

Executive Search, Selection and Executive Assessment Services

SERVICE ORDER – Executive Search Agency for 2 x S&I Roles

SERVICE ORDER

1. Client Information	
Purchase Order to be issued under separate cover	
Reference:	CQC PSO 104
Purchase / Limit Order No:	TBC
Commercial Contact	
Name:	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED].uk
Work Manager	
Name:	[REDACTED]
Contact Tel. No:	[REDACTED]
Contact Address:	Citygate Newcastle Upon Tyne NE1 4PA
Email:	[REDACTED]
Authorised Officer: (Sponsor/Budget Approver/Invoicing & timesheets)	

2. Contractor Information	
Vendor (Supplier):	Russell Reynolds Associates
Contact:	[REDACTED]
Contact Tel No:	[REDACTED] 2
Contact Address:	Almack House, 28 King Street, London, SW1Y 6QW
Email:	[REDACTED]
[REDACTED]	[REDACTED]
Consultant / Key Personnel:	[REDACTED]

3. Contractual Detail	
Contract Ref: Incl. Framework name and relevant section. .	CQC PSO 104
Special Terms and Conditions: e.g. overtime, expenses, travel & subsistence, notice period.	Please see Annex A Terms & Conditions

4. Project Information	
Project Title:	Executive Search Agency for Strategy & Intelligence Roles
Primary Location: (including full address)	151 Buckingham Palace Road, London, SW1W 9SZ
Start Date:	01 November 2016
End Date:	31 March 2017

5. Commercial Detail			
	Maximum No. of Days	Day Rate (£)	Total charge (£)
Executive Director	Full Time		
Director of Intelligence	Full Time		
Grand Total (£) exclusive of VAT:			£60,500

Monthly Invoices (unless states otherwise) relating to this Service Order should be sent to the Client Work Manager (provided at 1. above) by email in pdf format, unless otherwise indicated. The invoice should quote the Purchase Order Number (and CD Reference).

Invoices received without a Purchase Order number may be rejected.

Please note that Limit Orders should not span financial years and where necessary requisitioners should take the appropriate steps to ensure that separate Limit Orders are created.

For and on behalf of:	Russell Reynolds Associates	For and on behalf of:	Care Quality Commission
Signature:		Signature:	
Name:	Patrick Johnson	Name:	Ruth Bailey
Capacity:	Managing Director	Capacity:	Director of People
Date:	28 November 2016	Date:	3 February 2017

Specification of Requirements / Role Description / Deliverables

The section below should be used to provide clear details relating to the requirements for delivery of the project/assignment. It should include, where appropriate, milestones / key deliverables with dates, and proposals for skills transfer.

- The Scope of this piece of work is to invite proposals from companies of excellence in the executive search and selection market
- The successful company will be able to present an outstanding portfolio of successful appointments at executive level, and as a result, demonstrate a proven, cost effective and successful strategy for providing this service to CQC
- The successful company will be able to demonstrate a track record of success in sourcing successful appointments for leadership roles in the field of intelligence and analysis.

The Roles

The roles of Executive Director, Strategy & Intelligence and Director of Intelligence are critical in the delivery of the new CQC 5 year strategy “Shaping the Future” which was published in May.

“Shaping the Future” requires CQC to be a more intelligence driven organisation. This intelligence, together with knowledge from our inspections and data from our partners, will enable CQC to better monitor and report on the quality of services. We will build a new Insight model that monitors quality. We will inspect all new services, but then focus our follow-up inspections on areas where our insight suggests risk is greatest or quality is improving.

The context is that CQC will have less money so critical that we are able to use intelligence to better direct inspection at those services where there is greatest risk to quality and safety. These roles will provide the leadership, expertise and focus required to ensure the policy ambitions of the strategy are turned into practical delivery.

The successful candidates

Executive Director of Strategy and Intelligence

The successful candidate will have proven skill in gathering information and recognition of the key issues which impact on the future of health and care regulation and ensuring the translation of this information into evidence based outcomes. They will have a strong track record of success in contributing to the development and implementation of information and knowledge management strategies to generate accurate and reliable information on the quality of service provision. The ideal candidate will also have experience of working within a democratic political context to advise politicians and their advisors.

Director of Intelligence

The successful candidate will have a thorough knowledge of applying rigorous evidence-based performance and risk analysis, strong analytical skills, and will be experienced in the development of appropriate analytical and modelling tools. A strong understanding of data science and new technologies for quantitative and qualitative data collections and analysis will also be required. Extensive experience in managing analytical teams to deliver reports, publications, special reviews and studies is essential as is the ability to

think and act strategically in developing practical, innovative and creative solutions to complex service-regulation issues.

The Requirement

CQC require the service of an executive search agency with the capability to deliver the successful appointment of suitably experienced candidates with a strong track record. There are likely to be few candidates with the right track record of success. This will require an effective search strategy across the public and private sectors to identify and attract potential applicants who may not be actively seeking a new role.

CQC will have already tested the market through national advertising for both roles so further advertising will not be required. Candidates details secured through CQC advertising will be passed to the successful firm to progress alongside search candidates.

Applications

We expect to be presented with a strong case outlining: search strategy for each role (i) Executive Director, Strategy & Intelligence and (ii) Director of Intelligence; portfolio of similar projects undertaken in the last 24 months; CVs of individual consultants assigned to the assignment; proposed selection process and methods of selection including but not restricted to:

- Search strategy
- Candidate handling
- Attraction of a diverse range of candidates
- Assessment and testing
- The final panel interview will be undertaken by CQC

Tenders should also specify arrangements for project and risk management and provide evidence of their Equality and Diversity policies and how this would be applied in undertaking the contract services.

Annex A – Terms & Conditions

TERMS AND CONDITIONS

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A GENERAL PROVISIONS

A1 Definitions and Interpretation

Unless the context otherwise requires the following terms shall have the meanings given to them below:

“Affected Party” means the Party seeking to claim relief in respect of a Force Majeure Event.

“Affiliate” means 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.

“Approval” and “Approved” means the prior written consent of the Authority.

“Authorised Representative” means the Authority representative named in the CCN as authorised to approve agreed Variations.

“Authority Data” means:

- (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Contractor by or on behalf of the Authority; or (ii) which the Contractor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Authority is the Data Controller.

“Authority Premises” means any premises owned, occupied or controlled by the Authority or any other Crown Body which are made available for use by the Contractor or its Sub-Contractors for provision of the Services.

“Authority Software” means software which is owned by or licensed to the Authority (other than under or pursuant to the Contract) and which is or will be used by the Contractor for the purposes of providing the Services.

“Authority System” means the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Contractor in connection with the Contract which is owned by or licensed to the Authority by a third party and which interfaces with the Contractor System or which is necessary for the Authority to receive the Services.

“BPSS” means the HMG Baseline Personnel Security Standard for Government employees.

DN: Please discuss this with commissioners of the service. It may be that BPSS is required or that the contract can refer to the Authority’s Staff Vetting Procedures (see below).

“Breach of Security” means any incident that result in unauthorised access of data, applications, services, networks and/or devices by bypassing their underlying security mechanisms.

“CCN” means a change control notice in the form set out in Schedule 4.

“Commencement Date” means the date set out in paragraph 1.2 of the Form of Contract.

“Commercially Sensitive Information” means the information listed in Schedule 5:

(a) Which is provided by the Contractor to the Authority in confidence for the period set out in Schedule 5; and/or

(b) That constitutes a trade secret.

“Confidential Information” means 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 or trade secrets or Intellectual Property Rights of either Party and all personal data and sensitive personal data within the meaning of the DPA. Confidential Information shall not include information which:

(a) was public knowledge at the time of disclosure otherwise than by breach of clause E4;

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

(c) Is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

(d) Is independently developed without access to the Confidential Information.

“Contract” has the meaning given in paragraph 1.1 of the Form of Contract.

“Contract Period” means the period from the Commencement Date to:

(a) The End Date; or

(b) Following an Extension, the end date of the Extension

or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

“Contracting Authority” means any contracting authority (other than the Authority) as defined in regulation 2 of the Regulations.

“Contractor Software” means software which is proprietary to the Contractor, including software which is or will be used by the Contractor for the purposes of providing the Services and which is set out in Schedule 7.

“Contractor System” means the information and communications technology system used by the Contractor in performing the Services including the Software, the Contractor Equipment and related cabling (but excluding the Authority System).

“Control” means that a person possesses, directly or indirectly, 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.

“Crown” means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies and “Crown Body” is an emanation of the foregoing.

“Data Controller, Data Processor and Personal Data” shall have the same meaning as set out in the Data Protection Act 1998.

“Disaster” means an event defined as a disaster in the Business Continuity and Disaster Recovery Plan.

“Default” means any breach of the obligations of the relevant Party (including abandonment of the Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DOTAS” means the Disclosure of Tax Avoidance Schemes rules which require a promotor of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to national insurance contributions by the National Insurance (Application of Part 7 of the Finance Act 2004) regulations 2012, SI 2012/1868 made under section 132A of the Social Security Administration Act 1992.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under that 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.

