

SCHEDULE 7
CALL-OFF TERMS AND CONDITIONS

(FOR USE BETWEEN THE CUSTOMER AND THE SUPPLIER)

CONTENT

1. INTERPRETATION
 2. INITIAL CONTRACT PERIOD
 3. EXTENSION OF INITIAL CONTRACT PERIOD
 4. SUPPLIERS STATUS
 5. PROVISION OF MANAGEMENT INFORMATION
 6. CUSTOMER OBLIGATIONS
 7. ENTIRE AGREEMENT
 8. NOTICES
 9. MISTAKES IN INFORMATION
 10. CONFLICTS OF INTEREST
 11. PREVENTION OF FRAUD
- SUPPLY OF GOODS AND/OR SERVICES
12. PROVISION OF THE GOODS
 13. MANNER OF PROVIDING GOODS AND/OR SERVICES
 14. DELIVERY
 15. OWNERSHIP AND RISK
 16. NON-DELIVERY
 17. INSPECTION, REJECTION AND GUARANTEE
 18. LABELLING AND PACKAGING
 19. TRAINING
 20. CONTRACT PERFORMANCE
 21. KEY PERSONNEL
 22. SUPPLIERS STAFF
 23. INSPECTION OF PREMISES
 24. OFFERS OF EMPLOYMENT
- PAYMENT AND CONTRACT PRICE

- 25. CONTRACT PRICE
- 26. PAYMENT AND VAT
- 27. SET OFF
- 28. RECOVERY OF SUMS DUE
- 29. EURO

STATUORY OBLIGATIONS AND REGULATIONS

- 30. PREVENTION OF BRIBERY AND CORRUPTION
- 31. DISCRIMINATION
- 32. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
- 33. ENVIRONMENTAL REQUIREMENTS
- 34. HEALTH AND SAFETY

PROTECTION OF INFORMATION

- 35. DATA PROTECTION
- 36. FREEDOM OF INFORMATION ACT AND ENVIRONMENTAL INFORMATION REGULATIONS
- 37. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989
- 38. CONFIDENTIAL INFORMATION
- 39. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES
- 40. SECURITY
- 41. INTELLECTUAL PROPERTY RIGHTS
- 42. RECORDS AND AUDIT ACCESS

CONTROL OF CONTRACT

- 43. TRANSFER AND SUB CONTRACTING
- 44. WAIVER
- 45. VARIATION
- 46. SEVERABILITY
- 47. REMEDIES IN THE EVENT OF DEFECTIVE GOODS
- 48. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES
- 49. LIQUIDATED DAMAGES
- 50. CUMULATIVE REMEDIES
- 51. MONITORING OF CONTRACT PERFORMANCE

LIABILITIES

- 52. LIABILITY, INDEMNITY AND INSURANCE
- 53. PROFESSIONAL INDEMNITY (IF APPLICABLE)
- 54. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY
- 55. WARRANTIES AND REPRESENTATIONS

DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION

- 56. SUSPENSION
- 57. TERMINATION
- 58. BREAK
- 59. FRAMEWORK AGREEMENT
- 60. CONSEQUENCES OF EXPIRY OR TERMINATION
- 61. DISRUPTION
- 62. RECOVERY UPON TERMINATION
- 63. FORCE MAJEURE

DISPUTES AND LAW

- 64. GOVERNING LAW
- 65. TUPE
- 66. DISPUTE RESOLUTION

APPENDIX 1 – ORDER FORM

APPENDIX 2 – PRICES FOR GOODS AND/OR SERVICES

APPENDIX 3 – VARIATIONS AND/OR SUPPLEMENTS TO THE CALL OFF TERMS AND CONDITIONS

APPENDIX 4 - VARIATION FORM

1. INTERPRETATION

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:-

"Approval" and "Approved" means the written consent of the Customer not to be unreasonably withheld or delayed

"Auditor" means the National Audit Office or an auditor appointed by the Audit Commission as the context requires or such other auditor as may have been appointed in relation to the Customer

"Certificate of Conformity" means a certificate authorised by an Independent Testing House/Organisation evidencing that all Goods supplied meet the required minimum specification.

"Commencement Date" means the date set out in the Order Form

"Commercially Sensitive Information" means the Confidential Information listed in the Order Form comprised of information which is provided by the Supplier and designated as commercially sensitive information by the Customer for the period set out in that Order Form

"Confidential Information" means:-

(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA; and

(b) the Commercially Sensitive Information,

and does not include any information:-

(i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 38 (Confidential Information));

(ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(iv) is independently developed without

	access to the Confidential Information
"Contract"	means the written agreement between the Customer and the Supplier consisting of the Order Form and these clauses save that for the purposes of Clause Interpretation only, reference to Contract shall not include the Order Form
"Contract Period"	means the period from the Commencement Date to:- <ul style="list-style-type: none"> (a) the date of expiry set out in Clause 2 (Initial Contract Period); or (b) following an extension pursuant to Clause 3 (Extension of Initial Contract Period), the date of expiry of the extended period; or (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract
"Contract Price"	means the price (exclusive of any applicable VAT), payable to the Supplier by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Supplier of its obligations under the Contract
"Contracting Authority"	means YPO and any Contracting Authority for the purposes of the Public Contracts Regulations 2015
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular Authorities, persons, commissions or agencies from time to time carrying out functions on its behalf
"Customer"	means the customer(s) identified in the Order Form
"Data Controller"	has the meaning given to it in the Data Protection Legislation, as amended from time to time
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call Off Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data breach.
"Data Processor"	has the meaning given to it in the Data Protection Legislation, as amended from time to time

“Data Protection Legislation” or “DPA”

means the Data Protection Act 1998 as long as it remains in force, and when they come into force, the General Data Protection Regulations 2016 (Regulation (EU) 2016/679), the Data Protection Act 2018 as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

“Data Subject”

has the meaning given to it in the Data Protection Legislation, as amended from time to time;

“Data Subject Access Request”

means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

"Default"

means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other

"Deliverables"

means those deliverables listed in the Order Form

"EIR"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations

"Equipment"

means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under the Contract

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation

"Force Majeure"

means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-

- (a) any industrial action occurring within the Supplier's or any sub-contractor's

organisation; or

- (b) the failure by any sub-contractor to perform its obligations under any sub-contract (save where such failure is itself due to an event that would otherwise fall within this definition of Force Majeure);
- (c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

"Framework Agreement"

means the framework agreement for the provision Goods and/or Services between YPO and the Supplier

"Fraud"

means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud YPO, a Contracting Authority or the Customer

"Good Industry Practice"

means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or Contracting Authority engaged in a similar type of undertaking under the same or similar circumstances.

"Goods and/or Services"

means the Goods and/or Services to be supplied as specified in the Order Form

"Improvement Notice"

means a notice issued on the Supplier to improve minor breaches of the Framework Agreement, the Contract or the Order Form instructing the Supplier to improve or remedy any minor breaches in the provision of the Goods and/or Services

"Independent Testing Engineer"

means an independent engineer appointed by either YPO, the Customer or the Supplier to provide written advice as to whether or not Goods have been installed correctly. It is agreed that the Independent Testing Engineer's decision shall be final as to whether or not the Goods have been installed to the required standard/specification.

"Independent Testing House/Organisation"

means a testing house/organisation independent of any party that may be appointed for the testing of any Goods either in situ or at premises to be agreed under the terms of this Contract. It is agreed that the Independent Testing House/Organisation's decision shall be final as to whether or not the Goods meet the required standard/specification.

"Information"	has the meaning given under section 84 of the FOIA
"Intellectual Property Rights" and "IPRs"	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"Key Personnel"	means any individual identified in the Order Form as being key personnel
"Law"	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Authority of which the Supplier is bound to comply
"Material Default"	means any breach of clauses 10 (Conflict of Interest), 30 (Prevention of Bribery and Corruption), 34 (Health and Safety), 35 (Data Protection Act), 36 (Freedom of Information Act and Environmental Information Regulations), 37 (Official Secrets Act), 42 (Records and Audit Access), 43 (Transfer and Sub-Contracting), 55 (Warranties and Representations)
"Minor Breach"	means any breach of the Contract or the Order Form which may be either a partial breach or a breach not so severe as to warrant a Material Default.
"Month"	means calendar month
"Order"	means the order submitted by the Customer to the Supplier in accordance with the Framework Agreement
"Order Form"	means the order submitted to the Supplier by the Customer in accordance with the Framework Agreement which sets out the description of the Goods and/or Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards
"Parent Company"	means any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the

Supplier. The term "**Holding Company**" shall have the meaning ascribed in Section 1261 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

"Party"

means the Supplier or the Customer

"Personal Data"

has the meaning given to it in the Data Protection Legislation as amended from time to time;

"Pre-Existing IPR"

means any Intellectual Property Rights vested in or licensed to the Customer or the Supplier prior to or independent of the performance by the Customer or the Supplier of their obligations under the Contract and in respect of the Customer includes, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs

"Premises"

means the location where the Goods and/or Services are to be supplied, as set out in the Order Form

"Processing"

has the meaning given to it in the Data Protection Legislation but, for the purposes of this Call Off Contract, it shall include both manual and automatic processing and "**Process**" and "**Processed**" shall be interpreted accordingly;

"Prohibited Act"

means any of the following acts, as described in the Bribery Act 2010:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by YPO or another Contracting Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation creating offences concerning fraudulent acts;

- (iii) at common law concerning fraudulent acts relating to this Call-off Contract; or

defrauding, attempting to defraud or conspiring to defraud YPO or any other Contracting Authority.

"Project Specific IPRs"

means:-

- (a) IPRs in Services and/or Deliverables provided by the Supplier, (or by a third party on behalf of the Supplier) specifically for the purposes of the Contract including, any Deliverables, and all updates and amendments of these items and/or
- (b) IPRs arising as a result of the provision of the Services and/or Deliverables by the Suppliers under the Contract

"Property"

means the property, other than real property, issued or made available to the Supplier by the Customer in connection with the Contract

"Quality Standards"

means the quality standards published by BSI British Standards, the National Standards Authority of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent Authority (and their successor Authorities), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form

"Replacement Supplier"

means any third party Supplier appointed by the Customer, to supply substantially similar Goods and/or Services, and which the Customer receives in substitution for any of the Goods and/or Services following the expiry, termination or partial termination of the Contract

"Request for Information"

shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "Request" shall apply)

"Sub-Processor"

means any third Party appointed to Process Personal Data on behalf of the Supplier related to this Call Off Contract;

"Staff"

means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract

"Staff Vetting Procedures"

means the Customer's Procedures and departmental policies for the vetting of personnel whose role will involve the handling of information or

a sensitive of confidential nature or the handling of information which is subject to any relevant security measure including, the provisions of the Official Secrets Act 1911 to 1989.

