

ORDER

ORDER NO: SER/0677	Date of Order: 1 April 2017
---------------------------	------------------------------------

(To be quoted on all correspondence relating to this Order)

<p>FROM (Customer):</p> <p>Water Services Regulation Authority Centre City Tower 7 Hill Street Birmingham B5 4UA</p> <p>Customer's Representative: Samantha Bache</p> <p>T: +44 (0) 121 644 7540 M: +44(0) 7713 094 798 E: samantha.bache@ofwat.gsi.gov.uk</p>	<p>TO (Supplier):</p> <p>Grant Thornton UK LLP 30 Finsbury Square London EC2P 2YU</p> <p>Supplier's Representative: [REDACTED]</p> <p>[REDACTED]</p>
--	--

<p>SERVICES TO BE DELIVERED TO:</p> <p>Ofwat, Centre City Tower, 7 Hill Street, Birmingham, B5 4UA</p> <p>And</p> <p>Ofwat, 21 Bloomsbury Street, London, WC1B 3HF</p>	<p>INVOICE ADDRESS:</p> <p>finance@ofwat.gsi.gov.uk</p> <p>or</p> <p>Finance Team Water Services Regulation Authority Centre City Tower 7 Hill Street Birmingham B4 5UA</p>
---	---

Any Contract arising from this Order shall be governed by the Terms and Conditions of Contract for Consultancy Services dated 11 April 2017 (attached at Appendix A); and any enhancements thereto and provisions expressly listed herein.

Description of Services Requirement

Internal Audit Services (PROC.01.0532)

The Customer's statutory accounts are audited by the National Audit Office (NAO), who fulfil the role of external auditor. It is essential that Internal Audit (IA) liaise and work effectively with the NAO to ensure internal audits are completed to a high standard and meet NAO's assurance requirements for the external audit. Details of the Services required are outlined in the Specification as appended at Appendix B.

Programme: Compliance, Assurance & Improvement

Term

The Commencement Date shall be 3 April 2017. All internal audit work will be completed by 31 March 2018 followed by several management days to finalise representation of accounts to Audit and Risk Assurance Committee (ARAC) by 31 May 2018, unless extended or terminated earlier in accordance with the provisions of the Contract.

Information security

This Contract is subject to the Customer accepting the Supplier's final Information Security Plan. The Supplier will prepare and deliver to the Customer for approval the full and final Security Plan by 17 April 2017. The full plan should be based on the security information and cover all aspects as set out the Customer's Information Security Agreement for Third Parties (Appendix C).

Charges

Day rates and blended rates

The table below provides the day rates for each grade of Supplier's Staff involved in the performance of the contract Services and a blended rate.

Grade	Day rates* (£)	Blended rate* (£)
Partner or Director	£1,300	£650
Audit Manager	£825	
Lead Auditor	£480	
Junior Auditor	£300	

The blended rate will apply to 'Core' audits and the Parties will discuss and agree on an audit by audit basis whether a blended rate or grade based day Rate is appropriate for 'Strategic' or 'Development' audits (see Performance of the Services and Deliverables section below for definition of audit types).

Part days worked shall be charged on a pro-rata basis.

* A Working Day is defined as eight (8) hours (excluding lunch breaks) and shall be inclusive of travel and related expenses to the Base Locations (Central Birmingham and Central London). The Supplier shall not charge for any more than eight (8) working hours in one day.

The day rates and blended rates are all inclusive with the sole exceptions of:

- business travel and accommodation outside of the Base Locations; and
- Value Added Tax.

OFFICIAL: COMMERCIAL - SENSITIVE

The Customer will not pay for:

- Any items which it regards as part of the Supplier's overheads (for example: word processing, secretarial time, cost of faxes and telephone charges);
- Any mark-up on disbursements;
- Travelling time unless the Customer's Representative has authorised in advance the payment of travelling time.

The day rates and blended rate set out in this Order cannot be increased in any circumstances i.e. they are fixed for the whole Term and will not be subject to Variation.

Any business travel and accommodation required outside of Base Locations must be agreed by the Customer's representative and must be in accordance with the Customer's standard travel and accommodation rates as attached at Appendix D as updated and amended from time to time. Agreed expenses will be reimbursed on acceptance of receipts and where appropriate a mileage log.

Any travel undertaken as a consequence of the performance of the contract must utilise the most effective means (taking into account the cost of travel, the cost of accommodation and savings in time) for the whole journey.

Payment profile

A payment profile for each annual audit plan will be agreed between the Customer and the Supplier prior to commencement of the audits.

Invoicing should be carried out on acceptance of audit reports by the Customer in accordance with the agreed payment profile and the provisions of Clause 6 (Charges, Payment and Recovery of Sums Due) of the Terms and Conditions of Contract for Consultancy Services. Payment will be made within thirty (30) calendar days of receipt by the Customer of a valid invoice from the Supplier.

Payment will be made electronically via Banks Automated Clearing Services (BACS).

All invoices shall contain the following information:

- the Order number (as stated above);
- a summary of the Services; and
- the line value; total value excluding Value Added Tax (VAT), the VAT percentage and total value including VAT.

Invoices must not contain the Supplier's terms and conditions, nor can reference be made to the Supplier's terms and conditions. Invoices with the Supplier's terms and conditions printed on them or referred to therein will not be accepted by the Customer.

Performance of the Services and Deliverables

Implementation Plan and milestones (including dates for completion)

The Supplier will develop for the financial year an Annual Internal Audit Plan. The Supplier will present this to ARAC for discussion and approval.

Each Internal Audit review will be classified as one of three types in accordance with the table below:

No.	Type	Description
1	Strategic	These reviews will focus on working with senior management on the most significant risks and challenges facing the way in which the Customer operates to achieve its strategic objectives.