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Employment Liabilities” means any Loss including those incurred by or attributed to the Authority (which shall include any incurred as a result of an indemnity or warranty given, or to be given, by the Authority to a Replacement Contractor or sub-contractor).

“End Date” means the date set out in paragraph 1.2 of the Form of Contract.

“Equipment” means the Contractor’s equipment, consumables, plant, materials and such other items supplied and used by the Contractor in the delivery of the Services.

“Extension” has the meaning given in paragraph 1.3 of the Form of Contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that 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 Event” means any event outside the reasonable control of either Party affecting its performance of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, for flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Contractor or the Staff or any other failure in the Contractor’s supply chain.

“Form of Contract” means Section 1 of the Contract.

“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;

“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 body engaged in a similar type of undertaking under the same or similar circumstances.

“Halifax Abuse Principle” means the principle explained in the CJEU Case C-255/02 Halifax and others.

“HMRC” means HM Revenue & Customs.

“ICT Environment” means the Authority System and the Contractor System.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the End Date.

“Intellectual Property Rights” means patents, utility models, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing,

copyright, database rights, domain names, plant variety rights, Know-How, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“ITEPA” means the Income Tax (Earnings and Pensions) Act 2003.

“Key Personnel” mean those persons named in the Specification as key personnel.

“Key Performance Indicators” means the key performance indicators listed in the Schedule 11 and a Key Performance Indicator (“KPI”) shall mean any one of them;

“Know-How” means all information not in the public domain held in any form (including without limitation that comprised in or derived from drawings, data formulae, patterns, specifications, notes, samples, chemical compounds, biological materials, computer software, component lists, instructions, manuals, brochures, catalogues and process descriptions and scientific approaches and methods).

“Law” means law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body with which the Contractor is bound to comply.

“Loss” means any losses, costs, charges, expenses, interest, fees (including legal fees), payments, demands, liabilities, claims, proceedings, actions, penalties, charges, fines, damages, destruction, adverse judgments, orders or other sanctions and the term “Losses” shall be construed accordingly.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Material Breach” means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Authority would otherwise derive from:

- (a) a substantial portion of the Contract; or
- (b) any of the obligations set out in clauses A6, D1, E1, E2, E3, E4, E7, E8 or E10.

DN: Ensure the list of clauses correlates with the body of the Contract

“Month” means calendar month.

“NICs” means National Insurance Contributions.

“Occasion of Tax Non-Compliance” means:

(a) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

i) a relevant Tax Authority successfully challenging the Contractor under the General Anti-Abuse Rule or the Halifax Abuse principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

ii) the failure of an avoidance scheme which the Contractor was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or

(b) any tax return of the Contractor submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Commencement Date or to a civil penalty for fraud or evasion.

“Pre-Existing Intellectual Property Rights” shall mean any Intellectual Property Rights vested in or licensed to the Authority or the Contractor prior to or independently of the performance by the Authority of the Contractor of their obligations under this Contract.

“Premises” means the location where the Services are to be supplied as set out in the Specification. DN: Please consider whether there are more than one location. If so, they must be clearly identified and listed in the Specification and ITT accordingly.

“Price” means the price (excluding any applicable VAT) payable to the Contractor by the Authority under the Contract, as set out in Schedule 3 for the full and proper performance by the Contractor of its obligations under the Contract.

“Pricing Schedule” means Schedule 3 containing details of the Price.

“Prohibited Act” means:

(a) to directly or indirectly offer, promise or give any person working for or engaged by the 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 the Contract;

(c) an offence:

i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

ii) under legislation or common law concerning fraudulent acts; or

iii) the defrauding, attempting to defraud or conspiring to defraud the Authority;

(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct has been carried out in the UK.

“Property” means the property, other than real property, issued or made available to the Contractor by the Authority in connection with the Contract.

“Purchase Order” means the document in which the Authority specifies the Services which are to be supplied by the Contractor under the Contract.

“Quality Standards” means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in Schedule 1.

“Receipt” means the physical or electronic arrival of the invoice at the address specified in clause A4.4 or at any other address given by the Authority to the Contractor for the submission of invoices from time to time.

“Regulations” means the Public Contract Regulations 2015 (SI 2015/102).

“Regulatory Body” means a government department and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority.

"Relevant Conviction" means a conviction that is relevant to the nature of the Services or as listed by the Authority and/or relevant to the work of the Authority.

“Relevant Requirements” means all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010.

“Relevant Tax Authority” means HMRC or, if applicable, a tax authority in the jurisdiction in which the Contractor is established.

“Replacement Contractor” means any third party supplier appointed by the Authority to supply any services which are substantially similar to any of the Services in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Request for Information” means a request for information under the FOIA or the EIR.

“Returning Employees” means those persons agreed by the Parties to be employed by the Contractor (and/or any Sub-Contractor) wholly or mainly in the supply of the Services immediately before the end of the Contract Period.

“Security Policy” means ISO/IEC 27001 Information Security Management.

DN: If a low value contract consider whether to define this as ‘means the Authority’s Information Security and Governance Policy appended to Schedule 8’ instead of ‘ISO/IEC 27001’.

“Services” means the services set out in Schedule 1 including any modified or alternative services.

“Specification” means the description of the Services to be supplied under the Contract as set out in Schedule 1 including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“SSCBA” means the Social Security Contributions and Benefits Act 1992.

“Staff” means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority;

DN: Please discuss this with commissioners of the service. It may be that BPSS is required or that the contract can refer to the Authority’s Staff Vetting Procedure (see above).

“Sub-Contractor” means a third party directly or indirectly contracted to the Contractor (irrespective of whether such person is an agent or company within the same group of companies as the Contractor) whose services are used by the Contractor (either directly or indirectly) in connection with the provision of the Services, and “Sub-Contract” shall be construed accordingly.

“Tender” means the Authority’s invitation to supply to contractors consisting of the Specification, [the terms of the Framework Agreement], these clauses and form of Letter of Engagement.

“Tender Response” means the document submitted by the Contractor to the Authority in response to the Authority’s invitation to suppliers for formal offers to supply the Services appended hereto in Schedule 2.

“Termination Notice” means a written notice delivered by the Authority to the Contractor indicating that it intends to terminate this Contract in accordance with its terms.

“TFEU” means the Treaty on the Functioning of the European Union.

“Third Party IP Claim” has the meaning given to it in clause E8.7 (Intellectual Property Rights).

“Third Party Software” means software which is proprietary to any third party which is or will be used by the Contractor to provide the Services including the software and which is specified as such in Schedule 7.

“Treaties” means the Treaty on European Union and the TFEU.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

“TUPE Information” means the information set out in clause B17.1.

“Valid Invoice” means an invoice containing the information set out in clause C2.5.

“Variation” means a variation to the Specification, the Price or any of the terms or conditions of the Contract.

“VAT” means value added tax charged or regulated in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

In the Contract, unless the context implies otherwise:

- (a) the singular includes the plural and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central Government body;
- (e) the words “other”, “in particular”, “for example”, “including” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- (f) headings are included for ease of reference only and shall not affect the interpretation or construction of the Contract;
- (g) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time; and
- (h) references to the Contract are references to the Contract as amended from time to time.

A2 The Authority's Obligations

A2.1 Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority 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 Authority in any other capacity, and the exercise by the Authority of its duties and powers in any other capacity shall not lead to any liability (howsoever arising) on the part of the Authority to the Contractor.

A3 Contractor's Status

A3.1 The Contractor shall be an independent contractor 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.

A3.2 The Contractor shall not (and shall ensure that any other person engaged in relation to the Contract shall not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent or employee of the Authority.

A4 Notices and Communications

A4.1 Subject to clause A4.3, where the Contract states that a notice or communication between the Parties must be "written" or "in writing" it is not valid unless it is made by letter (sent by hand, first class post, recorded delivery or special delivery) or by email.

A4.2 If it is not returned as undelivered a notice served:

(a) in a letter is deemed to have been received 2 Working Days after the day it was sent;
and

(b) in an email is deemed to have been received 4 hours after the time it was sent provided it was sent on a Working Day

or when the other Party acknowledges receipt, whichever is the earlier.

A4.3 Notices pursuant to clauses G3 (Force Majeure), I2 (Dispute Resolution) or to terminate the Contract or any part of the Services are valid only if served in a letter by hand, recorded delivery or special delivery.

A5 Mistakes in Information

A5.1 The Contractor is responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the Services and shall pay the Authority any extra costs occasioned by any discrepancies, errors or omissions therein.

A6 Conflicts of Interest

A6.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will notify the Authority without delay giving full particulars of any such conflict of interest which may arise.

A6.2 The Authority may terminate the Contract immediately by notice and/or take or require the Contractor to take such other steps it deems necessary if, in the Authority's reasonable opinion, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority pursuant to this clause A6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

B. THE SERVICES

B1 Specification

B1.1 In consideration of the Contractor supplying the Services the Contractor shall be paid the Price.

B1.2 The Contractor shall comply fully with its obligations set out in the Specification and Tender (to include, without limitation, the KPIs and all obligations in relation to the quality, performance and provision of the Services),

B2 Provision and Removal of Equipment

B2.1 The Contractor shall provide all the Equipment and resource necessary for the supply of the Services.