“Supplier”	means the person, firm or company or organisation whom executes this Contract and includes any employee, agent, servant, sub-contractor or representative of the supplier or person employed by on or on behalf of the supplier to provide the Goods and/or Services.
“Supplier’s Contract Manager”	means the person appointed by the Supplier to manage the Contract
"Tender"	means the document(s) submitted by the Supplier to the Customer in response to the Customer's invitation to suppliers for formal offers to supply it with the Goods and/or Services
“Term”	means the period commencing on the Commencement Date and ending on 12 MONTHS + 6 MONTHS OPTIONAL EXTENSION – 12/02/2022 + 12/08/2022 or on earlier termination of this Call Off Contract
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales
“Year”	means a calendar year
“YPO”	means YPO, any employee, agent servant or representative of YPO or any other public authority or person employed on behalf of YPO

The interpretation and construction of the Contract shall be subject to the following provisions: -

- 1.1 Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2 Words importing the masculine include the feminine and the neuter;
- 1.3 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.4 References to any person shall include natural persons and partnerships, firms and other incorporated authorities and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.5 References to any statute, enactment, order, regulation or other similar instrument shall be construed as including any amendment by any subsequent enactment, modification, order, regulation or instrument;
- 1.6 Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract; and
- 1.7 Reference to a clause is a reference to the whole of that clause unless stated otherwise.

- 1.8 Reference to any employees of the Supplier shall be deemed to include the Supplier's agents and sub-contractors unless expressly stated otherwise.
- 1.9 "Time" shall be construed to be British Summer Time or Greenwich Mean Time or any other arrangement prevailing generally within England for the time being during the Contract Period.

2. INITIAL CONTRACT PERIOD

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 3 (Extension of Initial Contract Period).

3. EXTENSION OF INITIAL CONTRACT PERIOD

- 3.1 Subject to satisfactory performance of its obligations under the Contract by the Supplier during the Initial Contract Period, the Customer may, by giving written notice to the Supplier not less than three (3) Months prior to the last day of the Initial Contract Period, extend the Contract for any further period specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

4. SUPPLIERS STATUS

- 4.1 At all times during the Contract Period the Supplier shall be an independent Supplier and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

5. PROVISION OF MANAGEMENT INFORMATION

- 5.1 The Supplier shall submit Management Information to YPO in the form set out in Schedule 3 of the Framework Agreement, and to the Customer in such form as may be specified, throughout the Term on the last day of every Month and thereafter in respect of any Call-Off Contract entered into with any Contracting Authority.
- 5.2 YPO may share the Management Information provided by the Supplier with any Contracting Authority.
- 5.3 YPO may make changes to the Management Information which the Supplier is required to supply and shall give the Supplier at least one (1) Month's written notice of any changes. Any costs of providing information incurred as a result of these changes will be borne by the Supplier.

6. CUSTOMER OBLIGATIONS

- 6.1 Save as otherwise expressly provided, the obligations of the Customer under the Contract are obligations of the Customer in its capacity as a contracting counterparty and nothing in the 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 Contract (howsoever arising) on the part of the Customer to the Supplier.
- 6.2 The Customer will endeavour to have their Order annotated with the relevant Contract reference number, but this cannot be guaranteed on all Orders.
- 6.3 The Customer shall respond to any reasonable request for information from the Supplier.
- 6.4 The Customer will assign an authorised representative who will liaise with the Supplier's Contract Manager, to ensure both parties use reasonable endeavours to meet their contractual obligations.

- 6.5 The Customer shall ensure that all Orders are awarded in accordance with the provisions of the Framework Agreement and in accordance with the Public Contracts Regulations 2015 (and any subsequent re-enactment thereof).

7. ENTIRE AGREEMENT

- 7.1 Subject to the provisions of the Framework Agreement relating to Call-off Contracts, this Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt within it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 7.2 Each of the Parties acknowledge and agree that in entering into the 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 Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 7.3 Nothing in Clauses 7.1 and 7.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 7.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:-
- 7.4.1 the Order Form
 - 7.4.2 the clauses of the Contract; and
 - 7.4.3 any other document referred to in the clauses of the Contract
- 7.5 For the avoidance of doubt any terms that the Supplier may seek to impose and which in any way vary or contradict these Contract Order terms shall be excluded and not form part of the Order.
- 7.6 The Contract may be executed in counterparts each of which when executed and delivered shall constitute a duplicate original but all the counterparts together shall constitute the one agreement.

8. NOTICES

- 8.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 8.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), by facsimile transmission or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in Clause 8.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 8.3 For the purposes of Clause 8.2, the address of each Party shall be:
- 8.3.1 For the Customer: the address set out in the Order Form.
 - 8.3.2 For the Supplier: the address set out in the Framework Agreement.
- 8.4 Either Party may change its address for service by serving a notice in accordance with this clause.

9. MISTAKES IN INFORMATION

- 9.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

10. CONFLICTS OF INTEREST

- 10.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract.
- 10.2 The Supplier shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 10.1 above arises or is reasonably foreseeable.
- 10.3 A Supplier may be considered to have a conflict of interest, if the Supplier:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Supplier;
 - (b) Receives or has received any direct or indirect subsidy from another Supplier;
 - (c) Has the same legal representative as another Supplier;
 - (d) Has a relationship with another Supplier, directly or through common third parties, that puts it in a position to influence another Supplier regarding the provision of Goods and/or Services under this Contract;
 - (e) Has a close business or family relationship with an employee of a Customer involved in the tendering of this Contract.
- 10.4 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

11. PREVENTION OF FRAUD

- 11.1 The Supplier shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Supplier (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 11.2 The Supplier shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 11.3 If the Supplier or its Staff commits any Fraud in relation to this or any other contract with YPO, a Contracting Authority or the Customer, the Customer may:-
- 11.3.1 terminate the Contract with immediate effect by giving the Supplier notice in writing and recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or
 - 11.3.2 recover in full from the Supplier any other loss sustained by the Customer in consequence of any breach of this clause.

SUPPLY OF GOODS

12. PROVISION OF THE GOODS

- 12.1 The Supplier shall supply and, where relevant, install the Goods in accordance with the specification in the Framework Agreement, the Invitation to Tender, the Order Form and in accordance with any obligations implied by Section 12 or 14 of the Sale of Goods Act 1979.
- 12.2 If requested by the Customer the Supplier shall provide the Customer with samples of Goods for evaluation and Approval, at the Supplier's cost and expense.
- 12.3 If the Customer informs the Supplier in writing that the Customer reasonably believes that any part of the Goods do not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Supplier shall at its own expense re-schedule and replace or credit the costs of the Goods in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.
- 12.4 If requested by the Customer the Supplier shall submit products to an Independent Testing House/Organisation for testing at the Supplier's cost and expense. Where the Goods are too large to be sent to an Independent Testing House/Organisation or need to be tested in situ then the Supplier shall arrange for an Independent Testing Engineer to test the Goods and the installation of the Goods at their own cost and expense. Such requests for Testing should be acted upon immediately.
- 12.5 The Supplier shall ensure that the Goods are fully compatible with any of the Customer's equipment, to the extent specified in the Order Form.
- 12.6 Where new products are introduced into a range, these products are deemed to have been introduced on a sale or return basis with an agreed annual unit sales target. A review of the new products will be made at regular intervals from introduction and if the target has not been achieved then the Supplier will provide a full credit for any remaining stock which will be collected by the Supplier at their cost. Bespoke products are excluded from this clause.
- 12.7 The Supplier acknowledges that the Customer relies on the skill and judgment of the Supplier in the provision of the Goods and the performance of its obligations under the Contract.
- 12.8 The Supplier shall employ sufficient Staff to ensure that the Goods are provided at all times and in accordance with the Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of Staff is available to provide the Goods in accordance with the Contract during Staff holidays or absence through sickness or any other cause.
- 12.9 Timely supply of the Goods shall be of the essence of the Contract, including in relation to commencing the supply of the Goods within the time agreed or on a specified date.
- 12.10 During the life of the Framework Agreement Suppliers should ensure (where applicable) that ongoing testing of the Goods takes place to ensure that the Goods meet the relevant required standards. All ongoing testing will require a Certificate of Conformity which may be requested by YPO and other Contracting Authorities at any time during the Term. Where requested any deliveries of Orders placed during the term of the Framework Agreement shall be accompanied by a Certificate of Conformity.

13. MANNER OF PROVIDING GOODS AND/OR SERVICES

- 13.1 The Supplier shall at all times comply with the relevant legislation, codes of conduct and regulations governing the provision of Goods and/or Services.
- 13.2 Where applicable the Supplier shall maintain and shall ensure that any Staff utilised in the provision of the Goods and/or Services maintain accreditation and certification with the relevant authorised

body. To the extent that the standard of Goods and/or Services has not been specified in the Contract the Supplier shall agree the relevant standard of the Goods and/or Services with the Customer prior to the supply of the Goods and provision of the Services, and in any event the Supplier shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

13.3 The Supplier shall ensure that all Staff providing the Goods and/or Services shall do so with all due skill, care and diligence and shall possess such qualifications, certification, skills and experience as are necessary for the proper supply of the Goods and provision of the Services.

13.4 The Supplier shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation Authority.

14. DELIVERY

14.1 The Supplier shall deliver the Goods and/or Services at the time(s) and date(s) specified in the Order Form and within such lead times indicated in the Invitation to Tender.

14.2 Unless otherwise stated in the Order Form, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.

14.3 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.

14.4 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods and/or Services within the time specified in the Order Form, the Customer may release itself from any obligation to accept and pay for the Goods and/or Services and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.

14.5 The Customer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Customer elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by it as a result of such over-delivery (including the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Customer in writing.

14.6 The Customer shall be under no obligation to accept or pay for any Goods and/or Services supplied earlier than the date for delivery stated in the Order Form.