OFFICIAL: COMMERCIAL - SENSITIVE

2	Development	These reviews will focus on providing best practice advice in relation to changes to existing processes to ensure that the Customer has robust arrangements in place.
3	Core	These reviews will focus on core operational and financial areas which support the business and for which there are often other assurance needs or requirements.

The 2017-18 Annual Internal Audit Plan and Strategic Internal Audit Plan will be developed by the Supplier to be agreed with the Customer for the Term.

Performance Monitoring

The Customers' Representative for the requirement will monitor the performance of the services being received.

The Customers' Representative will hold review meetings with the Supplier's Key Personnel at such other frequency as agreed with the Supplier Staff to determine the effectiveness of the service provided. This will allow for feedback and to agree any actions as required.

The Supplier is required to contribute appropriately to a Post Assignment Review at the conclusion of the assignment. The Customer and the Supplier will confirm the format and nature of the Post Assignment Review in advance.

Management Arrangements

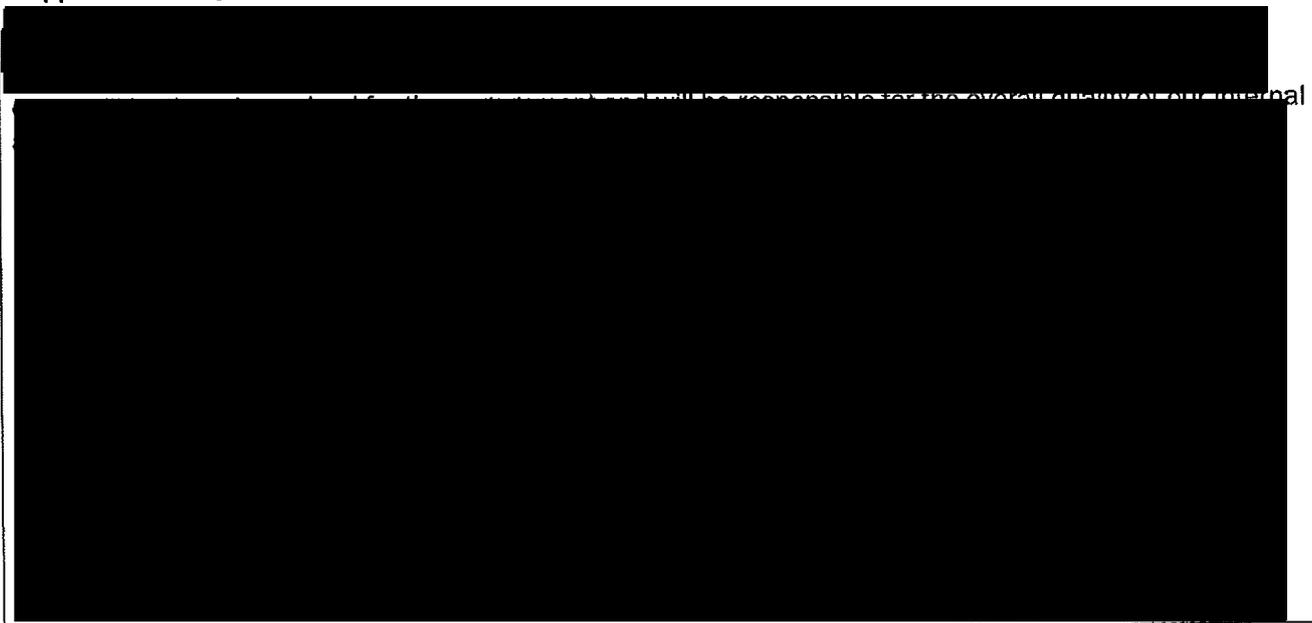
Ofwat's representative

Samantha Bache, Director, Operations (Finance) will act as the Customer's representative on behalf of the Customer.

Any disputes in relation to the contract shall be escalated as follows: Jenny Block – General Counsel, Executive.

T: +44 (0) 121 644 7645
M: +44(0) 7734 981 343
E: jenny.block@ofwat.gsi.gov.uk

Supplier's Delivery Team

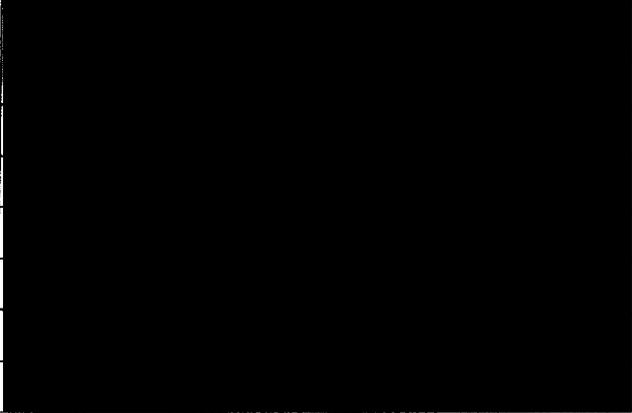


Conflicts of Interest

The Supplier must disclose to the Customer any actual or potential conflict of interest arising from the contract Services as soon as is reasonably practicable after becoming aware of the conflict. If the Parties are unable to resolve the conflict to the reasonable satisfaction of the Customer, the Customer shall be entitled to terminate the contract with immediate effect.

Key Personnel

The Key Personnel for the provision of the contract Services shall be:

Name	Role/Contract Grade	Core or Specialist
		Core
		Specialist
		Specialist

Subcontractors

Subcontractors may be used with the prior written agreement of the Customer.

Variation to contract

Any amendments to the contract must be agreed in writing in accordance with the provisions of Clause 25.3 of Terms and Conditions of Contract for Consultancy Services.