B2.2 The Contractor shall not deliver any Equipment to nor begin any work on the Premises without obtaining Approval.

B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Authority shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Authority's Default. The Contractor shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost.

B2.4 Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Contractor.

B2.5 If the cost of any Equipment is reimbursed to the Contractor such Equipment shall be the property of the Authority and shall on request be delivered to the Authority as directed by the

Authority. The Contractor will keep a full and accurate inventory of such Equipment and will deliver that inventory to the Authority on request and on completion of the Services.

B2.6 The Contractor shall maintain all Equipment in a safe, serviceable and clean condition.

B2.7 The Contractor shall, at the Authority's written request, at its own expense and as soon as reasonably practicable:

(a) remove immediately from the Premises Equipment which is, in the Authority's opinion, hazardous, noxious or not supplied in accordance with the Contract; and

(b) replace such item with a suitable substitute item of Equipment.

B2.8 Within 20 Working Days following the end of the Contract Period, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor shall make good any damage to those Premises and any fixtures and fitting in the Premises which is caused by the Contractor or Staff. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein

B3 Manner of Carrying Out the Services

B3.1 The Contractor shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of the Service has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services. The Contractor shall ensure that those Staff are properly managed and supervised.

B3.3 If the Specification includes installation of equipment the Contractor shall notify the Authority in writing when it has completed installation. Following receipt of such notice, the Authority shall inspect the installation and shall, by giving notice to the Contractor:

(a) accept the installation; or

(b) reject the installation and inform the Contractor why, in the Authority's reasonable opinion, the installation does not satisfy the Specification.

B3.4 If the Authority rejects the installation pursuant to clause B3.3(b), the Contractor shall immediately rectify or remedy any defects and if, in the Authority's reasonable opinion, the

installation does not, within 2 Working Days or such other period agreed by the Parties, satisfy the Specification, the Authority may terminate the Contract with immediate effect by notice.

B3.5 The installation shall be complete when the Contractor receives a notice issued by the Authority in accordance with clause B3.3(a). Notwithstanding acceptance of any installation in accordance with clause B3.3(a), the Contractor shall remain solely responsible for ensuring that the Services and the installation conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Authority of the installation.

B3.6 During the Contract Period, the Contractor shall:

- (a) at all times have all licences, approvals and consents necessary to enable the Contractor and Staff to carry out the installation;
- (b) provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the installation; and
- (c) not, in delivering the Services, in any manner endanger the safety or convenience of the public.

B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services.

B4.2 The Contractor shall designate a Key Personnel to act on behalf of the Contract as the Contract manager to oversee the provision of the Services and liaise and report to the representatives of the Authority.

B4.3 The Key Personnel shall not be released from supplying the Services without the agreement of the Authority, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment or other similar extenuating circumstances.

B4.3 Any replacements to the Key Personnel shall be subject to Approval. Such replacements shall be of at least equal status, experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Authority shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse effect on the Services which could be caused by a change in Key Personnel.

B4.5 The Authority may, by notice to the Contractor, ask it to remove any Staff whose presence is, in the Authority's reasonable opinion, undesirable. The Contractor shall comply with any such request immediately.

B5 Contractor's Staff

B5.1 The Authority may, by notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

- (a) any member of the Staff; or
- (b) any person employed or engaged by any member of the Staff

whose admission or continued presence would, in the Authority's reasonable opinion, be undesirable or if not suitably qualified to carry out the Services.

B5.2 The Contractor shall ensure that all Staff who have access to the Authority's Premises, the Authority System or the Authority Data have been cleared in accordance with the BPSS.

DN: Please discuss this with commissioners of the service. It may be that BPSS is required or that the contract can refer to the Authority's Staff Vetting Procedures instead (see above).

[B5.3 The Authority may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.]

DN: This is optional.

B5.4 At the Authority's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in to the Authority's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.

B5.5 If the Contractor fails to comply with clause B5.4 within two Months of the date of the request and in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Authority, then the Authority 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 Authority.

B5.6 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

B5.7 The Contractor shall provide all necessary training on a continuing basis for all its Staff employed or engaged in the provision of the Services in compliance with the Specification, the Security Policy and the Security Plan.

B5.8 The Contractor shall ensure that:

(a) it does not, whether as employer or as provider of the Services, engage in any act or omission that would contravene the Equality Act 2010 (“the Equality Legislation”); and

(b) it complies with all its obligations as an employer or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation or the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

B6 Inspection of Premises

B6.1 Save as the Authority may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender Response and to have complete due diligence in relation to all matters connected with the performance of its obligations under the Contract.]

DN: Please insert clause if applicable.

B7 Licence to Occupy Premises

B7.1 Any land or Premises made available from time to time to the Contractor by the Authority in connection with the Contract shall be on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on termination of the Contract.

B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary for it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Authority may reasonably request.

B7.3 Should the Contractor require modifications to the Authority’s Premises, such modifications shall be subject to Approval and shall be carried out by the Authority at the Contractor’s expense. The Authority shall undertake approved modification work without undue delay.

B7.4 The Contractor shall (and shall ensure that any Staff on the Authority’s Premises shall) observe and 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 on the Authority’s Premises as determined by the Authority

B7.5 The Contract does not create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Authority retains the right at any time to use the Premises owned or occupied by it in any manner it sees fit.

B8 Property

B8.1 All Property is and shall remain the property of the Authority and the Contractor irrevocably licenses the Authority and its agents to enter any Premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Authority. The Contractor shall take all reasonable steps to ensure that the title of the Authority to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Authority's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Authority.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Authority otherwise within 5 Working Days of receipt.

B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without Approval.

B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Authority's reasonable security requirements as required from time to time.

B8.5 The Contractor shall be liable for all loss of or damage to the Property, unless such loss or damage was caused by the Authority's negligence. The Contractor shall inform the Authority immediately of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

B9.1 Except in respect of any transfer of Staff under TUPE, for the Contract Period and for 12 Months thereafter neither party shall employ or make an offer employment to the other party's staff who have been associated with the Services and/or the Contract without consent of the other Party.

C PAYMENT

C1 Price

C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Price in accordance with clause C2 (Payment and VAT) and the Pricing Schedule.

C1.2 [The Contract Price is fixed, and is not subject to indexation or escalation during the Contract Period.]

DN: Please check whether Price is fixed for any periods of extension and amend C4 accordingly.

C2 Payment and VAT

C2.1 Unless otherwise stated in the Contract payments shall be once a month in arrears.

C2.2 The Contractor shall submit invoices to the Authority on the dates set out in Schedule 3.

C2.3 The Authority shall, in addition to the Price and following Receipt of a Valid Invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2.3 The Contractor shall add VAT to the Price at the prevailing rate as applicable and shall show the amount of VAT payable separately on all invoices as an extra charge. If the Contractor fails to show VAT on an invoice, the Authority will not, at any later date, be liable to pay the Contractor any additional VAT.

C2.4 All Contractor invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

C2.5 Valid Invoices shall include:

- (a) the Contractor's full name, address and title of the Contract;
- (b) the Purchase Order number

and, if requested by the Authority:

- (c) timesheets for Staff engaged in providing the Services signed and dated by the Authority's representative on the Premises on the day;
- (d) the name of the individuals to whom the timesheet relates and hourly rates for each;
- (e) identification of which individuals are Contractor's staff and which are Sub-Contractors;
- (f) the address of the Premises and the date on which work was undertaken;
- (g) the time spent working on the Premises by the individuals concerned;
- (h) details of the type of work undertaken by the individuals concerned;
- (i) details of plant or materials operated and on standby;
- (j) separate identification of time spent travelling and/or meal or rest breaks; and
- (k) where appropriate, details of journeys made and distances travelled.

C2.6 The Authority shall not pay Contractor time spent on meal or rest breaks and the Contractor shall ensure that all workers take adequate meal or rest breaks.

C2.7 The Authority shall not pay for plant which is not in use during a meal or rest break.

C2.8 Meal and rest breaks will include breaks both in or outside an individual's workplace along with any time taken in travelling to or from the break location and/or any facilities for cleaning/changing/washing in preparation for or return from a meal or rest break.

C2.9 Timesheets must include a minimum of 30 minutes break for each shift of 8 hours, a minimum of 45 minutes break in a shift of between 8 and 12 hours and a minimum of one hour break will be taken within a shift in excess of 12 hours and the Contractor's rates and Contract Price must include such breaks.

C2.10 The Authority shall not pay the Contractor's overhead costs unless specifically agreed in writing by the Authority and overhead costs shall include, without limitation; facilities, utilities, insurance, tax, head office overheads, indirect staff costs and other costs not specifically and directly ascribable solely to the provision of the Services.

C2.11 If Schedule 3 expressly provides that the Authority may be charged for plant which is on standby then in circumstances where plant was waiting to be transferred between Premises or where the Authority has instructed that the plant is retained on the Premises then a standby charge of 60% of agreed rates may be made in respect of such relevant periods if supported by timesheets. DN: Please use above clause if the Contractor is required to provide plant.

C2.12 The Authority shall pay only for the time spent by Staff working on the Premises.

