

**Part 2 –Terms and Conditions**  
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## RECITALS

- A. The Customer has followed the call off procedure set out in paragraph 1.3 of Panel Schedule 5 (Ordering Procedure) and has awarded this Legal Services Contract to the Supplier by way of a Further Competition Procedure.
- B. The Customer issued its Statement of Requirements for the provision of the Ordered Panel Services on 10 June 2019.
- C. In response to the Statement of Requirements the Supplier submitted a Tender to the Customer on the 03 July 2019 through which it provided to the Customer its solution for providing the Ordered Panel Services.

On the basis of the Tender, the Customer selected the Supplier to provide the Ordered Panel Services to the Customer in accordance with the terms of this Legal Service Contract.

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

- 1.1.1 In this Legal Services Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Contract Schedule 1 (Definitions) or the relevant Contract Schedule in which that capitalised expression appears.
- 1.1.2 If a capitalised expression does not have an interpretation in Contract Schedule 1 (Definitions) or relevant Contract Schedule, it shall have the meaning given to it in the Panel Agreement. If no meaning is given to it in the Panel Agreement, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning

### 1.2 Interpretation

- 1.2.1 The interpretation and construction of the Legal Services Contract shall be subject to the following provisions:
  - 1.2.1.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
  - 1.2.1.2 words importing the masculine include the feminine and the neuter;
  - 1.2.1.3 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
  - 1.2.1.4 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown;
  - 1.2.1.5 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Legal Services Contract);

- 1.2.1.6 headings are included in the Legal Services Contract for ease of reference only and shall not affect the interpretation or construction of the Legal Services Contract;
- 1.2.1.7 references to "Clauses" and the "Contract Schedules" are, unless otherwise provided, references to the clauses of and the schedules to this Legal Services Contract and references in any Contract Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Contract Schedule in which these references appear;
- 1.2.1.8 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.2 in the event of and only to the extent of any conflict between the Order Form, these Terms and Conditions and the provisions of the Panel Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.2.2.1 the Panel Agreement (excluding Panel Schedule 4 (Template Order Form and Template Terms and Conditions));
  - 1.2.2.2 the Order Form;
  - 1.2.2.3 these Terms and Conditions;
  - 1.2.2.4 any other document referred to in the Legal Services Contract; and
  - 1.2.2.5 Panel Schedule 21 (Tender).

## **2. The Ordered Panel Services**

- 2.1 This Legal Services Contract shall commence on the Commencement Date set out at section A, paragraph 1.4 (Commencement Date) of the Order Form and expire either as set out at section A, paragraph 1.5 (Term) of the Order Form or on the completion of the Ordered Panel Services, unless extended or terminated earlier in accordance with these Terms and Conditions.
- 2.2 The Supplier shall supply the Ordered Panel Services set out in the Order Form (as the same may be amended or updated in accordance with this Legal Services Contract) to the Customer in accordance with the provisions of the Legal Services Contract.

## **3. Delivery and management of the Ordered Panel Services**

- 3.1 Within a reasonable period of time of the Commencement Date (having regard to the circumstances), the Supplier shall take proactive steps (in a manner and to an extent proportionate to the size and nature of the Order) to plan and agree the Ordered Panel Services to be provided with the Customer to clarify and document (to the extent that the above have not been done prior to or at the Commencement Date and included at paragraph 1.2 of section B (the Ordered Panel Services) of the Order Form):
  - 3.1.1 the legal advice required;
  - 3.1.2 how legal input will be structured to minimise costs and maximise efficiency;
  - 3.1.3 whether and how work previously undertaken for central Government can be re-used to reduce cost;
  - 3.1.4 the levels and names of Supplier Personnel working on performing the Ordered Panel Services, including the Key Personnel identified in the Order Form and/or pursuant to Clause 5 (below);

- 3.1.5 which of the Customer's Personnel can provide instructions and authorise additional work; and
  - 3.1.6 the general management of the Ordered Panel Services and the provision by the Supplier thereof.
- 3.2 During the performance of the Ordered Panel Services the Supplier shall conduct reviews at intervals specified at paragraph 1.2 of section B (the Ordered Panel Services) of the Order Form (if so specified) but in any event no less than once every three (3) Months to:
- 3.2.1 review adherence to the plans (whether original plans or plans as subsequently amended under this Clause 3.2, as the case may be) for the Ordered Panel Services prepared pursuant to clause 3.1 (above); and
  - 3.2.2 ensure optimisation of efficiency and value for money in provision of the Ordered Panel Services.
- 3.3 The Supplier shall:
- 3.3.1 confirm to the Customer that any review required has, in each case, been completed; and
  - 3.3.2 report to the Customer on the outcome of the review (including documenting the same in such form as the Customer may reasonably require); and
  - 3.3.3 make and apply such adjustments to the plans for the delivery of the Ordered Panel Services as the Customer may direct.
- 3.4 The Supplier shall:
- 3.4.1 comply with all reasonable instructions given to the Supplier and the Supplier Personnel by the Customer in relation to the Ordered Panel Services from time to time, including reasonable instructions to reschedule or alter the Ordered Panel Services;
  - 3.4.2 without prejudice to Clause 3.4.1, immediately report to the Customer's Representative any matters which involve or could potentially involve an actual or potential Conflict of Interest and/or of Clause 9.2 (Confidentiality) and shall follow any direction made by the Customer in respect of the proper management and mitigation of the same;
  - 3.4.3 co-operate in a timely and prompt manner with the Customer and the Customer's other professional advisers in relation to the Ordered Panel Services as required by the Customer;
  - 3.4.4 comply with the Customer's internal policies and procedures and Government codes and practices in force from time to time (including policies, procedures, codes and practices relating to vetting, security, equality and diversity, confidentiality undertakings and sustainability) in each case as notified to the Supplier in writing by the Customer; and
  - 3.4.5 save to the extent expressly set out in the Order Form, obtain Approval from the Customer's Representative before advising the Customer on:
    - (a) EU law (including State aid and public procurement); or
    - (b) public law (including national security); or
    - (c) the Transfer of Undertakings (Protection of Employment) Regulations 1981 (or any subsequent enactment thereof); or

(d) any other issue as may be notified to the Supplier from time to time by the Customer's Representative,

and where Approval is given, if the advice is given orally, confirm in writing, to the Customer's Representative, any advice given to the Customer.

3.5 The Supplier shall not:

3.5.1 knowingly act at any time during the term of the Legal Services Contract 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 will thereby arise or exist in relation to the Ordered Panel Services; or

3.5.2 incur any expenditure which would result in any estimated figure for any element of the Ordered Panel Services being exceeded without the Customer's written agreement; or

3.5.3 without the prior written consent of the Customer, accept any commission, discount, allowance, direct or indirect payment, or any other consideration from any third party in connection with the provision of the Ordered Panel Services; or

3.5.4 pledge the credit of the Customer in any way; or

3.5.5 engage in any conduct which in the reasonable opinion of the Customer is prejudicial to the Customer, the Authority or the Crown.

3.6 Both Parties shall take all necessary measures to ensure the health and safety of the other Party's employees, consultants and agents visiting their premises.

3.7 Where the Supplier is more than one firm or organisation acting as a Group of Economic Operators, each firm or organisation that is a member of the Group of Economic Operators shall be jointly and severally liable for performance of the Supplier's obligations under the Legal Services Contract.