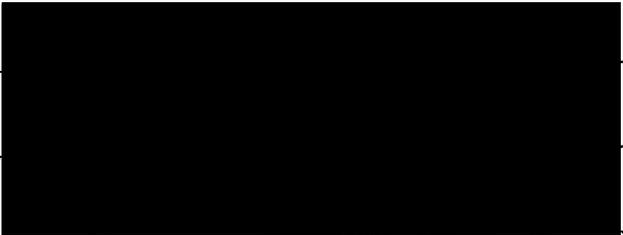
Formation of Call Off Contract

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter into a legally binding contract with the Customer to provide to the Customer the Services specified in the Order Requirements set out in this Order Form incorporating the rights and obligations in the Conditions of Contract.

For and on behalf of the Customer:

Name	JENNY BLOCK
Position	GENERAL COUNSEL
Signature	
Date	13/4/17

OFFICIAL: COMMERCIAL - SENSITIVE

For and on behalf of the Supplier:	
Name	
Position	
Signature	
Date	19/4/17

Appendix A

Terms and Conditions of Contract for Consultancy Services

This is attached as a separate document.

Appendix B

Specification

Services Required

The Customer's statutory accounts are audited by the National Audit Office (NAO), who fulfil the role of external auditor. It is essential that Internal Audit (IA) liaise and work effectively with the NAO to ensure internal audits are completed to a high standard and meet NAO's assurance requirements for the external audit.

Objective

The IA provider must provide an independent assurance service for management by measuring and evaluating the adequacy, reliability and effectiveness of management and financial control systems.

IA will be required to make recommendations based on the appraisal of each system reviewed and to provide an annual assurance report to the Accounting Officer (AO) and Audit and Risk Assurance Committee (ARAC).

Scope and Key Tasks

The Customer anticipates that circa 70 audit days will be used in the financial year.

The Customer and the Supplier will agree an audit plan at the start of the financial year and will detail the audits required during the financial year. The audit plan will be subject to refinement throughout the year. Any work undertaken should be with the approval of Jenny Block – General Counsel, Executive, or her nominated representative, Samantha Bache – Delivery Director, Operations.

1. Ad-hoc Service Provision

The Customer may require the Supplier to carry out ad-hoc work from time to time, such as:

- value for money reviews;
- tax advice;
- fraud investigations;
- special investigation; or
- areas of high regulatory risk.

Manner of carrying out the Services

The role, responsibilities and conduct of IA in government are prescribed in **Government Accounting and the Public Sector Internal Audit Standards (PSIAS)**.

The IA service is required to conform to the objectives and standards set out in these publications. The Supplier is expected to become familiar with the above documents, to keep up to date with any amendments and new publications.

Registration with Professional Body

The Supplier must be registered with the Chartered Institute of Internal Auditors, or an equivalent professional auditing or accounting body, and maintain their registration throughout the duration of the Contract. If the Supplier is not registered itself, then at least 75% (or as prescribed by the relevant Institute) of its Board of Directors, partners or owners must be registered with The Chartered Institute of Internal Auditors or an equivalent professional body. The Customer reserves the right to request evidence of the Supplier's registration at any time during the Contract.

Quality assurance

The Supplier, where possible, must engage to deliver real change to the internal control environment by implementation of audit recommendations in accordance with professional quality assurance standards.

The Supplier must provide assurance that it has a management review and control programme to demonstrate that it meets professional standards.

The Supplier must allow Ofwat's Representative and NAO access to its staff, records, working papers and audit documentation to allow for audit and inspection of progress and performance to be made.

At a firm level, the quality and control systems should comply with international quality control procedures, including ISQC1, ISA220 and the IFAC Code of Ethics. There should also be independent oversight and external quality assurance and review, including reviews by the Audit Quality Monitoring Team of the FRC (formerly the AIU) and the ICAEW's Quality Assurance Directorate (QAD). In relation to public sector work, there should also be annual reviews by the UK Supreme Audit Agencies. Those bodies carry out regular reviews of the quality of working practices and adherence to technical standards.

The internal audit practice should work to Public Sector Internal Audit Standards, both in letter and spirit of the standards. Particularly, there should be understanding of the purpose and spirit of the requirement for an annual head of internal audit opinion on governance, risk and internal controls. The Supplier shall at all times comply with the PSIAS, in addition to maintaining compliance with the Government's Internal Audit Service performance framework. In any event, the Supplier shall perform its obligations in accordance with the Law and Good Industry Practice.

The Supplier shall ensure that Staff nominated to perform the services, shall do so with due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper performance of the services. The Customer expects that the Supplier's Staff nominated for the services will have the following skills and experience.

- Experience of IA in the public sector, preferably within a Regulatory body.
- Experience of IA in governance, IT, Risk Management, Facilities Management and Procurement, Project Management.
- Demonstrable experience of systems audit.
- High standards of professionalism and integrity.

The Supplier shall nominate Staff that meet, as a minimum, the competences set out in the following role profiles.

Internal Audit Director or Partner acting in the role of the Head of Internal Audit

Qualifications and Experience

- Thorough understanding of risk-based internal auditing.
- Graduate level education or equivalent.
- Professional Member of the Chartered Institute of Internal Auditors (CMIIA) or holding a CCAB qualification or equivalent.
- Significant internal audit experience at a senior level, with sound knowledge of the public sector environment and management practices.
- Sound knowledge of the latest developments on risk-based auditing, business risk management, internal control and corporate governance.
- Experience of successfully delivering a varied programme of work to tight deadlines and within budget.
- Significant exposure to senior management level executives and able to demonstrate clear evidence of strategic achievements, including identifying the key strategic risks for the organisation.

Audit Manager

Qualifications and Experience

- Significant understanding of risk-based internal auditing.
- Graduate level education or equivalent.
- Professional Member of the Chartered Institute of Internal Auditors (CMIIA) or holding a CCAB qualification or equivalent.
- Significant internal audit experience at a senior level, with sound knowledge of the public sector environment and management practices.
- Sound knowledge of the latest developments on risk-based auditing, business risk management, internal control and corporate governance.
- Experience of successfully delivering a varied programme of work to tight deadlines and within budget.
- Exposure to senior management level executives and able to demonstrate clear evidence of achievements, including identifying the key strategic risks for the organisation.

