Information); or (b) notified to the CMA in writing (prior to the commencement of or during this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information: <ul style="list-style-type: none"> (i) which is provided by the Service Provider to the CMA in confidence for the period set out in Schedule 5 or the notification; and/or (ii) which constitutes a trade secret;
Commencement Date	shall be the 30.09.2021
CMA's Representative	shall have the meaning attributed to it in Clause 9 (Authorisation)
Completion Date	means 31.03.2022 or the date the Goods are delivered or the Services are complete in accordance with the terms of this Agreement if later
Confidential Information	means all information, including any information obtained by the Service Provider from any department, agency or office of Her Majesty's Government relating to and connected with this Agreement and the Services, 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
Contracting Authority	means any contracting authority as defined in Regulation 5(2) of the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 other than the CMA
Controller	shall have the meaning given in GDPR
Crown Body	means any department, office or agency of the Crown
Data Loss Event	means any event that results, or may result, in unauthorised access to Personal Data held by the Service Provider 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	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data
Data Protection Legislation	means (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; (iii) all Applicable Laws about the Processing of Personal Data and privacy
Data Protection Officer	shall have the meaning given in GDPR
Data Subject	shall have the meaning given in GDPR
Data Subject Request	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data
DPA 2018	means Data Protection Act 2018
GDPR	means the General Data Protection Regulation (Regulation (EU) 2016/679)
Goods	means the goods specified in Schedule 1B together with such other goods as the Parties may from time to time agree in writing
Good Industry Practice	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector
Government Buying Standards	means any UK Government standards advised as best buying practice.
Intellectual Property Rights	means patents, inventions, trademarks, service marks, logos, design rights (whether registrable or not), applications for any of those rights, copyright, database rights, know how, trade or business names and other similar rights or obligations, whether registrable or not, in any country, including but not limited to, the United Kingdom
Joint Controllers	means where two or more Controllers jointly determine the purpose and meaning of Processing
LED	means Law Enforcement Directive (Directive (EU) 2016/680)
Party or Parties	means a Party or Parties to this Agreement e.g. the CMA and the Service Provider
Personal Data	shall have the meaning given in GDPR
Personal Data Breach	shall have the meaning given in GDPR
Premises	means The Cabot, 25 Cabot Square, London E14 4QZ or any other Premises that the CMA shall occupy as notified to the Service Provider from time to time
Processor	shall have the meaning given in GDPR

Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of the obligations under this Agreement
Protective Measures	means appropriate technical and organisational measures 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 such measures adopted by it, including those outlined in Schedule 6 (Processing, Personal Data and Data Subjects)
Purchase Order Number	means the purchase order number which is required to be included on any invoice which the Service Provider provides the CMA
Reimbursable Expenses	means those expenses as listed in Schedule 2 (the Charges)
Request for Information	has the meaning set out in Clause 23.2
Security Policy	means the CMA's security policy as updated from time to time
Services	means the services to be provided by the Service Provider to the CMA, as detailed in Schedule 1 Part A (Description of Services and Service Levels) as amended from time to time in accordance with the provisions of this Agreement
Service Levels	means the standards of performance to be met by the Service Provider in providing the Services, details of which are set out in Schedule 1 Part B (Description of Services and Service Levels) as amended from time to time in accordance with the provisions of this Agreement
Service Provider	means the person, partnership or company who undertakes to render such Services or provide the Goods to the CMA in accordance with the terms of this Agreement as set out in the Award Letter dated [insert date]
Service Provider Personnel	means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any sub-contractor engaged in the performance of its obligations under this Agreement
Service Provider's Representative	shall have the meaning attributed to it in Clause 9 (Authorisation)
Staff Vetting Procedure	means the CMA's procedures for the vetting of Service Provider Personnel as advised to the Service Provider by the CMA
Sub-processor	means any third-party appointed to process Personal Data on behalf of the Service Provider related to this Agreement
Term	means the term of this Agreement as described in Clause 2.1
Value Added Tax	means the value added tax charged in accordance with the Value Added Tax Act 1994 (as amended)
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 the Agreement shall be subject to the following provisions:

1.2.1 a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;

1.2.2 the headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of the Agreement;

- 1.2.3 references to 'person', where the context allows, includes a corporation or an unincorporated association;
- 1.2.4 words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.
- 1.2.5 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.

2. Duration of Agreement and Commencement of Services

- 2.1 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 without notice on the Completion Date.
- 2.2 This Agreement shall not be extended without agreement in writing signed by both the Parties.

3. Supply of Goods and/or Services

- 3.1 By entering into this Agreement, the Service Provider hereby agrees to provide the Goods as specified in Schedule 1B (Description of the Goods and specification) and/or Services as specified in Schedule 1A (Description of Services and Service Levels) during the Term of this Agreement in consideration of the Charges.
- 3.2 Nothing in this Agreement shall:
 - 3.2.1 restrict the CMA from purchasing similar or equivalent Goods and/or Services with any third party supplier during the Term of this Agreement; or
 - 3.2.2 be construed as any representation or guarantee from the CMA as to the volume or value of the Goods and/or Services that the CMA will purchase under this Agreement.

4. Delivery of the Goods

- 4.1 The Goods shall be delivered to the CMA in accordance with the instructions detailed in Schedule 1B (Description of the Goods and specification).
- 4.2 The CMA shall not be obliged to return to the Service Provider any packaging materials for the Goods.
- 4.3 The CMA shall have the right to change its delivery instructions including the delivery date at any time by notice in writing to the Service Provider.
- 4.4 Time of delivery is of the essence of this Agreement and the CMA shall be entitled to reject all the Goods if any part of the Goods is not delivered on the agreed date and:
 - 4.4.1 recover from the Service Provider any expenditure reasonably incurred by the CMA in obtaining the Goods and/or the Services from another supplier; and
 - 4.4.2 claim damages for any additional costs, loss or expenses incurred by the CMA which are in any way attributable to the Service Provider's failure to deliver the Goods on the delivery date.
- 4.5 Delivery of the Goods shall be completed on the completion of the loading of the Goods at the location detailed in Schedule 1B (Description of the Goods and specification).

- 4.6 Where Goods are delivered in excess of those ordered by the CMA, the CMA may at its option elect to keep such excess goods and treat them as if ordered or to reject them. Any Goods rejected under this Clause shall be collected by the Service Provider within three days of notification of their rejection by the CMA. Any Goods awaiting collection shall be at the Service Provider's risk and the CMA shall have no responsibility or liability in respect of such Goods.
- 4.7 Unless specifically agreed with the CMA, the Service Provider shall not make any charge for any packing materials (including pallets, packing cases, wrappers or other packing materials of any description).
- 4.8 The Service Provider shall not deliver the Goods in instalments without the CMA's prior written consent.

5. Acceptance

- 5.1 Signature on behalf of the CMA of a delivery note or other document presented for signature on delivery or collection of the Goods is not evidence that the correct quantity or number of Goods have been delivered or that they otherwise meet the requirements of this Agreement.
- 5.2 The CMA will be deemed to have accepted the Goods as being in accordance with the Agreement unless:
- 5.2.1 Within 14 days of the date of delivery of the Goods, the CMA notifies the Service Provider in writing of any defect or other failure of the Goods to conform with the Agreement (which would be apparent upon reasonable inspection and testing of the Goods within 14 days); or
- 5.2.2 The CMA notifies the Service Provider in writing of any defect or other failure of the Goods to conform with the Agreement within a reasonable time where the defect or failure would not be so apparent within 14 days of the date of delivery

failing which the CMA shall not be entitled to reject the Goods and the CMA shall be bound to pay the Charges as if the Goods had been delivered in accordance with the Agreement.

6. Passing of legal title and risk

- 6.1 Title to and risk in the Goods supplied to the CMA shall pass to the CMA on delivery without prejudice to any right of rejection which the CMA may have under this Agreement or by law provided that if the CMA pays for the Goods prior to delivery, title shall pass to the CMA when payment is made and the Goods are appropriated to this Agreement.
- 6.2 Unless otherwise agreed in writing the Service Provider shall bear the risk of loss, destruction or damage to any Goods until the Goods are delivered in accordance with this Agreement.
- 6.3 Any Goods which are rejected or which are awaiting replacement or repair shall be at the Service Provider's risk from the time of receipt by the Service Provider of notice from the CMA rejecting the Goods or requiring the Service Provider to repair or replace the Goods.

7. Provision of Services

- 7.1 The Service Provider shall properly perform the Services in accordance with Schedule 1A (Description of Services and Service Levels).
- 7.2 Where it is agreed that the Service Provider is to perform Services at the CMA's Premises, the CMA shall procure safe and unencumbered access to the Premises, lighting, heating and other such facilities, supplies, materials or equipment for the Service Provider Personnel in accordance with the demands of any Applicable Law and as the Service Provider shall reasonable require.

- 7.3 The Service Provider shall use all endeavours to meet any performance dates for the Services specified in this Agreement and time shall be of the essence for the performance of the Services.

8. Service Provider's Status

- 8.1 In performing the Services and/or providing the Goods, the Service Provider shall operate as, and have the status of, an independent contractor and shall not operate or have the status of agent, employee or representative of the CMA. Accordingly:

8.1.1 the Service Provider shall not, and shall procure that his agents and servants do not, say or do anything that might lead any other person to believe that the Service Provider is acting as the agent of the CMA; and

8.1.2 nothing in this Agreement shall impose any liability on the CMA in respect of any liability incurred by the Service Provider to any other person but this shall not be taken to exclude or limit any liability of the CMA to the Service Provider that may arise by virtue of either a breach of this Agreement or any negligence on the part of the CMA, its staff or agents.