3.8 Upon expiry of this Legal Services Contract, or as the Ordered Panel Services to be performed under it near completion, as seems appropriate to the Customer under the circumstances, the Supplier shall conduct a knowledge transfer exercise where requested to do so by the Customer. This exercise shall:

3.8.1 document, collate and transfer to the Customer any significant know-how, learning and/or practices generated, developed and/or used by the Supplier during this Legal Services Contract;

3.8.2 compile and transfer to the Customer a document bible(s) (including electronic versions of the same if the Customer so requires) comprising the contractual and/or other documents and/or advice generated, developed and/or used by the Supplier during this Legal Services Contract;

3.8.3 be completed within one (1) Month of the later of completion of the relevant Ordered Panel Services, or the request to conduct the exercise made by the Customer, or the expiry of this Legal Services Contract; and

3.8.4 be performed at no additional cost or charge to the Customer.

**Records, Audit Access and Open Book Data**

3.9 The Supplier shall keep and maintain for seven (7) years after the Expiry Date (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Legal Services Contract including the Ordered Panel Services provided under it, any Sub-Contracts and the amounts paid by the Customer.

3.10 The Supplier shall:

- 3.10.1 keep the records and accounts referred to in Clause 3.9 in accordance with Good Industry Practice and Law; and
- 3.10.2 afford any Auditor access to the records and accounts referred to in Clause 3.9 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Term and the period specified in Clause 3.9, in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its Sub-Contractors of any of the Supplier's obligations under this Legal Services Contract including in order to:
- (a) verify the accuracy of the Charges and any other amounts payable by the Customer under this Legal Services Contract (and proposed or actual variations to them in accordance with this Legal Services Contract);
  - (b) verify the costs of the Supplier (including the costs of all Sub-Contractors and any third party suppliers) in connection with the provision of the Ordered Panel Services;
  - (c) verify the Open Book Data;
  - (d) verify the Supplier's and each Sub-Contractor's compliance with the applicable Law;
  - (e) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Customer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
  - (f) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Panel Guarantor and/or the Call Off Guarantor and/or any Sub-Contractors or their ability to perform the Ordered Services
  - (g) obtain such information as is necessary to fulfil the Customer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
  - (h) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Legal Services Contract;
  - (i) carry out the Customer's internal and statutory audits and to prepare, examine and/or certify the Customer's annual and interim reports and accounts;
  - (j) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
  - (k) verify the accuracy and completeness of any information delivered or required by this Legal Services Contract;
  - (l) review the Supplier's quality management systems (including any quality manuals and procedures);
  - (m) review the Supplier's compliance with the Standards;

- (n) inspect the Customer assets, including the Customer's IPRs, equipment and facilities, for the purposes of ensuring that the Customer assets are secure and that any register of assets is up to date; and/or
  - (o) review the integrity, confidentiality and security of the Customer Data.
- 3.11 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Ordered Panel Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor(s) is outside of the control of the Customer.
- 3.12 Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
  - 3.12.1 all reasonable information requested by the Customer within the scope of the audit;
  - 3.12.2 reasonable access to sites controlled by the Supplier and to any Supplier Equipment used in the provision of the Ordered Panel Services; and
  - 3.12.3 access to the Supplier Personnel.
- 3.13 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations in respect of records, audit access and open book data, unless the audit reveals a breach by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

**4. Variation and Extension**

- 4.1.1 The Customer may request:
  - 4.1.1.1 a variation to the Ordered Panel Services;
  - 4.1.1.2 an extension to the Term specified at paragraph 1.5 of section A of the Order Form); and/or
  - 4.1.1.3 a variation to any other part of the Order Form; and/or
  - 4.1.1.4 a variation to any other term of these Terms and Conditions, at any time during the Term.
- 4.1.2 Any request by the Customer for a variation to the Ordered Panel Services shall be by written notice to the Supplier:
  - 4.1.2.1 giving sufficient information for the Supplier to assess the extent of the variation and any additional costs that may be incurred (where any element of the Charges is composed of a fixed price or a capped price); and
  - 4.1.2.2 specifying the timeframe within which the Supplier must respond to the request, which shall be reasonable and the Supplier shall respond to such request within such timeframe.
- 4.1.3 In the event that the Supplier and the Customer are unable to agree any change to the Charges in connection with any requested variation to the Ordered Panel Services, the Customer may agree that the Supplier should continue to perform its obligations under the Legal Services Contract without the variation or may terminate the Legal Services Contract in accordance with Clause 11.8 (Termination in relation to Variation).

**5. Personnel**

## **Key Personnel**

- 5.1 Where Key Personnel have been specified in the Order Form this Clause 5 and the following provisions shall apply:
- 5.1.1 The Order Form lists the Key Personnel who the Supplier shall appoint to fill the Key Roles (where identified) at the Commencement Date;
  - 5.1.2 the Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term;
  - 5.1.3 the Customer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel;
  - 5.1.4 the Supplier shall not remove or replace any Key Personnel (including when carrying out its obligations under Contract Schedule 2 (Exit Management) unless :
    - 5.1.4.1 requested to do so by the Customer;
    - 5.1.4.2 the relevant person concerned resigns, retires or dies or takes any extended absences such as maternity leave or long-term sick leave;
    - 5.1.4.3 the person's employment or contractual arrangement with the Supplier or a Sub-Contractor is terminated for material breach of contract by the employee; or
    - 5.1.4.4 the Supplier obtains the Customer's prior written consent (such consent not to be unreasonably withheld or delayed);
  - 5.1.5 the Supplier shall:
    - 5.1.5.1 notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
    - 5.1.5.2 ensure that any Key Role is not vacant for any longer than five (5) Working Days;
    - 5.1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least three (3) Months' notice;
    - 5.1.5.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Ordered Panel Services; and
    - 5.1.5.5 ensure that any replacement for a Key Role:
      - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
      - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced;
    - 5.1.5.6 shall and shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Term without Approval; and

- 5.1.5.7 the Supplier shall not charge, and the Customer shall have no liability to pay, for any additional costs incurred by the Supplier in respect of reading-in time by any replacement Key Personnel.
- 5.2 The Customer may direct the Supplier to end the involvement in the provision of the Ordered Panel Services of any of the Supplier Personnel:
  - 5.2.1 whom the Customer believes does not have the required levels of training and expertise; or
  - 5.2.2 whose performance, in the Customer's opinion, has been unsatisfactory; or
  - 5.2.3 where the Customer has other reasonable grounds for doing so.
- 5.3 The Customer will consult with and provide reasons to the Supplier where it is able to and where it is appropriate for the Customer to do so, provided that the decision of the Customer shall be final and it shall not be obliged to provide any reasons. The Customer shall not be liable for the cost of replacing any such Key Personnel.

#### **Supplier Personnel**

- 5.4 The Supplier shall:
  - 5.4.1 provide a list of the names of all Supplier Personnel requiring admission to Customer Premises, specifying the capacity in which they require admission and giving such other particulars as the Customer may reasonably require;
  - 5.4.2 ensure that all Supplier Personnel:
    - 5.4.2.1 are appropriately qualified, trained and experienced to provide the Ordered Panel Services with all reasonable skill, care and diligence;
    - 5.4.2.2 are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the Standards;
    - 5.4.2.3 obey all lawful instructions and reasonable directions of the Customer (including, if so required by the Customer, the ICT Policy) and provide the Ordered Panel Services to the reasonable satisfaction of the Customer; and
    - 5.4.2.4 comply with all reasonable requirements of the Customer concerning conduct at the Customer Premises, including the any security requirements as notified to the Supplier by the Customer from time to time;
  - 5.4.3 subject to Contract Schedule 3 (Staff Transfer), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Customer;
  - 5.4.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a breach under this Legal Services Contract shall be a breach by the Supplier;
  - 5.4.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
  - 5.4.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
  - 5.4.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
  - 5.4.8 procure that the Supplier Personnel shall vacate any Customer Premises immediately upon the Expiry Date.

