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1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

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

"Broker's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Broker, including all IPRs, together with information derived from the foregoing, and that in any case is clearly designated as being confidential;
"Broker's Representative"	means the representative of the Broker appointed by the Broker from time to time in relation to the Contract and notified to the Client;
"Broker's Staff"	means all persons employed by the Broker and/or any Sub-Contractor to perform the Broker's obligations under the Contract together with the Broker's and/or any Sub-Contractor's servants, consultants, agents, suppliers and Sub-Contractors used in the performance of the Broker's obligations under the Contract;
"Client"	means the Contracting Body that issues the Letter of Appointment;
"Client's Confidential Information"	means all Client's Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Client, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"Client's Personal Data"	means the Personal Data supplied by the Client to the Broker and, for the purposes of or in connection with the Contract;

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"Client's Representative"	means the representative of the Client appointed by the Client from time to time in relation to the Contract and notified to the Broker;
"Confidential Information"	means the Client's Confidential Information and/or the Broker's Confidential Information;
"Contract"	means the written agreement between the Client and the Broker consisting of the Letter of Appointment, these Call-Off Terms (save to the extent varied by the Letter of Appointment) and any other documents referred to in either of them;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Broker by the Client under the Contract for the full and proper performance by the Broker of the Contract Services;
"Contract Mediator"	has the meaning set out in Clause 41.5.1 of the Framework Agreement;
"Contract Services"	means the Services to be supplied by the Broker to the Client as set out in the Letter of Appointment;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Employee Liabilities"	means all claims actions, proceedings, orders, demands, complains, investigations and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments, (b) unlawful deduction of wages;

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(c) unfair, wrongful or constructive dismissal compensation;

(d) compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay;

(e) compensation for less favourable treatment of part-time workers;

(f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;

(g) claims whether in tort, contract or statute or otherwise;

(h) any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);

“Framework Agreement” means the Framework Agreement between the Authority and the Broker referred to in the Letter of Appointment;

"Letter of Appointment" means the letter from the Client to the Broker dated **[DD/MM/YYYY]** (including its appendices) containing the Order to provide the Contract Services;

"Material Breach" means a material breach of the Contract;

"Party" means the Broker or the Client and **"Parties"** shall mean both of them;

“Persistent Failure” means any two (2) or more failures by the Broker in any rolling period of twelve (12) Months to comply with

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obligations in respect of the Contract Services under with the Contract;

"Relevant Transfer Date"	means the date upon which the Relevant Transfer takes place;
"Service Levels"	means the service levels set out in either Appendix 1 or Appendix 2;
"Sub-Contract"	means the Broker's contract with a Sub-Contractor whereby the Sub-Contractor agrees to provide to the Broker the Contract Services or any part thereof or facilities, services necessary for the provision of the Contract Services or any part thereof necessary for the management, direction or control of the Contract Services or any part thereof;
"Sub-Contractor"	means any person appointed by the Broker to carry out any of the Broker's obligations under the Contract; and
"Transferring Customer Employees"	means those employees of the Customer to which TUPE will apply on the Relevant Transfer Date, and in respect of whom written notification has been given by the Customer to the Supplier before the Relevant Transfer Date.

1.2 Interpretation

- 1.2.1 The interpretation and construction of the Contract shall be subject to the following provisions:
- 1.2.1.0 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.1.1 words importing the masculine include the feminine and the neuter;
 - 1.2.1.2 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
 - 1.2.1.3 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.1.4 the Appendices forms part of these Call-Off Terms and shall have effect as if set out in full in the body of these Call-Off

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Terms and any reference to these Call-Off Terms includes the Appendices;

- 1.2.1.5 references to any statute, enactment, order, regulation, code, official guidance or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation, code, official guidance or instrument as amended or replaced by any subsequent enactment, modification, order, regulation, code, official guidance or instrument (whether such amendment or replacement occurs before or after the date of the Contract);
 - 1.2.1.6 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
 - 1.2.1.7 references to “Clauses” and the “Annex” are, unless otherwise provided, references to the clauses of and the Annex to these Call-Off Terms and references to “paragraphs” are, unless otherwise provided, references to paragraphs of the Annex in which the references are made;
 - 1.2.1.8 terms or expressions contained in the Contract which are capitalised but which do not have an interpretation in Clause 1.1 shall be interpreted in accordance with the Framework Agreement;
 - 1.2.1.9 a reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.2 in the event of and only to the extent of any conflict between the Letter of Appointment, these Call-Off Terms, any other document referred to in the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- 1.2.2.0 this Framework Agreement;
 - 1.2.2.1 the Call-Off Agreement; and
 - 1.2.2.2 any other document and which for the avoidance of doubt may include but which is not limited to a Cover Note and or Policy (of insurance) referred to in the Call-Off Agreement (not including this Framework Agreement).