Lead Auditor

Qualifications and Experience

- Wide experience and understanding of risk-based internal auditing.
- Graduate level education or equivalent.
- Professional Member or Practitioner of the Chartered Institute of Internal Auditors (PIA or CMIIA) or holding a part or full CCAB accountancy qualification or equivalent.
- Significant audit experience at a senior level, with sound knowledge about the latest developments on risk-based auditing, business risk management, internal control and corporate governance.
- Is able to manage several audit assignments at one time, ensuring that all audit objectives are met to tight deadlines and within budget.
- Is able to manage all components of an audit or consultancy assignment.
- Ensures that assignment resource budgets are adequately managed, individually and in total.
- Some exposure to senior management level executives and able to contribute to the development of the audit strategy.
- Is able to identify the key strategic, operational and financial risks for the organisation.

Junior Internal Auditor

Qualifications and Experience

- Understanding the principles of risk-based internal auditing and is able to contribute to the range of services internal audit provides.
- Graduate level education or equivalent.
- Will hold the Chartered Institute of Internal Auditors Diploma in Internal Audit Practice (PIIA) or equivalent and is undergoing professional training for internal audit; or a recognised accountancy qualification, with relevant exposure to internal audit.
- Knowledge about the latest developments on risk-based auditing, business risk management, internal control and corporate governance.
- Is able to identify and record the objectives, risks and controls.
- Execute audit work under supervision on an individual assignment to the appropriate standard, maintaining proper documentary records and working to tight deadlines and within budget.
- Is able to manage most components of an audit or consultancy assignment.
- Some exposure to management level executives and is aware of the main aspects of the audit strategy.

Conduct of Staff

The Supplier's Staff will be expected to conduct themselves in accordance with the Code of Ethics set out by the Chartered Institute of Internal Auditors or the equivalent standard of their professional auditing or accounting institute and must also comply with relevant legislation, for example the Official Secrets Act; Equal Opportunities and Data Protection legislation.

Audit reports

The Supplier will be required to produce an audit report for each audit requirement, which should set out:

- terms of reference, which are agreed prior to the project being undertaken;
- approach to completing the project;
- findings that have been identified, together with how they are substantiated; and
- audit recommendations and level of assurance.

There is currently cross government work led by XDIAS on recommended assurance levels which the Supplier will have regard to whilst working with the Customer.

For each audit carried out, the Supplier is required to inform the Customer of the initial findings before producing a draft report. The Supplier will then:

- produce a draft report for each audit within 10 Working Days of the completion of the audit and submit it to the Customer for verification of factual accuracy; and
- produce a final report and submit it to the Customer's Representative within 10 Working Days of receipt of comments on the draft report. Audit reports should be appropriately classified.

Audit reports must contain an assurance level on the adequacy, reliability and effectiveness of the internal control system(s) and should identify key issues with clear recommendations for action.

Audit Committee

The Supplier will be required to attend and present their findings to the Customer's Audit and Risk Committee (ARAC), which usually meets 4 times a year.

The Supplier will be required to provide a monthly report on:

- the progress of audits within the strategy; and
- details of requests for advice and assistance.

The report should also include progress against performance measures and indicators and a forward plan running to the end of the financial year.

The Supplier will be expected to be proactive in sharing best practice in risk management and governance with the Customer by suggesting scope for improvement across all areas of the Customer's activities.

Appendix C

Information Security Agreement for third parties

This is attached as a separate document.

Appendix D - Travel and Accommodation rates

Receipts must be submitted with all claims and must be in accordance with these rates

Accommodation:

Paid on actual expenditure within the following prescribed ceilings:

Outside London	£115
Private residence	£25

These rates cover a 24 hour period for accommodation only, inclusive of VAT, receipts must be submitted.

Mileage Rates:

25p per mile

A mileage log must be submitted (to/from, mileage/date, to see/purpose)

Rail Travel:

The actual cost of public transport (normally rail) may be reimbursed. Economy Class (second class) rail tickets should be purchased.

Terms and Conditions of Contract for Consultancy Services

1 Interpretation

1.1 In these terms and conditions:

- "Agreement" means the contract between (i) the Customer acting as part of the Crown and (ii) the Supplier constituted by the Supplier's countersignature of the Order;
- "Central Government Body" means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:
- (a) Government Department;
 - (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
 - (c) Non-Ministerial Department; or
 - (d) Executive Agency;
- "Charges" means the charges for the Services as specified in the Order;
- "Confidential Information" means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
- "Customer" means the Water Services Regulation Authority;
- "Customer Data" (a) 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:
(i) are supplied to the Supplier by or on behalf of the Customer; or
(ii) the Supplier is required to generate, process, store or transmit pursuant to the Agreement; and/or
(b) any Personal Data for which the Customer is the Data Controller (the terms 'Data Controller' and 'Personal Data' shall have the meanings prescribed under GDPR);
- "Customer System" means the Customer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Customer or in respect of which access may be granted to the Supplier to provide the Services;
- "Data Protection Legislation" means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals including the Data Protection Act 1998, the Privacy and Electronic Communication (EC Directive) Regulations 2003, the Regulation of Investigatory Powers Act 2000, the Telecommunications (lawful Business Practice Interception of Communications) Regulations 2000, the Consumer Protection and unfair Trading Regulations 2008, the GDPR and any relevant national laws implementing Directives 95/46/EC, 2002/58/EC, 97/66/EC and the GDPR all as in force, as amended and/or replaced from time to time;
- "Deliverables" means anything delivered or to be delivered by the Supplier to the Customer in final form, as specified in the Agreement;