- 5.5 If the Customer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Legal Services Contract, it may:
- 5.5.1 refuse admission to the relevant person(s) to the Customer Premises; and/or
  - 5.5.2 direct the Supplier to end the involvement in the provision of the Ordered Panel Services of the relevant person(s).
- 5.6 The decision of the Customer as to whether any person is to be refused access to the Customer Premises shall be final and conclusive.

**Staff Transfer**

- 5.7 The Parties agree that:
- 5.7.1 where the commencement of the provision of the Ordered Panel Services or any part of the Ordered Panel Services results in one or more Relevant Transfers, Contract Schedule 3 (Staff Transfer) shall apply as follows:
    - (a) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of Contract Schedule 4 (Staff Transfer) shall apply;
    - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Contract Schedule 3 (Staff Transfer) shall apply;
    - (c) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of Contract Schedule 3 (Staff Transfer) shall apply; and
    - (d) Part C of Contract Schedule 3 (Staff Transfer) shall not apply;
  - 5.7.2 where commencement of the provision of the Ordered Panel Services or a part of the Services does not result in a Relevant Transfer, Part C of Contract Schedule 3 (Staff Transfer) shall apply and Parts A and B of Contract Schedule 3 (Staff Transfer) shall not apply; and
  - 5.7.3 Part D of Contract Schedule 3 (Staff Transfer) shall apply on the expiry or termination of the Ordered Panel Services or any part of the Ordered Panel Services;
- 5.8 The Supplier shall both during and after the Term indemnify the Customer against all Employee Liabilities that may arise as a result of any claims brought against the Customer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

**Appointment of Sub-Contractors**

- 5.9 The Supplier shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Supplier is able to:
- 5.9.1 manage any Sub-Contractors in accordance with Good Industry Practice;
  - 5.9.2 comply with its obligations under this Legal Services Contract in the provision of the Ordered Panel Services; and
  - 5.9.3 assign, novate or otherwise transfer to the Customer or any Replacement Supplier any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Legal Services Contract.
- 5.10 Prior to sub-contacting any of its obligations under this Legal Services Contract, the Supplier shall notify the Customer and provide the Customer with:

- 5.10.1 the proposed Sub-Contractor's name, registered office and company registration number;
  - 5.10.2 the scope of any Ordered Panel Services to be provided by the proposed Sub-Contractor; and
  - 5.10.3 where the proposed Sub-Contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Customer that the proposed Sub-Contract has been agreed on "arm's-length" terms.
- 5.11 If requested by the Customer within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 5.10, the Supplier shall also provide:
- 5.11.1 a copy of the proposed Sub-Contract; and
  - 5.11.2 any further information reasonably requested by the Customer.
- 5.12 The Customer may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 5.10 (or, if later, receipt of any further information requested pursuant to Clause 5.11), object to the appointment of the relevant Sub-Contractor if they consider that:
- 5.12.1 the appointment of a proposed Sub-Contractor may prejudice the provision of the Ordered Panel Services or may be contrary to the interests respectively of the Customer under this Legal Services Contract;
  - 5.12.2 the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
  - 5.12.3 the proposed Sub-Contractor employs unfit persons,  
in which case, the Supplier shall not proceed with the proposed appointment.
- 5.13 If:
- 5.13.1 the Customer has not notified the Supplier that it objects to the proposed Sub-Contractor's appointment by the later of ten (10) Working Days of receipt of:
    - (a) the Supplier's notice issued pursuant to Clause 5.10; and
    - (b) any further information requested by the Customer pursuant to Clause 5.11; and
  - 5.13.2 the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of the Authority and the Customer,  
the Supplier may proceed with the proposed appointment.

**Appointment of Key Sub-Contractors**

- 5.14 The Authority and the Customer have consented to the engagement of the Key Sub-Contractors listed in Panel Schedule 7 (Key Sub-Contractors).
- 5.15 Where the Supplier wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the Authority and the Customer (the decision to consent or otherwise not to be unreasonably withheld or delayed). The Authority and/or the Customer may reasonably withhold its consent to the appointment of a Key Sub-Contractor if any of them considers that:
- 5.15.1 the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Ordered Panel Services or may be contrary to its interests;
  - 5.15.2 the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers; and/or
  - 5.15.3 the proposed Key Sub-Contractor employs unfit persons.

- 5.16 Except where the Authority and the Customer have given their prior written consent under Clause 5.14, the Supplier shall ensure that each Key Sub-Contract shall include:
- 5.16.1 provisions which will enable the Supplier to discharge its obligations under this Legal Services Contract;
  - 5.16.2 a right under CRTPA for the Customer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Customer;
  - 5.16.3 a provision enabling the Customer to enforce the Key Sub-Contract as if it were the Supplier;
  - 5.16.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Customer or any Replacement Supplier;
  - 5.16.5 obligations no less onerous on the Key Sub-Contractor than those imposed on the Supplier under this Legal Services Contract in respect of:
    - (a) data protection requirements set out in Clause 9.1 (Protection of Personal Data);
    - (b) FOIA requirements set out in Clause 9.4 (Freedom of Information);
    - (c) the obligation not to embarrass the Customer or otherwise bring the Customer into disrepute set out in Clause 13.3;
    - (d) the keeping of records in respect of the Ordered Panel Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data;
    - (e) the conduct of audits set out in Clause 3 under the heading of Records, Audit Access & Open Book Data;
  - 5.16.6 provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on the Customer under Clause 11 (Termination) and Clause 12 (Consequences of Expiry or Termination) of this Legal Services Contract;
  - 5.16.7 a provision restricting the ability of the Key Sub-Contractor to Sub-Contract all or any part of the provision of the Ordered Panel Services provided to the Supplier under the Sub-Contract without first seeking the written consent of the Customer;
  - 5.16.8 a provision, where a provision in Contract Schedule 3 (Staff Transfer) imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to the Customer, Former Supplier or the Replacement Supplier as the case may be.

#### **Appointment of Key Sub-Contractors**

- 5.17 The Supplier shall ensure that all Sub-Contracts contain a provision:
- 5.17.1 requiring the Supplier to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
  - 5.17.2 requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;

- 5.17.3 requiring the Sub-Contractor to include in any Sub-Contract which it in turn awards suitable provisions to impose, as between the parties to that Sub-Contract, requirements to the same effect as those required by sub-clauses 5.17.1 and 5.17.2 directly above; and
- 5.17.4 conferring a right to the Customer to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.
- 5.18 The Supplier shall pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice.
- 5.19 Any invoices submitted by a Sub-Contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.
- 5.20 Notwithstanding any provision of Clauses 9.2 (Confidentiality) and 13 (Publicity, Media and Official Enquiries) if the Supplier notifies the Customer that the Supplier has failed to pay an undisputed Sub-Contractor's invoice within thirty (30) days of receipt, or the Customer otherwise discovers the same, the Customer shall be entitled to publish the details of the late or non-payment (including on Government websites and in the press).