C2.13 The Authority shall not pay a stand-by rate if plant is on standby because no work was being carried out on the Premises at that time or no operator or other relevant staff were available (unless the standby is because the Contractor is awaiting licensing of the Premises on the Authority's instructions).

C2.14 The Authority shall not pay for plant or equipment which is stood down during any notice period pursuant to clauses H1, H2 and/or H3 and the Contractor shall mitigate such costs as far as is reasonably possible, for example, by reutilising Staff, plant, materials and services on other contracts. DN: Please use above clause if the Contractor is required to provide plant.

C2.15 The Contractor may claim expenses only if they are clearly identified, supported by original receipts and Approved.

C2.16 If the Authority pays the Contractor prior to the submission of a Valid Invoice this payment shall be on account of and deductible from the next payment to be made.

C2.17 If any overpayment has been made or the payment or any part is not supported by a Valid Invoice the Authority may recover this payment against future invoices raised or directly from the Contractor. All payments made by the Authority to the Contractor shall be on an interim basis

pending final resolution of an account with the Contractor in accordance with the terms of this clause C2.

C2.18 The Authority shall pay all sums due to the Contractor within 30 days of Receipt of a Valid Invoice. Valid Invoices should be submitted for payment to the following address:

CARE QUALITY COMMISSION
T70 PAYABLES F175
PHOENIX HOUSE
TOPCLIFFE LANE
WAKEFIELD
WF3 1WE

C2.19 If the Contractor 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 the Sub-Contract which requires payment to be made of all sums due from it to the Sub-Contractor within 30 days from the receipt of a valid invoice.

C2.20 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.21 shall be paid by the Contractor to the Authority not less than 5 Working Days before the date upon which the tax or other liability is payable by the Authority.

C2.21 The Contractor shall not suspend the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C2.22 Any late payment of undisputed invoices by the Authority will be subject to interest at the rate of a maximum of 3% above the base rate from time to time of Barclays Bank plc.

C2.23 The Authority shall not pay an invoice which is not Valid Invoice.

C3 Recovery of Sums Due

C3.1 If under the Contract any sum of money is recoverable from or payable by the Contractor to the Authority (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor from the Authority under the Contract or under any other agreement with the Authority or the Crown.

C3.2 Any overpayment by either Party, whether of the 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.

C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.

C3.4 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.

C4 Price during Extension

C4.1 Subject to Schedule 3 and clause F6, the Price shall apply for the Initial Contract Period and until the end date of any Extension or such earlier date of termination or partial termination of the Contract in accordance with the Law or the Contract.

C5 Euro

C5.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Authority.

C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1.

D. STATUTORY OBLIGATIONS

D1 Prevention of Fraud and Bribery

D1.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any Staff, have at any time prior to the Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

D1.2 The Contractor shall not during the Contract Period:

- (a) commit a Prohibited Act; and/or

(b) do or suffer anything to be done which would cause the Authority or any of its employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

D1.3 The Contractor shall, during the Contract Period:

(a) establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and

(b) keep appropriate records of its compliance with its obligations under clause D1.3(a) and make such records available to the Authority on request.

D1.4 The Contractor shall immediately notify the Authority in writing if it becomes aware that any breach of clauses D1.1 and/or D1.2 has occurred or is likely to occur, or has reason to believe that it has or any of the Staff have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the Contract or otherwise suspects that any person directly or indirectly connected with the Contract has committed or attempted to commit a Prohibited Act.

D1.5 If the Contractor notifies the Authority pursuant to clause D1.4, the Contractor shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation. This obligation continues for twelve (12) years following expiry or termination of this contract.

D1.6 If the Contractor is in Default under clauses D1.1 and/or D1.2, the Authority may by notice:

(a) require the Contractor to remove from performance of the Contract any Staff whose acts or omissions have caused the Default; or

(b) immediately terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or

(c) recover in full from the Contractor any other Loss sustained by the Authority in consequence of any breach of those clauses.

D1.7 Any notice served by the Authority under clause D1.6 shall specify the nature of the Prohibited Act, the identity of the party who the Authority believes has committed the Prohibited Act and the action that the Authority has taken (including, where relevant, the date on which the Contract shall terminate).

D1.8 The Contractor shall not offer or give, or agree to give, to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Authority or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.9 The Contractor warrants that it has not paid commission or agreed to pay commission to the Authority or any other public body or any person employed by or on behalf of the Authority or any other public body in connection with the Contract.

D2 Discrimination

D2.1 The Contractor shall:

- (a) perform its obligations under the Contract in accordance with:
 - i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy maternity or otherwise);
 - ii) the Authority's equality and diversity policy as given to the Contractor from time to time;
 - iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps and inform the Authority of the steps taken to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation).

D3 Rights of Third Parties

D3.1 A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D4 Environmental Requirements

D4.1 The Contractor shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Contractor shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Specification and Tender. Without prejudice to the generality of the foregoing, the Contractor shall:

- (a) comply with all Policies and/or procedures and requirements set out in the Specification and Tender in relation to any stated environmental and social requirements, characteristics and impacts of the Services and the Contractor's supply chain;
- (b) maintain relevant policy statements documenting the Contractor's significant social and environmental aspects as relevant to the Services being supplied and as proportionate to the nature and scale of the Contractor's business operations; and
- (c) maintain plans and procedures that support the commitments made as part of the Contractor's significant social and environmental policies, as referred to in Clause D4.1 (b).

D4.2 The Contractor shall meet reasonable requests by the Authority for information evidencing the Contractor's compliance with the provisions of this Clause D.

D5 Business Continuity and Disaster Recovery Plan

D5.1 The Contractor shall comply at all times with the relevant provisions of the Business Continuity and Disaster Recovery Plan to be appended hereto in Schedule 12.

D5.2 The Business Continuity and Disaster Recovery Plan shall be compliant with the current British Standard (BS25999) code of practice and specification for business continuity management or equivalent. In particular the Business Continuity and Disaster Recovery Plan must show that the Contractor is able to maintain the Services throughout the terms of the contract as far as practicable in the event of a Disaster, unforeseen business disruption or emergency event.

D5.3 The Authority further reserves the right to undertake or commission an independent audit of the Business Continuity Plan that is put in place by the Contractor in respect of Services supplied to or on behalf of the Authority.

D5.4 Following the declaration of a Disaster in respect of any of the Services, the Contractor shall:

- (a) implement the Disaster Recovery Plan
- (b) continue to provide the affected Services to the Authority in accordance with the Disaster Recovery Plan; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Plan.

D5.5 To the extent that the Contractor complies fully with the provisions of this clause D5 (and the reason for the declaration of a Disaster was not a breach of any of the other terms of this Contract on the part of the Contractor), the KPIs to which the affected Services are to be provided during the continuation of the Disaster shall not be the KPIs as referred to in Schedule 11 but shall be the KPIs set out in the Disaster Recovery Plan or (if none) the best service levels which are reasonably achievable in the circumstances.

D6 Health and Safety

D6.1 The Contractor shall perform its obligations under the Contract in accordance with:

- (a) all applicable Law regarding health and safety (including Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety); and
- (b) the Authority's health and safety policy while at the Authority's Premises.

D6.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority's Premises of which it becomes aware and which relate to or arise in connection with the performance of the Contract. The Contractor shall instruct Staff to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

E PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

E1.3 To the extent that Authority Data is held and/or Processed by the Contractor, the Contractor shall supply Authority Data to the Authority as requested by the Authority in the format specified in the Specification.

E1.4 The Contractor shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data.

E1.5 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored securely off-site. The Contractor shall ensure that such back-ups are made available to the Authority immediately upon request.

E1.6 The Contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy Framework.

E1.7 If Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

- (a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data and the Contractor shall do so promptly; and/or
- (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.

E1.8 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E2 Data Protection Act

E2.1 For the purposes of clauses E1 and 2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed in the DPA.

E2.2 The Contractor shall (and shall ensure that all its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.

E2.3 Notwithstanding the general obligation in clause E2.1, if the Contractor is Processing Personal Data as a Data Processor for the Authority the Contractor shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority (which may be specific instructions or instructions of a general nature) as set out in the Contract or as otherwise notified by the Authority;
- (b) comply with all applicable Laws;
- (c) Process the Personal Data only to the extent and in such manner as is necessary for the provision of the Contractor's obligations under the Contract or as is required by Law or any Regulatory Body;
- (d) Implement and maintain appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might

result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
- (f) not transfer the Personal Data to any Sub-Contractor and/or Affiliates for the provision of the Services without Approval;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without Approval;
- (h) ensure that all Staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E2;
- (i) ensure that none of the Staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Authority;
- (j) not disclose Personal Data to any third parties in any circumstances other than with Approval or in compliance with a legal obligation imposed upon the Authority;
- (k) notify the Authority (within 5 Working Days) if it receives:
 - i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Authority's obligations under the DPA;
- (l) provide the Authority with full cooperation and assistance in relation to any complaint or request made, including by:
 - i) providing the Authority with full details of the complaint or request;
 - ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Authority's instructions;
 - iii) providing the Authority with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Authority); and
 - iv) providing the Authority with any information requested by the Authority;
- (m) permit the Authority (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with clause E9 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the Authority to enable the Authority to verify and/or procure that the Contractor is in full compliance with its obligations under the Contract;

(n) provide a written description of the technical and organisational methods employed by the Contractor for Processing Personal Data (within the timescales required by the Authority); and

(o) not Process Personal Data outside the European Economic Area without Approval and, if the Authority consents to a transfer, to comply with:

i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in schedule 1 of the DPA by providing an adequate level of protection to any Personal Data that is transferred; and

ii) any reasonable instructions notified to it by the Authority.

