

IFF Research Limited

Attn: [REDACTED]

Date: 16<sup>th</sup> August 2024

Dear Sirs,

**Proc 908 2024 – CMA Business Omnibus Research - Award of contract**

Following receipt of your proposal for the provision of the above services dated 16<sup>th</sup> August 2024, the Competition and Markets Authority ("**CMA**") is pleased to award this contract to your company.

This letter (the "**Award Letter**") and its Annexes (namely Annex A: Agreement for the Provision of CMA Business Omnibus; PROC\_908-2024 and Annex B: CMA Business Omnibus Research proposal dated 16 August 2024 (together the "**Agreement**") set out the terms of the Agreement between the CMA and IFF Research (**Service Provider**) for the provision of the Services.

Unless the context otherwise requires, capitalised expressions used in this Award Letter have the meanings as set out in Annex A to this Award Letter. In the event of any conflict between this Award Letter and the Annexes, the order of precedence will be as follows:

- First, this Award Letter,
- Then, second, Annex A (Agreement for the Provision of CMA Business Omnibus),
- Then, third the Service Provider response to the Invitation to Tender, Annex B.

Please do not attach any Service Provider terms and conditions to this Agreement as they will not be accepted by the CMA and may delay the processes.

For the purposes of the Agreement, the CMA and the Service Provider agree as follows:

- The contract price for the Services shall be £40,000 (Firm Non Variable) as set out in Schedule 2 of Annex A, of the Agreement.
- The specification of the Services to be supplied is as set out in Schedule 1 of Annex A of the Agreement.
- The address for notices of the Parties are:

**CMA**  
25 Cabot Square,  
Canary Wharf, London  
E14 4QA

**Service Provider**  
IFF Research

Attention: [REDACTED]  
[REDACTED]  
[REDACTED]

- The CMA may require the Service Provider to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Service Provider shall ensure that no person who (i) discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the CMA, or is of a type otherwise advised by the CMA (each such conviction a “**Relevant Conviction**”); or (ii) Service Provider to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

### **Payment**

All invoices must be sent electronically, quoting a valid purchase order number, to: CMA Accounts Payable at the following email address: [REDACTED]. In the event of a query regarding an outstanding payment you should contact CMA's Finance Team either by email to: [REDACTED] or by telephone on [REDACTED]. Within 10 working days of receipt of your countersigned copy of this letter, we will send you a Purchase Order (PO) with a unique PO number.

You must be in receipt of a valid PO number before submitting an invoice. To avoid delay in payment it is important that the invoice is compliant and that it includes a valid PO number, PO number item number (if applicable) and the details (name and telephone number) of your customer contact (i.e. Contract Manager). Non-compliant invoices will be sent back to you, which may lead to a delay in payment.

### **Liaison**

For general liaison your contact will continue to be [REDACTED]

We thank you for your co-operation to date, and look forward to forging a successful working relationship resulting in a smooth and successful delivery of the Services.

Please confirm your acceptance of this award and the Agreement by signing and returning the enclosed copy of this Award Letter to [REDACTED] at the above address **within 1 day** from the date of this Award Letter. No other form of acknowledgement will be accepted.

Please remember to quote the reference number above in any future communications relating to this Agreement.

Yours faithfully,

[REDACTED]

[REDACTED]

[REDACTED]

We accept the terms set out in this Agreement (including the Award Letter and its Annexes).



[Redacted text]

[Redacted text]

Signed for and on behalf of the Service Provider.

**ANNEX A**

**AGREEMENT FOR THE PROVISION OF SERVICES AND PURCHASE OF GOODS**

**CMA Business Omnibus Research  
PROC 908-2024**

**16<sup>th</sup> August 2024**

**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**

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Schedule 1 Part B

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Schedule 2

Charges

Schedule 3

Contract and Service Management

Schedule 4  
The CMA's Equipment  
Schedule 5  
Commercially Sensitive Information  
Schedule 6  
Data Protection  
Annex 1

## 1. Definitions and interpretations

1.1 In this Agreement unless the context otherwise requires the following words and expressions have the following meanings:

<b>Affected Party</b>	has the meaning set out in Clause 30.2 (Force Majeure)
<b>Affiliate(s)</b>	in relation to a body corporate, any other entity which directly or indirectly controls (in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and " <b>controlled</b> " shall be construed accordingly), is controlled by, or is under direct or indirect common control of that body corporate from time to time
<b>Agreement</b>	means any Agreement between the CMA and the Supplier for the purchase of Goods and/or Services pursuant to an Order Form incorporating these terms and Schedules
<b>Annex</b>	means an annex to the Order Form
<b>Applicable Laws</b>	means all applicable laws (including case law), legislation, statutes, statutory instruments, rules, regulations, edicts, by-laws or directions or guidance from government or governmental agencies including any rules, regulations, guidelines or other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time
<b>Authority Data</b>	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media and which:  (a) are supplied to the Supplier by or on behalf of the CMA; or (b) the Supplier is required to generate, process, store or transmit pursuant to this Agreement,  including any of the CMA's Confidential Information and any Personal Data for which the CMA is the Controller
<b>Bribery Offence</b>	has the meaning set out in Clause 21.10.1 (Compliance)
<b>Claim</b>	means any claim which it appears that the CMA is, or may become, entitled to indemnification under this Agreement
<b>CMA</b>	means the Competition & Markets Authority
<b>CMA's Representative</b>	shall have the meaning attributed to it in Clause 3.1 (Authorisation)
<b>Code</b>	has the meaning set out in Clause 27.6 (Freedom of Information)
<b>Commencement Date</b>	has the meaning set out in Clause 2.1 (Basis of Agreement)
<b>Commercially Sensitive Information</b>	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:  (i) which is provided by the Supplier to the CMA in confidence for the period set out in Schedule 5 (Commercially Sensitive Information) or the notification; and/or  (ii) which constitutes a trade secret
<b>Confidential Information</b>	means all information, including any information obtained by the Supplier from any department, agency or office of His Majesty's Government relating to and connected with this Agreement, which is secret or otherwise not publicly available (in both cases either in its entirety or in

	part) including commercial, financial, marketing or technical information, know-how, trade secrets or business methods, in all cases whether disclosed orally or in writing before or after the date of this Agreement
<b>Conflict of Interest</b>	a conflict between the financial or personal interests of the Supplier or the Supplier Personnel and the duties owed to the CMA under this Agreement, in the reasonable opinion of the CMA
<b>Contracting Authority</b>	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the CMA
<b>Crown Body</b>	means any department, office or agency of the Crown
<b>Data Protection Legislation</b>	<p>means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a Party</p> <p><b>Controller, Data Subject, Personal Data, Personal Data Breach, Processor and Processing</b> shall each have the meaning given to them in the Data Protection Legislation</p>
<b>Deliverables</b>	means all of the reports, documents, work products, data and other materials which are generated or acquired by the Supplier (or any Supplier Personnel) in the performance of the Services and/or delivery of the Goods
<b>Delivery Note</b>	means the document provided by the Supplier to the CMA certifying that the Goods have been delivered. The Delivery Note shall contain, as a minimum: the type and quantity of goods delivered and the actual date of delivery
<b>DPA 2018</b>	means Data Protection Act 2018
<b>Employee Liabilities</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:</p> <ul style="list-style-type: none"> <li>a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>b) unfair, wrongful or constructive dismissal compensation</li> <li>c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay</li> <li>d) compensation for less favourable treatment of part-time workers or fixed term employees</li> <li>e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the CMA or the New Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions</li> <li>f) claims whether in tort, contract or statute or otherwise</li> </ul>



	g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation
<b>Environmental Policy</b>	means the CMA's environmental policy as updated by the CMA and notified to the Supplier from time to time
<b>EU References</b>	has the meaning set out in Clause 1.2.7(a) (Definitions and interpretations)
<b>Force Majeure Event</b>	means any event outside the reasonable control of the Supplier affecting its ability to perform any of its obligations under this Agreement including fires, strikes (excluding strikes by its own employees), floods, war, acts of God, catastrophic or partial failure of any part of the telecommunications or power supply network, insurrection or riots, embargoes, or regulations of any civil or military authority
<b>Good Industry Practice</b>	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
<b>Goods</b>	means the goods (including any part or parts of them) which the Supplier is to provide to the CMA pursuant to the Order Form, or (where used) Schedule 1 Part B (Description of the Goods and specifications), in accordance with these terms
<b>Government Buying Standards</b>	means the Government Buying Standards product specifications which are mandatory for central government departments and related organisations accessible via <a href="https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs">https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs</a>
<b>ICT Environment</b>	means the CMA's IT system and the Supplier's IT system
<b>Independent Controller</b>	means a Party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data
<b>Information</b>	has the meaning set out in Clause 27.1 (Freedom of Information)
<b>Information Commissioner</b>	means the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies
<b>Insolvency Event</b>	in respect of a person: <ul style="list-style-type: none"> <li>(a) if that person is insolvent;</li> <li>(b) where that person is a company, LLP or a partnership, if an order is made or a resolution is passed for the winding up of the person (other than voluntarily for the purpose of solvent amalgamation or reconstruction);</li> <li>(c) if an administrator or administrative receiver is appointed in respect of the whole or any part of the person's assets or business;</li> <li>(d) if the person makes any composition with its creditors; or</li> <li>(e) takes or suffers any similar or analogous action to any of the actions detailed in this definition as a result of debt in any jurisdiction</li> </ul>
<b>Intellectual Property Rights</b>	means any patent, copyright, trade mark, service mark or trade name, right in software, right in design, right in databases, image right, moral right, right in an invention, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights in each case whether registered or not and including all applications (or rights to apply) for, or renewal or extension of, such rights which exist now or which will exist in the future in the United Kingdom and all other countries in the world in each case whether