“Expiry Date”	means the date for expiry of the Agreement as set out in the Order;
“FOIA”	means the Freedom of Information Act 2000;
“ICT Environment”	means the Customer System and the Supplier System;
“Information”	has the meaning given under section 84 of the FOIA;
GDPR	means the General Data Protection Regulation (EU) 2016/679;
“Intellectual Property Rights” or “IPRs”	means patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom);
“Key Personnel”	means any persons specified as such in the Order or otherwise notified as such by the Customer to the Supplier in writing;
“Malicious Software”	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Order”	means the order for Services set out on the front cover hereof;
“Order Number”	means the Customer’s unique number relating to the supply of the Services;
“Party”	means the Supplier or the Customer (as appropriate) and “Parties” shall mean both of them;
“Personal Data”	means personal data (as defined in the GDPR which is processed by the Supplier or any Staff on behalf of the Customer pursuant to or in connection with this Agreement;
“Pre-Existing Intellectual Property Rights”	means any Intellectual Property Rights vested in or licensed to: <ul style="list-style-type: none"> a) the Supplier prior to or independently of the performance by the Supplier of its obligations under the Agreement; and b) the Customer prior to or independently of the performance by the Customer of its obligations under the Agreement;
“Project Specific IPRs”	means IPRs in Deliverables created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the Agreement including, any updates and amendments of these Deliverables created during the Term;
“Request for Information”	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term “request” shall apply);
“Security Policy”	means the Customer’s current security policy as updated from time to time;
“Services”	means the services to be supplied by the Supplier to the Customer under the Agreement;
“Specification”	means the specification for the Services (including as to quantity, description and quality) as specified in the Order;

“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Customer, the Customer’s procedures for the vetting of personnel as provided to the Supplier from time to time;
“Supplier”	means the person named as Supplier in the Order;
“Supplier System”	means the information and communications technology system used by the Supplier in providing the Services (but excluding the Customer System);
“Term”	means the period from the start date of the Agreement set out in the Order to the Expiry Date as such period may be extended or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

2. Basis of Agreement

- 2.1 The Order constitutes an offer by the Customer to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.
- 2.2 The offer comprised in the Order shall be deemed to be accepted by the Supplier on receipt by the Customer of a copy of the Order countersigned by the Supplier within 7 days of the date of the Order.

3. Supply of Services

- 3.1 In consideration of the Customer’s agreement to pay the Charges, the Supplier shall supply the Services to the Customer for the Term subject to and in accordance with the provisions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
 - 3.2.1 co-operate with the Customer and the Customer’s other professional advisers in relation to the Services;
 - 3.2.2 comply with all reasonable instructions given to the Supplier and its Staff by the Customer in relation to the Services;
 - 3.2.3 carry out the Services within the timeframe agreed with the Customer;
 - 3.2.4 perform the Services with all reasonable care, skill and diligence in accordance with

- good industry practice in the Supplier's industry, profession or trade;
- 3.2.5 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
- 3.2.6 immediately report to the Customer's representative any matters which involve or could potentially involve a conflict of interest as referred to in clause 3.3.1;
- 3.2.7 comply with all applicable laws; and
- 3.2.8 provide all equipment and other items as are required to provide the Services.
- 3.3 The Supplier shall not:
 - 3.3.1 knowingly act at any time during the Agreement in any capacity for any person, firm or company in circumstances where a conflict of interest between such person, firm or company and the Customer shall thereby exist in relation to the Services; or
 - 3.3.2 incur any expenditure which would result in any estimated figure for any element of the Services being exceeded without the Customer's written agreement; or
 - 3.3.3 engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer.
- 3.4 The Customer shall use reasonable endeavours to provide the Supplier with complete, accurate and up-to-date information to enable the Supplier to provide the Services.
- 3.5 The Customer shall not disclose the Deliverables to any third party without the Supplier's prior written consent (not to be unreasonably withheld), except where provided to professional advisers, external auditors, or any Central Government Body or as required by law, or any legal or regulatory authority.
- 3.6 The Customer may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Customer and the Supplier.

4. Remedies in the event of inadequate performance

- 4.1 In the event that the Customer is of the reasonable opinion that the Supplier's performance of its obligations under the Agreement has failed to meet the requirements set out in the Agreement or otherwise fails to comply with any of the terms of the Agreement, then the Customer may, without prejudice to its rights under Clause 21.2, do any of the following:
 - 4.1.1 without terminating the Agreement, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Agreement;
 - 4.1.2 without terminating the whole of the Agreement, terminate the Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
 - 4.1.3 terminate, in accordance with Clause 21.2 the whole of the Agreement; and/or
 - 4.1.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

4.2 If the Supplier fails to supply any of the Services in accordance with the provisions of the Agreement and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within twenty (20) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

4.3 In the event that the Supplier

4.3.1 fails to comply with Clause 4.2 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty;
or

4.3.2 persistently fails to comply with Clause 4.2 above;

the Customer may terminate the Agreement with immediate effect by giving the Supplier notice in writing.

5. Term

5.1 The Agreement shall take effect on the date specified in the Order and shall expire on the Expiry Date, unless it is otherwise extended or terminated in accordance with the terms and conditions of the Agreement.

6. Charges, Payment and Recovery of Sums Due

6.1 The Charges for the Services shall be as set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

6.2 The Supplier shall invoice the Customer as specified in the Agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant Order Number and a breakdown of the Services supplied in the invoice period.

6.3 In consideration of the supply of the Services by the Supplier, the Customer shall pay the Supplier the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Order Number. The Customer may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.

6.4 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Customer shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

6.5 If there is a dispute between the Parties as to the amount invoiced, the Customer shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 21.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 24.

6.6 If a payment of an undisputed amount is not made by the Customer by the due date, then the Customer shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.