E2.4 The Contractor shall comply at all times with the DPA and shall not perform its obligations under the Contract in such a way as to cause the Authority to breach any of its applicable obligations under the DPA.

E2.5 The Contractor shall fully indemnify the Authority against the costs of dealing with any claims made in respect of any information subject to the Data Protection Act 1998, which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, its Sub-contractors, agent or staff.

E2.6 This clause E2 shall apply during the Contract Period and indefinitely after its expiry.

E3 Official Secrets Acts and Finance Act

E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

(a) the Official Secrets Acts 1911 to 1989; and

(b) section 182 of the Finance Act 1989.

E3.2 The Contractor shall not remove from the Authority's premises any classified or privacy marked material without the Authority's express agreement. The Contractor must keep any such material so removed under conditions approved by the Authority for the housing of such classified or privacy marked material.

E3.3 In the event that the Contractor or its Staff fail to comply with this clause, the Authority reserve the right to terminate the Contract by giving notice in writing to the Contractor.

E4 Confidential Information

E4.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of FOIA.

E4.2 Except to the extent set out in this clause E4 or if disclosure or publication is expressly permitted elsewhere in the Contract each Party shall treat all Confidential Information belonging to the other Party as confidential and shall not disclose any Confidential Information belonging to the other Party to any other person without the other party's consent, except to such persons and to such extent as may be necessary for the performance of the Party's obligations under the Contract.

E4.3 Notwithstanding any other term of this Contract, the Contractor hereby gives its consent for the Authority to publish the whole Contract (but with any information which is Confidential Information belonging to the Authority redacted) including from time to time agreed changes to the Contract, to the general public.

E4.4 The Authority may consult with the Contractor to inform its decision regarding any redactions but the Authority shall have the final decision in its absolute discretion.

E4.5 The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Contract.

E4.6 If required by the Authority, the Contractor shall ensure that Staff, professional advisors and consultants sign a non-disclosure agreement prior to commencing any work in connection with the Contract in substantially the form attached in Schedule 6. The Contractor shall maintain a list of the non-disclosure agreements completed in accordance with this clause E4.3.

E4.7 If requested by the Authority, the Contractor shall give the Authority a copy of the list and, subsequently upon request by the Authority, copies of such of the listed non-disclosure agreements as required by the Authority. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor's confidentiality obligations under the Contract.

E4.8 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the 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.

E4.9 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

E4.10 Clause E4.1 shall not apply to the extent that:

- (a) 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;
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;

(d) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

(e) it is independently developed without access to the other Party's Confidential Information.

E4.11 Nothing in clause E4.1 shall prevent the Authority disclosing any Confidential Information obtained from the Contractor:

(a) for the purpose of the examination and certification of the Authority's accounts;

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

(c) to any Crown Body or any Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments 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 government department or any Contracting Authority;

(d) to any consultant, contractor or other person engaged by the Authority

provided that in disclosing information under clauses E4.8 (c) and (d) the Authority discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E4.12 Nothing in clauses E4.1 to E4.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

E4.13 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4.6 is made aware of the Authority's obligations of confidentiality.

E4.14 If the Contractor does not comply with clauses E4.1 to E4.6 the Authority may terminate the Contract immediately on written notice to the Contractor.

E4.15 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services, the Contractor shall maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E4.16 The Contractor will immediately notify the Authority of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. The Contractor will co-operate with the Authority

in any investigation as a result of any breach of security in relation to Confidential Information or data.

E4.17 The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Authority's request if the Authority reasonably believes the Contractor has failed to comply with clause E4.12.

E5 Freedom of Information

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Contractor shall transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within 2 Working Days of receipt and the Contractor shall and shall procure that any Sub-Contractors shall:

- (a) give the Authority a copy of all Information in connection with the Contract in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may specify) of the Authority's request;
- (b) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIR;
- (c) not respond to directly to a Request for Information unless authorised to do so in writing by the Authority.

E5.3 The Authority shall determine in its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether the Commercially Sensitive Information and any other Information is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIR.

E5.4 The Contractor acknowledges that (notwithstanding the provisions of clause E4) the Authority 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 ('Code'), be obliged under the FOIA, or the EIR to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where E5.4(a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E5.5 The Contractor shall ensure that all information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.

E6 Publicity, Media and Official Enquiries

E6.1 Without prejudice to the Authority's obligations under the FOIA, the EIR or any obligations under the Regulations, or any policy requirements as to transparency, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E6.2 The Contractor shall use its reasonable endeavours to ensure that its Staff, professional advisors and consultants comply with clause E6.1.

E7 Security

E7.1 The Authority shall be responsible for maintaining the security of the Authority's Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Authority while on the Authority's Premises, and shall ensure that all Staff comply with such requirements.

E7.2 The Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

E7.3 The Contractor shall comply, and shall procure compliance of its Staff, with the Security Plan and Security Policy.

E7.4 The Authority shall notify the Contractor of any changes or proposed changes to the Security Policy.

DN: This is relevant if the Security Policy is defined as 'means the Authority's Information Security and Governance Policy appended to Schedule 8'

E7.5 The Contractor shall, as an enduring obligation during the Contract Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

E7.6 Notwithstanding clause E7.5, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the Authority Data, assist each other to mitigate any losses and to restore the provision of Services to their desired operating efficiency and the Contractor shall immediately take all reasonable steps necessary to:

- (a) minimise the extent of actual or potential harm caused by any Breach of Security;
- (b) remedy such Breach of Security to the extent possible and protect the integrity of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
- (c) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

(d) as soon as reasonably practicable provide the Authority with full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

E7.7 Any cost arising out of the actions of the Parties taken in compliance with clause E7.6 shall be borne by the Parties as follows:

(a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Authority Data (whilst the Authority Data was under the control of the Contractor); and

(b) by the Authority if the Malicious Software originates from the Authority Software or Authority Data (whilst the Authority Data was under the control of the Authority).

E7.8 The Contractor shall be liable for, and shall indemnify the Authority against all Losses suffered or incurred by the Authority and/or any third party arising from and/or in connection with any Breach of Security or attempted Breach of Security (to the extent that such Losses were not caused by any act or omission by the Authority).

E8 Intellectual Property Rights

E8.1 All Intellectual Property Rights in any guidance, specifications, reports, studies, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material which is:

(a) furnished to or made available to the Contractor by or on behalf of the Authority;

(b) prepared by or for the Contractor for use in relation to the performance of its obligations under the Contract; or

(c) the result of any work done by the Contractor, the Staff or any Sub-Contractor in relation to the provision of the Services (together with clauses E8.1 (a) and (b) the "IP Materials")

shall vest in the Authority and the Contractor shall not, and shall ensure that the Staff shall not, use or disclose any IP Materials without Approval save to the extent necessary for performance by the Contractor of its obligations under the Contract.

E8.2 The Contractor hereby assigns to the Authority, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b) and (c). This assignment shall take effect on the date of the Contract or (in the case of rights arising after the date of the Contract) as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation and do all acts as are necessary to execute this assignment.

E8.3 The Contractor shall waive or procure a waiver of any moral rights held by it or any third party in copyright material arising as a result of the Contract or the performance of its obligations under the Contract.

E8.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Services grants to the Authority a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Authority an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty-free, worldwide and irrevocable and shall include the right for the Authority to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Authority.

E8.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified the Authority and the Crown from and against all Losses and other liabilities which the Authority or the Crown may suffer or incur as a result of or in connection with any breach of this clause E8.5, except to the extent that any such claim results directly from:

- (a) items or materials based upon designs supplied by the Authority; or
- (b) the use of data supplied by the Authority which is not required to be verified by the Contractor under any provision of the Contract.

E8.6 The Authority shall notify the Contractor in writing of any claim or demand brought against the Authority for infringement or alleged infringement of any Intellectual Property Right in materials supplied and/or licensed by the Contractor to the Authority.

E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim, demand or action by any third party for infringement or alleged infringement of any third party Intellectual Property Rights (whether by the Authority or the Contractor) arising from the performance of the Contractor's obligations under the Contract ("Third Party IP Claim"), provided that the Contractor shall at all times:

- (a) consult the Authority on all material issues which arise during the conduct of such litigation and negotiations;
- (b) take due and proper account of the interests of the Authority; and
- (c) not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E8.8 The Authority shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any Third Party IP Claim and the Contractor shall indemnify the Authority for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not be required to indemnify the

Authority under this clause E8.8 in relation to any costs and expenses to the extent that such arise directly from the matters referred to in clauses E8.5(a) or (b).

E8.9 The Authority shall not, without the Contractor's consent, make any admissions which may be prejudicial to the defence or settlement of any Third Party IP Claim.