14.7 Unless expressly agreed to the contrary, the Customer shall not be obliged to accept delivery by instalments. If, however, the Customer does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Customer, entitle the Customer to terminate the whole of any unfulfilled part of the Contract without further liability to the Customer.

15. OWNERSHIP AND RISK

15.1 Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of acceptance of delivery. Ownership of the Goods, without prejudice to any other rights or remedies of the Customer pass to the Customer at the time of payment. Notwithstanding Title, the Customer shall be entitled to use or re-sell the Goods in the ordinary course of its business.

16. NON-DELIVERY

- 16.1 Where specified by the Customer on dispatch of any consignment of the Goods, the Supplier shall send the Customer an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Customer on the due date for delivery, the Customer shall, (provided that the Customer has been advised in writing of the dispatch of the Goods), within ten (10) Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier free of charge to deliver substitute Goods within the timescales specified by the Customer or terminate the Contract.

17. INSPECTION, REJECTION AND GUARANTEE

- 17.1 The Customer or its authorised representatives may inspect or test the Goods or installation of the Goods either when complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no Approval given during or after such inspection or test shall constitute a waiver by the Customer of any rights or remedies in respect of the Goods and the Customer reserves the right to reject the Goods in accordance with Clause 17.2
- 17.2 The Customer may by written notice to the Supplier reject any of the Goods which fail to conform to the Approved sample, do not have valid certification, or fail to meet the Contract requirements. Such notice shall be given within a reasonable time after delivery/installation to the Customer of such Goods. If the Customer rejects any of the Goods pursuant to this clause the Customer may (without prejudice to other rights and remedies) either:-
- 17.2.1 have such Goods promptly, and in any event within five (5) Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the Approved sample or with the Order Form and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
 - 17.2.2 treat the Contract as discharged by the Supplier's breach and obtain a refund from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Customer in obtaining other Goods in replacement provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.
- 17.3 The issue by the Customer of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods.
- 17.4 The Supplier hereby guarantees the Goods for the period from the date of delivery to the Customer or the end user to the date of either:-
- 17.4.1 twelve (12) Months thereafter;
 - 17.4.2 or such other guarantee period or warranty period notified by the Supplier in their response to the Invitation to Tender against faulty materials or workmanship;
- 17.5 If the Customer shall within such guarantee period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.
- 17.6 Any Goods rejected or returned by the Customer as described in Clause 17.2 shall be returned to the Supplier at the Suppliers risk and expense.

18. LABELLING AND PACKAGING

- 18.1 The Goods shall be packed and marked in a proper manner and in accordance with the Customer's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the order number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

19. TRAINING

- 19.1 Where indicated in the Order Form, the Contract Price shall include the cost of instruction of the Customer's personnel in the use and maintenance of the Goods and such instruction shall be in accordance with the requirements specified in the Order Form.

20. CONTRACT PERFORMANCE

- 20.1 In supplying the Goods and/or Services the Supplier shall perform its obligations under the Contract:

20.1.1 with appropriately experienced, accredited, qualified and trained Staff with all due care and attention;

20.1.2 in a timely manner; and

20.1.3 in compliance with applicable Laws, including any obligations implied by Section 12 and 14 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982.

- 20.2 The Supplier shall ensure that:

20.2.1 the Goods and/or Services conform in all respects with the specifications set out, in either the Order Form or where applicable the Framework Agreement or any sample Approved by the Customer;

20.2.2 the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with the requirements set out in the Order Form;

20.2.3 the Goods and/or Services conform in all respects with all applicable Laws; and

20.2.4 the Goods and/or Services are free from defects in design and workmanship and are fit for purpose for which such Goods and/or Services are ordinarily used and for any particular purpose made known to the Supplier by the Customer.

- 20.3 the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures.

21. KEY PERSONNEL

- 21.1 The Parties have agreed to the appointment of the Key Personnel. The Supplier shall and shall procure that any sub-contractor shall obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least one (1) Months' written notice must be provided by the Supplier of its intention to replace Key Personnel.

- 21.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Supplier or sub-contractor. The Customer may request to be present at the interviews of candidates for Key Personnel positions before they are appointed.

- 21.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Goods and/or Services to the Customer. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 21.4 The Customer may also require the Supplier to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of removing and/or replacing any Key Personnel.

22. SUPPLIER'S STAFF

- 22.1 The Customer may, by written notice to the Supplier, refuse to admit onto, or withdraw permission to remain on, the Premises:-
- 22.1.1 any member of the Staff; or
- 22.1.2 any person employed or engaged by any member of the Staff;
- whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 22.2 At the Customer's written request, the Supplier shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.
- 22.3 The Supplier's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 22.4 If the Supplier fails to comply with Clause 22.2 within two (2) Months of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 22.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Supplier has failed to comply with Clause 22.2 shall be final and conclusive.
- 22.6 The Supplier shall comply with the Staff Vetting Procedures in respect of all Supplier Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedure.

23. INSPECTION OF PREMISES

- 23.1 Save as the Customer may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

24. OFFERS OF EMPLOYMENT

- 24.1 For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Supplier shall employ or offer employment to any of the other Party's Staff who have been associated with the procurement and/or the contract management of the Goods and/or Services without that other Party's prior written consent.

PAYMENT AND CONTRACT PRICE

25. CONTRACT PRICE

- 25.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with Clause 26 (Payment and VAT).
- 25.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Supplier a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.
- 25.3 Unless otherwise expressly stated in the Framework Agreement, the Contract or the Order Form, no claim by the Supplier will be allowed for any addition to the Contract Price on the grounds of any matter relating to any document forming part of the Framework Contract, the Contract or the Order Form or any ambiguity or discrepancy therein on which an experienced Supplier could have satisfied himself by reference to the Customer or any other appropriate means.

26. PAYMENT AND VAT

- 26.1 The Customer shall pay all sums due to the Supplier in cleared funds within thirty (30) days of a valid undisputed invoice, submitted in accordance with the payment profile set out in the Order Form.
- 26.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods and/or Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 26.3 Where the Supplier enters into a sub-contract with a supplier for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a 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) days of a valid undisputed invoice, as defined by the sub-contract requirements.
- 26.4 The Supplier shall add VAT to the Contract Price at the prevailing rate as applicable.
- 26.5 The Supplier shall indemnify YPO and the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred which is levied, demanded or assessed on YPO and/or 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 Contract. Any amounts due under this Clause 26.5 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.
- 26.6 The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Contract under Clause 57 (Termination) for failure to pay undisputed sums of money.

27. SET OFF

- 27.1 The Supplier shall not be entitled to retain or set-off any amount due to the Customer by it but the Customer may retain or set-off any amount owed to it by the Supplier under this Contract which has fallen due and payable against any amount due to the Supplier under this Contract.
- 27.2 If the payment or deduction of any amount referred to in Clause 27.1 is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

28. RECOVERY OF SUMS DUE

- 28.1 Wherever under the 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 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 Contract or under any other agreement or contract with the Customer.

- 28.2 Any overpayment by either Party, whether of the Contract Price 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.
- 28.3 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.
- 28.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

29. EURO

- 29.1 Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Supplier free of charge to the Customer.
- 29.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 29.1 by the Supplier.

STATUTORY OBLIGATIONS AND REGULATIONS

30. PREVENTION OF BRIBERY AND CORRUPTION

- 30.1 The Supplier :
 - 30.1.1 has not, will not, and will procure that its Staff have not, and will not commit a Prohibited Act in connection with this Contract;
 - 30.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010
 - 30.1.3 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by YPO or the Customer or that a contract has been reached to that effect in connection with the securing or execution of this Contract, or any other contract with YPO or the Customer, excluding any arrangements of which full details have been disclosed in writing to YPO and/or the Customer prior to the execution of this Contract
- 30.2 The Supplier will upon request provide the Customer with all reasonable assistance to enable the Customer to perform any activity required for the purposes of complying with the Bribery Act, as may be required of the Customer by any relevant government or agency in any relevant jurisdiction. Should the Customer request such assistance the Customer shall pay the reasonable expenses of the Supplier arising as a result
- 30.3 The Supplier will provide to the Customer certification (if requested to do so), in writing in such form as may be provided by the Customer, to be signed by an officer of the Supplier, of the compliance with this Clause 30 by:
 - 30.3.1 the Supplier and
 - 30.3.2 all persons associated with the Supplier; and
 - 30.3.3 any other persons who are supplying Goods and/or Services in connection with this Contract.

- 30.4 Certification (if requested) will be provided by the Customer within fifteen (15) Working Days of the Commencement Date and annually thereafter for the Term. The Supplier will provide any evidence of compliance as may reasonably be requested by the Customer.
- 30.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to the Customer and enforced by the Supplier where appropriate.
- 30.6 Should the Supplier become aware of or suspect any breach of Clause 30.1 it will notify the Customer immediately.
- 30.7 Following notification under Clause 30.6 the Supplier will respond promptly and fully to the enquiries of the Customer, cooperate with any investigation undertaken by the Customer and allow the Customer to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 30.7 shall survive the expiry or termination of this Contract for a further period of six (6) years.
- 30.8 The Customer may recover in full from the Supplier and the Supplier shall indemnify the Customer in full from and against any other loss sustained by the Customer in consequence of any breach of this Clause 30 (Prevention of Bribery and Corruption), whether or not the Contract has been terminated.
- 30.9 The Customer may terminate this Contract and any Order immediately upon serving written notice if the Supplier or its Staff whether or not acting with the Supplier's knowledge, breaches Clause 30. Before exercising its right of termination under this Clause 30.9 the Customer will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 30.9.1 the Supplier or a senior officer of the Supplier; or
- 30.9.2 a member of Staff who is not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier or its Staff) means and shall be construed as acting;
- (a) with the authority of; or
- (b) with the actual knowledge; of any one or more of the Supplier's or Staff (as applicable) directors or partners or
- (c) in circumstances where any one or more of the directors (or partners) of the Supplier or its Staff (as applicable) ought reasonably to have had knowledge
- 30.10 Any notice of termination by the Customer under Clause 30.9 must specify:
- 30.10.1 The nature of the Prohibited Act; and
- 30.10.2 The identity of the person whom the Customer believes has committed the Prohibited Act; and
- 30.10.3 The date on which the Contract will terminate
- 30.11 In the event of any breach of Clause 30 the Customer is entitled to recover from the Supplier the value of any gift, consideration or commission.
- 30.12 Notwithstanding Clause 66 (Dispute Resolution) any dispute relating to:
- 30.12.1 the interpretation of this Clause 30 or
- 30.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by the Customer and its decision shall be final and conclusive

30.13 Termination under Clause 30.9 will:

30.13.1 Be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Customer under this Contract;

30.13.2 prohibit the Supplier from claiming any damages for early termination;

30.13.3 allow the Customer to recover from the Supplier the amount of any loss suffered by the Customer resulting from the termination; and

30.13.4 entitle the Customer to be indemnified by the Supplier for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Goods and/or Services from another party.