9. Authorisation

- 9.1 The following person (including any successor in office from time to time of such person) is authorised to act as the CMA's Representative on all matters concerning this Agreement:

Name: [REDACTED]

Email: [REDACTED]

- 9.2 The following person (including any successors in office from time to time of such person) is authorised to act as the Service Provider's Representative on all matters concerning this Agreement:

Name: [REDACTED]

Email: [REDACTED]

Each of the CMA and the Service Provider may from time to time by notice in writing to the other Party appoint another person to act as its authorised representative. Both Parties shall use their reasonable endeavours to ensure that any such substitutions and or additions do not have any adverse impact on the Services and/or the delivery of the Goods.

10. Warranties and Representations of the Quality of Goods and Services

- 10.1 The Service Provider warrants and represents that:

10.1.1 if requested by the CMA, it has carefully examined all parts of the Premises where the Services are to be performed or which are otherwise relevant to performance Services;

10.1.2 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 and/or deliver the Goods in accordance with the terms of this Agreement;

10.1.3 it has the experience, qualifications, staff and capability to and will execute the Services and/or delivery of the Goods efficiently and expeditiously to the CMA in accordance with the applicable Schedules, best professional standards and the terms of this Agreement;

10.1.4 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;

- 10.1.5 all Service Provider Personnel used to provide the Services and/or the Goods will be vetted in accordance with Good Industry Practice, the Security Policy and the Staff Vetting Procedure;
 - 10.1.6 it will provide the Service Provider Personnel with such training as is appropriate and necessary to enable them to perform the Services and/or deliver the Goods properly in accordance with the provisions of this Agreement;
 - 10.1.7 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 Service Provider the Service Provider Personnel which may prevent the Service Provider fulfilling its obligations in accordance with this Agreement;
 - 10.1.8 it will comply with any obligations imposed on it pursuant to Annex B (Confidentiality and Security requirements) and Annex C (Conflict of Interest in relation to Service Providers and Service Providers' Staff) of the Award Letter.
 - 10.1.9 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/or the delivery of the Goods; and
 - 10.1.10 the CMA's use and, if applicable, possession of the Services and/or the Goods 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 The Service Provider warrants that the Services supplied by it and/or used by it to perform and/or support the Services:
- 10.2.1 shall not contain any computer code:
 - (a) designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetically disrupting or distorting, the operation of the Services, or any of the CMA's other associated software, firmware, hardware, computer system or network (sometimes referred to as 'viruses' or 'worms');
 - (b) that would disable the Services or impair in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral (sometimes referred to as 'time bombs', 'time locks', or 'drop dead' devices); or
 - (c) that would permit the Service Provider or others to access the Services to cause such disablement or impairment (sometimes referred to as 'traps', 'access codes' or 'trap door' devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.
 - 10.2.2 shall be performed in accordance with any relevant specification detailed in Schedule 1 (Description of Services and Service Levels).
- 10.3 The Service Provider undertakes, represents and warrants to the CMA that the Goods shall:
- 10.3.1 conform to the description of the Goods set out in Schedule 1B (Description of the Goods and specifications) and with any instructions of the CMA, and shall otherwise meet the requirements of this Agreement;

- 10.3.2 be without fault, are of satisfactory quality and fit for their intended purpose (whether such purpose is implied or expressly stated in Schedule 1B);
- 10.3.3 be properly labelled, packaged, marked and described in accordance with Schedule 1B (Description of the Goods and specifications) and will be properly packed and secured in such a manner as to reach their destination undamaged and in good condition.
- 10.4 Where there is any breach of the Service Provider's warranty in Clause 10.3 or if any obligation, warranty or requirement imposed by, given or stated in this Agreement in respect of the Goods is not complied with or the Goods delivered are damaged the CMA shall be entitled at its sole discretion at any time after delivery of the Goods and without prejudice to any other right or remedy in respect of the matters to:
 - 10.4.1 reject the relevant Goods and raise a debit note against the Service Provider's invoice for them; and/or
 - 10.4.2 require the Service Provider to repair the Goods or to supply replacement Goods forthwith without charge with goods that conform to this Agreement and to delay payment until the requirements of this Agreement are entirely fulfilled; or
 - 10.4.3 treat this Agreement as terminated by the Service Provider's breach and require the repayment of any part of Charges for the Goods which the CMA has paid whether or not the CMA has previously required the Service Provider to repair the Goods or to supply any replacement Goods;
 - 10.4.4 carry out at the Service Provider's expense any work necessary to make the Goods comply with the Agreement; and/or
 - 10.4.5 claim such damages as may have been sustained in consequence of the Service Provider's breaches of the Agreement;
- 10.5 If the CMA exercises any right to reject the Goods, the CMA may at its absolute discretion require the Service Provider to collect the relevant Goods forthwith or return the Goods to the Service Provider and raise a debit note against the Service Provider's invoice for the carriage costs and any other costs incurred in connection with the rejection of and return of the Goods.

11. Service Provider's Personnel

- 11.1 The Service Provider shall take the steps reasonably required by the CMA to prevent unauthorised persons being admitted to the Premises. If the CMA gives the Service Provider notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of this Agreement, the Service Provider shall take all steps to comply with such notice and if required by the CMA the Service Provider shall replace any person removed under this Clause with another suitably qualified person and procure that any pass issued to the person removed is surrendered to the CMA.
- 11.2 If and when instructed by the CMA, the Service Provider shall give to the CMA a list of names and addresses of all Service Provider Personnel who are or may be at any time concerned with the provision of the Services and/or the Goods or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the CMA may reasonably require.
- 11.3 The decision of the CMA as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of this Agreement and as to whether the Service Provider has furnished the information or taken the steps required of him by this Clause shall be final and conclusive.
- 11.4 The Service Provider's Personnel, engaged within the boundaries of the Premises, shall comply with such rules, regulations, requirements and advisory notices (including those relating to

security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises. Details of such rules, regulations, requirements and advisory notices shall be provided, on request, by the CMA.

- 11.5 The Service Provider shall ensure that while on any of the CMA's Premises or while performing the Services that all of the Service Provider Personnel carry out their duties and behave in an orderly and appropriate manner, having regard to the nature of their duties.
- 11.6 The Service Provider Personnel employed or engaged in the provision of the Services may be required to undergo or have already undergone Baseline Personnel Security Standard (Baseline Standard) checking. The Service Provider shall contact the CMA's HR department, using the contact details as provided by the CMA on request by the Service Provider, for further details and advice regarding this procedure.
- 11.7 The Service Provider shall provide training on a continuing basis for all Service Provider Personnel employed or engaged in the provision of the Services in compliance with the CMA's Security Policy.
- 11.8 During the Term and for so long as the Service Provider continues to provide some or all of the Services, all Service Provider Personnel shall at all times be and be deemed to be employed or engaged by the Service Provider or the sub-contractor and not of the CMA. The Service Provider shall be responsible for the taking of all disciplinary action and hearing of grievances in respect of the Service Provider Personnel and for paying any salaries, taxes, contributions and charges payable in respect of the Service Provider Personnel.
- 11.9 If the Service Provider fails to comply with its obligations under this Clause 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 Service Provider, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the CMA.

12. Payment

- 12.1 The Service Provider shall submit electronic invoices for the Charges and any Reimbursable Expenses on a monthly basis in arrears on the last Working Day of each month or at times or intervals agreed by the CMA in writing. The Service Provider shall ensure that any electronic invoice it submits sets out the CMA's Purchase Order Number and Agreement reference number (if applicable) and the amount to be paid.
- 12.2 Electronic 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 the Service Provider should contact CMA's Finance Team either by email to: Finance.Team@cma.gov.uk or by telephone on 0203 738 6144/6617.
- 12.3 Unless otherwise agreed, payment for any undisputed invoice will be made within 30 calendar days of receipt of the invoice.
- 12.4 The Service Provider shall make available to the CMA such evidence thereof as the CMA may reasonably require to indicate the activities, Charges and expenses, if applicable, for which payment is sought.
- 12.5 All payments shall be in Pounds Sterling to such bank account as the Service Provider may from time to time notify the CMA with any applicable charges on such payments being at the Service Provider's expense.
- 12.6 Wherever under this Agreement any sum of money is recoverable from or payable by the Service Provider, that sum may be deducted from any sum then due, or which at any later time may become due, to the Service Provider under this Agreement or under any other agreement or contract with the CMA. If sufficient monies are not due to the Service Provider then the Service Provider will make good the deficit within 30 Working Days of notice being given.

- 12.7 Any over-payment by the CMA to the Service Provider whether in respect of the Charges, Reimbursable Expenses or Value Added Tax shall be a sum of money recoverable from the Service Provider pursuant to Clause 12.5 or otherwise.
- 12.8 The CMA reserves the right to impose late delivery penalties of 8% of the milestone invoice cost, for late delivery of services.

13. Prices

- 13.1 Unless otherwise stated in this Agreement, the Charges for the Services and/or the Goods shall not vary from that stated in Schedule 2 (the Charges).
- 13.2 The Charges for the Services stated in Schedule 2 (the Charges) shall include labour, all expenses apart from any Reimbursable Expenses listed in Schedule 2 (the Charges), insurance, materials, any required equipment and any other additional costs, unless otherwise stated and agreed in writing between the Parties.
- 13.3 If any sum due from the CMA to the Service Provider under this Agreement is not paid on or before the due date for payment then all sums then owing by the CMA to the Service Provider shall become due and payable immediately and the Service Provider 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 judgment 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).