2. SUPPLY OF CONTRACT SERVICES

2.1 Variation of Contract Services

- 2.1.1 The Client may request a variation to the Contract Services at any time provided that such variation does not amount to a material change to the Order.
- 2.1.2 Any request by the Client for a variation to the Contract Services shall be by written notice to the Broker:
 - 2.1.2.0 giving sufficient information for the Broker to assess the extent of the variation and any additional costs that may be incurred; and

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2.1.2.1 specifying the timeframe within which the Broker must respond to the request, which shall be reasonable,

and the Broker shall respond to such request within such timeframe.

2.1.3 In the event that the Broker and the Client are unable to agree any change to the Contract Charges in connection with any requested variation to the Contract Services, the Client may agree that the Broker should continue to perform its obligations under the Contract without the variation or may terminate the Contract in accordance with Clause 8.4.1.

3. PAYMENT AND CHARGES

3.1 Contract Charges, IPT and VAT

3.1.1 In consideration of the Broker's performance of its obligations under the Contract, the Client shall pay the Contract Charges in accordance with Clause 3.2 (Payment).

3.1.2 The Client shall, in addition to the Contract Charges and following receipt of a valid VAT, and/or IPT as applicable, invoice, pay the Broker a sum equal to the VAT and/or IPT, (as applicable, chargeable on the value of the Contract Services supplied.

3.1.3 The provisions of paragraph 2 and 3 of Framework Schedule 2 (Charging Structure) of the Framework Agreement shall apply in relation to the Contract Services.

3.1.4 If at any time before the Contract Services have been delivered in full the Broker reduces its Framework Prices for any Services which are provided under the Framework Agreement in accordance with the terms of the Framework Agreement with the result that the Framework Prices are lower than the Contract Charges, the Contract Charges for the Contract Services shall automatically be reduced so as to be equal to the Framework Prices.

3.1.5 The Broker shall indemnify the Client on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Client at any time in respect of the Broker's failure to account for or to pay any VAT, and/or IPT as applicable, relating to payments made to the Broker under the Contract. Any amounts due under this Clause shall be paid by the Broker to the Client not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Client.

3.2 Payment

3.2.1 The Client shall pay all sums properly due and payable to the Broker in respect of the Contract Services including the Premium amount in cleared funds by no later than thirty (30) calendar days after the date of a validly issued invoice for such sums.

3.2.2 The Broker shall ensure that each invoice (whether submitted electronically or in a paper form) contains all appropriate references and a detailed breakdown of the Contract Services provided and any disbursements and that it is supported by such other documentation as may reasonably be required by the Client to substantiate the invoice.

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- 3.2.3 The Broker shall ensure that all invoices submitted to the Client for Contract Services are exclusive of the Management Charge payable to the Authority in respect of the Contract Services. The Broker shall not be entitled to increase the Contract Charges by an amount equal to such Management Charge or to recover such Management Charge as a surcharge or disbursement.
- 3.2.4 The Broker shall make any payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Broker has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Broker.
- 3.2.5 If the Broker enters into a Sub-Contract in respect of the Contract Services, it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Broker to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 3.2.6 The Broker shall not suspend the supply of the Contract Services unless the Broker is entitled to terminate the Contract under Clause 8.2.2 on the grounds of the Client's failure to pay undisputed sums of money. Interest shall be payable by the Client in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any undisputed sums of money properly invoiced by the Broker in respect of the Contract Services.
- 3.2.7 All payments due shall be made in cleared funds to such bank or building society account as the recipient Party may from time to time direct in writing.

3.3 Recovery of Sums Due

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

4. LIABILITY AND INSURANCE

4.1 Liability

- 4.1.1 Neither Party excludes or limits its liability for:
- 4.1.1.0 death or personal injury; or
 - 4.1.1.1 fraud or fraudulent misrepresentation by it or its employees.
- 4.1.2 No individual nor any service company of the Broker employing that individual shall have any personal liability to the Client for the Contract Services supplied by that individual on behalf of the Broker and the Client shall not bring any claim under the Contract against that individual or such service company in respect of the Contract Services save in the case of Fraud or any liability for death or personal injury.