**Termination of Sub-Contracts**

- 5.21 The Customer may require the Supplier to terminate:
  - 5.21.1 a Sub-Contract where:
    - (a) the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to the Customer's right of termination pursuant to any of the termination events in Clause 11 (Termination) except Clause 11.5 (Termination on Notice); and/or
    - (b) the relevant Sub-Contractor or its Affiliates embarrassed the Customer or otherwise brought the Customer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Customer, regardless of whether or not such act or omission is related to the Sub-Contractor's obligations in relation to the Ordered Panel Services or otherwise; and/or
  - 5.21.2 a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
    - (a) the Customer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
    - (b) the Customer has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which the Customer was given notice of the Change of Control.

**Competitive Terms**

- 5.22 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any materials, equipment, software, goods or services used by the Supplier or the Supplier Personnel in the supply of the Ordered Panel Services, then the Customer may:
  - 5.22.1 require the Supplier to replace its existing commercial terms with its Sub-Contractor with the more favourable commercial terms obtained by the Customer in respect of the relevant item; or

- 5.22.2 subject to the Clauses allowing termination of Sub-Contracts, enter into a direct agreement with that Sub-Contractor or third party in respect of the relevant item.
- 5.23 If the Customer exercises the option pursuant to Clause 5.22, then the Charges shall be reduced by an amount that is agreed in accordance with Clause 4 (Variation and Extension).
- 5.24 The Customer's right to enter into a direct agreement for the supply of the relevant items is subject to:
- 5.24.1 the Customer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Ordered Panel Services; and
- 5.24.2 any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

#### **Retention of Legal Obligations**

- 5.25 Notwithstanding the Supplier's right to Sub-Contract, the Supplier shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

### **6. CHARGES AND INVOICING**

#### **6.1 Charges and VAT**

- 6.1.1 In consideration of the Supplier's performance of its obligations under this Legal Services Contract, the Customer shall pay the undisputed Charges in accordance with this Clause 6 (Charges and Invoicing).
- 6.1.2 The Customer shall, in addition to the Charges and following receipt of a valid invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Ordered Panel Services supplied.
- 6.1.3 The provisions of Panel Schedule 3 (Panel Prices and Charging Structure) of the Panel Agreement shall apply in relation to the Ordered Panel Services.
- 6.1.4 The Supplier shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Legal Services Contract. Any amounts due under this Clause 6.1.4 shall be paid by the Supplier to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

#### **6.2 Invoicing**

- 6.2.1 The Customer shall pay all undisputed sums properly due and payable to the Supplier in respect of the Ordered Panel Services in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.
- 6.2.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Ordered Panel Services provided and any Reimbursable Expenses and/or Disbursements and/or any other costs (where the Customer has indicated in the Order Form that these are payable) and that it is supported by Supporting Documentation.

- 6.2.3 The Supplier shall ensure that all invoices submitted to the Customer for the Ordered Panel Services are exclusive of the Management Charge payable to the Authority in respect of the Ordered Panel Services. The Supplier shall not be entitled to increase the Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.
- 6.2.4 The Supplier shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Supplier.
- 6.2.5 Subject always to the provisions of Clause 16, if the Supplier enters into a Sub-Contract in respect of the Ordered Panel Services (or any part of them), 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 thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 6.2.6 The Supplier shall not suspend the supply of the Ordered Panel Services unless:
- 6.2.6.1 the Supplier is entitled to terminate the Legal Services Contract under Clause 11.2.2 on the grounds of the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Supplier in respect of the Services; and
- 6.2.6.2 the Supplier has provided ten (10) Working Days notice of its intention to suspend the provision of the Ordered Panel Services.
- 6.2.7 The Supplier shall accept the Government Procurement Card as a means of payment for the Ordered Panel Services where such card is agreed with the Customer to be a suitable means of payment. The Supplier shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Customer.
- 6.2.8 All payments due hereunder shall be made in cleared funds to such bank or building society account as is specified at paragraph 3.6 of section B of the Order Form or otherwise as the recipient Party may from time to time direct by notice in writing.

### **6.3 Recovery of Sums Due**

- 6.3.1 Wherever under the Legal Services Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Customer in respect of any breach of the Legal Services Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Legal Services Contract.
- 6.3.2 Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

## 7. LIABILITY AND INSURANCE

### 7.1 Liability

- 7.1.1 Neither Party excludes or limits its liability for:
  - 7.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors; or
  - 7.1.1.2 bribery or Fraud by it or its employees or agents; or
  - 7.1.1.3 any other liability than cannot be excluded or limited under Law.
- 7.1.2 No individual nor any service company of the Supplier employing that individual shall have any personal liability to the Customer for the Ordered Panel Services supplied by that individual on behalf of the Supplier and the Customer shall not bring any claim under the Legal Services Contract against that individual or such service company in respect of the Ordered Panel Services save in the case of Fraud or any liability for death or personal injury. Nothing in this Clause 7.1.2 shall in any way limit the liability of the Supplier in respect of the Ordered Panel Services, and such liability shall be uncapped unless otherwise specified in the Order Form. The total aggregate liability of the Customer under this Legal Services Contract shall be limited to one hundred per cent (100%) of the Charges paid or properly due hereunder.
- 7.1.3 The Supplier shall fully indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Ordered Panel Services or the performance or non-performance by the Supplier of its obligations under the Panel Agreement and the Customer's financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused by any act or omission of the Supplier.
- 7.1.4 Subject to Clauses 6.1.1 and 6.1.5, in no event shall either Party be liable to the other for any:
  - 7.1.4.1 loss of profits;
  - 7.1.4.2 loss of business;
  - 7.1.4.3 loss of revenue;
  - 7.1.4.4 loss of or damage to goodwill;
  - 7.1.4.5 loss of anticipated savings; and/or
  - 7.1.4.6 any indirect, special or consequential loss or damage.
- 7.1.5 The Supplier shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Customer) be recoverable by the Customer:
  - 7.1.5.1 any additional operational and/or administrative costs and expenses incurred by the Customer, including costs relating to time spent by or on behalf of the Customer in dealing with the consequences of any Material Breach;
  - 7.1.5.2 any wasted expenditure or charges;
  - 7.1.5.3 the additional cost of procuring, implementing and operating any alternative or replacement services to the Services which shall include any incremental costs associated with the replacement of

such services above those which would have been payable under this Legal Services Contract;

- 7.1.5.4 any compensation or interest paid to a third party by the Customer; and
- 7.1.5.5 any regulatory losses, fines, penalties, expenses or other losses incurred by the Customer pursuant to any Law.
- 7.1.6 No enquiry, inspection, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Customer to any document or information provided by the Supplier in its provision of the Services, and no failure of the Customer to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Supplier to exercise all the obligations of a professional Supplier employed in a customer/supplier relationship.
- 7.1.7 Save as otherwise expressly provided, the obligations of the Customer under the Legal Services Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the Legal Services Contract shall operate as an obligation upon, or in any other way fetter or constrain the Customer in any other capacity, nor shall the exercise by the Customer of its duties and powers in any other capacity lead to any liability under the Legal Services Contract (howsoever arising) on the part of the Customer to the Supplier.