14. Value Added Tax

- 14.1 All sums payable under this Agreement are exclusive of VAT and the CMA shall pay to the Service Provider, in addition to the Charges, a sum equal to the Value Added Tax chargeable on the value of the Services and/or the Goods provided in accordance with this Agreement.

15. Audit and Accounts

- 15.1 For the purpose of the examination and certification of the accounts relating to the CMA, the National Audit Office Comptroller and Auditor General of the United Kingdom or other duly appointed auditors may examine documents evidencing expenditure incurred and income received by the CMA which are owned, held or otherwise within the control of the Service Provider and may require the Service Provider to produce such oral or written explanations as it considers necessary. The Service Provider, shall, so far as it is able, secure the cooperation of the Service Provider Personnel engaged pursuant to the terms of this Agreement in the above process.
- 15.2 The Service Provider shall keep and maintain accounts and records to the satisfaction of the CMA of all expenditures which are reimbursable by the CMA and of the hours worked and costs incurred by the Service Provider or in connection with any employees or subcontractors of the Service Provider paid for by the CMA on a time charge basis. The Service Provider shall on request afford the CMA or its representatives such access to those records as may be required by the CMA in connection with this Agreement.
- 15.3 The Service Provider shall ensure that the said accounts and records are available for a period of six years after termination or expiry of this Agreement.

16. Failures in Performance

- 16.1 If at any time during the Term of this Agreement the Service Provider shall fail to provide the Service and/or the Goods or any part thereof in accordance with this Agreement the CMA may:
- 16.1.1 withhold payment until such time as the Service Provider provides the Service and/or the Goods to the satisfaction of the CMA's representative;
- 16.1.2 deduct such amount from any sums payable to the Service Provider as the CMA's Representative shall reasonably determine to provide or employ other persons to

provide the Service and/or the Goods or any part thereof and charge to the Service Provider any additional costs incurred by the CMA;

16.1.3 suspend this Agreement in whole or in part until such time as the CMA's Representative is satisfied that the Service Provider can properly provide the Service and/or the Goods; and

16.1.4 terminate this Agreement in accordance with Clause 29 (Termination).

17. Use of CMA's Equipment

17.1 The CMA shall make available to the Service Provider solely for the purpose of the provision of the Services, and subject to the terms of this Agreement, the equipment and materials specified in Schedule 4 (The CMA's Equipment). If any of such equipment is subject to third-party maintenance contracts the Service Provider undertakes to comply with such maintenance contracts.

17.2 Any equipment provided by the CMA to assist the Service Provider in executing the Services shall be held by the Service Provider as bailee and fiduciary trustee for the CMA until either returned to the CMA or (if not promptly returned, at the CMA's option) paid for. Such equipment, once provided to the Service Provider, shall be held at the risk of and maintained in good condition by the Service Provider. Under no circumstances shall the Service Provider seek to move or dispose of any such equipment or permit any such equipment to be subject to any charge, lien or other interest of the Service Provider or any third party.

17.3 The Service Provider shall deliver up all such equipment to the CMA forthwith on termination of this Agreement for any reason (or forthwith on the CMA's request to do so earlier). Without prejudice to the provisions of Clause 17.2, failure to deliver up such equipment within 24 hours of such termination or request shall entitle the CMA to payment in respect of such equipment and to issue a debit note or issue an invoice as it deems necessary.

18. Corrupt Gifts or Payments

18.1 The Service Provider shall not:

18.1.1 Offer or give, or agree to give, to any employee or representative of the CMA any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this Agreement or any other agreement with the CMA or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any such agreement. The attention of the Service Provider is drawn to the criminal offences created by the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916.

18.1.2 Enter into this Agreement or any other agreement with a person in Her Majesty's Service in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the CMA.

18.2 Any breach of this Clause 18 by the Service Provider or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Service Provider) or the commission of any offence by the Service Provider or by anyone employed by him or acting on his behalf under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916, in relation to this Agreement or any other agreement with Her Majesty's Service shall entitle the CMA to terminate this Agreement with immediate effect and recover from the Service Provider the amount of any direct loss resulting from such termination and/or to recover from the Service Provider the amount or value of any such gift, consideration or commission.

- 18.3 Any dispute, difference or question arising in respect of the interpretation of this Clause 18, the right of the CMA to terminate this Agreement or the amount or value of any such gift, consideration or commission shall be decided by the CMA, whose decision shall be final and conclusive.

19. Publicity

- 19.1 The Service Provider agrees not to disclose the identity of CMA as a client of the Service Provider, 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 Service Provider shall abide by any conditions or limitations imposed by the CMA in such approval, if given.
- 19.2 The Service Provider further agrees not to disclose the existence of this Agreement, or the nature of the relationship of the Parties established by this Agreement.

20. Secrecy and Confidentiality

- 20.1 In addition to the obligations set out in Annex B of the Award Letter, the Service Provider undertakes to abide by, and procure that all Service Provider Personnel abide by the following sections of legislation, which form part of the CMA's Security Policy;

- 20.1.1 Part 9 of the Enterprise Act 2002, this applies to information obtained in the course of merger and market investigations and contains:

- (a) a general prohibition on disclosure of specified information;
- (b) the exceptions to the prohibition;
- (c) the considerations which the CMA must have regard to before disclosing any specified information; and
- (d) a criminal offence of improperly disclosing or using specified information.

- 20.1.2 The provisions on non-disclosure of information in the various regulatory statutes which apply to price control and other regulatory references:

- (a) The Airports Act 1986, section 74.
- (b) The Airports (Northern Ireland) Order 1994, Article 49.
- (c) The Communications Act 2003, article 393.
- (d) The Electricity (Northern Ireland) order 1992, Article 61.
- (e) The Energy Act 2004.
- (f) The Financial Services & Markets Act 2000, section 348.
- (g) The Gas (Northern Ireland) Order, Article 44.
- (h) The Postal Services Act 2000, Schedule 7.
- (i) The Railways Act 1993, section 145.
- (j) The Regulation of Investigatory Powers Act 2000.
- (k) The Telecommunications Act 1984, section 101.
- (l) The Transport Act 2000, Schedule 9.

- (m) The Utilities Act 2000, section 105.
 - (n) The Water Industry Act 1991, section 206.
 - (o) The Water Services etc (Scotland) Act 2005 (Consequential Provisions and Modifications).
 - (p) The Water and Sewerage Services (Northern Ireland) Order 2006, Article 265.
- 20.1.3 Other legislation, including any superseding legislation, imposing general non-disclosure or use of information obligations
 - (a) The Computer Misuse Act 1990.
 - (b) The Copyright, Designs and Patents Act 1988.
 - (c) The Data protection Act 2018.
 - (d) The Human Rights Act 1998.
 - (e) The Official Secrets Act 1989, section 5.

Guidance on this Clause 20 will be provided to the Service Provider by the CMA on request.
- 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:
 - 20.2.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 20.2.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 20.3 Clause 20.2 shall not apply to the extent that:
 - 20.3.1 such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 23 (Freedom of Information);
 - 20.3.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 20.3.3 such information was obtained from a third party without obligation of confidentiality;
 - 20.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 20.3.5 it is independently developed without access to the other Party's Confidential Information.
- 20.4 The Service Provider may only disclose the CMA's Confidential Information to the Service Provider's Personnel who are directly involved in the provision of the Services and/or the delivery of the Goods and who need to know the information, and shall ensure that such Service Provider Personnel are aware of and shall comply with these obligations as to confidentiality.
- 20.5 The Service Provider shall not, and shall procure that the Service Provider Personnel do not, use any of the CMA's Confidential Information received otherwise than for the purposes of this Agreement.

- 20.6 The Service Provider shall procure that those members of the Service Provider Personnel engaged in the provision of the Services and/or the delivery of the Goods sign a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- 20.7 Nothing in this agreement shall prevent the CMA from disclosing the Service Provider's Confidential Information:
- 20.7.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 20.7.2 to any consultant, contractor or other person engaged by the Contracting Authority or any person conducting an Office of Government Commerce gateway review;
 - 20.7.3 for the purpose of the examination and certification of the CMA's accounts; or
 - 20.7.4 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.
- 20.8 The CMA shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to Clause 20.7 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 the 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 Service Provider and any Service Provider 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 Service Provider and any Service Provider Personnel rendered services under a contract with the CMA.
- 20.11 The Service Provider 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 Service 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. Authority Data

- 21.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Authority Data.
- 21.2 The Service Provider shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Service Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by the CMA.
- 21.3 To the extent that Authority Data is held and/or processed by the Service Provider, the Service Provider shall supply that Authority Data to the CMA as requested by the CMA in the format specified.
- 21.4 The Service Provider shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 21.5 The Service Provider shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the CMA's Business Continuity and

Disaster Recovery Plan. The Service Provider shall ensure that such back-ups are available to the CMA at all times upon request.

- 21.6 The Service Provider shall ensure that any system on which the Service Provider holds any Authority Data, including back-up data, is a secure system that complies with the CMA's Security Policy.
- 21.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's default so as to be unusable, the CMA may:
 - 21.7.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Provisions and the Service Provider shall do so as soon as practicable; and/or
 - 21.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Provisions.
- 21.8 If at any time the Service Provider 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 Service Provider shall notify the CMA immediately and inform the CMA of the remedial action the Service Provider proposes to take.