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- 4.1.3 Subject to the limits stated in Clause 4.1.8 below, subject to Clause 4.1.4 and without prejudice to the provisions of 4.1.5 below the Broker shall fully indemnify and keep indemnified the Client on demand in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with, the supply, purported supply or late supply of the Contract Services or the performance or non-performance by the Broker of its obligations under the Framework Agreement and the Client's financial loss arising from any advice given or omitted to be given by the Broker, or any other loss which is caused by any act or omission of the Broker.
- 4.1.4 Subject to Clauses 4.1.1 and 4.1.5, in no event shall either Party be liable to the other for any:
- 4.1.4.0 loss of profits;
 - 4.1.4.1 loss of business;
 - 4.1.4.2 loss of revenue;
 - 4.1.4.3 loss of or damage to goodwill;
 - 4.1.4.4 loss of savings (whether anticipated or otherwise); and/or
 - 4.1.4.5 any indirect, special or consequential loss or damage.
- 4.1.5 The Broker shall be liable for the following types of loss, damage, cost or expense which shall be regarded as direct and shall (without in any way, limiting other categories of loss, damage, cost or expense which may be recoverable by the Client) be recoverable by the Client:
- 4.1.5.0 the additional operational and/or administrative costs and expenses arising from any Material Breach; and
 - 4.1.5.1 the cost of procuring, implementing and operating any alternative or replacement services to the Contract Services.
 - 4.1.5.2 any regulatory losses, fines, expenses or other losses arising from a breach by the Broker of any Laws.
- 4.1.6 No enquiry, approval, sanction, comment, consent, decision or instruction at any time made or given by or on behalf of the Client to any document or information provided by the Broker in its provision of the Contract Services, and no failure of the Client to discern any defect in or omission from any such document or information shall operate to exclude or limit the obligation of the Broker to exercise all the obligations of a professional Broker employed in a Client/Broker relationship
- 4.1.7 Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client 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 Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Broker.

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- 4.1.8 Subject always to Clause 4.1.1 and Clause 4.1.4, the aggregate liability (whether expressed as an indemnity or otherwise) of each Party to the other Party for each year of this Contract:
- 4.1.8.1 for all defaults resulting in direct loss or damage to the property of the other party shall be subject to a limit of £1 million (One Million Pounds) unless otherwise stipulated by the Customer in the Letter of Appointment following a further competition;
 - 4.1.8.2 in respect of all other defaults, claims, losses or damages whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of the sum of [£5 million] [(five Million Pounds)] or a sum equivalent to One Hundred and Twenty-Five Per Cent (125%) of the Contract Charges paid or payable to the Supplier in the relevant year of the Contract calculated at the date of the event giving rise to the liability (estimated for the full year if the event occurs in the first year of the Contract) unless a different aggregate limit or limits is otherwise stipulated by the Customer in the Letter of Appointment following a further competition.

4.2 Insurance

- 4.2.1 The Broker shall effect and maintain a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Broker, arising out of the Broker's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policy or policies shall include professional indemnity cover in respect of any financial loss to the Client arising from any advice given or omitted to be given by the Broker under the Contract or otherwise in connection with the provision of the Contract Services. and for so long as the Broker may have any liability to the Client:
- 4.2.1.0 public liability insurance adequate to cover all risks in the performance of its obligations under this Call Off Contract from time to time;
 - 4.2.1.1 employers' liability insurance with a minimum limit of indemnity as required by law from time to time; and
 - 4.2.1.2 professional indemnity insurance to cover all risks in the performance of this Contract from time to time with a minimum limit of indemnity of £5m sterling for each individual claim.
- 4.2.2 It shall be the responsibility of the Broker to determine the amount of insurance cover that will be adequate to enable the Broker to satisfy any liability arising in respect of the risks referred to in Clause 4.2.1
- 4.2.3 If, for whatever reason, the Broker fails to give effect to and maintain the insurances required by Clause 4.2.1, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Broker.
- 4.2.4 The provisions of any insurance or the amount of cover shall not relieve the Broker of any liabilities under the Contract.

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4.2.5 The Broker shall produce to the Client, on request, confirmation of cover in the form of a "To whom it may concern" letter 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.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 All Intellectual Property Rights in the output from the Contract Services shall vest in the Broker who shall grant to the Client a non-exclusive, royalty-free, unlimited, irrevocable licence to use and exploit the same.

5.2 Subject to Clause 5.1 and save as expressly granted elsewhere under the Contract, the Client shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Broker or its licensors and the Broker shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Client or its licensors.