E8.10 If any Third Party IP Claim is made or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Authority and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), shall (without prejudice to the rights of the Authority under clauses E8.4 and G2.1(g)) use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement; or

(b) procure a licence to use the Intellectual Property Rights and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Authority

and if the Contractor is unable to comply with clauses E8.10(a) or (b) within 20 Working Days of receipt by the Authority of the Contractor's notification the Authority may terminate the Contract immediately by notice to the Contractor.

E8.11 The Contractor grants to the Authority a royalty-free, irrevocable, worldwide, non-exclusive licence (with a right to sub-license) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Authority reasonably requires in order to exercise its rights under, and receive the benefit of, the Contract (including, without limitation, the Services).

E8A Use of Documents and Information

E8.1 Except with the consent in writing of the Authority, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.

E8.2 Except with the consent in writing of the Authority the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Authority otherwise than for the purpose of the Contract.

E8.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and must be returned on completion of the Contract.

E8.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E8.5 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

E8.6 To the extent that Authority Data is held and/or processed by the Contractor the Contractor shall supply that Authority Data to the Authority as requested by the Authority in the format specified in the Specification Schedule [and/or the Exit Management Strategy].

E8.7 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.

E8.8 The Contractor shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster

E8.9 Recovery Plan. The Contractor shall ensure that such back-ups are available to the Authority at all times upon request and are delivered to the Authority at no less than [three] monthly intervals.

E8.10 The contractor shall ensure that any system on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy.

E8.11 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Authority may:

(a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan and the Contractor shall do so as soon as practicable but not later than [ten calendar days]; and/or

(b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the Business Continuity and Disaster Recovery Plan.

E8.12 If at any time the Contractor suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.

E9 Audit

E9.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the Authority's representatives such access to those records and processes as may be requested by the Authority in connection with the Contract.

E9.2 The Contractor agrees to make available to the Authority, free of charge, whenever requested, copies of audit reports obtained by the Contractor in relation to the Services.

E9.3 The Contractor shall permit duly authorised representatives of the Authority and/or the National Audit Office to examine the Contractor's records and documents relating to the Contract and to provide such copies and oral or written explanations as may reasonably be required.

E9.4 The Contractor (and its agents) shall permit the Comptroller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purposes of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and

effectiveness with which the Authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes.

E10 Tax Compliance

E10.1 If, during the Contract Period, an Occasion of Tax Non-Compliance occurs, the Contractor shall:

- (a) notify the Authority in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly give the Authority:
 - i) details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
 - ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

E10.2 If the Contractor or any Staff are liable to be taxed in the UK or to pay NICs in respect of consideration received under the Contract, the Contractor shall:

- (a) at all times comply with ITEPA and all other statutes and regulations relating to income tax, and SSCBA and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Contractor or any Staff.

F. CONTROL OF THE CONTRACT

F1 Monitoring of Contract Performance

F1.1 The Contractor shall comply with the monitoring arrangements set out in the KPI Schedule and the Specification including, but not limited to:

- (a) reporting performance of the Services against the KPIs;
- (b) providing all management and reporting information listed in the Specification at such intervals as specified; and
- (c) providing such other performance data and information as the Contractor may be required to produce by the Authority under the Specification or otherwise under the Contract from time to time.

F1A.2 The Contractor shall measure its performance against the KPIs, and within 7 days of submitting of its claim for payment each Month, the Contractor shall provide the Authority with a performance report setting out the Contractor's performance against all KPIs and the Overall KPI Performance Score in respect of the immediately preceding Month. Where KPI's are only measured Quarterly or Half Yearly they shall be reported in the Month immediately following the relevant Quarterly or Half Yearly performance report date.

F1A Failure to meet requirements

F1.1A If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services do not meet the requirements of the Contract or differs in any way from those requirements, and this is not as a result of a default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.

F2 Not Used

F3 Remedies for inadequate performance

F3.1 If the Authority reasonably believes the Contractor has committed a Material Breach it may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

(a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor has demonstrated to the Authority's reasonable satisfaction that the Contractor will be able to supply the Services in accordance with the Specification;

(b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

(a) withhold or reduce payments to the Contractor in such amount as the Authority reasonably deems appropriate in each particular case; and/or

(a) terminate the Contract in accordance with clause H2.

F3.2 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Authority may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Authority or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services.

F3.3 If the Authority reasonably believes the Contractor has failed to supply all or any part of the Services in accordance with the Contract, professional or industry practice which could reasonably be expected of a competent and suitably qualified person, or any legislative or regulatory requirement, the Authority may give the Contractor notice specifying the way in which its performance falls short of the requirements of the Contract or is otherwise unsatisfactory.

F3.4 If the Contractor has been notified of a failure in accordance with clause F3.3 the Authority may:

(a) direct the Contractor to identify and remedy the failure within such time as may be specified by the Authority and to apply all such additional resources as are necessary to remedy that failure at no additional charge to the Authority within the specified timescale; and/or

(b) withhold or reduce payments to the Contractor in such amount as the Authority deems appropriate in each particular case until such failure has been remedied to the satisfaction of the Authority.

F3.5 If the Contractor has been notified of a failure in accordance with clause F3.3, it shall:

(a) use all reasonable endeavours to immediately minimise the impact of such failure to the Authority and to prevent such failure from recurring; and

(b) immediately give the Authority such information as the Authority may request regarding what measures are being taken to comply with the obligations in this clause F3.5 and the progress of those measures until resolved to the satisfaction of the Authority.

F3.6 If, having been notified of any failure, the Contractor fails to remedy it in accordance with clause F3.5 within the time specified by the Authority, the Authority may treat the continuing failure as a Material Breach and may terminate the Contract immediately on notice to the Contractor.

F4 Transfer and Sub-Contracting

F4.1 Except where clauses F4.5 and F4.6 both apply, the Contractor shall not transfer, novate, charge, assign, sub-contract or in any other way dispose of the Contract or any part of it without Approval. All such documents shall be evidenced in writing and shown to the Authority on request. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.

F4.2 The Contractor shall be responsible for the acts and/or omissions of its Sub-Contractors as though they are its own. If it is appropriate, the Contractor shall provide each Sub-Contractor with a copy of the Contract and obtain written confirmation from them that they will provide the Services fully in accordance with the Contract.

F4.3 The Contractor shall ensure that its Sub-Contractors and suppliers retain all records relating to the Services for at least 6 years from the date of their creation and make them available to the Authority on request in accordance with the provisions of clause E9 (Audit). If any Sub-Contractor or supplier does not allow the Authority access to the records then the Authority shall have no obligation to pay any claim or invoice made by the Contractor on the basis of such documents or work carried out by the Sub-Contractor or supplier.

F4.4 If the Authority has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Authority, be sent by the Contractor to the Authority immediately.

F4.5 Notwithstanding clause F4.1, the Contractor may assign to a third party (the "Assignee") the right to receive payment of the Price or any part thereof due to the Contractor (including any

interest which the Authority incurs under clause C2 (Payment and VAT)). Any assignment under this clause F4.5 shall be subject to:

- (a) reduction of any sums in respect of which the Authority exercises its right of recovery under clause C3 (Recovery of Sums Due);
- (b) all related rights of the Authority under the Contract in relation to the recovery of sums due but unpaid; and
- (c) the Authority receiving notification under both clauses F4.6 and F4.7.

F4.6 If the Contractor assigns the right to receive the Price under clause F4.5, the Contractor or the Assignee shall notify the Authority in writing of the assignment and the date upon which the assignment becomes effective.

F4.7 The Contractor shall ensure that the Assignee notifies the Authority of the Assignee's contact information and bank account details to which the Authority shall make payment at least [5] Working Days prior to submission of the relevant invoice.

F4.8 The provisions of clause C2 shall continue to apply in all other respects after the assignment and shall not be amended without Approval of the Authority.

F4.9 Subject to clause F4.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority;
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
- (c) any private sector body which substantially performs the functions of the Authority

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F4.10 Any change in the legal status of the Authority such that it ceases to be a Contracting Authority shall not, subject to clause F4.11, affect the validity of the Contract and the Contract shall bind and inure to the benefit of any successor body to the Authority.

F4.11 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F4.9 to a body which is not a Contracting Authority or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):

- (a) the rights of termination of the Authority in clauses H1 and H2 shall be available to the Contractor in respect of the Transferee;

(b) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and

(b) 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 prior consent in writing of the Contractor.

F4.12 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F4.13 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.

F4.14 The Authority shall be entitled to novate the Contract to any other body which substantially performs any of the functions that previously had been performed by the Authority.

F4.15 Provided that the Authority has given prior written consent, the Supplier shall be entitled to novate the Contract where:

(a) the specific change in contractor was provided for in the procurement process for the award of this Contract;

(b) there has been a universal or partial succession into the position of the Supplier, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the criteria for qualitative selection applied in the procurement process for the award of this Contract.

F5 Waiver

F5.1 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.

F5.2 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 A4 (Notices and Communications).

F5.3 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.

F6 Variation

F6.1 If, after the Commencement Date, the Authority's requirements change, the Authority may request a Variation subject to the terms of this clause F6.