22. Data Protection

- 22.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the CMA is the Controller and the Service Provider is the Processor. The only processing that the Processor is authorised to do is listed in Schedule 6 (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor.
- 22.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 22.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controllers, include:
 - 22.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 22.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 22.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 22.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 22.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - 22.4.1 process that Personal Data only in accordance with Schedule 6 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by law;
 - 22.4.2 ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure

to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken 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;

22.4.3 ensure that :

- (a) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 6);
- (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 clause;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (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; and

22.4.4 not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- (a) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
- (b) the Data Subject has enforceable rights and effective legal remedies;
- (c) 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
- (d) The Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

22.4.5 at the written direction of the CMA, delete or return Personal Data (and any copies of it) to the CMA on termination of the Agreement unless the Service Provider is required by law to retain the Personal Data.

22.5 Subject to Clause 22.6 the Processor shall notify the Controller immediately if it:

22.5.1 receives a Data Subject Request (or purported Data Subject Request);

- 22.5.2 receives a request to rectify, block or erase any Personal Data;
 - 22.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 22.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 22.5.5 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
 - 22.5.6 becomes aware of a Data Loss Event.
- 22.6 The Processor's obligation to notify under Clause 22.5 shall include the provision of further information to the Controller in phases, as details become available.
- 22.7 Taking into account the nature of the processing, the Processor shall 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 Clause 22.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 22.7.1 The Controller with full details and copies of the complaint, communication or request;
 - 22.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - 22.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 22.7.4 assistance as requested by the Controller following any Data Loss Event;
 - 22.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 22.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 22.8.1 The Controller determines that the processing is not occasional;
 - 22.8.2 The Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 22.8.3 The Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 22.9 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 22.10 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 22.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:

- 22.11.1 notify the Controller in writing of the intended Sub-processor and processing;
 - 22.11.2 obtain the written consent of the Controller;
 - 22.11.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 22 such that they apply to the Sub-processor; and
 - 22.11.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 22.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- 22.13 The Controllers may, at any time on not less than 30 Working Days' notice, revise this Clause 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).
- 22.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 22.15 Where the Parties include two or more Joint Controllers as identified in Schedule 6 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller agreement based on the terms outlined in Schedule 6 – Annex A in replacement of Clauses 22.1-22.14 above for the Personal Data under joint control.

23. Freedom of Information

- 23.1 The Service Provider acknowledges that the CMA is subject to the requirements of the Code of Practice on Government Information, Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with the CMA, at the Service Provider's expense, to enable the CMA to comply with its Information disclosure obligations.
- 23.2 In this Clause:
- 'Information' has the meaning ascribed to it in section 84 of the FOIA; and
- 'Request for Information' has the meaning ascribed to it in section 8 of the FOIA, or any apparent request for information under the FOIA or EIR.
- 23.3 The Service Provider shall (and shall procure that its sub-contractors shall):
- 23.3.1 transfer any Request for Information to the CMA as soon as practicable after receipt and in any event within two Working Days;
 - 23.3.2 provide the CMA with a copy of all Information in its possession or power in the form that the CMA requires within five Working Days (or such other period as the CMA may specify) of the CMA requesting that Information; and
 - 23.3.3 provide all necessary assistance as reasonably requested by the CMA to enable it to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 23.4 The CMA shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or, any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the EIR.

- 23.5 In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so in writing by the CMA.
- 23.6 The Service Provider acknowledges that (notwithstanding the provisions of Clause 23) the CMA may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA ("the Code"), be obliged under the FOIA or the EIR to disclose information concerning the Service Provider or the Services:
- 23.6.1 in certain circumstances without consulting the Service Provider; or
- 23.6.2 following consultation with the Service Provider and having taken their views into account;
- provided always that where Clause 23.6.1 applies the CMA shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.
- 23.7 The Service Provider shall ensure that all Information produced during the Term of this Agreement or relating to the Agreement is retained for disclosure and shall permit the CMA to inspect such records as requested from time to time.
- 23.8 The Service Provider acknowledges that any lists or schedules provided by it outlining information it deems confidential or commercially sensitive are of indicative value only and that the CMA may nevertheless be obliged to disclose information which the Service Provider considers confidential in accordance with Clauses 23.4 and 23.6.

24. Transparency

- 24.1 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 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. Notwithstanding any other term of this Agreement, the Service Provider hereby gives his consent for the CMA to publish this Agreement in its 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 the Agreement, to the general public.
- 24.2 The CMA may consult with the Service Provider to inform its decision regarding any redactions but the CMA shall have the final decision in its absolute discretion.
- 24.3 The Service Provider shall assist and cooperate with the CMA to enable the CMA to publish this Agreement.

25. Indemnities and Insurance

- 25.1 The Service Provider shall hold harmless and indemnify the CMA on demand from and against all claims, demands, proceedings, actions, damages, costs (including legal costs), expenses and any other liabilities arising from claims made by the CMA's staff or agents, or by third parties, in respect of any death or personal injury, or loss or destruction of or damage to property, or any other loss, destruction or damage, including but not limited to financial losses which are caused, whether directly or indirectly, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Service Provider, its employees, agents or sub-contractors save where such breach is a direct result of a failure of the CMA.
- 25.2 The Service Provider shall be liable to the CMA for any loss, damage, destruction, injury or expense, whether direct or indirect, (and including but not limited to loss or destruction of or damage to the CMA's property, which includes data) arising from the Service Provider's breach of contract or duty (whether arising in negligence, tort, statute or otherwise).

- 25.3 The Service Provider shall effect with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Service Provider in respect of the indemnities provided under this Agreement, which in any event shall not be less than £1,000,000, and shall at the request of the CMA produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.
- 25.4 Nothing in this Agreement shall impose any liability on any member of the staff of the CMA or its representatives in their personal capacity.
- 25.5 The Service Provider shall indemnify the CMA against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used by or on behalf of the Service Provider for the purpose of this Agreement, provided that any such infringement or alleged infringement is not knowingly caused directly by any act of the CMA.
- 25.6 The CMA shall indemnify the Service Provider against all proceedings, actions, claims, demands, costs (including legal costs), charges, expenses and any other liabilities arising from or incurred by reason of any infringement or alleged infringement of any third party's Intellectual Property Rights used at the request of the CMA by the Service Provider in the course of providing the Services, provided that any such infringement or alleged infringement is not knowingly caused by, or contributed to by, any act of the Service Provider.
- 25.7 Except in relation to death or personal injury, fraud or fraudulent misrepresentation or any other liability which cannot legally be excluded or limited and subject to Clauses 25.5 and 25.6 the amount of liability under this Clause 25 shall be limited to a sum of £4,000,000 or twice the Agreement value, whichever is the greater, or such other sum as may be agreed in writing between the CMA and the Service Provider.
- 26. Conflicts of Interest**
- 26.1 In addition to Annex C of the Award Letter, the Service Provider shall take appropriate steps to ensure that it is not placed in a position where, in the opinion of the CMA, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the CMA under the provisions of this Agreement. The Service Provider will disclose to the CMA full particulars of any such conflict of interest which may arise within 5 calendar days of becoming aware of such conflict.
- 26.2 Where the CMA is of the opinion that the conflict of interest notified to it under Clause 26.1 above is capable of being avoided or removed, the CMA may require the Service Provider to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and if the Service Provider 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 Service Provider the amount of any loss resulting from such termination.
- 26.3 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 with the application by the Service Provider of due diligence and ought to have been disclosed as required prior to the Commencement Date, the CMA may determine the Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Service Provider the amount of any loss resulting from such determination.
- 26.4 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 Service Provider and the duties owed to the CMA under the provisions of this Agreement. The actions of the CMA pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the CMA.

27. Intellectual Property Rights

- 27.1 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 or is created or acquired independently of its obligations pursuant to this Agreement ("**Retained Rights**"). The CMA grants to the Service Provider a non-exclusive, non-transferrable right to use some or all of the Retained Rights for the sole purpose of performing the Service Provider's obligations under this Agreement.
- 27.2 Subject to any pre-existing rights of third parties and of the Service Provider, the Intellectual Property Rights in all reports, documents and other materials which are generated or acquired by the Service Provider (or any of its sub-contractors or agents) (the "**Deliverables**") in the performance of the Services and/or delivery of the Goods shall belong to and be vested automatically in the CMA and the CMA hereby grants to the Service Provider a non-exclusive, non-transferrable licence to such Intellectual Property Rights in the Deliverables for the sole purpose of performing its obligations under this Agreement.
- 27.3 The Service Provider waives all moral rights relating to the Deliverables.
- 27.4 If the Service Provider in providing the Services uses any materials in which there are pre-existing Intellectual Property Rights owned by itself, its agents, sub-contractors or third parties, it shall itself provide, or procure from such agent, sub-contractor or third party a non-exclusive, licence for, or, if the Service Provider 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.
- 27.5 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 Service Provider or which has been communicated to the Service Provider under a condition that it shall be confidential to the Service Provider), 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.
- 27.6 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.
- 27.7 The Service Provider 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 Charges.

28. Contract and Service Management

- 28.1 If formal progress reports are required these will be as defined in Section 2 of Schedule 3 (Contract and Service Management). The Service Provider shall render such reports at such time and in such form as may be specified by the CMA, or as otherwise agreed between the Parties.
- 28.2 The submission and acceptance of progress reports shall not prejudice any rights of the CMA under the Agreement.
- 28.3 When meetings are required these will be as defined in Section 3 of Schedule 3 (Contract and Service Management).
- 28.4 The CMA shall give Service Provider reasonable notice of required attendance. Such attendance shall be at the Service Provider's expense.

29. Termination

29.1 The CMA may immediately terminate this Agreement either wholly or in part by giving notice in writing to the Service Provider if:

29.1.1 The Service Provider commits a material breach of any of its obligations under this Agreement which is incapable of remedy;

29.1.2 The Service Provider commits a material 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;

29.1.3 The Service Provider:

- (a) 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;
- (b) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that Party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- (c) 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;
- (d) 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;
- (e) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts; or
- (f) 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; or
- (g) 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;
- (h) 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 29.