31. DISCRIMINATION

31.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

31.2 The Supplier shall take all reasonable steps to secure the observance of Clause 31.1 by all its Staff and servants, employees, or agents of the Supplier and all suppliers and Staff employed in the execution of the Contract.

32. THE CONTRACTS (RIGHTS OF THIRD PARTYS) ACT 1999

32.1 A person who is not a Party to the 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, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

33. ENVIRONMENTAL REQUIREMENTS

33.1 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

34. HEALTH AND SAFETY

34.1 The Supplier shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under the Contract.

34.2 While on the Premises, the Supplier shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

34.3 The Supplier shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

34.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.

- 34.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request

PROTECTION OF INFORMATION

35. DATA PROTECTION

- 35.1 Where any Personal Data is Processed in connection with the exercise of the Parties' rights and obligations under this Call Off Contract, the Parties acknowledge that the Customer is the Data Controller and that the Supplier is the Data Processor.

- 35.2 The Supplier shall:

- (a) Process the Personal Data only in accordance with instructions from the Customer to perform its obligations under this Call Off Contract;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction, or damage to the Personal Data;
- (c) not disclose or transfer the Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Goods and/or Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Customer (save where such disclosure or transfer is specifically authorised under this Call Off Contract)
- (d) take reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - (i) are aware of and comply with the Supplier's duties under the Call Off Contract;
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Call Off Contract; and
 - (iii) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the DPA);
- (e) notify the Customer immediately if it becomes aware of a Data Loss Event or if it receives:
 - (i) from a Data Subject (or third party on their behalf) a Data Subject Access Request (or purported Data Subject Access Request) a request to rectify, block or erase any Personal Data or any other request, complaint or communication relating to the Customer's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Customer with full cooperation and assistance (within the timescales reasonably required by them) in relation to any complaint, communication or request made (as referred to at Clause 35.2(e)) including by promptly providing:
 - (i) the Customer with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Customer to enable them to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and

- (iii) the Customer, on request by the Customer, with any Personal Data it holds in relation to a Data Subject; and
 - (g) if requested by the Customer, provide a written description of the measures that has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to Clause 35.2(e) and provide to the Customer copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.
- 35.3 The Supplier shall not Process or otherwise transfer any Personal Data in or to a Restricted Country. If, after the Call Off Commencement Date, the Supplier or any Sub-Contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country outside the European Economic Area, the following provisions shall apply:
- (a) the Supplier shall propose a Variation to the Customer which, if it is agreed by them, shall be dealt with in accordance with the Variation Procedure;
 - (b) the Supplier shall set out in its proposal to the Customer for a Variation details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in or to any Restricted Countries;
 - (ii) the Restricted Countries to which the Personal Data will be transferred and/or Processed; and
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Customer's compliance with the DPA;
 - (c) in providing and evaluating the Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Countries; and
 - (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Call Off Contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Countries either enters into:
 - (1) a direct data processing agreement with the Customer on such terms as may be required by them; or
 - (2) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Customer and the Sub-Contractor relating to the relevant Personal Data transfer, and
 - (iii) in each case which the Supplier acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering

adequate safeguards under the DPA) and technical and organisation measures which the Customer deems necessary for the purpose of protecting Personal Data.

35.3.2 The Supplier shall use its reasonable endeavours to assist the Customer to comply with any obligations under the DPA and shall not perform its obligations under this Call Off Contract in such a way as to cause the Customer to breach any of their obligations under the DPA to the extent the Supplier is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

35.3.3 The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

35.3.4 Before allowing any Sub-Processor to process any Personal Data related to this Call Off Contract, the Supplier shall:

- (a) notify the Customer in writing of the intended Sub-Processor and processing;
- (b) obtain the written consent of the Customer;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this Clause 35 such that they apply to the Sub-Processor; and provide the Customer with such information regarding the Sub-Processor as they may reasonably require.

35.3.5 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor.

36. FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION REGULATIONS

36.1 The Supplier acknowledges that the Customer is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Customer to enable them to comply with its Information disclosure obligations

36.2 The Supplier shall and shall procure that its Staff shall:

36.2.1 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;

36.2.2 provide the Customer with a copy of all Information in its possession or power 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

36.2.3 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 EIR.

36.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.

36.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Customer.

36.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 36.2) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the EIR to disclose information concerning the Supplier of the Goods and/or Services:

36.5.1 in certain circumstances without consulting the Supplier; or

- 36.5.2 following consultation with the Supplier and having taken their views into account;
- 36.5.3 provided always that where Clause 36.2 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 36.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 36.7 The Supplier acknowledges that the Commercially Sensitive Information (where supplied) is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 36.5

37. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989

- 37.1 The Supplier shall comply with and shall ensure that its Staff comply with, the provisions of:
 - 37.1.1 the Official Secrets Acts 1911 to 1989; and
 - 37.1.2 Section 182 of the Finance Act 1989
- 37.2 In the event that the Supplier or its Staff fail to comply with this Clause, the Customer reserves the right to terminate the Contract by giving notice in writing to the Supplier.

38. CONFIDENTIAL INFORMATION

- 38.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
 - 38.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 38.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 38.2 Clause 38.1 shall not apply to the extent that:
 - 38.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the EIR pursuant to Clause 36 (Freedom of Information);
 - 38.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 38.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 38.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
 - 38.2.5 it is independently developed without access to the other party's Confidential Information.
- 38.3 The Supplier may only disclose the Customer's Confidential Information to its Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 38.4 The Supplier shall not, and shall procure that its Staff do not, use any of the Customers Confidential Information received otherwise than for the purposes of this Contract

- 38.5 At the written request of the Customer, the Supplier shall procure that those members of the Staff identified in the Customer's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 38.6 Nothing in this Contract shall prevent the Customer from disclosing the Supplier's Confidential Information:
- 38.6.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 38.6.2 to any consultant, supplier or other person engaged by the Customer or any person conducting a gateway review;
 - 38.6.3 for the purpose of the examination and certification of the Customer's accounts;
 - 38.6.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 or any relevant Law making similar provision with regard to the Customer of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 38.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Suppliers Confidential Information is disclosed pursuant to Clause 38.6 is made aware of the Customer's obligations of confidentiality.
- 38.8 Nothing in this Clause 38 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the 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 Intellectual Property Rights.
- 38.9 The Supplier shall not without the prior written consent of the Customer divulge the existence of the Contract or any Order or disclose any information relating to or contained in the Contract to any person who is not engaged in the performance of the Contract.
- 38.10 In the event that the Supplier fails to comply with this Clause 38 the Customer reserves the right to terminate the Contract by notice in writing with immediate effect.
- 38.11 The provisions of this Clause 38 shall apply notwithstanding termination of the Contract.

39. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 39.1 The Supplier shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its Staff comply with this Clause 39.1.
- 39.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 39.3 The Suppliers shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

40. SECURITY

- 40.1 The Customer shall be responsible for maintaining the security of the premises in accordance with its standard security requirements. The Suppliers shall comply with all reasonable security requirements of the Customer while on the premises and shall ensure that all Staff comply with such requirements.

- 40.2 The Customer shall provide to the Supplier upon request copies of its written security procedures and shall afford the Supplier upon request an opportunity to inspect its physical security arrangements.

41. INTELLECTUAL PROPERTY RIGHTS

- 41.1 Save as granted elsewhere under the Contract, neither the Customer nor the Supplier shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 41.2 The Supplier shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Customer Pre-Existing IPR or the Project Specific IPRs to any third party.
- 41.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Customer. The Supplier hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 41.4 The assignment under Clause 41.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 41.5 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.
- 41.6 If requested to do so by the Customer, the Supplier shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the assignment under Clause 41.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 41.7 The Customer hereby grants to the Supplier a non-exclusive, revocable, non-assignable licence to use the Customer Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Supplier to supply the Services and/or supply the Deliverables.
- 41.8 Prior to using any third party Intellectual Property Rights, the Supplier shall obtain the Approval of the Customer. The Supplier shall provide the Customer with details of any third party licence required by the Supplier and/or the Customer in order for the Supplier to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Customer reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred
- 41.9 Where the Supplier is granted Approval by the Customer to use the third party rights, the Supplier shall procure that the owner of third party rights grants to the Customer a licence upon the terms informed to the Customer when seeking the Approval.
- 41.10 The Supplier shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Supplier of the Services and/or supply of the Deliverables and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**") except where the Claim arises from:
- 41.10.1 items or materials based upon designs supplied by the Customer; or
- 41.10.2 the use of data supplied by the Customer which is not required to be verified by the Supplier under any provision of the Contract.
- 41.11 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:

- 41.11.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 41.11.2 shall take due and proper account of the interests of the Customer; and
 - 41.11.3 shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).
- 41.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:-
- 41.12.1 modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
 - 41.12.2 procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer,
- 41.13 In the event that the Supplier is unable to comply with Clauses 41.12.1 or 41.12.2 within twenty (20) Working Days of receipt of the Supplier's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Supplier shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverable that is subject to the Claim.
- 41.14 In the event that a modification or substitution in accordance with Clause 41.12.1 is not possible so as to avoid the infringement, or the Supplier has been unable to procure a licence in accordance with Clause 41.12.2 the Customer shall be entitled to delete the relevant Service from the Contract and/or terminate the Contract with immediate effect.
- 41.15 This Clause 41 sets out the entire financial liability of the Supplier with regard to the infringement of any Intellectual Property Rights as a result of the provision of the Services and/or the provision of the Deliverables hereunder. This shall not affect the Supplier's financial liability for other Defaults or causes of action that may arise hereunder.