	registered or not and including any application for registration of the foregoing
<b>Key Staff</b>	any persons specified as such in the Order Form or otherwise notified as such by the CMA to the Supplier in writing, following agreement to the same by the Supplier
<b>Law</b>	any law, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply
<b>LED</b>	means the Law Enforcement Directive (Directive (EU) 2016/680)
<b>Malicious Software</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence
<b>MSA Offence</b>	has the meaning set out in Clause 21.26.1(a) (Compliance)
<b>New Supplier</b>	means any person that provides goods or services in replacement of any of the Goods and/or Services whether those goods or services are the same as or similar to any or all of the Goods and/or Services
<b>Non-Affected Party</b>	has the meaning set out in Clause 30.2 (Force Majeure)
<b>Order Form</b>	means the order form signed by the CMA and the Supplier printed above these terms
<b>Party or Parties</b>	means a Party or Parties to this Agreement e.g. the CMA and the Supplier
<b>Premises</b>	means The Cabot, 25 Cabot Square, London, E14 4QZ or any other Premises that the CMA shall occupy as notified to the Supplier from time to time
<b>Price</b>	means the price for the Goods and/or Services set out in Schedule 2 (Charges)] or, if no price is quoted, the price set out in the Supplier's price list, published on the date of delivery or deemed date of delivery of the Goods, or completion of the performance of the Services
<b>Purchase Order</b>	means the supplementary document that accompanies an Order Form and these terms used solely for the purpose of invoicing
<b>Purchase Order Number</b>	means the purchase order number which must be quoted on all correspondence and any invoice which the Supplier provides the CMA
<b>Quick Wins</b>	has the meaning set out at Clause 21.6 (Compliance)
<b>Regulations</b>	the Public Contracts Regulations 2015 as amended from time to time
<b>Reimbursable Expenses</b>	means those expenses as listed in Schedule 2 (Charges)
<b>Removable Media</b>	means all physical items and devices that can carry and transfer electronic information. Examples include but are not limited to DVDs, CDs, floppy disks, portable hard disk drives, USB memory sticks, flash drives, portable music and video players including mobile phones, hand held devices such as Blackberries and Personal Digital Assistants and laptop computers
<b>Request for Information</b>	has the meaning set out in Clause 27.1 (Freedom of Information)

<b>Security Policy</b>	means the CMA's security policy as updated from time to time
<b>Service Levels</b>	means the standards of performance to be met by the Supplier in providing the Services, details of which are set out 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
<b>Services</b>	means the services to be provided by the Supplier to the CMA, as detailed in the Order Form, or (where used) Schedule 1 Part A (Description of Services and Service Levels) as amended from time to time in accordance with the provisions of this Agreement
<b>Specification</b>	means CMA's specifications or stipulations for the Goods and/or Services notified in writing to the Supplier in the applicable Order Form or Schedule 1 Part A ((Description of Services and Service Levels) or Schedule 1 Part B (Description of the Goods and specifications) respectively
<b>Subcontract</b>	any contract or agreement (or proposed contract or agreement), other than this Agreement, pursuant to which a third party: <ul style="list-style-type: none"> <li>a) provides the Deliverables (or any part of them);</li> <li>b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</li> <li>c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them)</li> </ul>
<b>Sub-contractor</b>	any person other than the Supplier, who is a party to a Subcontract and the servants or agents of that person
<b>Supplier</b>	means the person 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 Order Form
<b>Supplier Personnel</b>	means all directors, officers, employees, agents, consultants, contractors, Sub-contractors or other third parties working on behalf of the Supplier or any Supplier group company engaged in the performance of its obligations under this Agreement
<b>Supplier's Representative</b>	shall have the meaning attributed to it in Clause 3.2 (Authorisation)
<b>Term</b>	means the term of this Agreement as described in Clause 4.1 (Agreement Term)
<b>Transfer Regulations</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006
<b>UK GDPR</b>	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018
<b>Value Added Tax</b>	means the value added tax charged in accordance with the Value Added Tax Act 1994 (as amended)
<b>Working Day</b>	means a day which is not a Saturday, a Sunday or a bank or public holiday in England

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

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

- 1.2.2 references to Clauses and Schedules are to the clauses and schedules in this Agreement unless stated otherwise;
- 1.2.3 words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender;
- 1.2.4 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;
- 1.2.6 references to any legislation or legislative provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification);
- 1.2.7 any reference which, immediately before IP Completion Day (or such later date when relevant EU Law ceases to have effect pursuant to section 1A of the European Union (Withdrawal) Act 2018), is a reference to (as it has effect from time to time):
  - (a) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic Law by application of section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic Law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic Law from time to time; and
  - (b) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

## **2. Basis of Agreement**

- 2.1 The Order Form is an offer made by the CMA to the Supplier and this Agreement shall come into effect upon acceptance of the Order Form by the Supplier (the "**Commencement Date**"). Unless previously withdrawn by the CMA, Order Forms shall be deemed accepted if not rejected by the Supplier by notice in writing within 7 days of their date.
- 2.2 No Order Form shall be capable of acceptance by the Supplier unless it is in writing and is signed by an authorised representative on behalf of the CMA.
- 2.3 In the event of a conflict or ambiguity the order of preference for this Agreement and the documents attached to or referred to in this Agreement are as follows:
  - 2.3.1 the Order Form; then
  - 2.3.2 the Schedules to these terms; then
  - 2.3.3 these terms; then
  - 2.3.4 the Purchase Order.

## **3. Authorisation**

- 3.1 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:

- [REDACTED]
- [REDACTED]
- 3.2 The following person (including any successors in office from time to time of such person) is authorised to act as the Supplier's Representative on all matters concerning this Agreement:

[REDACTED]

[REDACTED]

Each of the CMA and the Supplier 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.

#### **4. Agreement Term**

- 4.1 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 later of the completion of the delivery of the Goods and/or completion of the Services.
- 4.2 This Agreement shall not be extended without agreement in writing signed by both the Parties.

#### **5. Conditions for the supply of Goods**

- 5.1 The Supplier shall supply the Goods strictly in accordance with the CMA's delivery instructions (including as to date and location) whether given in Schedule 1 Part B (Description of the Goods and specifications) or separately.
- 5.2 The CMA shall have the right to change its delivery instructions including the delivery date at any time, on paying any additional reasonable costs to be incurred by the Supplier as a result of any such change provided such costs are agreed in advance in writing by the CMA and provided the Supplier promptly submits proper invoices for such costs to the CMA.
- 5.3 The CMA can cancel any order or part order of Goods which has not been delivered. If the CMA gives less than 14 days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable endeavours to minimise these costs.
- 5.4 All Goods shall be delivered, carriage paid, at the place specified in Schedule 1 Part B (Description of the Goods and specifications) and only between 9.00 am and 4.00 pm on Working Days, unless otherwise agreed by the CMA. A Delivery Note must accompany the Goods.
- 5.5 Delivery of the Goods shall be completed on the completion of the loading of the Goods at the location detailed in the Order Form.
- 5.6 Time of delivery is of the essence of this Agreement. The CMA shall be under no obligation to accept delivery of the Goods before the specified delivery time, but reserves the right to do so.
- 5.7 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 Supplier within 3 days of notification of their rejection by the CMA. Any Goods awaiting collection shall be at the Supplier's risk and the CMA shall have no responsibility or liability in respect of such Goods.
- 5.8 The Goods will be properly packed and secured in such a manner as to reach their destination undamaged and in good condition. The CMA shall not be obliged to return to the Supplier any packaging materials for the Goods.

- 5.9 The cost of packaging will be deemed to be included in the cost of the Goods. If the Supplier requires packaging to be returned, it will be returned at the Supplier's expense.
- 5.10 The Supplier shall not deliver the Goods in instalments without the CMA's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all shall entitle the CMA to the remedies set out at Clause 13.6 (Warranties and representations).
- 5.11 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.
- 5.12 The CMA will be deemed to have accepted the Goods as being in accordance with this Agreement unless:
- 5.12.1 within 14 days of the date of delivery of the Goods, the CMA notifies the Supplier in writing of any defect or other failure of the Goods to conform with this Agreement (which would be apparent upon reasonable inspection and testing of the Goods within 14 days); or
- 5.12.2 the CMA notifies the Supplier in writing of any defect or other failure of the Goods to conform with this 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 Price as if the Goods had been delivered in accordance with this Agreement.

- 5.13 The Supplier shall promptly keep the CMA informed of any matter of which it is or reasonably should, as Supplier of the Goods, be aware of relating to the storage, transportation, handling, assembly or use of the Goods by the CMA (including any Applicable Law or advice from responsible or professional or legal bodies in respect of raw materials used in the manufacture of the Goods) and the actions it has taken or proposes to take and those that the CMA should take in relation to such matters.

## **6. Passing of legal title and risk**

- 6.1 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 6.2 The Goods shall be at the risk of the Supplier until they are delivered in accordance with this Agreement when, without prejudice to any right of rejection which the CMA may have under this Agreement or by Law, title to and risk in the Goods shall pass to the CMA, provided that if the CMA pays for the Goods prior to delivery, title to the Goods shall pass to the CMA when payment is made.

## **7. Use of CMA's equipment**

- 7.1 The CMA shall make available to the Supplier 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 Supplier undertakes to comply with such maintenance contracts.
- 7.2 Any equipment provided by the CMA to assist the Supplier in executing the Services shall be held by the Supplier 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 Supplier, shall be held at the risk of and maintained in good condition by the Supplier. Under no circumstances shall the Supplier 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 Supplier or any third party.

- 7.3 The Supplier 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 7.2, 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.