29.1.4 the Service Provider ceases to carry on all or a substantial part of its business.

29.2 In addition to the CMA's rights of termination under Clause 29.1, the CMA shall be entitled to terminate this Agreement by giving to the Service Provider not less than 30 days' notice to that effect.

29.3 Termination under Clauses 29.1 or 29.2 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the CMA and shall not affect the continued operation of Clause 20 (Secrecy and Confidentiality).

30. Consequences of termination

30.1 In the event of this Agreement being terminated either wholly or in part under Clauses 29.1 or 29.2 all sums of money that were then due or accruing from the CMA to the Service Provider in respect of this Agreement shall cease to be due or accruing to the extent of the termination.

- 30.2 The CMA shall have the right to recover from the Service Provider all Charges and Reimbursable Expenses paid in respect of work which has not yet been delivered.
- 30.3 The Service Provider shall co-operate with the CMA and/or any new provider of the Services and/or Goods appointed by the CMA in ensuring the smooth handover and continued running of the Services and/or delivery of the Goods during such handover.
- 30.4 Subject to Clause 30.4 below, the Parties shall immediately return all of the other Party's property 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.
- 30.5 In the event termination is triggered pursuant to Clause 29.1, without prejudice to any other rights, the CMA may complete the Services or have them completed by a third party, using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Service Provider) all materials, plant and equipment on the Premises belonging to the Service Provider. The CMA shall be entitled to recover from the Service Provider all fees paid to him prior to the occurrence of any of the events described in Clause 29.1.

31. Assignment and Sub-contracting

- 31.1 Unless otherwise agreed in writing with the CMA, the Service Provider shall not assign or sub-contract any portion of this Agreement without the prior written consent of the CMA. Sub-contracting any part of this Agreement shall not relieve the Service Provider of any obligation or duty attributable to it under this Agreement.
- 31.2 Where the Service Provider employs a sub-contractor for the purpose of performing the Agreement, he shall cause a term to be included in such sub-contract which requires payment to be made to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by the sub-contract requirements.

32. Force Majeure

- 32.1 Neither Party shall be liable for any breach of its obligations under this Agreement resulting from causes beyond its reasonable control including, but not limited to, 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 (Event of Force Majeure).
- 32.2 Each of the Parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, the said notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 32.3 If the Event of Force Majeure shall continue for more than 30 calendar days either Party shall be entitled to immediately terminate this Agreement at any time thereafter subject to providing the other Party notice of such termination. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

33. Notices

- 33.1 Any notices sent under this Agreement must be in writing. Notice by email is deemed to be in writing.
- 33.2 Notices may be served in the ways set out below at the addresses in the Award Letter 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	properly addressed prepaid and posted
e-mail	9.00am on the first Working Day after sending	despatched in a legible and complete form to the correct e-mail address without any error message provided that a confirmation copy of the e-mail 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 e-mail transmission

34. Headings

34.1 The headings to Clauses shall not affect their interpretation.

35. Working Time Directive

35.1 The Service Provider shall ensure that the Working Time Directive Employment Regulations will be applied in the proper manner to all personnel supplied via this Agreement.

35.2 The Service Provider shall ensure that (i) it complies with good employment practices and policies observed by the CMA; and (ii) that all employment legislation is applied appropriately to all workers employed in providing the Services and/or the Goods.

36. Observance of Statutory Requirements

36.1 The Service Provider insofar as it is legally required shall comply with all statutory requirements to be observed and performed in connection with this Agreement and shall indemnify the CMA against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach of its statutory obligations.

37. Equal Opportunities and Harassment

37.1 The Service Provider shall adopt a policy to comply with the requirements of the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Employment Equality (Religion or Belief) Regulations 2003, the Sex Discrimination Act 1975 as amended, Equal Pay Act 1970, Employment Equality (Sexual Orientation) Regulations 2003, Sex Discrimination (Gender Reassignment) Regulations 1999, and the Disability Discrimination Act 1995 and the Disability Discrimination Act 2005, and accordingly, shall not treat one individual or group of people less favourably than others because of colour, race, nationality, ethnic origin, religion, gender, sexual orientation or disability and, further, shall seek to promote equality among its workers and generally. The Service Provider will note the CMA's current and future obligations under these Acts and under the Data Protection Act 2018, Freedom of Information Act 2000, Human Rights Act 1998, and any codes of practice and best practice guidance issued by the Government and the appropriate enforcement agencies.

37.2 The Service Provider will comply with the above legislation in so far as it places obligations upon the Service Provider in the performance of its obligations under this Agreement. The Service

Provider will facilitate the CMA's compliance with the CMA's obligations under these provisions and comply with any request from the CMA for that purpose.

- 37.3 In the event of any finding of unlawful racial, disability or discrimination (including sexual discrimination) being made against the Service Provider by any court or industrial tribunal, or of an adverse finding in any formal investigation by the Equality and Human Rights Commission the Service Provider shall take appropriate steps to prevent repetition of the unlawful discrimination and shall on request provide the CMA with details of any steps taken.
- 37.4 The Service Provider shall set out its policies on race relations, sex discrimination and disability discrimination:
- 37.4.1 in instructions to those concerned with recruitment, training and promotion;
- 37.4.2 in documents available to its personnel, recognised trade unions or other representative groups of its personnel; and
- 37.4.3 in recruitment advertisements and other literature.
- 37.5 The Service Provider shall, on request provide the CMA with copies of its policies, examples of the instructions and other documents, recruitment advertisements and other literature.
- 37.6 The Service Provider shall provide such information as the CMA may reasonably request for the purpose of assessing the Service Provider's compliance with this Clause 37.
- 37.7 The Service Provider shall take all reasonable steps to ensure that any Service Provider Personnel engaged in the performance of this Agreement do not act towards either CMA staff or members of the public in a manner that could amount to harassment on any of the grounds mentioned in Clause 37.1.

38. Invalidity and Severability

- 38.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity shall remain in full force and effect.

39. Rights of Third Parties

- 39.1 Except where it is expressly provided elsewhere, no person who is not a party to this Agreement shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

40. Variations and Cancellation

- 40.1 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 director of each of the Parties to this Agreement. The Service Provider shall carry out any such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the original Agreement.
- 40.2 Where the Service Provider receives any such direction from the CMA pursuant to Clause 40.1 which would require an amendment to the Charges for the Services and/or the delivery of the Goods or which would prevent the Service Provider from fulfilling any of its obligations under this Agreement, the Service Provider shall promptly notify the CMA in writing to that effect. The CMA shall confirm in writing any amendments to the Charges for the Services and/or delivery of the Goods or any modifications to the Service Provider obligations to which it agrees.
- 40.3 In respect of the Services, if the CMA shall not agree to any such amendments or modifications, the CMA may at its sole discretion either elect to continue with the Agreement without such variations or to terminate the Agreement on 30 days' notice (in which event the CMA will pay a

reasonable price for all work carried out up to the date of termination but will not be liable for any other direct or indirect costs, damages or expenses of the Service Provider).

41. Survival of the Agreement

- 41.1 Insofar as any of the rights and obligations of the Parties in this Agreement shall or may be exercised after expiry or termination of the Agreement, the provisions of the Agreement conferring such rights and powers shall survive and remain in full force and effect.
- 41.2 Any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect.

42. Non-Solicitation

- 42.1 For the duration of this Agreement and for a period of six months thereafter, the Service Provider 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 Service Provider has had contact during this Agreement without the prior written consent of the CMA.
- 42.2 The Service Provider acknowledges that breach of Clause 42.1 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 Service Provider agrees to make the following payments to the CMA:
- 42.2.1 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;
- 42.2.2 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
- 42.2.3 where in the reasonable opinion of the CMA the employee has received special training funded by the CMA, the Service Provider shall pay the reasonable costs associated with providing additional training to any new employee.
- 42.3 If the CMA gives its consent to the employment of any of its employees by the Service Provider such consent shall not vary or amend the duties of confidentiality owed by the said employee to the CMA or the Service Provider's obligations under this Agreement.

43. Entire Agreement

- 43.1 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.

44. Waiver

- 44.1 The rights and remedies of either Party in respect of the 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. Any waiver of any breach of this Agreement shall be in writing. 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.

45. General

- 45.1 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.

- 45.2 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.

46. Environmental Requirements

- 46.1 In performing this Agreement the Service Provider 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.
- 46.2 The Service Provider shall ensure that the Goods and their packaging are manufactured using biodegradable substances wherever they are available and appropriate. Where the Goods, their packaging or their manufacturing process include timber or timber products, the Service Provider shall procure timber and wood-containing products from either sustainable and legal sources or Forest Law Enforcement, Governance and Trade (FLEGT) licensed or equivalent sources.
- 46.3 The paper for all written outputs, including reports, produced in connection with the Agreement shall (unless otherwise specified) be produced on recycled paper containing 100% post consumer waste and used on both sides where appropriate.
- 46.4 All Goods purchased by the Service Provider on behalf of the CMA (or which will become the property of the CMA) must comply with the relevant minimum environmental standards specified in the Government Buying Standards (formerly "Quick Wins") unless otherwise specified or agreed in writing. Click on <http://sd.defra.gov.uk/advice/public/buying/> and select "find a product".