## **7.2 Insurance**

- 7.2.1 Notwithstanding any benefit to the Customer of the policy or policies of insurance referred to in Clause 31 (Insurance) of the Panel Agreement, the Supplier shall effect and maintain further policy or policies of insurance or extensions to such existing policy or policies of insurance procured under the Panel Agreement in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Legal Services Contract. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Customer arising from any advice given or omitted to be given by the Supplier under the Legal Services Contract or otherwise in connection with the provision of the Ordered Panel Services. Such insurance shall be maintained for so long as the Supplier may have any liability to the Customer hereunder.
- 7.2.2 It shall be the responsibility of the Supplier to determine the amount of insurance cover that will be adequate to enable the Supplier to satisfy any liability arising in respect of the risks referred to in Clause 7.2.1.
- 7.2.3 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by Clause 7.2.1, the Customer may make alternative arrangements to protect its interests and may set-off the costs of such arrangements against the Charges.
- 7.2.4 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Legal Services Contract.
- 7.2.5 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel,

rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 All Intellectual Property Rights in any and all materials created and/or modified by the Supplier arising from or ancillary to the performance of the Ordered Panel Services (including any contractual and/or other documents, and/or advice generated, developed and/or used by the Supplier from the Ordered Panel Services shall vest in and be the property of the Customer.
- 8.2 The Supplier shall ensure, where necessary, that it secures the right to effect such vesting and the Supplier hereby assigns to the Customer with full title guarantee, all such Intellectual Property Rights in any and all such materials.
- 8.3 The Supplier shall on demand fully indemnify and keep fully 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 and or the Crown may suffer or incur as a result of any claim that the performance by the Supplier of the Ordered Panel Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "Claim").
- 8.4 If a Claim arises, the Customer shall 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. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Supplier:
- 8.4.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
  - 8.4.2 shall take due and proper account of the interests of the Customer;
  - 8.4.3 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
  - 8.4.4 shall not settle or compromise the Claim without the prior written approval of the Customer (not to be unreasonably withheld or delayed).
- 8.5 The Supplier shall have no rights to use any of the Customer's names, logos or trademarks without the Approval of the Customer, which the Customer shall have the absolute right to grant or deny.

## **9. PROTECTION OF INFORMATION**

### **9.1 Protection of Personal Data**

- 9.1.1 With respect to the Parties' rights and obligations under the Legal Services Contract, the Parties agree that the Customer is the Data Controller and that the Supplier is the Data Processor in relation to the Customer's Personal Data.
- 9.1.2 The Supplier shall:
- 9.1.2.1 Process the Customer's Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in the Legal Services Contract or as otherwise notified by the Customer to the Supplier during the Term of the Legal Services Contract);
  - 9.1.2.2 Process the Customer's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Panel Services or as is required by Law or any regulatory body;

- 9.1.2.3 implement appropriate technical and organisational measures to protect the Customer's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Customer's Personal Data and having regard to the nature of the Customer's Personal Data which is to be protected;
- 9.1.2.4 take reasonable steps to ensure the reliability of all members of the Supplier's Personnel who have access to the Customer's Personal Data;
- 9.1.2.5 obtain Approval in order to transfer all or any of the Customer's Personal Data to any Sub-Contractors for the provision of the Services;
- 9.1.2.6 ensure that all members of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 9.1;
- 9.1.2.7 ensure that none of the Supplier's Personnel publish, disclose or divulge any of the Customer's Personal Data to any third party unless directed in writing to do so by the Customer;
- 9.1.2.8 notify the Customer within five (5) Working Days if the Supplier receives:
  - (a) a request from a Data Subject to have access to the Customer's Personal Data relating to that person; or
  - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 9.1.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made relating to the Customer's Personal Data, including by:
  - (a) providing the Customer with full details of the complaint or request;
  - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
  - (c) providing the Customer with any Customer's Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
  - (d) providing the Customer with any information requested by the Customer;
- 9.1.2.10 permit or procure permission for the Customer or the Customer's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Supplier's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under the Legal Services Contract;

- 9.1.2.11 provide a written description of the technical and organisational methods employed by the Supplier for Processing the Customer's Personal Data (within the timescales required by the Customer); and
- 9.1.2.12 not Process or otherwise transfer any Customer's Personal Data outside the European Economic Area without the prior written consent of the Customer which shall have the absolute right grant (whether conditionally or otherwise) or deny.
- 9.1.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Legal Services Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation.
- 9.1.4 The Supplier acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Customer's Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 9.1.5 In the event that through any failure by the Supplier to comply with its obligations under the Legal Services Contract, Customer's Personal Data transmitted or Processed in connection with the Legal Services Contract is either lost or sufficiently degraded so as to be unusable, the Supplier shall be liable for the cost of reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Supplier.

## **9.2 Confidentiality**

- 9.2.1 Except to the extent set out in this Clause 9.2 or where disclosure is expressly permitted elsewhere in the Legal Services Contract, each Party shall:
  - 9.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
  - 9.2.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 9.2.2 Clause 9.2.1 shall not apply to the extent that:
  - 9.2.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 9.4 (Freedom of Information); or
  - 9.2.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
  - 9.2.2.3 such information was obtained from a third party (who lawfully acquired it and who is himself under no obligation restricting its disclosure) without obligation of confidentiality; or
  - 9.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Legal Services Contract; or
  - 9.2.2.5 it is independently developed without access to the other Party's Confidential Information;

9.2.2.6 such disclosure is demonstrated by the Party making the disclosure as having been made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the party making the disclosure shall ensure that the recipient of the Confidential Information is made aware of and asked to respect its confidentiality. Such disclosure shall in no way diminish the obligations of the parties under Clause 9.2,

provided that in respect of sub-clauses 9.2.2.2 to 9.2.2.5 (inclusive) the relationship to any other Confidential Information is not revealed.

9.2.3 The Supplier may only disclose the Customer's Confidential Information to those members of the Supplier's Personnel who are directly involved in the provision of the Ordered Panel Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.

9.2.4 The Supplier shall not, and shall procure that the Supplier's Personnel do not, use any of the Customer's Confidential Information received otherwise than for the purposes of the Legal Services Contract.

9.2.5 At the written request of the Customer, the Supplier shall procure that those members of the Supplier's Personnel identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with the Legal Services Contract.

9.2.6 Nothing in the Legal Services Contract shall prevent the Customer from disclosing the Supplier's Confidential Information (including the Management Information obtained pursuant to clause 27 of the Panel Agreement):

9.2.6.1 to any Crown body, or any Other Panel Customer 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 Other Panel Customer save as required by Law;

9.2.6.2 to any consultant, contractor or other person engaged by the Customer for any purpose relating to or connected with the Legal Services Contract or the Panel Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;

9.2.6.3 for the purpose of the examination and certification of the Customer's accounts;

9.2.6.4 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;

9.2.6.5 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

9.2.6.6 to the extent that the Customer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

9.2.6.7 on a confidential basis for the purpose of the exercise of its rights under this Legal Services Contract; or

- 9.2.6.8 on a confidential basis to a proposed body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Legal Service Contract pursuant to Clause 16.
- 9.2.7 The Customer shall use all reasonable endeavours to ensure that any government department, employee, third party or Sub-Contractor to whom the Supplier's Confidential Information is disclosed pursuant to Clause 9.2.6 is made aware of the Customer's obligations of confidentiality.
- 9.2.8 Nothing in this Clause 9.2 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Legal Services Contract 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 IPR.
- 9.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Legal Services Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 9.2.10 The Supplier shall, at all times during and after the performance of the Legal Services Contract, indemnify the Customer and keep the Customer fully indemnified on demand against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Customer arising from any breach of the Supplier's obligations under this Clause 9.2 except and to the extent that such liabilities have resulted directly from the Customer's instructions.
- 9.2.11 Nothing in this Clause 9.2 shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

### **9.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**

- 9.3.1 The Supplier shall comply with and shall ensure that the Supplier Personnel comply with, the provisions of:
- 9.3.1.1 the Official Secrets Acts 1911 to 1989; and
- 9.3.1.2 section 182 of the Finance Act 1989.