5.3 The Broker shall on demand fully indemnify and keep fully indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client and or the Crown may suffer or incur as a result of any claim that the performance by the Broker of the Contract Services infringes or allegedly infringes a third party's Intellectual Property Rights (any such claim being a "**Claim**").

5.4 If a Claim arises, the Client shall notify the Broker in writing of the Claim and the Client shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Broker shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Broker:

5.4.1 shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;

5.4.2 shall take due and proper account of the interests of the Client;

5.4.3 shall consider and defend the Claim diligently using competent counsel and in such a way as not to bring the reputation of the Client into disrepute; and

5.4.4 shall not settle or compromise the Claim without the prior written approval of the Client (not to be unreasonably withheld or delayed).

5.5 Neither Party shall have the right to use any of the other Party's names, logos or trademarks without the prior written approval of the other Party.

6. PROTECTION OF INFORMATION

6.1 Protection of Personal Data

6.1.1 With respect to the Parties' rights and obligations under the Contract, the Parties agree that the Client is the Data Controller and that the Broker is the Data Processor in relation to the Client's Personal Data.

6.1.2 The Broker shall:

6.1.2.0 Process the Client's Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in the Contract or

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as otherwise notified by the Client to the Broker during the term of the Contract);

- 6.1.2.1 Process the Client's Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;
- 6.1.2.2 implement appropriate technical and organisational measures to protect the Client's Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Client's Personal Data and having regard to the nature of the Client's Personal Data which is to be protected;
- 6.1.2.3 take reasonable steps to ensure the reliability of all members of the Broker's Staff who have access to the Client's Personal Data;
- 6.1.2.4 obtain the Client's prior written approval in order to transfer all or any of the Client's Personal Data to any Sub-Contractors for the provision of the Contract Services;
- 6.1.2.5 ensure that all members of the Broker's Staff 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;
- 6.1.2.6 ensure that none of the Broker's Staff publish, disclose or divulge any of the Client's Personal Data to any third party unless directed in writing to do so by the Client;
- 6.1.2.7 notify the Client within five (5) Working Days if the Broker receives:
 - (a) a request from a Data Subject to have access to the Client's Personal Data relating to that person; or
 - (b) a complaint or request relating to the Client's obligations under the Data Protection Legislation;
- 6.1.2.8 provide the Client with full cooperation and assistance in relation to any complaint or request made relating to the Client's Personal Data, including by:
 - (a) providing the Client with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;
 - (c) providing the Client with any Client's Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and

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- (d) providing the Client with any information requested by the Client;
 - 6.1.2.9 subject to third party obligations of confidentiality, permit or procure permission for the Client or the Client's Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Broker's data Processing activities (and/or those of its agents and Sub-Contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Broker is in full compliance with its obligations under the Contract;
 - 6.1.2.10 provide a written description of the technical and organisational methods employed by the Broker for Processing the Client's Personal Data (within the timescales required by the Client); and
 - 6.1.2.11 not Process or otherwise transfer any Client's Personal Data outside the European Economic Area without the prior written consent of the Client which may be given on such terms as the Client in its discretion thinks fit.
- 6.1.3 The Broker shall comply at all times with the Data Protection Legislation and shall not perform its obligations under the Contract in such a way as to cause the Client to breach any of its applicable obligations under the Data Protection Legislation.
- 6.1.4 The Broker acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to the Client's Personal Data that the Client may be irreparably harmed (including harm to its reputation). In such circumstances, the Client may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).
- 6.1.5 In the event that through any failure by the Broker to comply with its obligations under the Contract, Client's Personal Data is transmitted or Processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Broker shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such failure by the Broker.
- 6.2 Confidentiality**
- 6.2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in the Contract, each Party shall:
- 6.2.1.0 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 6.2.1.1 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 6.2.2 Clause 6.2.1 shall not apply to the extent that:
- 6.2.2.0 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for