47. Anti-Bribery

- 47.1 The Service Provider undertakes that it:
- 47.1.1 has not committed an offence under Sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "Bribery Offence");
 - 47.1.2 has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;
 - 47.1.3 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.
- 47.2 The Service Provider agrees that it:
- 47.2.1 has in place, and shall maintain until termination of the Agreement, adequate documented procedures designed to prevent persons associated with the Service Provider (including an employee, sub-contractor or agent or other third party working on behalf of the Service Provider) (an "Associated Person") from committing a Bribery Offence; and
 - 47.2.2 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; and
 - 47.2.3 shall not do or permit anything to be done which would cause the CMA or any of the CMA's employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act 2010; and

- 47.2.4 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 Service Provider's obligations under this Clause 47. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Service Provider's obligations.

48. Governing Law and Jurisdiction

- 48.1 This Agreement shall be considered as a contract made in England and shall be governed by, and construed in accordance with, the provisions of English law and the Service Provider hereby irrevocably submits to the jurisdiction of the English Courts. Submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the CMA to take proceedings against the Service Provider in any other Court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

Schedule 1 A

Description of Services and Service Levels

Part A:

The services detailed below are to be delivered in accordance with the supplier's proposal '*Ex-post Evaluation of Vertical Mergers, Proposal for the Competition and Markets Authority*' dated the 22nd September 2021, in response to the Competition and Markets Authority PROC 308-2021 Invitation tender. The start date of the Services, will be the 5th of October 2021.

1. The supplier is to review at least four of the CMA's merger decisions which considered vertical theories of harm, and will focus on the assessment of the potential for and impact of vertical effects, and the outcomes in the markets affected.
Any new cases proposed should be a vertical merger evaluated by the CMA between 2013 to 2018 and can include both clearances and, to the extent an evaluation is possible, prohibitions. We expect the supplier to propose a shortlist of UK cases along with an explanation of why the cases are suitable for study. We will agree the final case list with the successful supplier at the start of the project.
2. The review of each case should assess whether there has been a post-merger lessening of competition which has led to detriment for consumers. Each review should, in doing so, consider the extent to which the assumptions about lessening in competition from vertical theories of harm have occurred in line with the CMA's expectations.
3. We anticipate that the assessment of whether there has been a post-merger lessening of competition will be complex. To this regard, we are not necessarily expecting extensive econometric analysis, but instead a mix of qualitative and quantitative evidence (where feasible).

The evaluation of individual cases should be drawn together to conclude:

- a) What can be learned from the examined cases about how the CMA should assess vertical mergers and the theories of harm that arise in them. This may include what types of evidence and market features have been found to be the best predictors of harm from vertical mergers, and what framework can be established for this, based on the outcomes of the mergers examined;
 - b) whether the CMA made the right decision *ex ante* (was it reasonable), and did the CMA make the right decision *ex post* (was it correct) in each case?
4. The supplier should account for the relevant legal tests and guidelines at both phase 1 and phase 2, provide commentary on whether the analysis by the CMA was reasonable (and not only whether any predicted outcomes have come true), and should focus on drawing out useful lessons for future CMA work in mergers involving vertically-related firms.
 5. The supplier will be expected to identify and collect their own post-merger market data, and to conduct their own interviews with stakeholders. Where necessary and possible, the CMA will provide access to information gathered during the investigations.
 6. We expect the supplier to identify a list of risks and challenges foreseeable in this project and address each of these in their completion of the project.
 7. Regular contact is to be maintained by the supplier throughout the project.

Background to CMA research and evaluation projects

8. The CMA is an independent non-ministerial department. We work to promote competition for the benefit of consumers, both within and outside the UK. Our aim is to make markets work well for consumers, businesses and the economy.
9. The research and evaluation team sits in the Office of the Chief Economic Advisor (OCEA) and has a wide-ranging remit to evaluate the impact of our work.
10. More specifically, the team works to meet two needs:
 - a) External accountability: to evaluate whether the CMA meets its objectives and does so cost effectively to the taxpayer, and
 - b) Internal learning: to use research and formal evaluation of past work to inform future CMA work and choice of intervention methods and processes.
11. Reflecting the aims highlighted above, the research and evaluation team works to build a body of evidence and intellectual framework for evaluating the CMA's impact by estimating (i) ex-ante, the impact of its work, and (ii) undertaking or commissioning in depth ex-post evaluations and research to analyse the benefits of the CMA's work.
12. The overall aim of an evaluation is to improve our understanding of how effective the CMA has been in promoting and enforcing competition, and in making markets work well for consumers. Conducting this work allows us to fulfil our functions.

Background to Vertical Mergers

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Purpose of the evaluation

Overall aim

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Project details

30. The CMA has previously evaluated past merger decisions, and both the Office of Fair Trading (OFT) and Competition Commission (CC)⁷ have published evaluations in the past. These evaluations took a range of different approaches, but tended to evaluate each element of a range of different cases and try to extrapolate general lessons from these across all sectors.
31. Unlike these past evaluations, this project should focus on evaluating the assessment of vertical theories of harm only, even where horizontal theories of harm were also considered in the same cases (though it may be necessary to discuss horizontal competition in this context, and horizontal and vertical theories of harm often relate to the same sets of markets). However, the supplier may wish to consider the approaches used in previous evaluations when developing their approaches. Further details can be found on the CMA⁸, and archived OFT⁹ and CC¹⁰ websites.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Indicative resource weights

40. As set out in the purposes section, the report should set out an evaluation of each of the selected cases. The following headings group together the high-level points of interest, and may be an appropriate way of presenting the evaluations. We would be open to alternative approaches or structures for the report. The purpose of this section is to help the supplier to understand our relative priorities for this project, so we have indicated approximate resource weightings, which may be helpful in getting the appropriate level of detail for each section.
- a) Summary of the relevant economic theory (10%).
 - b) A summary of each case, a short outline of the main features of the relevant markets, and a summary of the CMA's findings (10%);
 - c) A detailed assessment and conclusion as to whether the CMA's assessment, use of evidence, expectations and decision on vertical theories of harm were reasonable (40%);
 - d) Given the subsequent developments in the market and with the benefit of hindsight, a detailed assessment and conclusion as to whether the CMA was correct in its decision, and whether detriment has arisen post-merger relative to the most likely counterfactual (40%).
42. In relation to the last two points, we note that it may be possible for detriment to have arisen and, at the same time, for the CMA to have taken a reasonable decision on the basis of the evidence available at the time. This is due to the SLC test being one of likelihood rather than certainty. The predictions made by the CMA, while reasonable at the time of the decision, might not have realised due to unforeseeable circumstances. In these cases, we would like to understand whether and how the CMA could have improved its reasoning.
43. In relation to point (d) above, we expect that the possibility of carrying out rigorous and exhaustive analysis to assess whether detriment has occurred will be limited. This is largely because we do not foresee sufficient data being readily available in the majority of the cases evaluated. Whilst, in principle, we consider that 'gold standard' evaluation approaches such as difference-in-differences would be ideal in answering this question, we are not expecting the supplier to undertake such analysis unless it is relatively straightforward to do so.
44. Where difference-in-difference analysis is not feasible, other methods can be used instead. For example, the analysis of whether detriment has arisen may focus on simple pricing (and/or quality) trends for the relevant market. In this case, we would also expect some benchmark for comparability to be provided: for example, a trend of costs or prices in a comparable industry. The supplier may also want to consider market structure indicators such as the entry or exit of firms, or consider what information may be gathered on the merged firms' strategies. This will allow a qualitative assessment using similar principles to those underlying the formal difference-in-differences analysis, although it will necessarily be less robust. We consider that such analysis would be a reasonable basis for inference on whether detriment has arisen where more formal assessment is not possible.

Information sources

45. The successful evaluation should draw on a range of information sources in order to develop an accurate picture of what has happened in each relevant market following the CMA's investigations, and to come to robust conclusions with respect to the research questions. The supplier should clearly identify in its methodology the sources of information that it expects to

use for the project. We expect that the evaluation might make use of several of the following information sources but encourage the supplier to suggest additional approaches or alternative information sources.

Previous work by the CMA

46. It will of course be necessary to consult the written decisions of each CMA merger evaluated. It may be useful for the supplier to have access to parts of our casefile, although confidentiality restrictions may limit what can be shared.
47. Following agreement of the list of cases for evaluation, we will strive to provide the supplier with the information from the CMA case files which we consider necessary to complete the evaluation. The depth of this information will vary between cases and according to how recent the decision is.
48. Conditional on UK GDPR and DPA 2018 compliance in relation to the processing of personal data, we expect to be able to pass on the following information for the UK cases, when it is on our file:
 - a) The unredacted decision documents;
 - b) Internal analysis notes such as working papers and internal presentations;
 - c) Pricing/quality data; and
 - d) Market structure data, e.g. volumes and market shares.
49. We will also be able to provide contact details for relevant stakeholders gathered during the original investigation. To comply with the UK GDPR, the CMA will need to take certain steps before it is able to do so (e.g. the CMA will notify the relevant stakeholders about the project and the need to share their contact details with external contractors).
50. In addition, we will endeavour to provide the following, although it may be more restricted in the depth of information we can provide.
 - a) Externally produced market reports, where licensing permits;
 - b) Some third party call notes or hearing documentation, where explicitly relevant to the project; and
 - c) Some main party documentation, where explicitly relevant to the project.
51. Further detail will be provided to the supplier. It may also be useful to consider any other published merger decisions by the CMA or other authorities or CMA reports in related sectors. For example, were there to be any later cases involving the same firms in the market, these might give more up to date information on their financials or their business plans.