42. RECORDS AND AUDIT ACCESS

- 42.1 The Supplier shall keep and maintain until six (6) years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including, the Goods and/or Services supplied under it, the Call-Off Contracts entered into with YPO and each individual customer and the amounts paid by each Contracting Authority.
- 42.2 The Supplier shall keep the records and accounts referred to in Clause 42.1 above in accordance with good accountancy practice.
- 42.3 The Supplier shall on request provide such records and accounts (together with copies of the Supplier's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer, the Customer's representatives and/or the Auditor as may be required from time to time.
- 42.4 The Customer shall use reasonable endeavours to ensure that each audit does not unreasonably disrupt the Supplier or delay the provision or supply of Goods and/or Services save insofar as the Supplier accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

- 42.5 Subject to the Customer's rights of Confidential Information, the Supplier shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:-
- 42.5.1 all information requested by the Customer within the scope of the audit;
 - 42.5.2 reasonable access to sites controlled by the Supplier and to Equipment used in the provision of the Goods and/or Services; and
 - 42.5.3 access to the Staff.
- 42.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 42, unless the audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

CONTROL OF THE CONTRACT

43. TRANSFER AND SUB-CONTRACTING

- 43.1 The Supplier shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.
- 43.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are it's the actions and or omissions of its own Staff.
- 43.3 Where the Customer has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Customer, be sent by the Supplier to the Customer as soon as reasonably practicable.
- 43.4 Subject to Clause 43.6, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 43.4.1 any Contracting Authority; or
 - 43.4.2 any other Authority 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
 - 43.4.3 any private sector Authority which substantially performs the functions of the Customer, provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.
- 43.5 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to Clause 43.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor Authority to the Customer.
- 43.6 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 43.4 to a Authority which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such Authorities being referred to as "**the Transferee**"):
- 43.6.1 the rights of termination of the Customer in Clause 57 shall be available to the Supplier in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - 43.6.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Supplier.

- 43.7 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 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 Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a Confidential Information undertaking in relation to such Confidential Information.
- 43.8 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 Contract.

44. WAIVER

- 44.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- 44.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 8 (Notices).
- 44.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

45. VARIATION

- 45.1 Subject to the provisions of this Clause 45.1, the Customer may request a variation to Goods and/or Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".
- 45.2 The Customer may request a Variation by completing and sending the Call-Off Terms and Conditions Variation form attached at Appendix 4 ("**the Variation Form**") to the Supplier giving sufficient information for the Supplier to assess the extent of the Variation and any additional cost that may be incurred. The Supplier shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.
- 45.3 In the event that the Supplier is unable to provide the Variation to the Goods and/or Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:
- 45.3.1 agree to allow the Supplier to continue to perform their obligations under the Contract without the Variation; or
- 45.3.2 terminate the Contract with immediate effect, except where the Supplier has already delivered part or all of the Order in accordance with the Order Form or where the Supplier can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at Clause 66.
- 45.3.3 If the Parties agree the Variation and any variation in the Contract Price, the Supplier shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

46. SEVERABILITY

- 46.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force

and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

- 46.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

47. REMEDIES IN THE EVENT OF DEFECTIVE GOODS

- 47.1 Without prejudice to any other right or remedy which the Customer may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with any of the terms of the Contract, the Customer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Customer:

- 47.1.1 to rescind the Contract;
- 47.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- 47.1.3 at the Customer's option, to give the Supplier the opportunity at the Supplier's expense to either remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 47.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Customer;
- 47.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
- 47.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

48. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 48.1 Where a complaint is received about the standard of Goods or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Supplier's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 57 (Termination) of the Contract.

- 48.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Supplier, then the Customer may, without prejudice to its rights under Clause 57 (Termination), do any of the following:

- 48.2.1 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier will once more be able to supply all or such part of the Services in accordance with the Contract;
- 48.2.2 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;
- 48.2.3 terminate, in accordance with Clause 57 (Termination), the whole of the Contract; and/or
- 48.2.4 charge the Supplier for and the Supplier shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any

part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

48.3 If the Supplier fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Customer shall instruct the Supplier to remedy the failure and the Supplier shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days of the Customer's instructions or such other period of time as the Customer may direct.

48.4 In the event that the Supplier

48.4.1 fails to comply with Clause 48.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

48.4.2 persistently fails to comply with Clause 48.3 above

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

49. LIQUIDATED DAMAGES

49.1 If the Supplier fails to deliver the Goods and/or Services by the date(s) agreed/specified in the Order Form or (where an extension of time has been agreed by the Parties) the revised date for delivery (as the context requires, the "Agreed Delivery Date"):

49.1.1 the Supplier shall pay the Customer a sum by way of liquidated damages for each day between the Agreed Delivery Date and the date on which the Goods and/or Services are delivered equal to **Not Applicable (N/A)** of the Contract Price for the relevant Goods and/or Services, up to a maximum amount of **N/A** of the Contract Price for the relevant Goods and/or Services ("Liquidated Damages Threshold"). Subject to Clause 49.3, during the period in which liquidated damages are payable under this Clause 49.1 ("Liquidated Damages Period").

49.2 if the sums payable by the Supplier pursuant to Clause 49.1 meet or exceed the Liquidated Damages Threshold, the Customer shall be entitled to:

49.2.1 claim any remedy available to it (whether under the Contract or otherwise) for loss or damage incurred or suffered over and above the Liquidated Damages Threshold; and

49.2.2 without prejudice to Clause 49.1 the Customer shall be entitled to terminate the Contract with immediate effect by giving notice in writing to the Supplier.

49.3 The Supplier shall not be obliged to pay any sums pursuant to Clause 49.1 if and to the extent the failure by the Supplier to deliver the Goods and/or Services by the Agreed Delivery Date directly results from the Customer Default provided that the Supplier notifies the Customer immediately of such circumstances in sufficient detail to enable the Customer to remedy the situation. Except as set out in this Clause 49.2, no payment or concession to the Supplier by the Customer or other act or omission of the Customer shall in any way affect its rights to liquidated damages pursuant to Clause 49.1 or be deemed to be a waiver of the right of the Customer to recover any damages unless such waiver has been expressly made in writing by the Customer.

49.4 Notwithstanding Clause 49.1 the Supplier does not exclude responsibility for performing or re-performing the obligation or duty which gave rise to the relevant claim at its own cost in such manner as would (if possible) result in the same or substantively similar effect for the Customer, whether or not such performance or re-performance gives rise to additional costs for the Supplier and the cost of re-performance shall be borne solely by the Supplier and shall not be re-charged to the Customer whether by way of costs, reimbursement or otherwise.

49.5 Having given careful consideration to this matter, all monies payable by the Supplier under Clause 49.1 are considered by the Parties to be a genuine pre-estimate of the losses which the Customer will incur in relation to the Supplier's failure to deliver the Goods and/or Services by the Agreed Delivery Date it being impossible to quantify the actual aggregate losses sustainable by the Customer in terms of both loss of revenue as well as loss of reputation and prestige (the Parties acknowledging that hypothetically the losses sufferable by the Customer might be more or less than the agreed liquidated damages calculation); arrived at without any inequality of bargaining position as between the Parties as a true bargain between the Parties; fair, given the nature and circumstances of the Contract; neither excessive, extravagant, unconscionable or oppressive in all the circumstances; and as such these monies are payable as liquidated damages such that the Supplier waives absolutely any entitlement to challenge the enforceability in whole or in part of this Clause 49.4. The Parties' joint intention in agreeing a scheme of liquidated damages in such circumstances is to substantially reduce and, to the fullest extent possible in law, eliminate, the risk of a dispute and potential litigation in relation to such circumstances.

49.6 Each Party confirms that:

49.6.1 it has taken specific legal advice on the effect of this clause; and

49.6.2 based on such advice, it does not enter into the Contract in anticipation that, or with any expectation that this Clause will be unenforceable for any reason.

50. CUMULATIVE REMEDIES

50.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

51. MONITORING OF CONTRACT PERFORMANCE

51.1 The Supplier shall comply with the monitoring arrangements set out in the Order Form including, providing such data and information as the Supplier may be required to produce under the Contract.

LIABILITIES

52. LIABILITY, INDEMNITY AND INSURANCE

52.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

52.1.1 death or personal injury caused by its negligence or that of its Staff;

52.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff; and

52.1.3 any breach of any obligations implied by Section 12 of the Sale of Goods and/or Services Act 1979.

52.2 Subject to Clause 52.3 and Clause 52.4, the Supplier shall indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Goods and/or Services by the Supplier of its obligations under the Contract or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier. The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

- 52.3 Subject always to Clause 52.4 and Clause 52.5, the liability of either Party for defaults shall be subject to the following financial limits:
- 52.3.1 the aggregate liability of either Party for all defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed 100% of contract value; and
 - 52.3.2 the annual aggregate liability under the Contract of either Party for all defaults shall in no event exceed the greater of 100% of the contract value per cent of the Contract Price payable by the Customer to the Supplier in the year in which the liability arises.
- 52.4 Subject to Clause 52.1, in no event shall either Party be liable to the other for any:
- 52.4.1 loss of profits;
 - 52.4.2 loss of business;
 - 52.4.3 loss of revenue;
 - 52.4.4 loss of or damage to goodwill;
 - 52.4.5 loss of savings (whether anticipated or otherwise); and/or
 - 52.4.6 any indirect or consequential loss or damage
- 52.5 The Customer may, amongst other things, recover as a direct loss:
- 52.5.1 any additional operational and/or administrative expenses arising from the Supplier's default;
 - 52.5.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier's default; and
 - 52.5.3 the additional cost of procuring replacement Goods and/or Services for the remainder of the Contract Period following termination of the Contract as a result of a default by the Supplier.
- 52.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 52.7 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of risks which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) Years following the expiration or earlier termination of the Contract.
- 52.8 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 52.9 The Supplier shall hold public liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 52.10 The Supplier shall give the Customer, on request, copies of all insurance policies referred to in this clause or a brokers verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

52.11 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

52.12 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract. 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 referred to in Clause 52.