## **8. Conditions for the supply of Services**

- 8.1 The Supplier shall properly perform the Services in accordance with Schedule 1 Part A (Description of Services and Service Levels).
- 8.2 Where the Supplier is to perform Services at premises other than the Supplier's premises, the CMA shall procure safe and unencumbered access to the Premises and the provision of adequate power, lighting, heating and other such facilities, supplies, materials or equipment for the Supplier's Personnel in accordance with the demands of any Applicable Law and as the Supplier shall reasonably require.
- 8.3 If this Agreement is for or includes Services to be performed by the Supplier then, the Supplier undertakes, represents and warrants to the CMA that the Supplier shall:
- 8.3.1 provide the Services with reasonable skill and care;
  - 8.3.2 co-operate with the CMA in all matters relating to the Services, and comply with all reasonable instructions of the CMA;
  - 8.3.3 use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
  - 8.3.4 ensure that the Services will conform with the Specification, including all descriptions and performance dates, and that any Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the CMA;
  - 8.3.5 at its own risk and expense provide all equipment, tools and vehicles and such other items as are required to provide the Services. Any equipment provided by the CMA to the Supplier for supplying the Services remains the property of the CMA and is to be returned to the CMA on expiry or termination of this Agreement.
  - 8.3.6 use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Services or transferred to the CMA, will be free from defects in workmanship, installation and design;
  - 8.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all Applicable Laws;
  - 8.3.8 take all reasonable care to ensure performance does not disrupt the CMA's operations, employees or other contractors; and
  - 8.3.9 comply with any reasonable instructions and guidelines issued by the CMA from time to time.
- 8.4 Time of performance of the Services is of the essence of this Agreement. The Services shall be provided so as to meet the dates set out in Schedule 1 Part A (Description of Services and Service Levels).
- 8.5 On completion of the Services, the Supplier is responsible for leaving the CMA's Premises in a clean, safe and tidy condition and making good any damage that it has caused to the CMA's Premises or property, other than fair wear and tear.

## **9. Contract management**

- 9.1 If formal progress reports are required these will be as set out in Section 2: of Schedule 3 (Contract and Service Management). The Supplier 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.
- 9.2 The Supplier must ensure that suitably authorised representatives attend progress meetings with the CMA and provide progress reports when specified in Section 2: of Schedule 3 (Contract and Service Management).
- 9.3 The submission and acceptance of progress reports shall not prejudice any rights of the CMA under this Agreement.
- 9.4 When meetings are required these will be as set out in Section 3: of Schedule 3 (Contract and Service Management).
- 9.5 The CMA shall give the Supplier reasonable notice of required attendance. Such attendance shall be at the Supplier's expense.

## **10. Pricing and Payment**

- 10.1 The Price shall be inclusive of all packaging, packing, labelling, export or import or other customs duties taxes or licences, insurance, delivery costs, labour and all other costs incurred by the Supplier in relation to the Goods and/or Services and their delivery/performance, apart from any Reimbursable Expenses listed in Schedule 2 (Charges), insurance, materials, any required equipment and any other additional costs, unless otherwise specified in Schedule 2 (Charges).
- 10.2 All sums payable under this Agreement are exclusive of VAT which shall be added if appropriate at the rate prevailing at the relevant tax point but inclusive of any other applicable tax or duty payable upon such sums.
- 10.3 No variation in the Price of the Goods and/or Services nor any extra charges will be accepted by the CMA unless expressly agreed by the CMA in writing.
- 10.4 The Supplier shall submit electronic invoices on a monthly bases in arrears on the last Working Day of each month or at times or intervals agreed by the CMA in writing.
- 10.5 Electronic invoices must be sent to CMA Accounts Payable at the following email address: [invoices@cma.gov.uk](mailto:invoices@cma.gov.uk). In the event of a query regarding an outstanding payment please contact CMA's Finance Team either by email to [Finance.Team@cma.gov.uk](mailto:Finance.Team@cma.gov.uk) or by telephone on 020 3738 6908 / 6284.
- 10.6 Invoices submitted early shall be deemed received on the date of delivery of the Goods or date of completion of the performance of the Services.
- 10.7 Invoices shall show the amount of VAT payable and shall detail the Purchase Order Number.
- 10.8 Save where an invoice is disputed, the CMA shall pay the Supplier within 30 Days of receipt of an invoice.
- 10.9 All payments shall be in pounds sterling by electronic transfer to the Supplier's bank account as set out in this Agreement, or such other bank account as the Supplier may from time to time notify to the CMA with any applicable charges on such payments being at the Supplier's expense.
- 10.10 The Supplier shall make available to the CMA such evidence thereof as the CMA may reasonably require to indicate the activities, Price and expenses, if applicable, for which payment is sought.



- 10.11 The Supplier must ensure that all Sub-contractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, the CMA can publish the details of the late payment or non-payment.
- 10.12 Whenever under this Agreement any sum or sums of money shall be recoverable from or payable by the Supplier to the CMA, that amount may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Agreement or under any other contract with the CMA or with any agency or office of His Majesty's Government. If sufficient monies are not due to the Supplier then the Supplier will make good the deficit within 30 Working Days of notice being given.
- 10.13 Any over-payment by the CMA to the Supplier whether in respect of the Price, Reimbursable Expenses or Value Added Tax shall be a sum of money recoverable from the Supplier.
- 10.14 Any money paid by the CMA to the Supplier in respect of any Goods rejected under these terms together with any additional expenditure over and above the Price specified in Schedule 2 (Charges) reasonably incurred by the CMA in obtaining other goods in replacement of any rejected Goods shall be paid by the Supplier to the CMA within 14 days of the date of the CMA's notice demanding the same or, at the CMA's sole option, shall be deducted from the money still to be paid by the CMA to the Supplier in relation to such Goods.
- 10.15 If the Price is stated in Schedule 2 (Charges) to be on a "time and materials" or "cost plus" basis or similar the Supplier shall give the CMA access to all documents and information in the Supplier's possession or under its control to enable the CMA to satisfy itself that the amount charged by the Supplier is properly and correctly charged in accordance with this Agreement and in default the CMA shall be entitled to withhold payment in whole or in part until such default is rectified to the satisfaction of the CMA.
- 10.16 If any sum due from the CMA to the Supplier under this Agreement is not paid on or before the due date for payment (and which has not been disputed by the CMA in good faith), then all sums then owing by the CMA to the Supplier shall become due and payable immediately and the Supplier shall be entitled to charge the CMA interest on the overdue amount from the due date until payment is made in full both before and after any judgement at 2% per annum over the Bank of England's base lending rate from time to time (accruing on a daily basis and compounded quarterly).
- 10.17 If there is a dispute between the Parties as to the amount invoiced, the CMA shall pay the undisputed amount. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in Clause 38 (Dispute Resolution).
- 10.18 On termination of this Agreement, the Price payable by the CMA to the Supplier will become due within 30 Days of termination.

## **11. Audit and accounts**

- 11.1 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 Supplier. The Supplier must allow any auditor appointed by the CMA access to its premises to verify all contract accounts and records of everything to do with this Agreement and provide copies for the audit.
- 11.2 During an audit, the Supplier must provide information to the auditor and reasonable cooperation at their request.
- 11.3 The Parties will bear their own costs when an audit is undertaken unless the audit identifies a material default by the Supplier, in which case the Supplier will repay the CMA's reasonable costs in connection with the audit.

11.4 The Supplier 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 Supplier or in connection with any Supplier Personnel paid for by the CMA on a time charge basis. The Supplier 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.

11.5 The Supplier must keep and maintain full and accurate records and accounts on everything to do with this Agreement for a period of 6 years after termination or expiry of this Agreement.

## **12. Intellectual Property**

12.1 The CMA owns, and shall continue to own all right, title and interest in and to any Intellectual Property Rights or proprietary interest that it owned prior to the Commencement Date of this Agreement ("**Retained Rights**") and grants the Supplier a non-exclusive, non-transferable right to use the Retained Rights for the sole purpose of performing the Supplier's obligations under this Agreement.

12.2 Subject to any pre-existing rights of third parties and of the Supplier, the Intellectual Property Rights in the Deliverables shall belong to and be vested automatically in the CMA and the CMA hereby grants to the Supplier a non-exclusive, non-transferable licence to such Intellectual Property Rights in the Deliverables for sole purpose of performing its obligations under this Agreement.

12.3 The Supplier waives all moral rights relating to the Deliverables.

12.4 Where a Party acquires ownership of Intellectual Property Rights incorrectly under this Agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

12.5 If the Supplier 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 Supplier 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.

12.6 The CMA shall have the sole right to use any information collected or collated pursuant to this Agreement (excluding any information which in the opinion of the CMA is confidential to the Supplier or which has been communicated to the Supplier under a condition that it shall be confidential to the Supplier), 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.

12.7 Nothing in this Agreement or done under this Agreement shall be taken to diminish any copyright, patent rights or any other Intellectual Property Rights which would, apart from this Agreement, vest in the CMA.

12.8 The Supplier 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 this Agreement Price.

12.9 If an IPR Claim is made or anticipated the Supplier must at its own expense and the CMA's sole option, either:

12.9.1 obtain for the CMA the rights in Clauses 12.1 and 12.2 without infringing any third party Intellectual Property Rights; and

- 12.9.2 replace or modify the relevant item with substitutes that don't infringe Intellectual Property Rights without adversely affecting the functionality or performance of the Goods and/or Services.

### **13. Warranties and representations**

#### **13.1 The Supplier warrants and represents that:**

- 13.1.1 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;
- 13.1.2 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 Specification, best professional standards and the terms of this Agreement;
- 13.1.3 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;
- 13.1.4 it is not impacted by an Insolvency Event;
- 13.1.5 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its affiliates that might affect its ability to perform this Agreement;
- 13.1.6 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 Supplier or any Supplier Personnel which may prevent the Supplier fulfilling its obligations in accordance with this Agreement;
- 13.1.7 it will comply with any other reasonable confidentiality or Conflict of Interest obligations imposed on it;
- 13.1.8 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Agreement;
- 13.1.9 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
- 13.1.10 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.