Desktop research

52. There is a large volume of work relating to merger retrospectives that has previously been conducted by the CMA, CC, OFT, academics and consultancies. We expect the supplier to be familiar with this literature and able to draw on it. This will help make the work consistent with that done in the past and to make use of established techniques and principles in developing robust methodologies.
53. Desk-based research may also be useful in understanding the relevant markets, and the developments that have taken place in them since the CMA's review. The report should make use of relevant companies' websites and reports, news sources, surveys and market reports to understand recent changes.

Interviews and stakeholder engagement

- 54. We expect third parties, such as customers and competitors of the merging parties, to already have a good understanding of developments in the relevant markets. In particular, we expect the research and evaluation to draw on the views of a range of competitors, input suppliers, customers, customer interest groups, industry bodies and any relevant regulatory authorities. If possible, the evaluation should also consider the views of the merging parties.
- 55. The CMA does not have powers to compel stakeholders to provide information for the purposes of an evaluation.

Comparisons with other markets within the UK or internationally

- 56. The experience of other jurisdictions in regulating vertical mergers, or in the outcomes of vertical mergers in countries other than the UK, may be informative to the UK evaluations. The supplier should consider making relevant comparisons where appropriate.
- 57. For example, price and/or quality trends for similar markets in Europe or the US may be a relevant comparator when determining whether detriment has arisen post-merger.
- 58. We expect this to be particularly relevant in those cases where an international firm is involved.

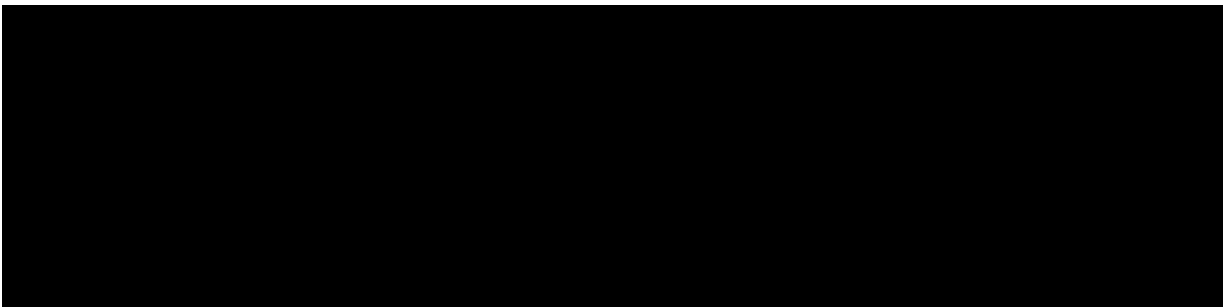
Quantitative work

- 59. Given the nature of our suggested list of cases, it is likely that qualitative work will be an important part of the merger evaluations. This work has been set out above. However, we expect some quantitative work to be required and to be informative in assessing how competition has developed in the markets following the mergers. There are a number of market outcomes that we would expect to be affected by competition, such as pricing or quality.
- 60. We expect that quantitative methods will be necessary to quantify the scale of competition changes (for example by calculating changes in shares of supply over time) and in providing an indication as to whether detriment has actually arisen in any particular markets. This analysis is likely to focus on simple pricing and/or quality trends for the relevant market. In this case, we would also expect some benchmark for comparability to be provided: for example, a trend of costs, or a trend of prices in a comparable industry.

Deliverables

Details of deliverables

- 61. On commencement of the contract, the provider will be required to provide the following outputs during the course of the project. We do not envisage making substantial changes to the timetable below. Where the supplier considers that changes to the timetable could maximise benefits of the work, this should be advised to the CMA immediately with a detailed explanation of why the changes are needed and how they will improve the quality of the work.





Project management and contact

- 62. Precise dates can be finalised in the kick-off meeting. If any are not possible from the supplier perspective, these must be notified to the CMA immediately. We do not expect to move milestones more than a few days either side.¹³
- 63. We expect the supplier to provide a named project manager who will be the point of contact for any inquiries during the course of the project. A team from the CMA will be involved with the project throughout and be available to discuss the project as required. Contact details for our team will be provided shortly after project award.
- 64. It is expected that there will be regular contact (i.e. at least every two weeks) between the supplier and the CMA.
- 65. These fortnightly updates are aimed at enabling both parties to clarify any points of interest, and for us to monitor progress on the project. We expect to have contact with the project team over the course of the project through these updates. We expect these updates to be a mix of meetings and conference calls, and expect that we will generally be content for the supplier to

¹³ Where unavoidable changes to timing must be made, as much notice as possible should be given to us and reasoning given as to the actions taken by the supplier to make internal rearrangements for meeting the original deadline. Should we need to move a date, we will likewise provide as much notice as possible.

decide the most useful format for them. We begin with the presumption that these will all be online meetings, but are happy to convert any to meetings at the supplier request. Where we have meetings, we will do so at the CMA's premises which are located at The Cabot, 25 Cabot Square, London E14 4QZ.

Nature of the outputs

66. All reports should detail the findings, along with the analysis and approach adopted. They should contain a concise executive summary, and the main body of the report should be to the point and not contain any unnecessary description or information. They should be of a quality which will be publishable by the CMA.
Our published reports have a wide non-technical readership and the outputs need to be written in plain English, structured logically, and well presented. Technical details should be included in appendices. The reports are required to be produced in accordance with CMA house style. Full details will be provided to the successful tenderer.
67. The files underlying all quantitative work should be provided to the CMA as per the deadline set out in the above timetable. This should be clearly laid out, with all acronyms explained. Any Stata code should include comments to allow us to easily understand the commands used. All Excel files should include raw data to avoid linking across spreadsheets, and hardcoding should be avoided wherever possible. Where hardcoding is necessary, an explanation of how the file can be replicated should be included.
68. We require that the files underlying quantitative work is provided to us in Stata or Excel format. Should the supplier need to use other software (such as R), we expect this to be flagged to us in advance and to receive a step by step explanation of what was done.
69. The report and any appendices should be provided to us in a format compatible with Microsoft Word 2019, and any pdf files created by the supplier which detail additional information should be searchable. Should the supplier become aware of any other potential compatibility issues, these should be flagged to the CMA as early as possible.

Risks and challenges

70. The supplier is to advise on any risk they foresee in the delivery of the project and set out mitigation actions to deal with such risks. This should at least cover: evaluation-related risks, including difficulties in securing the co-operation of stakeholders, or obtaining accurate and sufficient information; risks to the timetable; and risks that might affect the quality of the deliverables, including any risks relating to the ability to draw robust and useful conclusions.

Quality assurance

71. It is important the supplier maintains a clear quality assurance (QA) process, covering all aspects of the work, including both the qualitative and quantitative elements of the work and the content of deliverables.

Performance Management

Timing

72. Throughout the project, performance will be measured against the submission of the specified deliverables against the agreed timetable and any subsequent changes made to this. Upon receiving each deliverable, we will consider whether the submission is satisfactory.

Quality

73. Should any element fall below the standards that can reasonably be expected (for example, it contains avoidable inaccuracies, fails to provide the information set out in the project plan, or is not submitted in a readable format), we will advise the supplier promptly as is reasonably practicable.¹⁴
74. In relation to the draft and final report, we have set out longer anticipated review time due to the need for the report's methodology and conclusions to be understood at many levels within the organisation. Should either of these reports not be of a satisfactory quality, we reserve the right to withhold payment until successful delivery has been conducted. We further reserve the right to impose late delivery penalties of 8% of the milestone invoice cost should these be necessary.

Conflict Of Interest

75. A potential or actual conflict of interest could arise in connection with this contract, for instance where Tenderers are carrying out, or have previously carried out work for or on behalf of any companies under investigation or previously investigated by the Authority in the relevant cases, whether directly or indirectly.

Notwithstanding the above, you must notify the Authority of any actual or potential conflicts of interest that might affect delivery of the project.

Part B: *[Insert the Service Levels if applicable]*

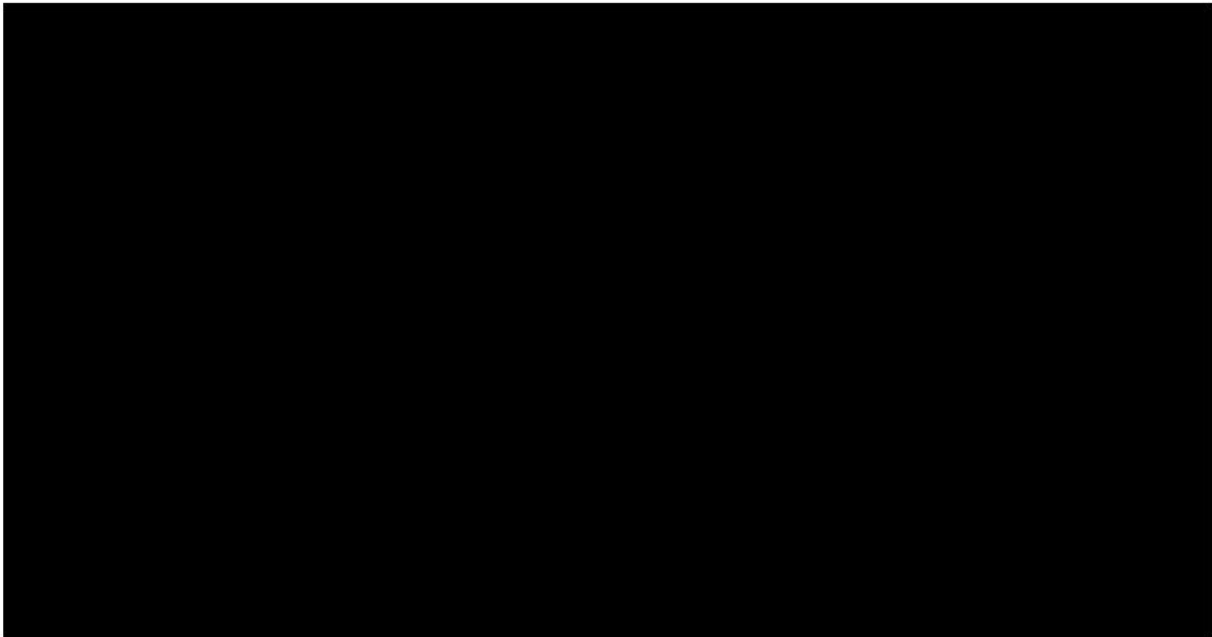
¹⁴ The project may proceed where the most important parts are of a sufficient quality even where we have not devoted resource to considering the supporting information (for example, underlying Stata do-files or supporting market reports). In such cases, we will reserve the right to notify the supplier of the documentation that we consider some elements will require revision. If this is the case, we will always do so within a reasonable period of time.