53. PROFESSIONAL INDEMNITY

53.1 The Supplier shall effect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Goods and/or Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this Clause and as a minimum, the Supplier shall ensure professional indemnity insurance held by the Supplier and by any agent, sub-contractor or consultant involved in the supply of the Goods and/or Services has a limit of indemnity of not less than the sum set out in the Invitation to Tender for the Framework Agreement and for each individual claim or such higher limit as the Customer may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

54. TAXATION, NATIONAL INSURANCE AND EMPLOYMENT LIABILITY

54.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment. The Supplier shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

55. WARRANTIES AND REPRESENTATIONS

55.1 The Supplier warrants and represents that:

55.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

55.1.2 the Contract is executed by a duly authorised representative of the Supplier;

55.1.3 in entering the Contract it has not committed any Fraud;

55.1.4 as at the Commencement Date, all information, statements and representations contained in the Tender response for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the 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;

55.1.5 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 Contract;

55.1.6 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 Contract;

- 55.1.7 no proceedings or other steps have been taken and not discharged (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;
- 55.1.8 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 Contract;
- 55.1.9 the Goods and/or Services shall be provided by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- 55.2 In the three (3) years prior to the date of the Contract:
 - 55.2.1 it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - 55.2.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
 - 55.2.3 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 Contract.

DEFAULT, DISRUPTION, SUSPENSION AND TERMINATION

56. SUSPENSION

- 56.1 Without prejudice to the Customer's right to terminate the Contract in Clause 57 below, the Customer may suspend the Supplier's appointment to supply Goods and/or Services by giving notice in writing to the Supplier. If the Customer provides notice to the Supplier in accordance with this Clause 56, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by the Customer in writing from time to time.
- 56.2 Should the Customer request product or installation testing for any reason whatsoever the Supplier will be suspended from the Framework (at no cost to YPO or the Customer) whilst this testing takes place. Any Orders already placed during this period shall be put on hold pending the outcome of the testing. For the avoidance of doubt, installation testing does not include acceptance testing and refers to any installation problems that may come to light following acceptance testing sign off.
- 56.3 A Supplier's Appointment may be suspended to allow YPO and/or a Customer the opportunity to investigate any incidents or complaints that may have arisen relating to the provision of Goods and/or Services under this Framework Agreement. Should this occur the Supplier will be suspended (at no cost to YPO or the Customer) whilst investigations take place. Any Orders already placed during this period shall be put on hold pending the outcome.
- 56.4 Following suspension of a Supplier's appointment under this Clause 56 the Supplier will be informed of the outcome as soon as possible and be advised whether or not they the Contract has been terminated with immediate effect.

57. TERMINATION

Termination - Insolvency and Change of Control

- 57.1 The Customer may terminate the Contract with immediate effect by giving notice in writing where the Supplier is a company and in respect of the Supplier:

- 57.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- 57.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- 57.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
- 57.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- 57.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- 57.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
- 57.1.7 being a "small company" within the meaning of Section 382 of the Companies Act 2006 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 57.1.8 any event similar to those listed in Clause 57.1 occurs under the law of any other jurisdiction.
- 57.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Supplier is an individual and:
- 57.2.1 an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors;
- 57.2.2 a petition is presented and not dismissed within fourteen (14) days or order made for the Supplier's bankruptcy;
- 57.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- 57.2.4 the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
- 57.2.5 a creditor or encumbrance attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within fourteen (14) days;
- 57.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 57.2.7 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
- 57.3 The Supplier shall notify the Customer immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

57.3.1 being notified that a Change of Control has occurred; or

57.3.2 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 an Approval was granted prior to the Change of Control.

57.4 The Customer may terminate the Contract with immediate effect by notice in writing where:

57.4.1 the Supplier are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Goods and/or Services;

57.4.2 the Supplier and its Staff employed in connection with the Goods and/or Services have failed to comply with the relevant Law governing the delivery of Goods and/or Services.

Termination on Default – Minor Breaches

57.5 Where the Supplier commits a Minor Breach of the Contract, the Customer shall be entitled to issue the Supplier with an "Improvement Notice". Such Improvement Notice shall state the nature of the Minor Breach and give the Supplier a minimum of ten (10) working days to remedy the Minor Breach.

57.6 If the Supplier commits three (3) Minor Breaches in a twelve (12) month rolling period this will be classed as a Material Default and the Contract may be terminated in accordance with Clause 57.7.3.

Termination on Default – Material Default

57.7 The Customer may terminate the Contract by serving written notice on the Supplier with effect from the date specified in such notice, where the Supplier commits a Material Default and:

57.7.1 the Supplier has not remedied the Material Default to the satisfaction of the Customer within twenty (20) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Material Default and requesting it to be remedied;

57.7.2 the Material Default is not, in the reasonable opinion of the Customer, capable of remedy;

57.7.3 if the Supplier has committed three (3) or more Minor Breaches within a twelve (12) month rolling period;

57.7.4 where any Contracting Authority terminates a Call-Off Contract awarded to the Supplier under this Contract as a consequence of a default by the Supplier;

57.7.5 where any Goods and/or Services have been tested by an Independent Testing House/Organisation or an Independent Testing Engineer and certifies/states that the Goods and Installation Services do not meet the minimum required standards/specification, the Framework Agreement, and any Orders or Contracts may be terminated and all outstanding Orders may be cancelled at no cost and without any liability to YPO or the Customer; or

57.7.6 where requested the Supplier fails to provide a Certificate of Conformity in relation to any of the Goods supplied under the Contract evidencing that the Goods supplied are certified to the minimum agreed specification.

57.8 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 ninety (90) Working Days of the date of such written notice, the Supplier may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply

where the failure to pay is due to the Customer exercising its rights under Clause 28 (Recovery of Sums Due).

57.9 If the Supplier has been suspended in accordance with Clause 56 and the outcome following such suspension shows the Supplier to be at fault, to have provided Goods and/or Services not to the required specification or that the Supplier has acted in breach of this Contract and/or the Framework Agreement

57.10 Any of the provisions in Regulation 73(1) of the Regulations apply

58. BREAK

58.1 The Customer shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Supplier

59. FRAMEWORK AGREEMENT

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

60. CONSEQUENCES OF EXPIRY OR TERMINATION

60.1 Where the Customer terminates the Contract under Clause 57 and then makes other arrangements for the supply of Goods and/or Services, the Customer may recover from the Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clause 57, 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.

60.2 Where the Customer terminates the Contract under Clause 58, the Customer shall indemnify the Supplier against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss to the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and valued list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under Clause 58.

60.3 The Customer shall not be liable under Clause 60.2 to pay any sum which:

60.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

60.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.

60.4 Save as otherwise expressly provided in the Contract:

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

60.4.2 Within thirty (30) Working Days of the date of termination or expiry of the Contract, the Supplier shall return to the Customer any data and Confidential Information belonging to the Customer that is in the Supplier's possession, power or control, either in its then current format or in a format nominated by Customer, together with all training manuals and other related documentation, and any other information and all copies thereof owned by the

Customer, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under the Contract, or such period as is necessary for such compliance.

- 60.4.3 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Supplier under Clauses 26 (Payment and VAT), 28 (Recovery of Sums Due), 30 (Prevention of Bribery and Corruption), 35 (Data Protection Act), 36 (Freedom of Information), 37 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 38 (Confidential Information), 41 (Intellectual Property Rights), 42 (Records and Audit Access), 50 (Cumulative Remedies), 52 (Liability, Indemnity and Insurance), 53 (Professional Indemnity), 60 (Consequences of Expiry or Termination), 62 (Recovery upon Termination) and 64 (Governing Law).

61. DISRUPTION

- 61.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other Supplier employed by the Customer.
- 61.2 The Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action is by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 61.3 In the event of industrial action by the Staff, the Supplier shall seek the Customer's Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.
- 61.4 If the Supplier's proposals referred to in Clause 61.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 61.5 If the Supplier is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be Approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Supplier as a direct result of such disruption.

62. RECOVERY UPON TERMINATION

- 62.1 On the termination of the Contract for any reason, the Supplier shall:
- 62.1.1 immediately return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPR's and the Project Specific IPR's 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 Services;
- 62.1.2 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Supplier under this Contract. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- 62.1.3 assist and co-operate with the Customer to ensure an orderly transition of the provision of the Goods and/or Services to the Replacement Supplier and/or the completion of any work in progress.
- 62.1.4 promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Supplier to conduct due diligence.

- 62.2 If the Supplier fails to comply with Clause 62.1 the Client may recover possession thereof and the Supplier grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.
- 62.3 Where the end of the Contract Period arises due to the Supplier's Default, the Supplier shall provide all assistance under Clause 62.1 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier shall take all reasonable steps to mitigate such costs.
- 62.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 41 shall automatically terminate without the need to serve notice.

63. FORCE MAJEURE

- 63.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 63.2 Any failure or delay by the Supplier in performing its obligations under the Contract which results from any failure or delay by an agent or sub-contractor shall be regarded as due to Force Majeure only if that agent or sub-contractor is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 63.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in Clause 63.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.
- 63.4 It is expressly agreed that any failure by the Supplier to perform or any delay by the Supplier in performing its obligations under the Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 63.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure hereunder.

DISPUTES AND LAW

64. GOVERNING LAW

- 64.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.
- 64.2 This Contract is binding on the Customer and its successors and assignees and the Supplier and the Supplier's successors and permitted assignees.

65. TUPE

- 65.1 During the period of six (6) Months preceding the expiry of this Contract or after the Customer has given notice to terminate the Contract or the Supplier stops trading, and within twenty (20) Working Days of being so requested by the Customer, the Supplier shall fully and accurately disclose to the

Customer, for the purposes of TUPE, all information relating to its Staff engaged in providing the Goods and/or Services under the Contract, in particular but not necessarily restricted to, the following:

- 65.1.1 the total number of Staff whose employment with the Supplier is liable to be terminated at the expiry of the Contract but for any operation of law;
 - 65.1.2 for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed Staff do not have to be given);
 - 65.1.3 full information about the other terms and conditions on which the affected Staff are employed (including their working arrangements), or about where that information can be found;
 - 65.1.4 details of pensions entitlements, if any; and
 - 65.1.5 job titles of the members of Staff affected and the qualifications required for each position.
- 65.2 The Supplier shall permit the Customer to use the information for the purposes of TUPE and of re-tendering. The Supplier will co-operate with the re-tendering of the Service by allowing the transferee to communicate with and meet the affected Staff and/or their representatives.
- 65.3 The Supplier agrees to indemnify the Customer fully and to hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Clause 65.
- 65.4 In the event that the information provided by the Supplier in accordance with Clause 65.1 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected Staff made subsequent to the original provision of such information or by reason of the Supplier becoming aware that the information originally given was inaccurate, the Supplier shall notify the Customer of the inaccuracies and provide the amended information.
- 65.5 The provisions of this Clause 65 shall apply during the continuance of the Contract and indefinitely after its termination.