#### **13.2 The Supplier undertakes, represents and warrants to the CMA that the Goods and their packaging and labelling shall:**

- 13.2.1 be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and/or storage of the Goods;
- 13.2.2 conform to the Specification and with any instructions of the CMA, and shall otherwise meet the requirements of this Agreement;
- 13.2.3 be without fault, are of satisfactory quality and fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification or Agreement);

- 13.2.4 be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with designs of the CMA);
- 13.2.5 comply with all Applicable Laws.
- 13.3 The Supplier warrants that it will notify the CMA of any request that Goods are returned to it or the manufacturer after the discovery of safety issues or defects that might endanger health or hinder performance and shall indemnify the CMA against the costs arising as a result of any such request.
- 13.4 The Supplier warrants that the Services supplied by it and/or software used by it to perform and/or support the Services:
  - 13.4.1 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 Supplier 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,
  - 13.4.2 shall be performed in accordance with any relevant Specification.
- 13.5 All third party warranties covering the Goods and/or Services (or part thereof) must be assigned for the CMA's benefit by the Supplier to the extent that the same is capable of such transfer or assignment to the CMA or otherwise providing such benefit for the CMA and for free.
- 13.6 Where: (i) there is any breach of the Supplier's warranty, obligation or requirement imposed by, given or stated in this Agreement in respect of the Goods or Services; or (ii) the Goods or any instalment of the Goods are not delivered or the Services are not performed at the specified time, the CMA shall be entitled at its sole discretion without liability to the Supplier (arising out of such action) and without prejudice to any other right or remedy the CMA may have to take one or more of the following actions to:
  - 13.6.1 cancel this Agreement in whole or in part;
  - 13.6.2 reject the relevant Goods (in whole or in part) and any Goods already delivered which cannot be effectively and commercially used by reason of the non-delivery of any undelivered Goods and:
    - (a) raise a debit note against the Supplier's invoice for them; or
    - (b) claim damages for any additional costs, loss or expenses incurred by the CMA which are in any way attributable to the Supplier's failure to deliver the Goods on the delivery date,
  - 13.6.3 refuse to accept any subsequent delivery of the Goods or performance of the Services;

- 13.6.4 recover from the Supplier any costs reasonably incurred by the CMA in obtaining substitute goods or services from another supplier;
- 13.6.5 require the Supplier at its sole cost to replace, repair the Goods or carry out such work as is necessary within 14 days so that the Goods conform to the Specification and this Agreement;
- 13.6.6 carry out at the Supplier's expense any work necessary to make the Goods comply with the Specification and this Agreement;
- 13.6.7 require the Supplier at its sole cost to re-execute the Services in accordance with this Agreement and Specification within 7 days;
- 13.6.8 treat this Agreement as terminated by the Supplier's breach and:
  - (a) delay payment of the Price for the Goods and/or Services until the requirements of this Agreement and any Specification are entirely fulfilled;
  - (b) refuse to make payment of the Price of the Goods and/or Services; or
  - (c) require the repayment of any part of the Price of the Goods and/or Services which the CMA has paid whether or not the CMA has previously required the Supplier to repair the Goods, supply any replacement Goods or re-execute the Services; and/or
- 13.6.9 claim such damages as may have been incurred by the CMA as a result of the Supplier's breach of this Agreement.
- 13.7 If the CMA claims that an Order Form has not been fulfilled or has been incorrectly fulfilled the Supplier shall be deemed to accept the validity of the claim unless it serves written notice on the CMA disputing the said claim and stating the reasons for its dispute within 7 days of the date of the said claim.
- 13.8 If the CMA exercises any right to reject the Goods under these terms the CMA may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's risk and cost on the basis that a full refund for Goods so returned shall be paid forthwith by the Supplier.
- 13.9 The CMA's rights under these terms are in addition to any statutory remedies available to the CMA.
- 13.10 The Supplier will immediately notify the CMA if it becomes aware of any representation or warranty made in relation to this Agreement that becomes untrue or misleading.

#### **14. Supplier's Personnel**

- 14.1 The Supplier Personnel involved in the performance of this Agreement must:
  - 14.1.1 be appropriately trained and qualified. Training is to be provided on a continuing basis for all Supplier Personnel employed or engaged in the delivery of the Goods or performance of the Services;
  - 14.1.2 be vetted in accordance with best industry practice and be subject to a valid Baseline Personnel Security Standard ("BPSS") check; and
  - 14.1.3 comply with all conduct requirements when on the CMA's Premises.
- 14.2 The Supplier shall ensure that no person who discloses that they have a conviction that is relevant to the nature of this Agreement, relevant to the work of the CMA, or is of a type

otherwise advised by the CMA (each such conviction a "**Relevant Conviction**"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a disclosure and barring service check or otherwise) is employed or engaged in the provision of any part of the Goods and/or Services.

- 14.3 The Supplier shall use those persons nominated (if any) as Key Staff in the Order Form or otherwise notified as such by the CMA to the Supplier in writing, and shall not remove or replace any of them unless:
- 14.3.1 requested to do so by the CMA or the CMA approves such removal or replacement (not to be unreasonably withheld or delayed);
  - 14.3.2 the person concerned resigns, retires or dies or is on parental or long term sick leave; or
  - 14.3.3 the person's employment or contractual arrangement with the Supplier or any Sub-contractor is terminated for material breach of contract by the employee.
- 14.4 Where the CMA gives the Supplier notice that any of the Supplier's Personnel isn't suitable to work on this Agreement, the Supplier shall take all steps to comply with such notice and must replace them with a suitably qualified alternative and procure that any pass issued to the person removed is surrendered to the CMA.
- 14.5 The Supplier must provide a list of Supplier Personnel needing to access the Premises and say why access is required.
- 14.6 The Supplier shall take the steps reasonably required by the CMA to prevent unauthorised persons being admitted to the Premises.
- 14.7 If and when instructed by the CMA, the Supplier shall give to the CMA a list of names and addresses of all Supplier 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.
- 14.8 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 Supplier has furnished the information or taken the steps required of it by this Clause shall be final and conclusive.
- 14.9 The Supplier indemnifies the CMA against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Personnel.
- 14.10 During the Term and for so long as the Supplier continues to provide some or all of the Services, all Supplier Personnel shall at all times be and be deemed to be employed or engaged by the Supplier or the Sub-contractor and not of the CMA. The Supplier shall be responsible for the taking of all disciplinary action and hearing of grievances in respect of the Supplier Personnel and for paying any salaries, taxes, contributions and charges payable in respect of the Supplier Personnel.
- 14.11 If the Supplier 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 Supplier, provided that such termination shall be without prejudice to any accrued rights of, or to any rights that shall accrue thereafter to, the CMA.

## **15. Indemnity**

- 15.1 In addition to any other remedy available to the CMA, the Supplier shall indemnify and defend the CMA and their respective Supplier Personnel in full and on demand, from and against any and all direct or indirect liabilities, claims, demands, damages, losses or expenses (including legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of this Agreement:
- 15.1.1 any claim made against the CMA by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier or Supplier Personnel;
  - 15.1.2 any claim made against the CMA by a third party for any other loss, destruction or damage including but not limited to financial losses which are caused, by the breach of contract or breach of duty (whether in negligence, tort, statute or otherwise) of the Supplier or Supplier Personnel save where such breach is a direct result of a failure of the CMA;
  - 15.1.3 wilful misconduct of the Supplier, any of its Sub-contractor and/or Supplier Personnel that impacts this Agreement;
  - 15.1.4 non-payment by the Supplier of any tax or National Insurance;
  - 15.1.5 any claim made against the CMA by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by the Supplier or Supplier Personnel; and
  - 15.1.6 any claim made against the CMA for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, provided that any such infringement or alleged infringement is not knowingly caused directly by any act of the CMA.
- 15.2 The CMA shall indemnify the Supplier 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 Supplier 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 Supplier.
- 15.3 Each Party must use all reasonable endeavours to mitigate any loss or damage which it suffers under or in connection with this Agreement, including any indemnities.
- 15.4 The Supplier shall provide all facilities, assistance and advice required by the CMA or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance, or purported performance of, or failure to perform, this Agreement.

## **16. Liability**

- 16.1 Nothing in this Agreement excludes or limits the Supplier's liability for:
- 16.1.1 death or personal injury caused by the Supplier's negligence;
  - 16.1.2 fraud or fraudulent misrepresentation;

- 16.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 16.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession);
- 16.1.5 defective products under the Consumer Protection Act 1987; or
- 16.1.6 any liability which cannot be legally excluded or limited.
- 16.2 Subject to Clause 16.1 each Party's total aggregate liability under or in connection with this Agreement (whether in tort, contract or otherwise) shall be capped at an aggregate amount of one hundred and twenty-five percent (125%) of the Price under this Agreement.
- 16.3 Nothing in this Agreement shall impose any liability on any member of the CMA staff or its representatives in their personal capacity.
- 16.4 If more than one Supplier is party to this Agreement, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.
- 16.5 All third party indemnities covering the Goods and/or Services must be assigned for the CMA's benefit by the Supplier.

## **17. Insurance**

- 17.1 The Supplier shall maintain in force at all times during the Term of this Agreement and for a period of one year after the termination or expiry of this Agreement full and comprehensive insurance to cover the Supplier's potential liability to the CMA under, or in connection with the Agreement to include:
  - 17.1.1 [employers liability insurance for the minimum amount of £5 million [for claims arising from a single event or series of related events in a single calendar year;
  - 17.1.2 professional indemnity insurance for the minimum amount of £1 million per event;
  - 17.1.3 public liability insurance for the minimum amount of £1 million per event; and
- 17.2 The Supplier shall on the written request of the CMA from time to time produce the relevant policy or policies together with receipt or other evidence of payment of the latest premium due there under.
- 17.3 The Supplier shall do nothing to invalidate any of the policies maintained in force in accordance with this Clause.