6.7 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Customer from any sum then due, or which may come due, to the Supplier under the Agreement or under any other agreement or contract with the Customer. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of

any such amount in whole or in part.

7. Premises and equipment

- 7.1 If necessary, the Customer shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment brought onto the Customer's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 7.2 If the Supplier supplies all or any of the Services at or from the Customer's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Supplier shall vacate the Customer's premises, remove the Supplier's equipment and leave the Customer's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to the Customer's premises or any objects contained on the Customer's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 7.3 The Customer shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Customer's premises the Supplier shall, and shall procure that all Staff shall, comply with all the Customer's security requirements.
- 7.4 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by the Customer in writing.
- 7.5 Without prejudice to clause 3.2.8, any equipment provided by the Customer for the purposes of the Agreement shall remain the property of the Customer and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Customer on expiry or termination of the Agreement.
- 7.6 The Supplier shall reimburse the Customer for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by the Customer shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless the Customer is notified otherwise in writing within 5 Working Days.

8. Staff and Key Personnel

- 8.1 If the Customer reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 8.1.1 refuse admission to the relevant person(s) to the Customer's premises;
 - 8.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 8.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Customer to the person removed is surrendered,and the Supplier shall comply with any such notice.
- 8.2 The Supplier shall:
 - 8.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
 - 8.2.2 if requested, provide the Customer with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Customer's premises in connection with the Agreement; and
 - 8.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Customer.
- 8.3 Any Key Personnel shall not be released from supplying the Services without the agreement of

the Customer, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

- 8.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Customer (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

9. Assignment and sub-contracting

- 9.1 The Supplier shall not without the written consent of the Customer assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Customer may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own, and the Customer shall only bring claims against the Supplier in relation to the Services performed under this Agreement.
- 9.2 Where the Supplier enters into a sub-contract for the purpose of performing its obligations under the Agreement, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 9.3 Where the Customer has consented to the placing of sub-contracts, the Supplier shall, at the request of the Customer, send copies of each sub-contract, to the Customer as soon as is reasonably practicable.
- 9.4 The Customer may assign, novate, or otherwise dispose of its rights and obligations under the Agreement:
- 9.4.1 to any Central Government Body without the consent of the Supplier; or
 - 9.4.2 to any other entity, with the Supplier's prior written consent (not to be unreasonably withheld),

provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement.

10. Intellectual Property Rights

- 10.1 Except as expressly set out in the Agreement:
- 10.1.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, including the Supplier's Pre-Existing Intellectual Property Rights;
 - 10.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the Project Specific IPRs, the Customer's Pre-Existing Intellectual Property Rights.
- 10.2 The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Agreement) without prior written approval, use or disclose any Customer Pre-Existing Intellectual Property Rights or the Project Specific IPRs to any third party. For avoidance of doubt, this shall include the use of the Customer's names, logo's or trademarks.
- 10.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so. For the avoidance of doubt Project Specific IPRs shall exclude the Supplier's internal working papers.
- 10.4 The assignment under Clause 10.3 shall either take effect on the date of the Agreement or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.

- 10.5 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Agreement.
- 10.6 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 10.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 10.7 The Customer hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use the Customer's Pre-Existing Intellectual Property Rights and the Project Specific IPR during the Term for the sole purpose of enabling the Supplier to provide the Services.
- 10.8 To the extent that this is necessary to enable the Customer to obtain the full benefits of ownership of the Project Specific IPRs, the Supplier hereby grants to the Customer and shall procure that any relevant third party licensor shall grant to the Customer a perpetual, irrevocable, non-exclusive, assignable, royalty free and global licence to use and/or sub-licence the Supplier's Pre-Existing Intellectual Property Rights or IPR owned by a third party to the extent necessary for the receipt of the Services.
- 10.9 Prior to using any third party Intellectual Property Right, the Supplier shall obtain the approval of the Customer. The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Agreement using the third party intellectual Property Rights. The Customer reserves the right to withhold approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 10.10 Where the Supplier is granted approval by the Customer to use the third party rights, the Supplier shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the approval.
- 10.11 The Supplier shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Supplier shall, during and after the Term, indemnify and keep indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Services infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:-
- 10.11.1 items or materials based upon designs supplied by the Customer; or
 - 10.11.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 10.12 The Customer shall promptly notify the Supplier in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim and co-operate with the Supplier's reasonable requests in defending or settling a claim. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 10.12.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 10.12.2 shall take due and proper account of the interests of the Customer;
 - 10.12.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and
 - 10.12.4 shall not settle or compromise the Claim without the Customer's prior approval (not to be unreasonably withheld or delayed).
- 10.13 If a Claim is made in connection with the Agreement or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-
- 10.13.1 modify the relevant part of the Services without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the

provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or

- 10.13.2 procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Customer, and in the event that the Supplier is unable to comply with Clauses 10.13.1 or 10.13.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Agreement with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services that is subject to the Claim.
- 10.14 In the event that a modification or substitution in accordance with Clause 10.13.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 10.13.2 the Customer shall be entitled to delete the relevant Service from the Agreement.
- 10.15 Subject to Clause 19.4, this Clause 10 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services hereunder. This shall not affect the Supplier's financial liability for other material breach or causes of action that may arise hereunder.

11. Governance and Records

11.1 The Supplier shall:

- 11.1.1 attend progress meetings with the Customer at the frequency and times specified by the Customer and shall ensure that its representatives are suitably qualified to attend such meetings; and
- 11.1.2 submit progress reports to the Customer at the times and in the format specified by the Customer.
- 11.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Customer. The Supplier shall on request afford the Customer or the Customer's representatives such access to those records as may be reasonably requested by the Customer in connection with the Agreement.