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- disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 6.4 (Freedom of Information); or
- 6.2.2.1 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner; or
 - 6.2.2.2 such information was obtained from a third party without obligation of confidentiality; or
 - 6.2.2.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or
 - 6.2.2.4 it is independently developed without access to the other Party's Confidential Information.
- 6.2.3 The Broker may only disclose the Client's Confidential Information to those members of the Broker's Staff who are directly involved in the provision of the Contract Services and who need to know the information, and shall ensure that such individuals are aware of and shall comply with these obligations as to confidentiality.
- 6.2.4 The Broker shall not, and shall procure that the Broker's Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of the Contract.
- 6.2.5 At the written request of the Client, the Broker shall sign a confidentiality undertaking prior to commencing any work in accordance with the Contract.
- 6.2.6 Nothing in the Contract shall prevent the Client from disclosing the Broker's Confidential Information (including the Management Information obtained pursuant to clause 13 of the Framework Agreement):
- 6.2.6.0 to any Crown body or any other Contracting Body on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any Client save as required by Law;
 - 6.2.6.1 to any consultant, contractor or other person engaged by the Client for any purpose relating to or connected with the Contract or the Framework Agreement (on the basis that the information shall be held by such consultant, contractor or other person in confidence and is not to be disclosed to any third party) or any person conducting an Office of Government Commerce gateway review or any additional assurance programme;
 - 6.2.6.2 for the purpose of the examination and certification of the Client's accounts; or
 - 6.2.6.3 for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

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- 6.2.7 The Client shall use all reasonable endeavours to ensure that any government department, Client, employee, third party or Sub-Contractor to whom the Broker's Confidential Information is disclosed pursuant to Clause 6.2.6 is made aware of the Client's obligations of confidentiality.
- 6.2.8 Nothing in this Clause 6.2 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.
- 6.2.9 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Broker undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.
- 6.2.10 The Broker shall, at all times during and after the performance of the Contract, indemnify the Client and keep the Client fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Client arising from any breach of the Broker's obligations under this Clause 6.2 except and to the extent that such liabilities have resulted directly from the Client's instructions.
- 6.3 Official Secrets Acts 1911 to 1989; section 182 of the Finance Act 1989**
- 6.3.1 The Broker shall comply with and shall ensure that its Staff comply with, the provisions of:
- 6.3.1.0 the Official Secrets Acts 1911 to 1989; and
 - 6.3.1.1 section 182 of the Finance Act 1989.
- 6.4 Freedom of Information**
- 6.5 The Broker acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.
- 6.6 The Broker shall and shall procure that its Sub-Contractors shall:
- 6.6.1 transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 6.6.2 provide the Client with a copy of all Information relating to a Request for Information in its possession, or control in the form that the Client requires within five (5) Working Days (or such other period as the Client may specify) of the Client's request; and
 - 6.6.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 6.7 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other contract whether the Commercially Sensitive Information and/or any other Information including Broker's Confidential Information, is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

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- 6.8 In no event shall the Broker respond directly to a Request for Information unless authorised in writing to do so by the Client.
- 6.9 The Broker acknowledges that (notwithstanding the provisions of Clause 6.2) the Client may, acting in accordance with the Ministry of Justice Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the Broker or the Contract Services:
- 6.9.1 in certain circumstances without consulting the Broker; or
 - 6.9.2 following consultation with the Broker and having taken the Broker's views into account,
 - 6.9.3 provided always that where Clause 6.10 applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Broker advanced notice, or failing that, to draw the disclosure to the Broker's attention after any such disclosure.
- 6.10 The Broker shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Client on reasonable notice to inspect such records as requested from time to time.
- 6.11 The Broker acknowledges that the Commercially Sensitive Information is of an indicative nature only and that the Client may be obliged to disclose it in accordance with Clause 6.9.
- 6.12 **Transparency**
- 6.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Client 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 the FOIA.
 - 6.12.2 Notwithstanding any other term of the Contract, the Broker hereby gives consent to the Client to publish the Contract to the general public in its entirety (subject only to redaction of any information which is exempt from disclosure in accordance with the provisions of the FOIA), including any changes to the Contract agreed from time to time.
 - 6.12.3 The Client may consult with the Broker to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.
 - 6.12.4 The Broker shall assist and cooperate with the Client to enable the Client to publish the Contract.

7. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 7.1 The Broker warrants, represents and undertakes to the Client that:
- 7.1.1 it has full capacity and authority and all necessary consents licences, authorisations permissions (statutory, regulatory, contractual or otherwise) to enter into and perform its obligations under the Contract;
 - 7.1.2 the Contract is executed by a duly authorised representative of the Broker;
 - 7.1.3 in entering the Contract it has not committed any Fraud;
 - 7.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

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- 7.1.5 all information, statements and representations contained in the Broker's tender or other submission to the Client for the award of the Contract Services are true, accurate and not misleading save as specifically disclosed in writing to the Client prior to execution of the Contract and it will advise the Client of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
 - 7.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
 - 7.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
 - 7.1.8 it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract;
 - 7.1.9 no proceedings or other steps have been taken and not discharged or dismissed (nor, to the best of its knowledge, are threatened) for the winding up of the Broker 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 Broker's assets or revenue;
 - 7.1.10 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the unauthorised use of, modification, access, introduction, creation or propagation of any disruptive element, virus, worms and/or Trojans, spyware or other malware into the computing environment (including the hardware, software and/or telecommunications networks or equipment), data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the Client; and
 - 7.1.11 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect for so long as is necessary for the proper provision of the Contract Services.
- 7.2 The Broker warrants, represents and undertakes to the Client that:
- 7.2.1 it has read and fully understood the Letter of Appointment and these Call-Off Terms and is capable of performing the Contract Services in all respects in accordance with the Contract;
 - 7.2.2 the Broker and each of its Sub-Contractors has all Staff, equipment and experience necessary for the proper performance of the Contract Services; and
 - 7.2.3 it will at all times:
 - 7.2.3.0 perform its obligations under the Contract with all reasonable care, skill and diligence and in accordance with Good Industry Practice;
 - 7.2.3.1 comply with all the KPIs and meet or exceed the Service Levels;

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- 7.2.3.2 carry out the Contract Services within the timeframe agreed with the Client; and
 - 7.2.3.3 ensure to the satisfaction of the Client that the Contract Services are provided and carried out by such appropriately qualified, skilled and experienced Brokers and/or other Staff as shall be necessary for the proper performance of the Contract Services.
- 7.3 The Broker shall immediately notify the Client in writing:
 - 7.3.1 of any material detrimental change in the financial standing and/or credit rating of the Broker;
 - 7.3.2 if the Broker undergoes a Change of Control; and
 - 7.3.3 provided this does not contravene any Law, of any circumstances suggesting that a Change of Control is planned or in contemplation.
- 7.4 For the avoidance of doubt, the fact that any provision within the Contract is expressed as a warranty shall not preclude any right of termination the Client would have in respect of breach of that provision by the Broker if that provision had not been so expressed.
- 7.5 The Broker acknowledges and agrees that:
 - 7.5.1 the warranties, representations and undertakings contained in the Contract are material and are designed to induce the Client into entering into the Contract; and
 - 7.5.2 the Client has been induced into entering into the Contract and in doing so has relied upon the warranties, representations and undertakings contained in the Contract.

8. TERMINATION

8.1 Termination on Insolvency

- 8.1.1 The Client may terminate the Contract with immediate effect by giving notice in writing to the Broker if:
 - 8.1.1.0 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, the Broker's creditors; or
 - 8.1.1.1 a shareholders', members' or partners' meeting is convened for the purpose of considering a resolution that the Broker be wound up or a resolution for the winding-up of the Broker is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 8.1.1.2 a petition is presented for the winding-up of the Broker (which is not dismissed within five (5) Working Days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened in respect of the Broker pursuant to section 98 of the Insolvency Act 1986; or

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- 8.1.1.3 a receiver, administrative receiver or similar officer is appointed over the whole or any part of the Broker's business or assets; or
- 8.1.1.4 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 Broker's assets and such attachment or process is not discharged within ten (10) Working Days;
- 8.1.1.5 an application is made in respect of the Broker either for the appointment of an administrator or for an administration order and an administrator is appointed, or notice of intention to appoint an administrator is given; or
- 8.1.1.6 if the Broker is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- 8.1.1.7 the Broker suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 8.1.1.8 in the reasonable opinion of the Client, there is a material detrimental change in the financial standing and/or the credit rating of the Broker which:
 - (a) adversely impacts on the Broker's ability to supply the Contract Services in accordance with the Contract; or
 - (b) could reasonably be expected to have an adverse impact on the Broker's ability to supply the Contract Services in accordance with the Contract; or
- 8.1.1.9 the Broker demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form and the new entity has or could reasonably be expected to have a materially less good financial standing or weaker credit rating than the Broker; or
- 8.1.1.10 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium in respect of the Broker comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 8.1.1.11 the Broker being an individual dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 8.1.1.12 the Broker being an individual or any partner or partners in the Broker who together are able to exercise control of the Broker where the Broker is a firm shall at any time become bankrupt or shall have a receiving order or administration order made against him or them, or shall make any composition or arrangement with or for the benefit for his or their creditors, or shall make any conveyance or assignment for the benefit of his or their creditors, or shall purport to do any of these things, or appears or appear unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of

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section 268 of the Insolvency Act 1986, or he or they shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his or their estate(s) or a trust deed shall be granted by him or them on behalf of his or their creditors; or

- 8.1.1.13 any event similar to those listed in Clauses 8.1.1.0 to 8.1.1.12 occurs under the law of any other jurisdiction.