## **18. Dealing with claims**

- 18.1 If the CMA becomes aware of any Claim, the CMA must:
  - 18.1.1 notify the Supplier as soon as reasonably practical becoming aware of a Claim;
  - 18.1.2 at the Supplier's cost, allow the Supplier to conduct all negotiations and proceedings to do with a Claim;
  - 18.1.3 at the Supplier's cost, give the Supplier reasonable assistance with the Claim if requested; and
  - 18.1.4 not make admissions about the Claim without the prior written consent of the Supplier which cannot be unreasonably withheld or delayed.



18.2 The Supplier must:

18.2.1 consider and defend the Claim diligently and in a way that does not damage the CMA's reputation; and

18.2.2 not settle or compromise any Claim without the CMA's prior written consent which it must not unreasonably withhold or delay

## 19. Data Protection

19.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation and allow the other Party to comply with the obligations imposed upon it by providing it with all necessary information. This Clause 19 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation. Where the optional Schedule 6 (Data Protection) has been applied in the Order Form, Clauses 19.2 to 19.9 will be disappplied, and the Supplier must Process Personal Data and ensure that Supplier Personnel Process Personal Data only in accordance with Schedule 6 (Data Protection).

19.2 The Parties acknowledge and agree that any data which is provided by the Supplier to the CMA for the purposes of complying with the reporting obligations under this Agreement shall not contain Personal Data.

19.3 The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives (in their respective capacities as Independent Controllers) in order to ensure the effective management and performance of this Agreement. The Parties will only provide such Personal Data to each other to the extent necessary to perform their respective obligations under this Agreement.

19.4 For the avoidance of doubt, the scope of Personal Data referred to in Clause 19.3 will be as follows:

19.4.1 **Personal Data:** first and last name, email address, business telephone number, office location and position/job title/role of the Supplier Personnel (for which the Supplier is the Controller) and of the CMA staff (for which the CMA is the Controller).

19.4.2 **Permitted Purpose:** the performance of this Agreement or compliance with an obligation imposed under Applicable Law.

19.4.3 **Permitted Recipients:** Supplier Personnel and CMA staff engaged in the performance of this Agreement.

19.5 Each Party shall Process such Personal Data in accordance with its respective privacy policy and Data Protection Legislation. Each Party shall be responsible for its own compliance with Articles 13 and 14 of the UK GDPR in respect of the Processing of Personal Data for the Permitted Purpose.

19.6 The Parties undertake not to:

19.6.1 Process the Personal Data other than in accordance with the Permitted Purpose;

19.6.2 retain or Process Personal Data for longer than is necessary for the Permitted Purpose;

19.6.3 do anything to cause the other Party to be in breach of Data Protection Legislation.

19.7 Where one Party has provided the other Party with Personal Data, the recipient of the Personal Data:

- 19.7.1 will provide all such relevant documents and information relating to its data protection policies and procedures as the disclosing Party may reasonably require (including its record of Processing activities maintained in accordance with Article 30 of the UK GDPR);
- 19.7.2 will not transfer Personal Data to a third party located outside of the UK unless it has obtained the prior written consent of the disclosing Party and such transfer:
  - (a) is necessary to achieve the Permitted Purpose;
  - (b) is protected with appropriate supplementary measures; and
  - (c) complies with the transfer restrictions set out under Chapter V of the UK GDPR;
- 19.7.3 will promptly notify the disclosing Party upon it becoming aware of any Personal Data Breach relating to the Personal Data provided by the disclosing Party and:
  - (a) do all such things as reasonably necessary to assist the disclosing Party in mitigating the effects of the Personal Data Breach;
  - (b) implement any measures necessary to restore the security of any compromised Personal Data;
  - (c) work with the disclosing Party to make any required notifications to the Information Commissioner or any other regulatory authority and affected Data Subjects in accordance with Data Protection Legislation; and
  - (d) not do anything which may damage the reputation of the disclosing Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 19.8 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity to the rights and freedoms of natural persons, each Party shall implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 19.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party:
  - 19.9.1 the other Party shall provide, at the cost of the request recipient, any information and/or assistance as reasonably requested by the request recipient to help it respond; or
  - 19.9.2 where the request is directed to the other Party and/or relates to that other Party's Processing, the request recipient will promptly (and in any event within 5 Working Days of receipt) forward such request to the other Party and provide any information and/or assistance as reasonably requested by the other Party to help it respond.
- 20. Security**
  - 20.1 The Supplier shall not delete or remove any security or proprietary notices contained within or relating to the Authority Data.
  - 20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the CMA.

- 20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the CMA as requested by the CMA in the format specified.
- 20.4 Where the Supplier uses Removable Media, this must be encrypted and approved or issued by the CMA when connected to the CMA's IT network and all use must be in strict accordance with the rules about sensitivity and risks of information. In particular, encrypted memory sticks may only be used for data marked up to and including the protective marking of 'Official'.
- 20.5 Floppy disks must not be used in the delivery of this Agreement.
- 20.6 The Supplier shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- 20.7 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site. The Supplier shall ensure that such back-ups are available to the CMA at all times upon request.
- 20.8 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with HM Government's Minimum Cyber Security Standard or any replacement / updates.
- 20.9 The Supplier shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus software available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.
- 20.10 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, the CMA may:
- 20.10.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent required by the CMA and the Supplier shall do so as soon as practicable; and/or
- 20.10.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so.
- 20.11 If at any time the Supplier 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 Supplier shall notify the CMA immediately and inform the CMA of the remedial action the Supplier proposes to take. Any theft of Removable Media must be reported to the police within 24 hours of becoming aware of the theft and a crime/incident number obtained.

## **21. Compliance**

- 21.1 The Supplier 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.
- 21.2 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with all Applicable Law.

### ***Environmental Requirements***

- 21.3 In performing this Agreement the Supplier 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.

- 21.4 The Supplier 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 Supplier 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.
- 21.5 The paper for all written outputs, including reports, produced in connection with this Agreement shall (unless otherwise specified) be produced on recycled paper containing 100% post-consumer waste and used on both sides where appropriate.
- 21.6 All Goods purchased by the Supplier 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.
- 21.7 Click on <http://sd.defra.gov.uk/advice/public/buying/> and select "find a product".

#### ***Health and safety***

- 21.8 The Supplier shall ensure that all of the Supplier's Personnel who have access to or are employed on the CMA's Premises comply with all health and safety rules and regulations and the CMA's health, safety and security procedures and instructions. Supplier Personnel shall complete any additional security clearance procedures required by the CMA when working at their Premises.
- 21.9 Each Party must as soon as possible notify the other of any health and safety incidents or material hazards they are aware of at the CMA's Premises that relate to the performance of this Agreement.

#### ***Anti-bribery***

- 21.10 The Supplier undertakes that it:
- 21.10.1 has not committed an offence under sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "**Bribery Offence**");
  - 21.10.2 has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;
  - 21.10.3 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.
- 21.11 The Supplier agrees that it:
- 21.11.1 has in place, and shall maintain until termination of this Agreement, adequate documented procedures designed to prevent Supplier Personnel from committing a Bribery Offence;
  - 21.11.2 shall comply with the Bribery Act 2010 and shall not, and shall procure that no Supplier Personnel shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;
  - 21.11.3 shall not do or permit anything to be done which would cause the CMA or any of CMA's employees, Sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act; and
  - 21.11.4 shall notify the CMA immediately in writing if it becomes aware or has reason to believe that it has, or any of its Supplier Personnel have, breached or potentially breached any of the Supplier's obligations under this Clause 21.11. Such notice to

set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

21.12 The Supplier shall not:

- 21.12.1 offer or give, or agree to give, to any person (whether working for or engaged by the CMA or any other public body) any inducement or reward for doing, 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 public function or for showing or refraining from showing favour or disfavour to any person in relation to this Agreement or any other public function; or
- 21.12.2 enter into this Agreement or any other agreement with a person in His Majesty's Government in connection with which commission has been paid or agreed to be paid by them, or to their knowledge, unless before this Agreement is made particulars of any such commission and of the terms of any agreement for the payment thereof have been disclosed in writing to the CMA.

21.13 The Supplier shall take all reasonable endeavours (including creating, maintaining and enforcing adequate policies, procedures and records), in accordance with Good Industry Practice, to prevent any matters referred to in Clause 21.12 and any fraud by the Supplier Personnel and the Supplier (including its shareholders, members and directors) in connection with this Agreement and shall notify the CMA immediately if it has reason to suspect that any such matters have occurred or is occurring or is likely to occur.

21.14 If the Supplier, the Supplier Personnel or anyone acting on the Supplier's behalf (whether with or without the knowledge of the Supplier) engages in conduct prohibited by Clause 21.12 or commits fraud in relation to this Agreement or any other contract with His Majesty's Government the CMA may:

- 21.14.1 require the Supplier to remove any Supplier Personnel from providing the Deliverables if their acts or omissions have caused the default; and
- 21.14.2 immediately terminate this Agreement and recover from the Supplier the amount of any direct loss resulting from such termination and/or to recover from the Supplier the amount or value of any such gift, consideration or commission.

21.15 Any dispute, difference or question arising in respect of the interpretation of Clause 21.10 to 21.15, 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.

***Official Secrets Act***

21.16 The Supplier shall take all reasonable steps to ensure that all Supplier Personnel are aware of the Official Secrets Acts 1911 to 1989, and understand that these Acts apply to them during and after performance of any work under or in connection with this Agreement.