F6.2 The Authority may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Price is required in order to implement the Variation within a reasonable time limit specified by the Authority. If the Contractor accepts the Variation it shall confirm it in writing.

F6.3 If the Contractor is unable to accept the Variation or where the Parties are unable to agree a change to the Price, the Authority may:

- (a) allow the Contractor to fulfil its obligations under the Contract without the Variation to the Specification; or
- (b) terminate the Contract immediately except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. If a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed in clause I2 (Dispute Resolution).

F6.4 Any Variation will not take effect unless recorded in a Change of Control Notice as attached hereto in Schedule 4 and approved in writing by the Authority.

F6.5 The provisions of clause F6.4 may be varied in an emergency if it is not practicable to obtain the Authorised Representative's approval within the time necessary to make the Variation in order to address the emergency. In an emergency, Variations may be approved by a different representative of the Authority. However, the Authorised Representative shall have the right to review such a Variation and require a Change of Control Notice to be entered into on a retrospective basis which may itself vary the emergency Variation.

DN: Note that the variation must be compliant with the Public Contracts Regulations 2015.

F7 Severability

F7.1 If any provision of the Contract which is not of a fundamental nature is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F8 Remedies Cumulative

F8.1 Except as expressly provided in 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.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the clauses of the Contract;
- (b) the Schedules; and
- (c) any other document referred to in the clauses of the Contract.

F10 Counterparts

F10.1 The Contract may be executed in counterparts, each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) any breach of any obligations implied by section 2 of the Supply of Goods and Services Act 1982;
- (d) any breach of clause D1; or
- (e) any liability to the extent it cannot be limited or excluded by Law.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, demands, charges, actions, damages, costs, breach of statutory duty, expenses and any other liabilities which may arise out of the supply,

or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor 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 Contractor, or any other loss which is caused directly by any act or omission of the Contractor.

G1.3 Subject to clause G1.1 the Contractor's aggregate liability in respect of the Contract shall not exceed five hundred thousand pound £500,000.

G1.4 The Contractor 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 Authority or by breach by the Authority of its obligations under the Contract.

G1.5 The Authority may recover from the Contractor the following losses incurred by the Authority to the extent they arise as a result of a Default by the Contractor:

- (a) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional costs of procuring a Replacement Contractor for the remainder of the Contract Period and or replacement deliverables which shall include any incremental costs associated with the Replacement Contractor and/or replacement deliverables above those which would have been payable under the Contract;
- (d) any compensation or interest paid to a third party by the Authority; and
- (e) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

G1.6 Subject to clauses G1.1 and G1.5, neither Party shall be liable to the other for any:

- (a) loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect); or
- (b) indirect, special or consequential loss.

G1.7 Unless otherwise specified by the Authority, the Contractor shall, with effect from the Commencement Date for such period as necessary to enable the Contractor to comply with its obligations herein, take out and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor'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 Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 years following the end of the Contract.

G1.8 The Contractor shall hold:

- (a) employer's liability insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor;
- (b) public liability with the minimum cover per claim of one million pounds £1,000,000;
- (c) product liability with the minimum cover per claim of one million pounds £1,000,000;
and
- (d) professional indemnity with the minimum cover per claim of one million pounds £1,000,000,

or any sum as required by Law unless otherwise agreed with the Authority in writing. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

G1.9 The Contractor shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's 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.

G1.10 If the Contractor does not give effect to and maintain the insurances required by the provisions of the Contract, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.11 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

G1.12 The Contractor shall not take any action or fail to take any reasonable action, or (to the extent that it is reasonably within its power) permit anything to occur in relation to the Contractor, which would entitle any insurer to refuse to pay any claim under any insurance policy in which the Contractor is an insured, a co-insured or additional insured person.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents on the Commencement Date and for the Contract Period that:

- (a) it has full capacity and authority and all necessary consents to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any fraud;
- (c) as at the Commencement Date, all information contained in the Tender Response or other offer made by the Contractor to the Authority remains true, accurate and not misleading, save as

may have been specifically disclosed in writing to the Authority prior to execution of the Contract and in addition, that it will advise the Authority of any fact, matter or circumstance of which it may become aware which would render such information to be false or misleading;

(d) 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 any of its assets which will or might have an adverse effect on its ability to perform its obligations under the Contract;

(e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;

(f) 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 Contractor 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 Contractor's assets or revenue;

(g) it owns, or 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;

(h) any person engaged by the Contractor shall be engaged on terms which do not entitle them to any Intellectual Property Right in any IP Materials;

(i) in the 3 years (or period of existence where the Contractor has not been in existence for 3 years) prior to the date of the Contract:

i) 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;

ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and

iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;

(j) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform its obligations under the Contract; and

(k) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance.

(l) (if an individual) he is regarded by HM Revenue & Customs as self-employed and accordingly shall indemnify the Authority against tax, national insurance contributions or similar impost for which the Authority may be liable in respect of the Contractor by reason of this Contract.

G3 Force Majeure

G3.1 Subject to the remaining provisions of this clause G3, a Party may claim relief under this clause G3 from liability for failure to meet its obligations under the Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Contractor in performing its obligations under the Contract which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Contractor.

G3.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

G3.3 If the Contractor is the Affected Party, it shall not be entitled to claim relief under this clause G3 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated by any of the Services, but the Contractor has failed to do so; and/or
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by the Contract.

G3.4 Subject to clause G3.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

G3.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to continue to perform its obligations under the contract and prevent and mitigate the effects of the Force Majeure Event. Where the Contractor is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

G3.6 If, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with the Contract, then during the continuance of the Force Majeure Event:
 - i) the other Party shall not be entitled to exercise its rights to terminate the Contract in whole or in part as a result of such failure pursuant to clause H2.1 or H2.3; and
 - ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Contractor fails to perform its obligations in accordance with the Contract it shall be entitled to receive payment of the Price (or a proportional payment of it) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of the Contract during the occurrence of the Force Majeure Event.

(c) either Party is prevented from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

G3.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract.

G3.8 Relief from liability for the Affected Party under this clause G3 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under the Contract and shall not be dependent on the serving of notice under clause G3.7.

G4 Guarantee

Within 10 Working Days of receipt of a written request from the Authority, the Contractor shall provide to the Authority a [bond or] guarantee in terms of the draft contained in Schedule 9 (or such other terms as the Authority may have approved) executed as a deed and delivered by a parent company or financial institute approved by the Authority.

DN: Please consider whether a bond/guarantee is required and consider use of Schedule 9 if applicable. Contact Finance for advice.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a company and in respect of the Contractor:

(a) 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;

(b) 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);

(c) a petition is presented for its winding up (which is not dismissed within 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;

(d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;

- (e) 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;
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- (g) being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is an individual and:

- (a) 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 Contractor’s creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Contractor 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;
- (e) a creditor or encumbrancer 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 Contractor’s assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005;
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- (h) any event similar to those listed in clauses H1.2(a) to (g) occurs under the law of any other jurisdiction.

H1.3 The Contractor shall notify the Authority immediately in writing of any proposal or negotiations which will or may result in a merger, take-over, change of control, change of name or status including where the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“Change of Control”). The Authority may terminate the

Contract with immediate effect by notice and without compensation to the Contractor within 6 Months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Authority becomes aware of the Change of Control, but shall not be permitted to terminate where Approval was granted prior to the Change of Control.

H1.4 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a partnership and:

- (a) a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) it is for any reason dissolved; or
- (c) a petition is presented for its winding up or for the making of any administration order, or an application is made for the appointment of a provisional liquidator; or
- (d) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (e) the partnership is deemed unable to pay its debts within the meaning of section 222 or 223 of the Insolvency Act 1986 as applied and modified by the Insolvent Partnerships Order 1994; or
- (f) any of the following occurs in relation to any of its partners:
 - (i) 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, his creditors;
 - (ii) a petition is presented for his bankruptcy; or
 - (iii) a receiver, or similar officer is appointed over the whole or any part of his assets;
- (g) any event similar to those listed in clauses H1.4(a) to (f) occurs under the law of any other jurisdiction .

H1.5 The Authority may terminate the Contract with immediate effect by notice and without compensation to the Contractor where the Contractor is a limited liability partnership and:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) it is for any reason dissolved;

- (c) an application 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 within Part II of the Insolvency Act 1986;
- (d) any step is taken with a view to it being determined that it be wound up (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation) within Part IV of the Insolvency Act 1986;
- (e) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator within Part IV of the Insolvency Act 1986;
- (f) a receiver, or similar officer is appointed over the whole or any part of its assets; or
- (g) it is or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (h) a moratorium comes into force pursuant to schedule A1 of the Insolvency Act 1986; or
- (i) any event similar to those listed in clauses H1.5 (a) to (h) occurs under the law of any other jurisdiction.

H1.6 References to the Insolvency Act 1986 in clause H1.5(a) shall be construed as being references to that Act as applied under the Limited Liability Partnerships Act 2000 subordinate legislation.