12. Confidentiality, Transparency and Publicity

12.1 Subject to clause 12.2, each Party shall:

- 12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- 12.1.1 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:
- 12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 12.2.2 to its auditors or for the purposes of regulatory requirements;
- 12.2.3 on a confidential basis, to its professional advisers;
- 12.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;
- 12.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Supplier's confidentiality obligations

under the Agreement; and

12.2.6 where the receiving Party is the Customer:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Customer;
- (b) on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company to which the Customer transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 13.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Customer under this clause 12.

- 12.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for the Customer to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Customer may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 12.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Customer.

13. Freedom of Information

- 13.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations (EIR) 2004 and shall:
- 13.1.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
 - 13.1.2 transfer to the Customer all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 13.1.3 provide the Customer with a copy of all Information belonging to the Customer requested in the Request for Information which is in its possession or control in the form that the Customer requires within 5 Working Days (or such other period as the Customer may reasonably specify) of the Customer's request for such Information; and
 - 13.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 13.2 The Supplier acknowledges that the Customer may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances the Customer shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 13.3 Notwithstanding any other provision in the Agreement, the Customer shall be responsible for

determining in its absolute discretion whether any Information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

14. Protection of Personal Data and Security of Data

14.1 The Supplier shall, and shall procure that all Staff shall, comply with any notification requirements under the Data Protection Legislation and both Parties shall duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.

14.2 Notwithstanding the general obligation in clause 14.1, where the Supplier is processing Personal Data for the Customer as a data processor (as defined by the Data Protection Legislation) the Supplier shall:

14.2.1 process such Personal Data only:

14.2.1.1 for the purpose of performing its obligations under the Agreement; and

14.2.1.2 for such other purposes as may be instructed by the Customer in writing from time to time; and

14.2.1.3 in accordance with the Data Protection Legislation;

14.2.2 ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data is processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data);

14.2.3 not otherwise modify, amend, remove or alter the contents of the Personal Data or disclose (unless legally required) or permit the disclosure of any of the Personal Data to any third party without the prior written authorisation of the Customer;

14.2.4 maintain up to date records of its processing activities performed on behalf of the Customer which shall include the categories of processing activities performed, information on cross border data transfers and a general description of security measures implemented in respect of processed data;

14.2.5 keep the Personal Data separate from any data it Processes on behalf of any other third party (including but not limited to business continuity measures and processes for regularly testing, assessing and evaluating the effectiveness of such security measures);

14.2.6 not appoint a sub-processor without the prior written consent of the second party, not to be unreasonably withheld, and ensure an agreement is entered into with the relevant sub-contractor which includes terms which are substantially the same as the terms set out in this clause 14;

14.2.7 not transfer Personal Data to a country or territory outside the European Economic Area except with the prior written consent of the Customer;

14.2.8 provide the Customer with such information as the Customer may reasonably request to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;

14.2.9 promptly notify the Customer of:

(a) any breach of the security requirements of the Customer as referred to in clause 14.3; and

(b) any request for personal data; and

14.2.10 ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of the Customer's obligations under the Data Protection Legislation.

14.3 When handling Customer Data (whether or not Personal Data), the Supplier shall ensure the security of the data is maintained in line with the security requirements of the Customer as notified to the Supplier from time to time. It is a mandatory requirement to inform the Information Commissioner's Office (ICO) of any breaches of Personal Data within 72 hours.

15. Security Requirements

15.1 Where required by the Customer, the Supplier shall comply, and shall procure the compliance of its Staff, with the Security Policy.

15.2 The Customer shall notify the Supplier of any changes or proposed changes to the Security Policy.

15.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may notify the Customer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate these costs. Any such change shall then be agreed in accordance with the change procedures previously agreed between the Customer and the Supplier.

15.4 Unless and/or until such a change is agreed by the Customer pursuant to clause 15.3 the Supplier shall continue to perform the Services in accordance with its existing obligations under the Agreement.

16. Malicious Software

16.1 The Supplier shall, as an enduring obligation for the Term, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

16.2 Notwithstanding clause 16.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

16.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of clause 16.2 shall be borne by the Parties as follows:

16.3.1 by the Supplier where the Malicious Software originates from the Supplier System or the Customer Data (whilst the Customer Data was under the control of the Supplier); and

16.3.2 by the Customer if the Malicious Software originates from the Customer System or the Customer Data (whilst the Customer Data was under the control of the Customer).

17. Customer Data

17.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to Customer Data.

17.2 The Supplier shall not store, copy, disclose, or use Customer Data except as necessary for the performance by the Supplier of its obligations under the Agreement or as otherwise expressly authorised in writing by the Customer.

17.3 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall supply that Customer Data to the Customer as may be requested by the Customer and in the format specified by the Customer.

- 17.4 The Supplier shall take responsibility for preserving the integrity of Customer Data and shall take all necessary steps to prevent the corruption or loss of Customer Data.
- 17.5 To the extent that Customer Data is held and/or processed by the Supplier, the Supplier shall perform secure back-ups of all Customer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Customer's instructions. The Supplier shall ensure that such back-ups are available to the Customer at all times upon request and are delivered to the Customer at agreed intervals.
- 17.6 The Supplier shall ensure that any system on which the Supplier holds Customer Data, including back-up data, is a secure system that complies with the Customer's current Security Policy. If any Customer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's default so as to be unusable, the Customer may:
- 17.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of the Customer Data to the extent required by the Customer and in accordance with the Customer's requirements and the Supplier shall do so as soon as practicable but not later than any agreed timescale; and/or
- 17.6.2 itself restore or procure the restoration of the Customer Data, and shall be reimbursed by the Supplier any reasonable expenses incurred in doing so to the extent required by the Customer and in accordance with the Customer's requirements.
- 17.7 If at any time the Supplier suspects or has reason to believe that Customer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier proposes to take.