66. DISPUTE RESOLUTION

- 66.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the 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 finance director (or equivalent) of each Party.
- 66.2 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.
- 66.3 If the dispute cannot be resolved by the Parties pursuant to Clause 66.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 66.5 unless:
- 66.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
 - 66.3.2 the Supplier does not agree to mediation.
- 66.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation (or arbitration) and the Supplier and the Staff shall comply fully with the requirements of the Contract at all times.

66.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

- 66.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within then (10) Working Days after a request by one Party to the other or if the 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 Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to specify relevant mediation Supplier to appoint a Mediator;
- 66.5.2 The Parties shall within ten (10) Working Days of the appointment of the 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 Advice, Conciliation and Arbitration Service (ACAS) to provide guidance on a suitable procedure;
- 66.5.3 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;
- 66.5.4 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;
- 66.5.5 Failing agreement, either of the Parties may invite the 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
- 66.5.6 If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the 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.

APPENDIX 1

ORDER FORM

FRAMEWORK AGREEMENT (INSERT REF: [REDACTED])

FROM

Contracting Authority/Customer	HM Revenue and Customs
Address	100 Parliament Street, London, SW1A 2BQ
Invoice Address	HMRC Invoice Processing Centre PO BOX 2092, J Spur, Barrington Road Worthing, BN12 9AN
Contact Ref:	Ref: Buyer Name: Commercial Specialist Phone: [REDACTED] e-mail [REDACTED]
Order Number	SR52796743 <i>To be quoted on all correspondence relating to this Order.</i>
Order Date	12/02/2021

TO

Supplier:	Marlborough Communications Ltd
Address:	[REDACTED] [REDACTED] [REDACTED]
Contact Details	Name: [REDACTED] Phone: [REDACTED] Email: [REDACTED]

1. TERM
<p>1.1 Effective Date</p> <p>1.1.1 This Contract shall commence on 12/02/2021.</p>
<p>1.2 Expiry Date</p> <p>1.2.1 This Contract shall expire on:</p> <p>1.2.1.1 12/02/2022 unless extended at the Customer's sole discretion for 6 months thereafter 12/08/2021.</p> <p>1.2.1.2 Completion in accordance with the terms of the Contract, of the Contract Services specified in this Appendix 1 whichever is the earlier, unless terminated earlier pursuant to this Contract.</p>

2. GOODS AND/OR SERVICES REQUIREMENTS
<p>2.1 Contract Goods and/or Services Required</p> <div data-bbox="151 992 1337 1361" style="background-color: black; height: 165px; margin-bottom: 10px;"></div> <div data-bbox="151 1422 1337 1608" style="background-color: black; height: 83px; margin-bottom: 10px;"></div> <div data-bbox="151 1668 1337 2027" style="background-color: black; height: 160px;"></div>

3. PERFORMANCE OF THE CONTRACT SERVICES AND DELIVERABLES

3.1 Implementation Plan and Milestones (including dates for completion)

*The customer requires an implementation plan to be either *(a) submitted with the suppliers bid submission; or *(b) submitted within 14 days of the commencement of the contract.

*Such milestones/key performance indicators below shall be applicable in addition to any milestones/key performance indicators mutually agreed between the parties and set out in the implementation plan.

***Once agreed the Implementation Plan will form part of the contractual documents and failure to meet the milestones/key performance indicators by the stipulated dates may be enforced as a breach of contract.**

***TIME IS OF THE ESSENCE FOR DELIVERY OF THE MILESTONES/KEY PERFORMANCE INDICATORS.**

(i) The Implementation Plan as at the Effective Date is set out below:

Milestone	Deliverables	Duration	Milestone Date	Customer Responsibilities (if applicable)
Confirm Shipping of Goods 7 weeks after receipt of order.	Confirm Shipping.	-	01/04/2021	Place order with the contract on 12/02/2021

(ii) If so required by the Customer, the Supplier shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Supplier shall ensure that each version of the Implementation Plan is subject to approval. The Supplier shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.

(iii) The Customer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.

(iv) The Supplier shall perform its obligations so as to achieve each Milestone by the Milestone Date.

(v) Changes to the Milestones shall only be made in accordance with the variation procedure and provided that the Supplier shall not attempt to postpone any of the Milestones using the variation procedure or otherwise (except in the event of a Customer default which affects the Supplier's ability to achieve a Milestone by the relevant Milestone Date).

3.2 Performance Monitoring

*Performance will be monitored by the milestones/key performance indicators set out in *(a) The Specification *(B) the Implementation Plan; or *(c) Point 3.1 above or any combination of the above.

4. CALL-OFF TERMS AND CONDITIONS

4.1 Customers **must state** whether they are requiring any amendments to the Call- Off Terms and Conditions and if so these must be included in Appendix 3.
HMRC's Mandatory Terms and Conditions will also apply to this call off contract these are as found in appendix 3.

1. SPECIAL TERMS AND CONDITIONS

5.3 DEADLINES: Please insert the date when the Goods, Services and/or Works should be provided (Delete if not applicable)
The Goods must be delivered to HMRC premises 7 weeks after the order was made. 01/04/2021

2. CONFIDENTIAL INFORMATION

6.1 The following information shall be deemed Commercially Sensitive Information or Confidential Information:

HMRC refer back to the NDA that completed by the supplier on 07/01/2021.

6.2 Duration that the information shall be deemed Commercially Sensitive Information or Confidential Information

Appendix 2:

PRICES FOR GOODS AND/OR SERVICES

AS DETAILED IN THE ATTACHED PRICING SCHEDULE

CHARGES FOR SERVICES

Contract Charges/ Daily Rates/ Fees

Charging mechanism, price and Day Rates	Fixed price, as detailed in the Pricing Schedule submitted by the Supplier in support of their bid.
Invoicing arrangements	On a receipt of a valid Invoice payment will be made to the Supplier within 30 days of the date of the invoice. If an invoice is disputed it will be returned to the Supplier with details on why the invoice cannot be processed for payment. Any changes to this standard requirement will need to be set out in the Specification
Performance-related payment	<i>n/a</i>
Travel and Subsistence	<i>N/a</i>

Pricing Schedule

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONFIDENTIAL - Not to be Reproduced

Appendix 3: (Variations and/or supplements to the Call-Off Terms)

Schedule 1 AUTHORITY'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'the Agreement' mean the attached Call-Off Contract between the Supplier and the Authority. References to 'the Authority' mean 'the Buyer' (the Commissioners for Her Majesty's Revenue and Customs).
- B. The Agreement incorporates the Authority's mandatory terms set out in this Schedule 1.
- C. In case of any ambiguity or conflict, the Authority's mandatory terms in this Schedule 1 will supersede any other terms in the Agreement.

1. Definitions

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Authority Data"	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Authority; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;
"Charges"	the charges for the Services as specified in [REDACTED]
"Connected Company"	means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;
"Control"	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
"Controller", "Processor", "Data Subject", "Data Protection Legislation"	take the meaning given in the GDPR; (a) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time; (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy;
"GDPR"	the General Data Protection Regulation (Regulation (EU) 2016/679);
"Key Subcontractor"	any Subcontractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the

Services; and/or

- (b) with a Subcontract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Call-Off Contract;

“Law”

any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“Personal Data”

has the meaning given in the GDPR;

“Purchase Order Number”

the Authority’s unique number relating to the supply of the Services;

“Services”

the services to be supplied by the Supplier to the Authority under the Agreement, including the provision of any Goods;

“Subcontract”

any contract or agreement (or proposed contract or agreement) between the Supplier (or a Subcontractor) and any third party whereby that third party agrees to provide to the Supplier (or the Subcontractor) all or any part of the Services, or facilities or services which are material for the provision of the Services, or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

“Subcontractor”

any third party with whom:

- (a) the Supplier enters into a Subcontract; or
(b) a third party under (a) above enters into a Subcontract, or the servants or agents of that third party;

“Supplier Personnel”

all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement;

“Supporting Documentation”

sufficient information in writing to enable the Authority to reasonably verify the accuracy of any invoice;

“Tax”

- (a) all forms of tax whether direct or indirect;
(b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
(c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and
(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,

in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;

“Tax Compliance” Non-

where an entity or person under consideration meets all 3 conditions contained in the relevant excerpt from HMRC’s “Test for Tax Non-Compliance”, as set out in Annex 1, where:

- (a) the “Economic Operator” means the Supplier or any agent, supplier or Subcontractor of the Supplier requested to be replaced pursuant to Clause 4.3; and
(b) any “Essential Subcontractor” means any Key Subcontractor;

“VAT”

value added tax as provided for in the Value Added Tax Act 1994.

2. Payment and Recovery of Sums Due

2.1 The Supplier shall invoice the Authority as specified in Clause Appendix 2 of the Agreement. Without prejudice to the generality of the invoicing procedure specified in the Agreement, the Supplier shall procure a Purchase Order Number from the Authority prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a Purchase Order Number:

2.1.1 the Supplier does so at its own risk; and

2.1.2 the Authority shall not be obliged to pay any invoice without a valid Purchase Order Number having been provided to the Supplier.

2.2 Each invoice and any Supporting Documentation required to be submitted in accordance with the invoicing procedure specified in the Agreement shall be submitted by the Supplier, as directed by the Authority from time to time via the Authority's electronic transaction system.

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

3. Warranties

3.1 The Supplier represents and warrants that:

3.1.1 in the three years prior to the 12/02/2021, it has been in full compliance with all applicable securities and Laws related to Tax in the United Kingdom and in the jurisdiction in which it is established;

3.1.2 it has notified the Authority in writing of any Tax Non-Compliance it is involved in; and

3.1.3 no proceedings or other steps have been taken and not discharged (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 and the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the 1/02/2021.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1.1, 3.1.2 and/or 3.1.3 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

3.3 In the event that the warranty given by the Supplier pursuant to Clause 3.1.2 is materially untrue, the Authority shall be entitled to terminate the Agreement pursuant to the Call-Off clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4. Promoting Tax Compliance

4.1 All amounts stated are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

4.2 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

4.3 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor of the Supplier prior to the provision of any material Services under the Agreement by that agent, supplier or Subcontractor. Upon a request by the

Authority, the Supplier shall not contract, or will cease to contract, with any agent, supplier or Subcontractor supplying Services under the Agreement.