### **9.4 Freedom of Information**

- 9.4.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 9.4.2 The Supplier shall and shall procure that its Sub-Contractors shall:
- 9.4.2.1 transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- 9.4.2.2 provide the Customer with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- 9.4.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 9.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Legal Services Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Supplier's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 9.4.4 In no event shall the Supplier respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 9.4.5 The Supplier acknowledges and agrees that (notwithstanding the provisions of Clause 9.2) the Customer may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Supplier or the ~~Legal Services Contract~~ Ordered Panel Services:
- 9.4.5.1 in certain circumstances without consulting the Supplier; or
- 9.4.5.2 following consultation with the Supplier and having taken the Supplier's views into account,
- provided always that where Clause 9.4.6 applies the Customer shall, in accordance with any recommendations of the Code, 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.
- 9.4.6 The Supplier shall ensure that all information is retained for disclosure in accordance with the provisions of the Legal Services Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer on reasonable notice to inspect such records as requested from time to time.
- 9.4.7 The Supplier acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Customer may be obliged to disclose it in accordance with Clause 9.4.5.

## 9.5 Transparency

- 9.5.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations, the content of this Legal Services Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458554/Procurement\\_Policy\\_Note\\_13\\_15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf) and the Transparency Principles referred to therein. The Customer shall determine whether any of the content of the Legal Services Contract is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations.
- 9.5.2 Notwithstanding any other term of the Legal Services Contract, the Supplier hereby gives consent to the Customer to publish the Legal Services Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations), including any changes to the Legal Services Contract agreed from time to time.

- 9.5.3 The Customer may consult with the Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.
- 9.5.4 The Supplier shall assist and cooperate with the Customer to enable the Customer to publish this Legal Services Contract and in the preparation of the Transparency Reports in accordance with Contract Schedule 4 (Transparency Reports).

## **10. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS**

10.1 The Supplier warrants, represents and undertakes to the Customer that:

- 10.1.1 it has full capacity and authority and all necessary consents, licences, permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Legal Services Contract;
- 10.1.2 the Legal Services Contract is executed by a duly authorised representative of the Supplier;
- 10.1.3 in entering the Legal Services Contract it has not committed any Fraud;
- 10.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 10.1.5 all information, statements and representations contained in the Supplier's tender or other submission to the Customer for the award of the Legal Services Contract (if applicable) are true, accurate and not misleading save as specifically disclosed in writing to the Customer prior to execution of the Legal Services Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 10.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Legal Services Contract;
- 10.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Legal Services Contract;
- 10.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Legal Services Contract;
- 10.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 10.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Customer; and
- 10.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations

under the Legal Services Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Legal Services Contract Services.

10.2 The Supplier warrants, represents and undertakes to the Customer that:

10.2.1 it has read and fully understood the Order Form and these Terms and Conditions and is capable of performing the Ordered Panel Services in all respects in accordance with the Legal Services Contract;

10.2.2 the Supplier and each of its Sub-Contractors has all personnel, equipment and experience necessary for the proper performance of the Ordered Panel Services; and

10.2.3 it will at all times:

10.2.3.1 perform its obligations under the Legal Services Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;

10.2.3.2 comply with all the KPIs;

10.2.3.3 carry out the Ordered Panel Services within the timeframe agreed with the Customer; and

10.2.3.4 without prejudice to its obligations under Clause 5 (Personnel), ensure to the satisfaction of the Customer that the Ordered Panel Services are provided and carried out by such appropriately qualified, skilled and experienced personnel as are necessary for the proper performance of the Ordered Panel Services.

10.3 The Supplier shall promptly notify the Customer in writing:

10.3.1 of any material detrimental change in the financial standing and/or credit rating of the Supplier;

10.3.2 if the Supplier undergoes a Change of Control; and

10.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.

10.4 For the avoidance of doubt, the fact that any provision within the Legal Services Contract is expressed as a warranty shall not preclude any right of termination the Customer would have in respect of breach of that provision by the Supplier if that provision had not been so expressed.

10.5 The Supplier acknowledges and agrees that:

10.5.1 the warranties, representations and undertakings contained in the Legal Services Contract are material and are designed to induce the Customer into entering into the Legal Services Contract; and

10.5.2 the Customer has been induced into entering into the Legal Services Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Legal Services Contract.

## **11. TERMINATION**

### **11.1 Termination on Insolvency**

11.1.1 The Customer may terminate this Legal Services Contract with immediate effect by giving notice in writing where:

11.1.1.1 an Insolvency Event affecting the Supplier occurs; or

11.1.1.2 the Supplier demerges into two or more firms, merges with another form, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Supplier.

## **11.2 Termination on Material Breach**

11.2.1 The Customer may terminate the Legal Services Contract with immediate effect by giving written notice to the Supplier if:

11.2.1.1 the Supplier commits a Material Breach and if:

(a) the Supplier has not within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice to the Supplier specifying the Material Breach and requesting it to be remedied:

(i) remedied the Material Breach; and

(ii) put in place measures to ensure that such Material Breach does not recur,

in each case to the satisfaction of the Customer; or

(b) the Material Breach is not, in the opinion of the Customer, capable of remedy; or

11.2.1.2 in the event of an investigation by the Solicitors Regulation Authority into the Supplier's organisation; or

11.2.1.3 in the event of conviction for dishonesty of the Supplier (if an individual) or any one or more of the Supplier's directors, partners or members (if the Supplier is a firm or firms), which conviction might reasonably be expected to lead to the striking off from the Roll of the individual(s) concerned.

11.2.2 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within five (5) calendar days from the receipt of a such notice, the Supplier may terminate the Legal Services Contract by ten (10) Working Days' written notice to the Customer.

## **11.3 Termination on Change of Control**

11.3.1 The Customer may terminate the Legal Services Contract by notice in writing with immediate effect within six (6) Months of:

11.3.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or

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

but shall not be permitted to terminate where the Customer's written consent to the continuation of the Legal Services Contract was granted prior to the Change of Control.

## **11.4 Termination for breach of Regulations**

11.4.1 The Customer may terminate this Legal Services Contract by notice in writing to the Supplier on the occurrence of any of the statutory provisos contained in Regulation 73 (1) (a) to (c).

### **11.5 Termination on Notice**

11.5.1 The Customer shall have the right to suspend the Legal Services Contract (whether with immediate effect or otherwise) at any time by giving written notice (which shall include the date on which the suspension is to take effect) to the Supplier.