8.2 Termination on Material Breach, Persistent Failure or Grave Misconduct etc

8.2.1 The Client may terminate the Contract with immediate effect by giving written notice to the Broker if:

8.2.1.0 the Broker commits a Material Breach and if:

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

(i) remedied the Material Breach; and

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

in each case to the satisfaction of the Client; or

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

8.2.1.1 if a Persistent Failure has occurred; or

8.2.1.2 if Grave Misconduct has occurred; or

8.2.1.3 the Broker breaches any of Clause 6.1 (Protection of Personal Data), Clause 6.2 (Confidentiality), Clause 6.3 (Official Secrets Acts 1911 to 1989), Clause 7 (Warranties, Representations and Undertakings), Clause 11 (Prevention of Bribery and Corruption), Clause 12 (Non Discrimination), Clause 13 (Prevention of Fraud) and Clause 14 (Transfer and Sub-Contracting).

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

8.3 Termination on Change of Control

8.3.1 The Client may terminate the Contract by written notice with immediate effect within six (6) Months of:

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

8.3.1.1 where no notification has been made, the date that the Client becomes aware of the Change of Control,

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

8.4 Termination on Notice

8.4.1 The Client shall have the right to suspend the Contract with immediate effect at any time by giving written notice to the Broker and to terminate the Contract with immediate effect by giving written notice to the Broker at any time.

8.5 Termination of Framework Agreement

8.5.1 The Client may terminate the Contract with immediate effect by giving written notice to the Broker if the Framework Agreement is terminated for any reason whatsoever.

8.6 Partial Termination

8.6.1 Where the Client is entitled to terminate the Contract pursuant to this Clause 8, the Client shall be entitled to terminate all or part of the Contract provided always that the parts of the Contract not terminated can operate effectively to deliver the intended purpose of the Contract or a part thereof.

8.7 Termination for loss of FSA Licence

8.7.1 The Client may terminate this Contract by serving written notice on the Broker with effect from the date specified in such notice where the Broker ceases to be licensed by the FSA to carry on regulated activities.

8.7.2 The Broker shall fully indemnify the Client against any regulatory losses, fines, expenses or other losses arising from a breach by the Broker of any Laws.

9. CONSEQUENCES OF EXPIRY OR TERMINATION

9.1 Subject to Clause 9.2, where the Client terminates the Contract pursuant to Clause 8 (Termination) and then makes other arrangements for the supply of the Contract Services:

9.1.1 the Client may recover from the Broker the cost reasonably incurred in making those other arrangements and any additional expenditure incurred by the Client in securing the Contract Services in accordance with the requirements of the Contract;

9.1.2 the Client shall take all reasonable steps to mitigate such additional expenditure; and

9.1.3 no further payments shall be payable by the Client to the Broker until the Client has established the final cost of making those other arrangements, whereupon the Client shall be entitled to deduct an amount equal to the final cost of such other arrangements from the further payments then due to the Broker.