4.4 If, at any point during the Term of the contract, there is Tax Non-Compliance, the Supplier shall:

4.4.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

4.4.2 promptly provide to the Authority:

(a) details of the steps which the Supplier is taking to resolve the Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Tax Non-Compliance as the Authority may reasonably require.

4.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 4.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

4.6 Upon the Authority's request, the Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

4.7 If the Supplier:

4.7.1 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with Clauses 4.2, 4.4.1 and/or 4.6 this may be a material breach of the Agreement;

4.7.2 fails to comply (or if the Authority receives information which demonstrates to it that the Supplier has failed to comply) with a reasonable request by the Authority that it must not contract, or must cease to contract, with any agent, supplier or Subcontractor of the Supplier as required by Clause 4.3 on the grounds that the agent, supplier or Subcontractor of the Supplier is involved in Tax Non-Compliance this shall be a material breach of the Agreement; and/or

4.7.3 fails to provide details of steps being taken and mitigating factors pursuant to Clause 4.4.2 which in the reasonable opinion of the Authority are acceptable this shall be a material breach of the Agreement;

and any such material breach shall allow the Authority to terminate the Agreement pursuant to the Call-Off Clause which provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

4.8 The Authority may internally share any information which it receives under Clauses 4.3 to 4.4 (inclusive) and 4.6, for the purpose of the collection and management of revenue for which the Authority is responsible.

5. Use of Off-shore Tax Structures

5.1 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of off-shore companies or other off-shore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Subcontractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Subcontract ("**Prohibited Transactions**"). Prohibited Transactions shall not include transactions made between the Supplier and its Connected

Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

- 5.2** The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.
- 5.3** In the event of a Prohibited Transaction being entered into in breach of Clause 5.1 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 5.1 and 5.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the escalation process in the Agreement.
- 5.4** Failure by the Supplier (or a Key Subcontractor) to comply with the obligations set out in Clauses 5.2 and 5.3 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

6 Data Protection and off-shoring

- 6.1** The Processor shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:

- 6.1.1** not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a)** the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (b)** the Data Subject has enforceable rights and effective legal remedies;
 - (c)** the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (d)** the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

- 6.2** Failure by the Processor to comply with the obligations set out in Clause 6.1 shall allow the Authority to terminate the Agreement pursuant to the Clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause or equivalent clause).

7 Commissioners for Revenue and Customs Act 2005 and related Legislation

- 7.1** The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 18 of the Commissioners for Revenue and Customs Act 2005 ('CRCA') to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 19 of CRCA.
- 7.2** The Supplier shall comply with, and shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data comply with the obligations set out in Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

- 7.3** The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel who will have access to, or are provided with, Authority Data in writing of the obligations upon Supplier Personnel set out in Clause 7.1 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 7.4** The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a Confidentiality Declaration, in the form provided at Annex 2. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.
- 7.5** In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 7, the Authority reserves the right to terminate the Agreement with immediate effect pursuant to the clause that provides the Authority the right to terminate the Agreement for Supplier fault (termination for Supplier cause).

CONFIDENTIAL - Not to be Reproduced in Whole or in Part

Annex 1
Excerpt from HMRC's "Test for Tax Non-Compliance"

Condition one (An in-scope entity or person)

1. There is a person or entity which is either: ("X")
 - 1) The Economic Operator or Essential Subcontractor (EOS)
 - 2) Part of the same Group of companies of EOS. An entity will be treated as within the same Group of EOS where that entities' financial statements would be required to be consolidated with those of EOS if prepared in accordance with *IFRS 10 Consolidated Financial Accounts*¹;
 - 3) Any director, shareholder or other person (P) which exercises control over EOS. 'Control' means P can secure, through holding of shares or powers under articles of association or other document that EOS's affairs are conducted in accordance with P's wishes.

Condition two (Arrangements involving evasion, abuse or tax avoidance)

2. X has been engaged in one or more of the following:
 - a. Fraudulent evasion²;
 - b. Conduct caught by the General Anti-Abuse Rule³;
 - c. Conduct caught by the Halifax Abuse principle⁴;
 - d. Entered into arrangements caught by a DOTAS or VADR scheme⁵;
 - e. Conduct caught by a recognised 'anti-avoidance rule'⁶ being a statutory provision which targets arrangements where either a main purpose, or an expected benefit, is to obtain a tax advantage or where the arrangement is not effected for commercial purposes. 'Targeted Anti-Avoidance Rules' (TAARs). It may be useful to confirm that the Diverted Profits Tax is a TAAR for these purposes;
 - f. Entered into an avoidance scheme identified by HMRC's published Spotlights list⁷;
 - g. Engaged in conduct which falls under rules in other jurisdictions which are equivalent or similar to (a) to (f) above.

Condition three (Arrangements are admitted, or subject to litigation/prosecution or identified in a published list (Spotlights))

3. X's activity in *Condition 2* is, where applicable, subject to dispute and/or litigation as follows:
 - i. In respect of (a), either X:
 1. Has accepted the terms of an offer made under a Contractual Disclosure Facility (CDF) pursuant to the Code of Practice 9 (COP9) procedure⁸; or,

¹ <https://www.iasplus.com/en/standards/ifrs/ifrs10>

² 'Fraudulent evasion' means any 'UK tax evasion offence' or 'UK tax evasion facilitation offence' as defined by section 52 of the Criminal Finances Act 2017 or a failure to prevent facilitation of tax evasion under section 45 of the same Act.

³ "General Anti-Abuse Rule" means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions

⁴ "Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others

⁵ A Disclosure of Tax Avoidance Scheme (DOTAS) or VAT Disclosure Regime (VADR) scheme caught by rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Section 19 and Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Section 19 and Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992.

⁶ The full definition of 'Anti-avoidance rule' can be found at Paragraph 25(1) of Schedule 18 to the Finance Act 2016 and Condition 2 (a) above shall be construed accordingly.

⁷ Targeted list of tax avoidance schemes that HMRC believes are being used to avoid paying tax due and which are listed on the Spotlight website: <https://www.gov.uk/government/collections/tax-avoidance-schemes-currently-in-the-spotlight>

2. Has been charged with an offence of fraudulent evasion.
- ii. In respect of (b) to (e), once X has commenced the statutory appeal process by filing a Notice of Appeal and the appeal process is ongoing including where the appeal is stayed or listed behind a lead case (either formally or informally). NB Judicial reviews are not part of the statutory appeal process and no supplier would be excluded merely because they are applying for judicial review of an HMRC or HMT decision relating to tax or national insurance.
 - iii. In respect of (b) to (e), during an HMRC enquiry, if it has been agreed between HMRC and X that there is a pause with the enquiry in order to await the outcome of related litigation.
 - iv. In respect of (f) this condition is satisfied without any further steps being taken.
 - v. In respect of (g) the foreign equivalent to each of the corresponding steps set out above in (i) to (iii).

1.1.1 For the avoidance of doubt, any reference in this Annex 1 to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation.

⁸ The Code of Practice 9 (COP9) is an investigation of fraud procedure, where X agrees to make a complete and accurate disclosure of all their deliberate and non-deliberate conduct that has led to irregularities in their tax affairs following which HMRC will not pursue a criminal investigation into the conduct disclosed.

Annex 2 Form
CONFIDENTIALITY DECLARATION

CONTRACT REFERENCE:

(‘the Agreement’)

DECLARATION:

I solemnly declare that:

1. I am aware that the duty of confidentiality imposed by section 18 of the Commissioners for Revenue and Customs Act 2005 applies to Authority Data (as defined in the Agreement) that has been or will be provided to me in accordance with the Agreement.
2. I understand and acknowledge that under Section 19 of the Commissioners for Revenue and Customs Act 2005 it may be a criminal offence to disclose any Authority Data provided to me.

SIGNED:	
FULL NAME:	
POSITION:	
COMPANY:	
DATE OF SIGNATURE:	

SIGNATORY PAGE:

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide to the Customer the Goods and/or Services specified in this Order Form (together with where completed and applicable, the mini-competition order (additional requirements) set out in this Order Form) incorporating the rights and obligations in the Call-Off Terms and Conditions set out in the Framework Agreement entered into by the Supplier and YPO on February 12th 2021.

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

For and on behalf of the Customer:

Name and Title	
Signature	
Date	

Appendix 4

CALL-OFF TERMS AND CONDITIONS VARIATION FORM

CALL-OFF TERMS AND CONDITIONS FOR GOODS AND/OR SERVICES

[Name of Lot]

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[] ("the Customer")

and

[] ("the Supplier")

1. The Order is varied as follows; [list details of the Variation]
2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Authorised to sign for and on behalf of the Customer

Signature

Date

Name in Capitals

Address

Authorised to sign for and on behalf of the Supplier

Signature

Date

Name in Capitals

Address

SCHEDULE 8

RETROSPECTIVE PAYMENTS CERTIFICATE

Tender Reference: [REDACTED]

Provision of: [REDACTED]

Commission:-

Rebate:-

Catalogue Contribution:-

Retrospective Payments will be payable to YPO at the quoted rate, on all business transacted under this Framework Agreement (referenced above)

All reports must be uploaded via the YPO's electronic Spend data portal http://suppliersinfo.ypo.co.uk/supplier_rebate/login.php in accordance with Clause 14.

Turnover figures are requested at the end of each month, Suppliers should submit the information no later than 14 days after the month end. If there is no spend for the preceding Month then a nil balance report should be uploaded. This is checked and verified before an invoice is raised.

Payments should be made no later than 28 days after date of invoice.

I agree that the above rebate will be paid to YPO.

For and on behalf of the Supplier (Director/Company Secretary)

SIGNATURE:

Name:

Date:

Company:

SCHEDULE 9

FRAMEWORK AGREEMENT SIGNATURE PAGE

SIGNED BY OR ON BEHALF OF THE PARTIES

For and on behalf of YPO

SIGNATURE: Name: Title: Date:	
---	--

For and on behalf of the Supplier.....

(Director/Company Secretary)

SIGNATURE: Name: Date:	
---	--

(Director)

SIGNATURE: Name: Date:	
---	--