***Discrimination***

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

- 21.18 The Supplier will comply with the above legislation in so far as it places obligations upon the Supplier in the performance of its obligations under this Agreement. The Supplier 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.
- 21.19 In the event of any finding of unlawful racial, disability or discrimination (including sexual discrimination) being made against the Supplier by any court or industrial tribunal, or of an adverse finding in any formal investigation by the Equality and Human Rights Commission the Supplier shall take appropriate steps to prevent repetition of the unlawful discrimination and shall on request provide the CMA with details of any steps taken.
- 21.20 The Supplier shall set out its policies on race relations, sex discrimination and disability discrimination:
- 21.20.1 in instructions to those concerned with recruitment, training and promotion;
- 21.20.2 in documents available to its Supplier Personnel, recognised trade unions or other representative groups of its Supplier Personnel; and
- 21.20.3 in recruitment advertisements and other literature.
- 21.21 The Supplier shall, on request provide the CMA with copies of its policies, examples of the instructions and other documents, recruitment advertisements and other literature.
- 21.22 The Supplier shall provide such information as the CMA may reasonably request for the purpose of assessing the Supplier's compliance with this Clause 21.17 to 21.23.
- 21.23 The Supplier shall take all reasonable steps to ensure that any Supplier 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 21.17 to 21.23.

#### ***Working Time Directive***

- 21.24 The Supplier shall ensure that the Working Time Directive Employment Regulations will be applied in the proper manner to all personnel supplied via this Agreement.
- 21.25 The Supplier 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.

#### ***Modern slavery***

- 21.26 The Supplier undertakes, warrants and represents that:
- 21.26.1 neither the Supplier nor any of its Supplier Personnel:
- (a) has committed an offence under the Modern Slavery Act 2015 (an "**MSA Offence**"); or
- (b) has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
- (c) is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 21.26.2 it shall comply with the Modern Slavery Act 2015;

- 21.26.3 it shall notify the CMA immediately in writing if it becomes aware or has reason to believe that it, or any of its Supplier Personnel have, breached or potentially breached any of Supplier's obligations under this Clause 21.26. Such notice to set out full details of the circumstances concerning the breach or potential breach of Supplier's obligations.
- 21.27 Any breach of this Clause 21 by the Supplier shall be deemed a material breach of this Agreement and shall entitle the CMA to terminate this Agreement in accordance with Clause 22 (Termination).

## **22. Termination**

- 22.1 The CMA may immediately terminate this Agreement either wholly or in part without payment of compensation by giving notice in writing to the Supplier if:
- 22.1.1 the Supplier commits a material breach of any of its obligations under this Agreement which is incapable of remedy;
- 22.1.2 the Supplier commits a breach of its obligations under this Agreement which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist;
- 22.1.3 the Supplier:
- (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 or dissolution 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) calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that Party;
  - (f) takes any steps in connection with proposing a reorganisation of the Party (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
  - (g) 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;
  - (h) 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;

- (i) 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 22.1.3; and/or
- 22.1.4 the Supplier ceases, or appears in the reasonable opinion of the CMA likely or is threatening to cease, to carry on all or a substantial part of its business.
- 22.2 In addition to the CMA's rights of termination under Clause 22.1, the CMA shall be entitled to terminate this Agreement by giving to the Supplier not less than 30 days' notice to that effect.
- 23. Break**
- 23.1 The CMA shall at any time have the right to terminate this Agreement or reduce the quantity of Goods or Services to be provided by the Supplier in each case by giving to the Supplier one month's written notice. During the period of notice the CMA may direct the Supplier to perform all or any of the work under this Agreement.
- 24. Consequences of termination**
- 24.1 The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which may have accrued up to the date of termination.
- 24.2 Upon termination of this Agreement for any reason whatsoever:
  - 24.2.1 all sums of money that were then due or accruing from the CMA to the Supplier in respect of this Agreement shall cease to be due or accruing to the extent of the termination;
  - 24.2.2 the CMA shall have the right to recover from the Supplier all prices paid in respect of work which has not yet been delivered;
  - 24.2.3 subject to Clause 24.1 the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Clause 24.2;
  - 24.2.4 the Parties shall immediately return all of the other Party's property and equipment in its possession at the date of termination, including all of its Confidential Information, together with all copies of such Confidential Information, and shall make no further use of such Confidential Information;
  - 24.2.5 the Supplier 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;
  - 24.2.6 the Supplier is responsible for the CMA's reasonable costs of procuring replacement Goods and/or Services for the rest of the term of this Agreement; and
  - 24.2.7 if the Supplier is required by any Law, regulation or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy by Clause 24.2.4, it shall notify the CMA in writing of such retention, giving details of the documents or materials that it must retain.
- 24.3 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement including 5.13 (Conditions for the supply of Goods), 7 (Use of CMA's equipment), 8.3 (Conditions for the supply of Services), 10 (Pricing and Payment), 11 (Audit and accounts), 12 (Intellectual Property), 13 (Warranties and representations), 14.9 (Supplier's Personnel), 15 (Indemnity), 16 (Liability), 17 (Insurance), 18 (Dealing with claims), 19 (Data Protection), 20 (Security), 24 (Consequences of Termination), 26 (Confidentiality), 27 (Freedom of Information), 28 (Transparency), 33



(Rights of third parties), 38 (Dispute resolution), 39 (Entire Agreement) and 41 (Law and jurisdiction) shall remain in full force and effect.

- 24.4 In the event termination is triggered pursuant to Clause 22.1, without prejudice to any other rights, the CMA may complete the Services or have them completed by a third party, using for that purpose all materials, plant and equipment on the Premises belonging to the Supplier. The CMA shall be entitled to recover from the Supplier all fees paid to it prior to the occurrence of any of the events described in Clause 24.2.

## **25. Transfer Regulations**

- 25.1 This Clause 25 will be disappplied where the optional Schedule 7 (Staff Transfer) has been applied in the Order Form.
- 25.2 It is the parties' intention that neither the commencement nor the termination of this Agreement or of any of the Services will give rise to a relevant transfer pursuant to the Transfer Regulations.
- 25.3 In addition to any other remedy available to the CMA, the Supplier shall indemnify and defend the CMA and any New Supplier and their respective directors, officers and employees in full and on demand, from and against any and all Employee Liabilities howsoever arising whether wholly or in part arising directly or indirectly foreseeable or not, which are or which may be incurred, suffered or paid by the CMA or any New Supplier in relation to any individual who claims that their employment or liabilities in connection with their employment transfer to the CMA, any of CMA's companies or a New Supplier under the Transfer Regulations including any Employee Liabilities relating to the termination of employment of any such individual.

## **26. Confidentiality**

- 26.1 The Supplier undertakes to abide by, and procures that all Supplier Personnel abide by all of the sections of legislation set out in the CMA's Security Policy.
- 26.2 Except to the extent set out in this Clause 26, or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
- 26.2.1 keep all Confidential Information it receives confidential and secure;
  - 26.2.2 not disclose, use or exploit the disclosing Party's Confidential Information without the disclosing Party's prior written consent;
  - 26.2.3 immediately notify the disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 26.3 The Supplier may only disclose the CMA's Confidential Information to Supplier Personnel to the extent necessary for the performance of this Agreement provided such disclosure is subject to obligations equivalent to those set out in this Agreement. The Supplier shall use its best endeavours to procure that any such Supplier Personnel complies with such obligations. The Supplier will be responsible to the CMA in respect of any disclosure or use of such Confidential Information by a person to whom disclosure is made.
- 26.4 The Supplier shall procure that those members of the Supplier 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.
- 26.5 The obligations of confidentiality in this Clause 26.5 do not extend to any Confidential Information which the Parties can show:
- 26.5.1 is or becomes generally available to the public other than as a result of a breach of the obligations of confidentiality under this Agreement;

- 26.5.2 was in its written records prior to the date of this Agreement and not subject to any confidentiality obligations;
  - 26.5.3 was or is disclosed to it by a third party entitled to do so;
  - 26.5.4 was independently developed without access to the disclosing Party's Confidential Information;
  - 26.5.5 the parties agree in writing is not Confidential Information or may be disclosed; or
  - 26.5.6 is required to be disclosed under any Applicable Law, or by order of a court or governmental body or authority of competent jurisdiction.
- 26.6 Nothing in this Agreement shall prevent the CMA from disclosing the Supplier's Confidential Information:
- 26.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - 26.6.2 to any consultant, contractor or other person engaged by a Contracting Authority or any person conducting a Cabinet Office gateway review;
  - 26.6.3 for the purpose of the examination and certification of the CMA's accounts; or
  - 26.6.4 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.
- 26.7 The CMA shall use all reasonable endeavours to ensure that any government department, Contracting Authority or Supplier Personnel to whom the Supplier's Confidential Information is disclosed pursuant to Clause 26.6 is made aware of the CMA's obligations of confidentiality.
- 26.8 Nothing in this Clause 26 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of any Intellectual Property Rights.
- 26.9 The Supplier and any Supplier 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 Supplier and any Supplier Personnel rendered services under a contract with the CMA.
- 26.10 The Supplier 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 Goods and/or Services so as to ensure that all persons concerned with the delivery of the Goods and/or provision of the Services are bound by provisions replicating the intent and effect of this Clause 26.

## **27. Freedom of Information**

- 27.1 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.