18. Acceptance

- 18.1 The Supplier shall make available the Deliverables for review over a period of thirty (30) days (or such other period as the Parties may agree) from the date of delivery of the Deliverables.
- 18.2 The review of the Deliverables shall be performed by the Customer with the co-operation of the Supplier in order to determine whether the Deliverables are in accordance with the Specification and all other applicable provisions herein.
- 18.3 If it is determined pursuant to the review that the Deliverables are in accordance with the Specification and all other applicable provisions herein, the Customer shall notify the Supplier in writing of its acceptance thereof.
- 18.4 If it is determined pursuant to the review that the Deliverables, or any element of the Deliverables, are not in accordance with the Specification and all other applicable provisions herein, the Customer shall extend the review period by a period of twenty (20) Working Days (or such other period as the Parties may agree), during which the Supplier shall correct the faults which caused the review to be recorded as unsuccessful and the review shall be re-performed.
- 18.5 In the event that after the Customer has extended the review period pursuant to clause 18.4, the relevant review has not been recorded as successful by the end of that period, the Customer shall have the option, in addition to any other remedies that may be available to it under the Agreement or otherwise, to elect one or more of the following remedies:

- 18.5.1 to extend the review period for a period or periods specified by the Customer during which the Supplier shall correct the faults which caused the review to be recorded as unsuccessful and the review shall be re-performed; or
 - 18.5.2 to accept such part of the Deliverables as the Customer may decide and pay a pro-rated Charge therefore or such other charge as may be agreed between the Parties. At its sole discretion the Customer may, in respect of any of the Deliverables that has not been so accepted extend, the review period for a period specified by the Customer during which the Supplier shall correct the faults which caused the review to be recorded as unsuccessful and the review shall be re-performed; or
 - 18.5.3 to terminate the Agreement and receive a refund of any sums paid in relation to such specific Services as were not successfully completed.
- 18.6 If the Customer extends the review period for a period or periods pursuant to clause 18.5 and the review has not been recorded as successful by the end of that period, the Customer shall have the option, in addition to any other remedies that may be available to it under the Agreement or otherwise, to elect one or more of the remedies specified in clause 18.5.

19. Liability

- 19.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by the Customer if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Agreement.
- 19.2 Subject always to clauses 19.3 and 19.4:
- 19.2.1 the aggregate liability of either party for all defaults resulting in direct loss of or damage to the tangible property of the other under the contract shall in no event exceed two million pounds (£2,000,000);
 - 19.2.2 the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of one million pounds (£1,000,000) or a sum equal to one hundred and twenty five per cent 125% of the Charges paid or payable to the Supplier; and
 - 19.2.3 in no event shall either Party be liable to the other Party for any:
 - (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 19.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 19.3.1 death or personal injury caused by its negligence or that of its Staff;
 - 19.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
 - 19.3.3 any other matter which, by law, may not be excluded or limited.

19.4 The Supplier's liability under the indemnity in clause 10.7 and 23.3 shall be two million pounds (£2,000,000).

20. Force Majeure

20.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

21. Termination

21.1 The Customer may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.

21.2 Without prejudice to any other right or remedy it might have, the Customer may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:

21.2.1 (without prejudice to clause 21.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;

21.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement

21.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;

21.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;

21.2.5 breaches any of the provisions of clauses 8.2, 12, 13, 14, and 22;

21.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 21.2.6) in consequence of debt in any jurisdiction.

21.3 The Supplier shall notify the Customer as soon as practicable of any change of control as referred to in clause 21.2.4 or any potential such change of control.

21.4 The Supplier may terminate the Agreement by written notice to the Customer if the Customer has not paid any undisputed amounts within 90 days of them falling due.

21.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 2, 3.2, 7.1, 7.2, 7.5, 7.6, 8, 10, 11.2, 12, 13, 14, 19, 21.6, 22.5, 23.3, 24 and 25.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.

21.6 Upon termination or expiry of the Agreement, the Supplier shall:

- 21.6.1 give all reasonable assistance to the Customer and any incoming supplier of the Services; and
- 21.6.2 return all requested documents, information and data to the Customer as soon as reasonably practicable, other than a copy of such information and data as the Supplier is required to retain in order to comply with any applicable law or regulation.

22. Compliance

- 22.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Customer's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 22.2 The Supplier shall:
 - 22.2.1 comply with all the Customer's health and safety measures while on the Customer's premises; and
 - 22.2.2 notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Customer's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 22.3 The Supplier shall:
 - 22.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Customer's equality and diversity policy as provided to the Supplier from time to time; and
 - 22.3.2 take all reasonable steps to secure the observance of clause 22.3.1 by all Staff.
- 22.4 The Supplier shall supply the Services in accordance with the Customer's environmental policy as provided to the Supplier from time to time.
- 22.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:
 - 22.5.1 the Official Secrets Acts 1911 to 1989; and
 - 22.5.2 section 182 of the Finance Act 1989.

23. Prevention of Fraud and Corruption

- 23.1 The Supplier shall not offer, give, or agree to give anything, to any person an 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 the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.
- 23.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify the Customer immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 23.3 If the Supplier or the Staff engages in conduct prohibited by clause 23.1 or commits fraud in relation to the Agreement or any other contract with the Crown (including the Customer) the Customer may:
 - 23.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination, including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Agreement; or

23.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

24. Dispute Resolution

- 24.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 24.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 24.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 24.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

25. General

- 25.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 25.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 25.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 25.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 25.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 25.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 25.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 25.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

26. Notices

- 26.1 Any notice to be given under the Agreement shall be in writing and may be served by personal

delivery, first class recorded or, subject to clause 26.3, e-mail to the address of the relevant Party set out in the Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:

- 26.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 26.3 Notices under clauses 20 (Force Majeure) and 21 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 26.1.

27. Governing Law and Jurisdiction

- 27.1 The validity, construction and performance of the Agreement, and all contractual and non contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.