11.5.2 The Customer shall have the right to terminate the Legal Services Contract (whether with immediate effect or otherwise) at any time by giving written notice of the termination to the Supplier, which shall include the date on which termination is to take effect. The Customer shall:

11.5.2.1 where such Charges are calculated by reference to rates or a capped price, pay the undisputed Charges properly incurred, invoiced and due hereunder up till the date of termination; or

11.5.2.2 where such Charges are calculated as a fixed price, pay a pro rata proportion of the fixed price reflecting the degree to which the Ordered Panel Services relating to the relevant fixed price have been performed as at the date of termination.

### **11.6 Termination in Relation to Panel Agreement**

11.6.1 The Customer may terminate the Legal Services Contract with immediate effect by giving written notice to the Supplier if the Panel Agreement is terminated for any reason whatsoever.

### **11.7 Termination in Relation to Benchmarking**

11.7.1 The Customer may terminate this Legal Services Contract with immediate effect by giving written notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in paragraphs 1 and 2 of Panel Schedule 12 (Continuous Improvement and Benchmarking).

### **11.8 Termination in Relation to Variation**

11.8.1 The Customer may terminate this Legal Services Contract with immediate effect by giving written notice to the Supplier for failure of the Parties to agree or the Supplier to implement a variation pursuant to Clause 4.1.3.

### **11.9 Partial Termination**

11.9.1 Where the Customer is entitled to terminate the Legal Services Contract pursuant to this Clause 11, the Customer shall be entitled to terminate all or part of the Legal Services Contract provided always that the parts of the Legal Services Contract not terminated can operate effectively to deliver the intended purpose of the Legal Services Contract or a part thereof.

## **12. CONSEQUENCES OF EXPIRY OR TERMINATION**

12.1 Subject to Clause 12.2, where the Customer terminates the Legal Services Contract pursuant to Clause 11 (Termination) and then makes other arrangements for the supply of the Services:

12.1.1 the Customer may recover from the Supplier the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Customer in securing the Services in accordance with the requirements of the Legal Services Contract;

12.1.2 the Customer shall take all reasonable steps to mitigate such additional expenditure; and

- 12.1.3 no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements, whereupon the Customer shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Supplier.
- 12.2 Clause 12.1 shall not apply where the Customer terminates the Legal Services Contract:
  - 12.2.1 solely pursuant to Clause 11.3 or Clause 11.5; or
  - 12.2.2 solely pursuant to Clause 11.6 if termination pursuant to Clause 11.6 occurs as a result of termination of the Panel Agreement pursuant to the provisions of clauses 19.1.4, 33.5 or 33.7 thereof.
- 12.3 On the termination of the Legal Services Contract for any reason, the Supplier shall, at the request of the Customer and at the Supplier's cost:
  - 12.3.1 immediately return to the Customer all Confidential Information and the Customer's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Ordered Panel Services;
  - 12.3.2 except where the retention of Customer's Personal Data is required by Law, promptly destroy all copies of the Customer Data and provide written confirmation to the Customer that the Customer Data has been destroyed.
  - 12.3.3 immediately deliver to the Customer in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Supplier by the Customer in connection with the Legal Services Contract provided to the Supplier;
  - 12.3.4 vacate, and procure that the Supplier's Personnel vacate, any premises of the Customer occupied for the purposes of providing the Ordered Panel Services;
  - 12.3.5 return to the Customer any sums prepaid in respect of the Ordered Panel Services not provided by the date of expiry or termination (howsoever arising); and
  - 12.3.6 promptly provide all information concerning the provision of the Ordered Panel Services which may reasonably be requested by the Customer for the purposes of properly understanding the manner in which the Ordered Panel Services have been provided or for the purpose of allowing the Customer or any replacement Supplier to conduct due diligence.
- 12.4 Without prejudice to any other right or remedy which the Customer may have, if any Ordered Panel Services are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Legal Services Contract then the Customer may (whether or not any part of the Ordered Panel Services have been delivered) do any one or more of the following:
  - 12.4.1 at the Customer's option, give the Supplier the opportunity (at the Supplier's expense) to remedy any failure in the performance of the Ordered Panel Services together with any damage resulting from such defect or failure (where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Legal Services Contract are fulfilled, in accordance with the Customer's instructions;
  - 12.4.2 without terminating the Legal Services Contract, itself supply or procure the supply of all or part of the Legal Services Contract 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 Legal Services Contract Services in accordance with the Legal Services Contract;

12.4.3 without terminating the whole of the Legal Services Contract, terminate the Legal Services Contract in respect of part of the Ordered Panel Services only and thereafter itself supply or procure a third party to supply such part of the Ordered Panel Services; and/or

12.4.4 charge the Supplier for, whereupon the Supplier shall on demand 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 Ordered Panel Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Ordered Panel Services.

12.5 The Parties shall comply with the exit management provisions set out in Schedule 2 (Exit Management).

12.6 Save as otherwise expressly provided in the Legal Services Contract:

12.6.1 termination or expiry of the Legal Services Contract shall be without prejudice to any rights, remedies or obligations accrued under the Legal Services Contract prior to termination or expiration and nothing in the Legal Services Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

12.6.2 termination of the Legal Services Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under the following Clauses: Clause 6 (Charges and Invoicing); Clause 7 (Liability and Insurance); Clause 8 (Intellectual Property Rights); Clause 9 (Protection of Information); Clause 14 (Prevention of Fraud and Bribery); Clause 22 (Contracts (Rights of Third Parties) Act); Clause 24.1 (Governing Law and Jurisdiction), Paragraph 4.3 (Confidentiality) of Section B of the Order Form, Paragraph 4.8 (Security) of Section B of the Order Form and, without limitation to the foregoing, any other provision or Contract Schedule of the Legal Services Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Legal Services Contract.

### **13. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

13.1 The Supplier shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Legal Services Contract in any way without Approval and shall take reasonable steps to ensure that the Supplier's Personnel and professional advisors comply with this Clause 13. Any such press announcements or publicity proposed under this Clause 13 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

13.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Legal Services Contract in accordance with any legal obligation upon the Customer including any examination of the Legal Services Contract by the Auditors.

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

#### **14. PREVENTION OF FRAUD AND BRIBERY**

- 14.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Commencement Date:
- 14.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
  - 14.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 14.2 The Supplier shall not during the Term:
- 14.2.1 commit a Prohibited Act; and/or
  - 14.2.2 do or suffer anything to be done which would cause the Customer or any of the Customer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 14.3 The Supplier shall during the Term:
- 14.3.1 establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
  - 14.3.2 keep appropriate records of its compliance with its obligations under Clause 14.3.1 and make such records available to the Customer on request;
  - 14.3.3 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing that the Supplier and all persons associated with it or its Sub-Contractors or other persons who are supplying the Ordered Panel Services in connection with this Legal Services Contract are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Customer may reasonably request; and
  - 14.3.4 have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.
- 14.4 The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of Clause 14.1, or has reason to believe that it has or any of the Supplier Personnel have:
- 14.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
  - 14.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
  - 14.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Legal Services Contract or otherwise suspects that any person or Party directly or indirectly connected with this Legal Services Contract has committed or attempted to commit a Prohibited Act.

14.5 If the Supplier makes a notification to the Customer pursuant to Clause 14.4, the Supplier shall respond promptly to the Customer's enquiries, co-operate with any investigation, and allow the Customer to audit any books, records and/or any other relevant documentation.

14.6 If the Supplier breaches Clause 14.3, the Customer may by notice:

14.6.1 require the Supplier to remove from performance of this Legal Services Contract any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

14.6.2 immediately terminate this Legal Services Contract.