- 27.2 The Supplier 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 Supplier's expense, to enable the CMA to comply with its Information disclosure obligations.
- 27.3 The Supplier shall (and shall procure that its Sub-contractors shall):
- 27.3.1 transfer any Request for Information to the CMA as soon as practicable after receipt and in any event within 2 Working Days;
  - 27.3.2 provide the CMA with a copy of all Information in its possession or power in the form that the CMA requires within 5 Working Days (or such other period as the CMA may specify) of the CMA requesting that Information; and
  - 27.3.3 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.
- 27.4 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.
- 27.5 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so in writing by the CMA.
- 27.6 The Supplier acknowledges that (notwithstanding the provisions of this Clause 27) 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 Supplier or the Services:
- 27.6.1 in certain circumstances without consulting the Supplier; or
  - 27.6.2 following consultation with the Supplier and having taken their views into account;
- provided always that where Clause 27.6.2 applies the CMA shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 27.7 The Supplier shall ensure that all Information produced during the Term of this Agreement or relating to this Agreement is retained for disclosure and shall permit the CMA to inspect such records as requested from time to time.
- 27.8 The Supplier 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 Supplier considers confidential in accordance with Clauses 27.4 and 27.6.
- 28. Transparency**
- 28.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement (including, but not limited to, any documents subsequently developed to monitor delivery and performance of this Agreement) is not Confidential Information. The CMA shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

- 28.2 Notwithstanding any other term of this Agreement, the Supplier hereby gives their consent for the CMA to publish this Agreement (and any documents subsequently produced by either Party as part of management of this Agreement – including, but not limited to, performance against key performance indicators and plans to rectify the same etc.) in their entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Agreement, to the general public.
- 28.3 The CMA may consult with the Supplier to inform its decision regarding any redactions that may be required to keep information which is exempt from disclosure under the FOIA from being disclosed but the CMA shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with the CMA to enable the CMA to publish this Agreement.
- 28.4 The Supplier agrees not to disclose the identity of the CMA as a client of the Supplier, 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 Supplier shall abide by any conditions or limitations imposed by the CMA in such approval, if given.
- 28.5 The Supplier further agrees not to disclose the existence of this Agreement, or the nature of the relationship established by this Agreement.

## **29. Conflicts of Interest**

- 29.1 The Supplier must take action to ensure that neither the Supplier nor Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest.
- 29.2 The Supplier must promptly, or within 5 days of becoming aware, notify and provide details to the CMA if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 29.3 Where the CMA is of the opinion that the Conflict of Interest notified to it under Clause 29.2 above is capable of being avoided or removed, the CMA may require the Supplier to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and if the Supplier 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 Supplier the amount of any loss resulting from such termination.
- 29.4 Where the CMA is of the reasonable opinion that the Conflict of Interest which existed at the time of the award of this Agreement could have been discovered by the Supplier's due diligence and ought to have been disclosed as required prior to the Commencement Date, the CMA may terminate this Agreement immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Supplier the amount of any loss resulting from such determination.
- 29.5 Notwithstanding the above, the CMA reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the CMA, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier 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.

## **30. Force Majeure**

- 30.1 Neither Party shall be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control.

- 30.2 A Party suffering a Force Majeure Event (“**Affected Party**”) shall notify the other Party (“**Non-Affected Party**”) in writing as soon as reasonably practicable specifying the cause of the event, the scope of commitments under this Agreement affected by the event, and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the notice of a Force Majeure Event, the Affected Party shall not be relieved of its responsibility to fully perform as to all other commitments in this Agreement.
- 30.3 An Affected Party must use all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 30.4 If the Force Majeure Event continues for a period of more than 30 days from the date of the notice of Force Majeure Event, the Non-Affected Party shall be entitled, at its sole discretion, to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event.

### **31. Sub-contracting and assignment**

- 31.1 This Agreement is personal to the Supplier. The Supplier shall not assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement without the prior written consent of the CMA.
- 31.2 The CMA may reasonably withhold its consent to the appointment of a Sub-contractor if it considers that:
- 31.2.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Deliverables or may be contrary to its interests;
  - 31.2.2 the proposed Sub-contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 31.2.3 the proposed Sub-contractor employs unfit persons.
- 31.3 Where the CMA asks the Supplier for details about Sub-contractors, the Supplier must provide details of all such Sub-contractors at all levels of the supply chain including:
- 31.3.1 their name;
  - 31.3.2 the scope of their appointment; and
  - 31.3.3 the duration of their appointment.
- 31.4 The Supplier must exercise due skill and care when it selects and appoints Sub-contractors.
- 31.5 The Supplier will ensure that all sub-contracts in the Supplier’s supply chain entered into after the Commencement Date wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement contain provisions that:
- 31.5.1 allow the Supplier to terminate the sub-contract if the Sub-contractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
  - 31.5.2 require the Supplier to pay all Sub-contractors in full, within 30 days of receiving a valid, undisputed invoice. The CMA reserves the right to ask for information about payment performance and will provide a facility for Sub-contractors to report poor performance to the CMA and the Cabinet Office; and
  - 31.5.3 allow the CMA to publish the details of the late payment or non-payment if this 30-day limit is exceeded.

- 31.6 At the CMA's request, the Supplier must terminate any sub-contracts in any of the following circumstances:
- 31.6.1 there is a change of control within the meaning of section 450 of the Corporation Tax Act 2010 of a Sub-contractor which is not pre-approved by the CMA in writing;
  - 31.6.2 the acts or omissions of the Sub-contractor have caused or materially contributed to a right of termination under Clause 22 (Termination);
  - 31.6.3 a Sub-contractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the CMA;
  - 31.6.4 the Sub-contractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
  - 31.6.5 the CMA has found grounds to exclude the Sub-contractor in accordance with Regulation 57 of the Regulations.
- 31.7 Sub-contracting any portion of this Agreement shall not relieve the Supplier of any obligation or duty attributable to it under this Agreement.
- 31.8 The CMA may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under this Agreement at any time without the prior written consent of the Supplier to any Crown Body, public or private sector body which performs the functions of the CMA.
- 31.9 Where the CMA uses its rights under Clause 31.8 the Supplier must enter into a novation agreement in the form that the CMA specifies.
- 31.10 The Supplier can terminate this Agreement novated under Clause 31.8 to a private sector body that is experiencing an Insolvency Event.
- 32. Not applicable**
- 33. Rights of third parties**
- 33.1 A person who is not a party to this Agreement has no rights (whether under the Contracts (Right of Third Parties) Act 1999 or otherwise) to enforce any provision of this Agreement.
- 33.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.
- 34. Severability of provisions**
- 34.1 If at any time any part of this Agreement is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from this Agreement and the validity and/or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission.
- 35. Waiver**
- 35.1 The rights and remedies of either Party in respect of this Agreement shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that Party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. 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.

### **36. Variations and cancellation**

- 36.1 No purported alteration or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is signed by a duly authorised representative of each of the Parties to this Agreement. The Supplier 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.
- 36.2 Where the Supplier receives any such direction from the CMA pursuant to Clause 36.1 which would require an amendment to the Price for the Services and/or the delivery of the Goods or which would prevent the Supplier from fulfilling any of its obligations under this Agreement, the Supplier shall promptly notify the CMA in writing to that effect. The CMA shall confirm in writing any amendments to the Price for the Services and/or delivery of the Goods or any modifications to the Supplier obligations to which it agrees.
- 36.3 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 this Agreement without such variations or to terminate this 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 Supplier).

### **37. Notices**

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

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

### **38. Dispute resolution**

- 38.1 If there is a dispute between the Parties, their senior representatives who have authority to settle the dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the dispute by commercial negotiation.
- 38.2 If the dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the dispute, the dispute must be resolved using Clauses 38.3 to 38.5.
- 38.3 Unless the CMA refers the dispute to arbitration using Clause 38.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 38.3.1 determine the dispute;
  - 38.3.2 grant interim remedies; and
  - 38.3.3 grant any other provisional or protective relief.
- 38.4 The Supplier agrees that the CMA has the exclusive right to refer any dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 38.5 The CMA has the right to refer a dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 38.3, unless the CMA has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 38.4.
- 38.6 The Supplier cannot suspend the performance of this Agreement during any dispute.

### **39. Entire Agreement**

- 39.1 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.

### **40. General**

- 40.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party. Each Party confirms it is acting on its own behalf and not for the benefit of any other person.
- 40.2 The Supplier shall not exercise any right of lien, general or otherwise and howsoever arising, over any Goods, any materials relating to the Services or any other property of the CMA's in the Supplier's possession, in respect of any sums owed by the CMA to the Supplier under this Agreement or otherwise.
- 40.3 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.



**41. Law and jurisdiction**

- 41.1 The Order Form, this Agreement and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the Laws of England and Wales.
- 41.2 All disputes or claims arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.

**Schedule 1 Part A**  
**Description of Services and Service Levels**

- a. Survey dataset in .csv format.
- b. Survey results in the format of a PowerPoint set of slides (note that the agency will not be required to present these slides).

**Schedule 1 Part B**  
**Description of the Goods and specifications**

Not used.

## Schedule 2 Charges

The fees payable to the Supplier shall be as follows:

The total cost for the project is £40,000 (excluding VAT).

The cost breakdown for the research is provided in the table below.

[REDACTED]		
[REDACTED]	[REDACTED]	
[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
[REDACTED]		
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]
[REDACTED]		[REDACTED]

<b>Total</b>	<b>£40,000</b>
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### **Schedule 3 Contract and Service Management**

#### **Section 1:**

##### **Introduction**

This Schedule specifies the requirements in respect of Service management issues.

#### **Section 2:**

##### **Formal progress reports**

As and when requested.

#### **Section 3:**

##### **Review meetings**

When requested by the CMA, the CMA's Representative and Supplier's Representative shall meet to review the provision of the Services.

**Schedule 4**  
**The CMA's Equipment**

Not applicable.

**Schedule 5**  
**Commercially Sensitive Information**

**Project team biographies**— These sections contain personal data that is also commercially sensitive in terms of the experience of the project team and their market value to other research agencies.