Schedule 1 B
Description of the Goods and specifications

See Schedule 1 A

Schedule 2 Charges

The fees payable to the Service Provider shall be as follows:



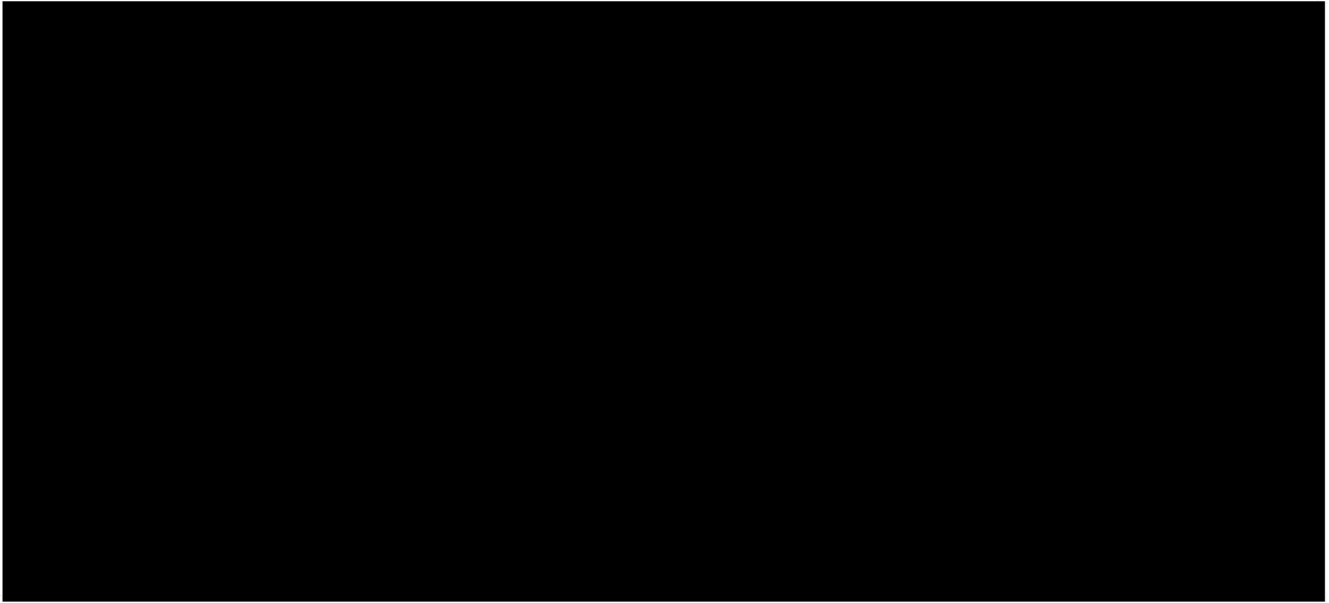
(Total Cost) FIRM PRICE	£120,000
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Schedule 3
Contract and Service Management

See Schedule 1 A

Schedule 4
The CMA's Equipment

Schedule 5
Commercially Sensitive Information



Schedule 6
Processing, Personal Data and Data Subjects

This Schedule shall be completed by the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [REDACTED]
2. [REDACTED]
3. The contact details of the Processor's Data Protection Officer are: [REDACTED]
4. The Processor shall comply with any further written instructions with respect to processing by the Controller.
5. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>Research with participants of the selected markets to assess whether the decision of the CMA in relation to the selected cases was correct.</i>
Duration of the processing	<i>Until the full review and publication of the CMA's Ex-post Evaluation of Vertical Mergers Report.</i>
Nature and purposes of the processing	<p><i>The nature of the processing includes (but is not necessarily limited to): collection, recording, organisation, structuring, storage, adaptation/alteration, retrieval, consultation, erasure or destruction.</i></p> <p><i>The purpose of the processing is for the appointed Supplier to conduct qualitative research with market participants on behalf of the CMA, and subsequently to provide the CMA with pseudonymised outputs (one presentation and one report) on the research findings.</i></p> <p><i>Contact details:</i></p> <p><i>For all the contact details of market participants shared by the CMA with the Supplier, the CMA will carry out the following steps:</i></p> <ol style="list-style-type: none"> <i>1) Before sharing any contact details with the contractor, the CMA will notify the employees for whom it has contact details by email. The email will be drafted with the required legal supervision and, in broad terms, will cover:</i> <ul style="list-style-type: none"> <i>- The CMA intentions to use the contact details for the purpose of this project,</i> <i>- The legal basis on which the CMA is allowed to do so, with a link to the CMA personal data charter,</i> <i>- The identity of the Supplier which the CMA will share contact details with,</i> <i>- Given that some of the case files are linked to mergers occurred few years ago and the contact details may thus be inaccurate, the CMA will seek to update the contact details with more accurate information, where possible.</i> <i>2) In case it transpires that the contact details are not up to date, the CMA will ask the Supplier to acquire business contact details from public available sources. The CMA will assist by providing relevant Job Titles, where possible.</i>

	<p>3) <i>In case the information was not available in the public domain, general email addresses should be used by the Supplier (info@...).</i></p> <p><i>Documents:</i> <i>To successfully complete the project, it is likely that the CMA will have to share with the contractor some documents processed during the original merger investigation.</i> <i>We expect there to be three relevant situations:</i></p> <ol style="list-style-type: none"> 1) <i>To ensure compliance with the Data Minimisation principle in the data protection legislation, the CMA will share with the appointed contractor those documents that summarise the CMA's reasoning and findings. These include, for example, economic advice, working papers and CMA internal presentations and notes. We expect these documents to include little or no personal data.</i> 2) <i>In case the appointed Supplier requests access to additional documents in order to be able to carry out the project, the CMA will assess the request of the Supplier and will carry out a risk-based assessment.</i> 3) <i>In both situations 1 and 2 above, any personal data will be processed as follows:</i> <ul style="list-style-type: none"> - <i>the project team plans to create a duplicate of the original files</i> - <i>take out manually from the duplicates any obviously irrelevant sections that contain personal data before sharing them with the contractor. This will allow the CMA to leave the original case files intact and to minimise the volume of personal data processed and shared with the appointed Supplier and at the same time to ensure that the Supplier is provided with all the documents that are essential for them to carry out the evaluation project.</i> - <i>in the rare case the CMA cannot avoid sharing with the Supplier some personal data, the CMA shall send an email to the data owners to inform them that the CMA is going to process and share with the contractor their personal data for the purpose of the ex-post evaluation project. This follows a similar process as that for contact details above.</i>
Type of Personal Data	<p><i>The names/contact details (professional postal address, professional telephone number, professional email address) of those data subjects who are recruited by the appointed Supplier to participate in the qualitative research to carry out the ex-post evaluation. This personal data, as a default, will not be shared by the appointed Supplier with the CMA unless exceptional circumstances imply that not doing so would prevent the successful completion of the project.</i></p> <p><i>The appointed Supplier (as processing agent) must be able to provide evidence to the CMA that data subjects:</i></p> <ul style="list-style-type: none"> <i>have been informed that the appointed Supplier (as processing agent) is retaining data which would enable them to be identified by the CMA for the duration of the processing (see above); and</i> <ul style="list-style-type: none"> - <i>have been informed of how their data will be processed along with a link to the CMA Personal Information Charter.</i> <p><i>No Special Category Data (SCD) is expected to be collected.</i></p>
Categories of Data Subject	<p><i>Participants of the selected markets aged 18+.</i></p>
Plan for return and destruction of the data once the processing is complete Unless requirement under union or member state law to preserve that type of data	<p><i>The data is to be destroyed by the appointed Supplier from its storage systems at the end of the period defined under Duration of the processing. The data within the backup systems, which cannot be destroyed, is marked within the internal backup guideline as not recoverable.</i></p>

Schedule 6 – Annex A: Joint Controller Agreement – Not Used

In this Annex the Parties must outline each Party's responsibilities for:

- providing information to Data Subjects under Article 13 and 14 of the GDPR.
- responding to Data Subject Requests under Articles 15-22 of the GDPR
- notifying the Information Commissioner (and Data Subjects) where necessary about Personal Data Breaches
- maintaining records of processing under Article 30 of the GDPR
- carrying out any required Data Protection Impact Assessment
- The agreement must include a statement as to who is the point of contact for Data Subjects.

The essence of this relationship shall be published.

You may wish to incorporate some clauses equivalent to those specified in Clause 22.2-22.14.

You may also wish to include an additional clause apportioning liability between the Parties arising out of data protection; of Personal Data that is jointly controlled.

Where there is a Joint Control relationship, but no Controller to Processor relationship under this Agreement, this completed Schedule Y should be used instead of Clause 22.1-22.14.