14.7 Any notice served by the Customer under Clause 14.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Customer believes has committed the Prohibited Act and the action that the Customer has elected to take (including, where relevant, the date on which this Legal Services Contract shall terminate).

## **15. NON-DISCRIMINATION**

15.1 The Supplier shall:

15.1.1 perform its obligations under this Panel Agreement (including those in relation to the provision of the Panel Services) in accordance with:

15.1.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

15.1.1.2 other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law;

15.1.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation);

15.1.3 have in place plans and policies which shall:

15.1.3.1 promote a diverse and inclusive workforce and working environment;

15.1.3.2 seek to effectively prevent discrimination, bullying and harassment of underrepresented groups (including those with caring responsibilities); and

15.1.3.3 promote recruitment from the widest pool of individuals,

and these plans and policies shall be robustly monitored using management information;

15.1.4 ensure that all managers and those involved in recruitment undertake unconscious bias training; and

15.1.5 where possible, avoid the use of single sex recruitment panels.

## **16. ASSIGNMENT AND NOVATION**

16.1 The Supplier shall not assign, novate, sub-contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Legal Services Contract or any part of it without Approval.

16.2 The Customer may assign, novate or otherwise dispose of its rights and obligations under the Legal Services Contract or any part thereof to:

16.2.1 any other Panel Customer; or

16.2.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or

16.2.3 any private sector body which substantially performs the functions of the Customer,

and the Supplier shall, at the Customer's request, enter into a novation agreement in such form as the Customer shall reasonably specify in order to enable the Customer to exercise its rights pursuant to this Clause 16.2. Any change in the legal status of the Customer such that it ceases to be a Panel Customer shall not, subject to Clause 16.3, affect the validity of the Legal Services Contract. In such circumstances, the Legal Services Contract shall bind and inure to the benefit of any successor body to the Customer.

16.3 If the rights and obligations under the Legal Services Contract are assigned, novated or otherwise disposed of pursuant to Clause 16.2 to a body which is not a Panel Customer or a Central Government Body or if there is a change in the legal status of the Customer such that it ceases to be a Panel Customer or Central Government Body (in the remainder of this Clause any such body being referred to as a "Transferee"):

16.3.1 the rights of termination of the Customer in Clause 11 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and

16.3.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Legal Services Contract or any part thereof with the previous consent in writing of the Supplier, which shall not be unreasonably withheld or delayed.

16.4 The Customer may disclose to any Transferee any Confidential Information of the Supplier which relates to the performance of the Supplier's obligations under the Legal Services Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Supplier's obligations under the Legal Services Contract and for no other purposes and shall take reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

16.5 For the purposes of Clause 16.3 each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other Party the full benefit of the provisions of the Legal Services Contract.

## **17. WAIVER AND CUMULATIVE REMEDIES**

17.1 The rights and remedies under this Legal Services Contract may be waived only by notice in accordance with Clause 23 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Legal Services Contract or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy.

17.2 Unless otherwise provided in this Legal Services Contract, rights and remedies under this Legal Services Contract are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.

## **18. FURTHER ASSURANCES**

- 18.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of the Legal Services Contract.

## **19. SEVERABILITY**

- 19.1 If any provision of the Legal Services Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Legal Services Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Legal Services Contract shall not be affected.
- 19.2 In the event that any deemed deletion under Clause 17.1 is so fundamental as to prevent the accomplishment of the purpose of this Legal Services Contract or materially alters the balance of risks and rewards in this Legal Services Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Legal Services Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Legal Services Contract and, to the extent that is reasonably practicable, achieves the Parties' original commercial intention.

## **20. RELATIONSHIP OF THE PARTIES**

- 20.1 Except as expressly provided otherwise in this Legal Services Contract, nothing in this Legal Services Contract, nor any actions taken by the Parties pursuant to this Legal Services Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

## **21. ENTIRE AGREEMENT**

- 21.1 The Legal Services Contract, together with a completed, signed and dated Panel Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.
- 21.2 Each of the Parties acknowledges and agrees that in entering into the Legal Services Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Legal Services Contract.
- 21.3 The Supplier acknowledges and agrees that it has:
- 21.3.1 entered into the Legal Services Contract in reliance on its own due diligence alone; and
  - 21.3.2 received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Legal Services Contract.
- 21.4 Nothing in Clauses 21.1 and 21.2 shall operate to exclude liability for Fraud or fraudulent misrepresentation.

## **22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

- 22.1 A person who is not a party to the Legal Services Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 21.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 22.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Legal Services Contract or any one or more Clauses of it.
- 22.3 The Supplier agrees that the Customer may enforce any of the provisions of the Panel Agreement referred to in clause 45.1 as if they were terms of the Legal Services Contract (reading references in those provisions to Panel Customer and the Supplier as references to the Customer and the Supplier respectively).

## **23. NOTICES**

- 23.1 Except as otherwise expressly provided in the Legal Services Contract, no notice or other communication from one Party to the other shall have any validity under the Legal Services Contract unless given or made in writing by or on behalf of the Party sending the communication.
- 23.2 Any notice or other communication given or made by either Party to the other shall:
- 23.2.1 be given by letter (sent by hand, post or a recorded signed for delivery service), facsimile or electronic mail confirmed by letter; and
  - 23.2.2 unless the other Party acknowledges receipt of such communication at an earlier time, be deemed to have been given:
    - 23.2.2.1 if delivered personally, at the time of delivery;
    - 23.2.2.2 if sent by pre-paid post or a recorded signed for service two (2) Working Days after the day on which the letter was posted provided the relevant communication is not returned as undelivered;
    - 23.2.2.3 if sent by electronic mail, upon receipt of a read receipt; and
    - 23.2.2.4 if sent by facsimile, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 9:00 hours on the next Working Day and provided that at time of transmission of the facsimile an error-free transmission report is received by the Party sending the communication.
- 23.3 For the purposes of Clause 23.2, the address, email address and fax number of each Party shall be the address, email address and fax number specified in the Order Form.
- 23.4 Either Party may change its address for service by serving a notice in accordance with this Clause 23.

## **24. DISPUTES AND LAW**

- 24.1 Governing Law and Jurisdiction
- 24.1.1 The Legal Services Contract shall be governed by and interpreted in accordance with the Laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Legal Services Contract.
- 24.2 Dispute Resolution
- 24.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Legal Services Contract

within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of representative of each Party specified in the Order Form.

- 24.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 24.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 24.2.1, the Parties shall refer it to mediation pursuant to the procedure set out in Clause 24.2.5 unless:
  - 24.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
  - 24.2.3.2 the Supplier does not agree to mediation.
- 24.2.4 The obligations of the Parties under the Legal Services Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and the Supplier's Personnel shall comply fully with the requirements of the Legal Services Contract at all times.
- 24.2.5 The procedure for mediation is as follows:
  - 24.2.5.1 a neutral adviser or mediator (the "**Contract Mediator**") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Contract Mediator within ten (10) Working Days after a request by one Party to the other or if the Contract Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Contract Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the CEDR to appoint a Contract Mediator;
  - 24.2.5.2 the Parties shall within ten (10) Working Days of the appointment of the Contract Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;
  - 24.2.5.3 unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
  - 24.2.5.4 if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
  - 24.2.5.5 failing agreement, either of the Parties may invite the Contract Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
  - 24.2.5.6 if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Contract Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.