## Schedule 6 Data Protection

### 1 Definitions

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

<b>Agreed Purposes</b>	has the meaning given to it in paragraph 2.3
<b>Business Contact Details</b>	first and last name, business telephone number, email address, office location and position/job title and/or role
<b>Claim Losses</b>	has the meaning given to it in paragraph 7.3 of Annex 2 (Joint Controller Agreement) to this Schedule
<b>Data Loss Event</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach
<b>Data Protection Impact Assessment</b>	an assessment by the Controller carried out in accordance with section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018
<b>Data Protection Officer</b>	has the meaning given to it in the UK GDPR
<b>Data Subject Request</b>	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
<b>Financial Penalties</b>	has the meaning given to it in paragraph 7.1 of Annex 2 (Joint Controller Agreement) to this Schedule
<b>Joint Control</b>	where two or more Controllers jointly determine the purposes and means of Processing
<b>Lead Controller</b>	has the meaning given to it in paragraph 1.2 of Annex 2 (Joint Controller Agreement) to this Schedule
<b>Personnel</b>	all directors, officers, employees, agents, consultants and contractors of a Party engaged in the performance of its obligations under this Agreement
<b>Processor Personnel</b>	all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Agreement
<b>Protective Measures</b>	appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Agreement, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it
<b>Subprocessor</b>	any third party appointed to process Personal Data on behalf of the Processor related to this Agreement

### 2. Status of the Parties

2.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement dictates the status of each Party under the DPA 2018. A Party may act as:

2.1.1 **“Controller”** in respect of the other Party who is “Processor”;

2.1.2 **“Processor”** in respect of the other Party who is “Controller”;

2.1.3        **“Joint Controller”** with the other Party;

2.1.4        **“Independent Controller”** of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under this Agreement and will specify in Annex 1 (Processing Personal Data) of this Schedule which scenario they think will apply in each situation.

2.2        Each Party must comply with its respective legal obligations under the Data Protection Legislation in accordance with the role it is performing under this Agreement and allow the other Party to comply with its obligations by providing them with all necessary information.

2.3        The Parties must Process the Personal Data for the purposes of fulfilling their obligations under this Agreement and pursuant to the terms of this Schedule or in order to comply with an obligation imposed upon them under applicable Law (the **"Agreed Purposes"**).

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

3.1        Where a Party is a Processor, the only Processing that it is authorised to do is listed in the applicable table in Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.

3.2        The Processor must notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

3.3        The Processor must, at the Processor's cost, provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and must continue to provide reasonable assistance to the Controller to ensure that any such Data Protection Impact Assessment is maintained throughout the duration of this Agreement. Such assistance may, at the discretion of the Controller, include:

3.3.1        a systematic description of the envisaged Processing and the purpose of the Processing;

3.3.2        an assessment of the necessity and proportionality of the Processing in relation to the Deliverables;

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

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

3.4        The Processor must, in relation to any Personal Data Processed in connection with its obligations under this Agreement:

3.4.1        Process that Personal Data only in accordance with Annex 1 (Processing Personal Data), unless the Processor is required to do otherwise by Law. If it is so required the Processor must promptly notify the Controller before Processing the Personal Data unless prohibited by Law;

3.4.2        notwithstanding any other provisions in this Agreement relating to (amongst others) security, ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject will not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:

a)        nature of the data to be protected;

b)        harm that might result from a Data Loss Event;

c)        state of technological development; and

d)        cost of implementing any measures;

- 3.4.3 ensure that:
- a) the Processor Personnel do not Process Personal Data except in accordance with this Agreement (and in particular Annex 1 (Processing Personal Data));
  - b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Processor's duties under this Schedule;
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 3.4.4 not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- a) the destination country has been recognised as adequate by the UK Government in accordance with Article 45 of the UK GDPR or section 74 of the DPA 2018;
  - b) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or section 75 of the DPA 2018) as determined by the Controller;
  - c) the Data Subject has enforceable rights and effective legal remedies;
  - d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and/or
  - e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;
- 3.4.5 at the written direction of the Controller, securely delete or return Personal Data (and any copies of it) to the Controller on termination or expiry of this Agreement, unless the Processor is required by Law to retain the Personal Data.
- 3.5 Subject to paragraph 3.6 of this Schedule, the Processor must notify the Controller immediately if, in relation to Processing Personal Data under or in connection with this Agreement, it:
- 3.5.1 receives a Data Subject Request (or purported Data Subject Request);
  - 3.5.2 receives a request to rectify, block or erase any Personal Data;
  - 3.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 3.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Agreement;
  - 3.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 3.5.6 becomes aware of a Data Loss Event.

- 3.6 The Processor's obligation to notify under paragraph 3.5 of this Schedule includes the provision of further information to the Controller, as details become available.
- 3.7 Taking into account the nature of the Processing, the Processor must (at its own expense) provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under paragraph 3.5 of this Schedule (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 3.7.1 the Controller with full details and copies of the complaint, communication or request;
  - 3.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 3.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 3.7.4 assistance as requested by the Controller following any Data Loss Event; and/or
  - 3.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's or any other regulatory authority.
- 3.8 The Processor must maintain complete and accurate records and information to demonstrate its compliance with this Schedule. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 3.8.1 the Controller determines that the Processing is not occasional;
  - 3.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 3.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 3.9 The Processor must allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 3.10 Each Party must designate its own Data Protection Officer if required by the Data Protection Legislation.
- 3.11 Before allowing any Subprocessor to Process any Personal Data related to this Agreement, the Processor must:
- 3.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
  - 3.11.2 obtain the written consent of the Controller;
  - 3.11.3 enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule such that they apply to the Subprocessor; and
  - 3.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 3.12 The Processor remains fully liable for all acts or omissions of any of its Subprocessors and the Processor must cease to engage a Subprocessor appointed pursuant to paragraph 3.11 upon the Controller's withdrawal of consent where it has reasonable grounds for doing so including where the Controller has concerns regarding the Subprocessor's ability to Process the Personal Data in a manner contemplated by this paragraph 3.
- 3.13 The CMA may, at any time on not less than thirty (30) Working Days' notice, revise this Schedule by replacing it with any applicable Controller to Processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 3.14 The Parties agree to take account of any guidance issued by the Information Commissioner. The CMA may, on not less than 30 Working Days' notice to the Supplier, amend this

Agreement to ensure that it complies with any guidance issued by the Information Commissioner.

#### 4. Where the Parties are Joint Controllers of Personal Data

- 4.1 In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the terms set out in **Error! Reference source not found.** (Joint Controller A agreement) shall apply in respect of such Processing. The Parties must only provide Personal Data to each other as Joint Controllers where it is recorded in the applicable table under Annex 1 (Processing Personal Data).

#### 5. Where the Parties are Independent Controllers of Personal Data

- 5.1 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as an Independent Controller.
- 5.2 Each Party must Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 5.3 Where a Party has provided Personal Data to the other Party in accordance with paragraph 5.1 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 5.4 The Parties will be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Agreement.
- 5.5 The Parties must only provide Personal Data to each other:
- 5.5.1 to the extent necessary to perform their respective obligations under this Agreement;
  - 5.5.2 in compliance with the Data Protection Legislation (including by ensuring all required data privacy information has been given to affected Data Subjects to meet the requirements of Articles 13 and 14 of the UK GDPR); and
  - 5.5.3 where it is recorded in the applicable table in Annex 1 (Processing Personal Data).
- 5.6 Subject to paragraph 5.5, the Party receiving Personal Data must not transfer that Personal Data to a third party located outside of the UK unless:
- 5.6.1 it has obtained the prior written consent of the other Party; and
  - 5.6.2 such transfer is necessary to achieve the Agreed Purposes, protected with appropriate supplementary measures and complies with the transfer restrictions set out under Chapter V of the UK GDPR.
- 5.7 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party must, with respect to its Processing of Personal Data as Independent Controller, implement and maintain Protective Measures to ensure a level of security appropriate to that risk. The measures must, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 5.8 A Party Processing Personal Data for the purposes of this Agreement must maintain a record of its Processing activities in accordance with Article 30 of the UK GDPR and must make the record available to the other Party upon reasonable request.
- 5.9 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement ("**Request Recipient**"):
- 5.9.1 the other Party must provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

- 5.9.2 where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:
- a) promptly, and in any event within 5 Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
  - b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 5.10 Each Party must promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other Party pursuant to this Agreement and must:
- 5.10.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Personal Data Breach;
  - 5.10.2 implement any measures necessary to restore the security of any compromised Personal Data;
  - 5.10.3 work with the other Party to make any required notifications to the Information Commissioner or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
  - 5.10.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 5.11 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Annex 1 (Processing Personal Data).
- 5.12 Personal Data must not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Agreement which is specified in Annex 1 (Processing Personal Data).

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

## Annex 1 Processing Personal Data

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

**Table 1: The CMA is the Controller and the Supplier is the Processor**

Description	Details
Category of Personal Data where the CMA is the Controller and the Supplier is the Processor	<p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the CMA is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"> <li>• CMA staff's Personal Data (which may include sensitive data for certain agreed services), Personal Information of visitors,</li> <li>• Business contact details of any directors, officers, employees, agents, consultants and contractors of Relevant Authority engaged in the performance of the Relevant Authority's duties under the Contract) for which the Relevant Authority is the Controller.</li> </ul>
Duration of the Processing	For the duration of the contract
Nature and purposes and subject matter of the Processing	<p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include the delivery of services for the contract and, or statutory obligation to protect consumers</p>
Type of Personal Data	Name, address, telephone number, images, biometric data.
Categories of Data Subject	Staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc.
International transfers and legal gateway	<p>Personal data may be geographically stored or accessed from the UK or EEA only (The UK Government has declared that the European Union and the European Economic Area are adequate for data protection purposes</p> <p>Likewise, the European Commission has also declared that the UK is adequate for data protection purposes. This means that personal data can</p>

	<p>flow unfettered between the UK and the EU/EEA. For the performance of this contract). Outside of the UK and the EU/EEA or Geographical Jurisdictions where an adequacy decision is not in place, international transfers will be governed by an International Data Transfer Agreement between the Controller and Processor or Sub-processor.</p>
<p>Plan for return and destruction of the data once the Processing is complete</p> <p>UNLESS requirement under Law to preserve that type of data</p>	<p>All personal data should be returned and/or securely destroyed upon the termination of the Contract.</p>
<p>Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Agreement against a breach of security (insofar as that breach of security relates to data) or a Data Loss Event</p>	<p>Risk Assessment</p> <p>The Supplier should perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address risks involved in processing the CMA's data in the performance of the Contract.</p>