H2 Termination on Default

H2.1 The Authority may terminate the Contract with immediate effect by notice if the Contractor commits a Default and:

- (a) the Contractor has not remedied the Default to the satisfaction of the Authority within 25 Working Days or such other period as may be specified by the Authority, after issue of a notice specifying the Default and requesting it to be remedied;
- (b) the Default is not, in the opinion of the Authority, capable of remedy; or
- (c) the Default is a Material Breach.

H2.2 If, through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall give notice to the Authority of its failure to pay. If the Authority fails to pay such

undisputed sums within 90 Working Days of the date of such notice, the Contractor 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 Authority exercising its rights under clause C3.1 (Recovery of Sums Due) or to a Force Majeure Event.

H3 Non Default Termination or Change of Government Policy

H3.1 The Authority may terminate the Contract at any time by giving [[30] OR [insert another period] days'] notice to the Contractor.

H3.2 The Authority may terminate the Contract by giving to the Contractor at least one Month's notice in writing where there is a change in government policy or a change in Law which means that, in the opinion of the Authority acting reasonably, the Services are no longer required or are no longer affordable to the Authority.

H4 Termination under the Regulations

H4.1 The Authority may terminate the Contract on written notice to the Contractor if:

(a) the Contract has been subject to a substantial modification which requires a new procurement procedure pursuant to regulation 72(9) of the Regulations;

(b) the Contractor was, at the time the Contract was awarded, in one of the situations specified in regulation 57(1) of the Regulations, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure which resulted in its award of the Contract; or

(c) the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

H5 Consequences of Expiry or Termination

H5.1 If the Authority terminates the Contract under clauses H2 or H4 and makes other arrangements for the supply of the Services the Authority may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period.

H5.2 If Contract is terminated under clauses H2 or H4 the Authority shall make no further payments to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority), until the Authority has established the final cost of making the other arrangements envisaged under this clause.

H5.3 If the Authority terminates the Contract under clause H3 the Authority shall make no further payments to the Contractor except for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the Authority.

H5.4 Save as otherwise expressly provided in the Contract:

(a) 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

(b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud and Bribery), E2 (Data Protection Act Compliance), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit), F9 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H5 (Consequences of Expiry or Termination), H7 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H6 Disruption

H6.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.

H6.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by its own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

H6.3 If there is industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.

H6.4 If the Contractor's proposals referred to in clause H6.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice.

H6.5 If the Contractor is unable to deliver the Services owing to disruption of the Authority's normal business, the Contractor may request a reasonable allowance of time, and, in addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H7 Recovery upon Termination

H7.1 On termination of the Contract for any reason, the Contractor shall at its cost:

- (a) immediately return to the Authority all Confidential Information, Personal Data and IP Materials 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;
- (b) immediately deliver to the Authority all Property (including materials, documents, information and access keys) provided to the Contractor in good working order;
- (c) immediately vacate any Authority Premises occupied by the Contractor;
- (d) assist and co-operate with the Authority to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress; and
- (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Authority for the purposes of adequately understanding the manner in which the Services have been provided and/or for the purpose of allowing the Authority and/or the Replacement Contractor to conduct due diligence.

H7.2 If the Contractor does not comply with clauses H7.1(a) and (b), the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-Contractors where any such items may be held.

H7.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H7.1(d) and (e) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H8 Retendering and Handover

H8.1 Within 21 days of being requested by the Authority, the Contractor shall provide, and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Authority to issue tender documents for the future provision of the Services.

H8.2 The Authority shall take all necessary precautions to ensure that the information referred to in clause H8.1 is given only to potential providers who have qualified to tender for the future provision of the Services.

H8.3 The Authority shall require that all potential providers treat the information in confidence; that they do not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to tender issued by the Authority; and that they shall not use it for any other purpose.

H8.4 The Contractor shall indemnify the Authority against any claim made against the Authority at any time by any person in respect of any liability incurred by the Authority arising from any deficiency or inaccuracy in information which the Contractor is required to provide under clause H8.1.

H8.5 The Contractor shall allow access to the Premises in the presence of the Authorised Representative, to any person representing any potential provider whom the Authority has selected to tender for the future provision of the Services.

H8.6 If access is required to the Contractor's Premises for the purposes of clause H7.5, the Authority shall give the Contractor 7 days' notice of a proposed visit together with a list showing the names of all persons who will be visiting. Their attendance shall be subject to compliance with the Contractor's security procedures, subject to such compliance not being in conflict with the objectives of the visit.

H8.7 The Contractor shall co-operate fully with the Authority during any handover at the end of the Contract. This co-operation shall include allowing full access to, and providing copies of, all documents, reports, summaries and any other information necessary in order to achieve an effective transition without disruption to routine operational requirements.

H8.8 Within 10 Working Days of being requested by the Authority, the Contractor shall transfer to the Authority, or any person designated by the Authority, free of charge, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package identical to that used by the Authority.

H9 Exit Management –

H9.1 Upon termination the Contractor shall render reasonable assistance to the Authority to the extent necessary to effect an orderly assumption by a Replacement Contractor in accordance with the procedure set out in clause H10.

H10 Exit Procedures

H10.1 Where the Authority requires a continuation of all or any of the Services on expiry or termination of this Contract, either by performing them itself or by engaging a third party to perform them, the Contractor shall co-operate fully with the Authority and any such third party and shall take all reasonable steps to ensure the timely and effective transfer of the Services without disruption to routine operational requirements.

H10.2 The following commercial approach shall apply to the transfer of the Services if the Contractor:

(a) does not have to use resources in addition to those normally used to deliver the Services prior to termination or expiry, there shall be no change to the Price; or

(b) reasonably incurs additional costs, the Parties shall agree a Variation to the Price based on the Contractor's rates either set out in Schedule 3 or forming the basis for the Price.

H10.3 When requested to do so by the Authority, the Contractor shall deliver to the Authority details of all licences for software used in the provision of the Services including the software licence agreements.

H10.4 Within one Month of receiving the software licence information described above, the Authority shall notify the Contractor of the licences it wishes to be transferred, and the Contractor shall provide for the approval of the Authority a plan for licence transfer.

H11 Knowledge Retention

H11.1 The Contractor shall co-operate fully with the Authority in order to enable an efficient and detailed knowledge transfer from the Contractor to the Authority on the completion or earlier termination of the Contract and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Contractor shall provide the Authority free of charge with full access to its Staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Authority. The Contractor shall comply with the Authority's request for information no later than 15 Working Days from the date that that request was made.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 Subject to the provisions of clause I2 the Contract, including any matters arising out of or in connection with it, shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not limit the right of the Authority to take proceedings against the Contractor in any other court of competent jurisdiction, and the taking of proceedings in any other court of competent jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

I2 Dispute Resolution

I2.1 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 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 of the Contractor and the commercial director of the Authority.

DN: Please check and insert the appropriate escalation process

I2.2 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.

12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless: (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.

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

- (a) 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 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 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
- (b) the Parties shall within 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. If appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
- (c) 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;
- (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
- (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. 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
- (f) if the Parties fail to reach agreement in the structured negotiations within 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 unless the dispute is referred to arbitration pursuant to the procedures set out in clause 12.6.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

(a) The Authority may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7;

(b) if the Contractor intends to commence court proceedings, it shall serve notice on the Authority of its intentions and the Authority shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7; and

(c) the Contractor may request by notice to the Authority that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Authority may consent as it sees fit.

12.7 If any arbitration proceedings are commenced pursuant to clause 12.6,

(a) the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the Authority shall give a notice of arbitration to the Contractor (the "Arbitration Notice") stating:

(i) that the dispute is referred to arbitration; and

(ii) providing details of the issues to be resolved;

(b) the London Court of International Arbitration ("LCIA") procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(c) the tribunal shall consist of a sole arbitrator to be agreed by the Parties;

(d) if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Authority under clause 12.7(a) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(e) the arbitration proceedings shall take place in London and in the English language; and

(f) the arbitration proceedings shall be governed by, and interpreted in accordance with, English Law.

SCHEDULE 1 – PRICING

Russell Reynolds are proposing a fee of £60k to cover both roles, excluding VAT. [REDACTED]

[REDACTED],
 [REDACTED]. The only extra cost is £500 contribution to expenses [REDACTED]

Description of Service	Cost on a per role basis £	Total Value £ excluding VAT	Value £ (including VAT)
Search and Selection: - Search strategy - Briefing with Stakeholders - Candidate brief and advert - Search – discrete approaches using our networks - Responding to candidates (including advert applicants) and Candidate handling - Weekly search updates with key point of contact - Longlist including report - Interviews - organising and facilitating only, the interview panel will be CQC panel members - Shortlist including report - Preparation for final panel - Referencing & due diligence The above will be offered for all roles – a description of each is provided in the main document.	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] (please describe services included) - please provide quotes for the following: 1) Media assessments (TV), cost for designing and conducting the tests, plus feedback to the panel and candidates and 2) the cost for administering their recommended personality questionnaire (in the past we have used WAVE) - cost for running the test, feeding back to candidates and CQC, including reports - Application of the test to the candidate - Analysing the results - One-to-one feedback with the candidate - Written report for the panel	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]
[REDACTED] costs (please state) e.g. travel and subsistence.	[REDACTED]	[REDACTED]	[REDACTED]