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- 9.2 Clause 9.1 shall not apply where the Client terminates the Contract:
- 9.2.1 solely pursuant to Clause 8.3 or Clause 8.4; or
 - 9.2.2 solely pursuant to Clause 8.5 if termination pursuant to Clause 8.5 occurs as a result of termination of the Framework Agreement pursuant to the provisions of clauses 24.8, 24.11 or 24.12 thereof.
- 9.3 On the termination of the Contract for any reason, the Broker shall, at the request of the Client and at the Broker's cost:
- 9.3.1 immediately return to the Client all Confidential Information and the Client's Personal Data in its possession or in the possession or under the control of any permitted suppliers or Sub-Contractors, which was obtained or produced in the course of providing the Contract Services;
 - 9.3.2 except where the retention of Client's Personal Data is required by Law, promptly destroy all copies of the Client Data and provide written confirmation to the Client that the data has been destroyed.
 - 9.3.3 immediately deliver to the Client in good working order (but subject to allowance for reasonable wear and tear) all the property (including materials, documents, information and access keys but excluding real property and IPR) issued or made available to the Broker by the Client in connection with the Contract provided to the Broker;
 - 9.3.4 vacate, and procure that the Broker's Staff vacate, any premises of the Client occupied for the purposes of providing the Contract Services;
 - 9.3.5 return to the Client any sums prepaid in respect of the Contract Services not provided by the date of expiry or termination (howsoever arising); and
 - 9.3.6 promptly provide all information concerning the provision of the Contract Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Contract Services have been provided or for the purpose of allowing the Client or any replacement Supplier to conduct due diligence.
- 9.4 Without prejudice to any other right or remedy which the Client may have, if any Contract Services are not supplied in accordance with, or the Broker fails to comply with, any of the terms of the Contract then the Client may (whether or not any part of the Contract Services have been delivered) do any one or more of the following:
- 9.4.1 at the Client's option, give the Broker the opportunity (at the Broker's expense) to remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Client's instructions;
 - 9.4.2 without terminating the Contract, itself supply or procure the supply of all or part of the Contract Services until such time as the Broker shall have demonstrated to the reasonable satisfaction of the Client that the Broker will once more be able to supply all or such part of the Contract Services in accordance with the Contract;
 - 9.4.3 without terminating the whole of the Contract, terminate the Contract in respect of part of the Contracting Services only and thereafter itself supply or procure a third party to supply such part of the Contract Services; and/or

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- 9.4.4 charge the Broker for, whereupon the Broker shall on demand pay, any costs reasonably incurred by the Client (including any reasonable administration costs) in respect of the supply of any part of the Contract Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Broker for such part of the Contract Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Contract Services.
- 9.5 Save as otherwise expressly provided in the Contract:
- 9.5.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
- 9.5.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Broker under the following Clauses: Clause 3 (Payment and Charges); Clause 4 (Liability and Insurance); Clause 5 (Intellectual Property Rights); Clause 6.1 (Protection of Personal Data); Clause 6.2 (Confidentiality); Clause 6.3 (Official Secrets Act); Clause 6.4 (Freedom of Information); Clause 11 (Prevention of Bribery and Corruption); Clause 11 (Prevention of Fraud); Clause 15 (Waiver); Clause 16 (Cumulative Remedies); Clause 20 (Entire Agreement); Clause 21 (Contracts (Rights of Third Parties) Act); Clause 22 (Notices); Clause 23 (Dispute and Law) and, without limitation to the foregoing, any other provision of the Contract which expressly or by implication is to be performed or observed notwithstanding termination or expiry shall survive the termination or expiry of the Contract.

10. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 10.1 The Broker shall not, and shall procure that its Sub-Contractors shall not, make any press announcements or publicise the Contract in any way without the Client's prior written approval and shall take reasonable steps to ensure that the Broker's Staff and professional advisors comply with this Clause 10. Any such press announcements or publicity proposed under this Clause 10 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,
- 10.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Client shall be entitled to publicise the Contract in accordance with any legal obligation upon the Client including any examination of the Contract by the Auditors.
- 10.3 The Broker shall not do anything or permit to cause anything to be done, which may damage the reputation of the Client or bring the Client into disrepute.

11. PREVENTION OF BRIBERY AND CORRUPTION

- 11.1 The Broker shall not:
- 11.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Client, any Contracting Body or any other public body or any person employed by or on behalf of the Client any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to the Contract; or
- 11.1.2 engage in, and shall procure that all the Broker's Staff or any person acting on the Broker's behalf shall not commit, in connection with the Contract, a Prohibited

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Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

- 11.2 The Broker warrants, represents and undertakes that it has not:
- 11.2.1 paid commission or agreed to pay commission to the Client, any Contracting Body or any other public body or any person employed by or on behalf of the Client in connection with the Contract; and
 - 11.2.2 entered into the Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Client or any other public body or any person employed by or on behalf of the Client in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Client and the Authority before execution of the Contract.
- 11.3 The Broker shall:
- 11.3.1 in relation to the Contract, act in accordance with the Ministry of Justice Guidance;
 - 11.3.2 immediately notify the Client if it suspects or becomes aware of any breach of this Clause 11;
 - 11.3.3 respond promptly to any of the Client's enquiries regarding any breach, potential breach or suspected breach of this Clause 11 and the Broker shall co-operate with any investigation and allow the Client to audit Broker's books, records and any other relevant documentation in connection with the breach;
 - 11.3.4 if so required by the Client, within twenty (20) Working Days of the commencement date of the Contract, and annually thereafter, certify to the Client in writing of the compliance with this Clause 11 by the Broker and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with the Contract. The Broker shall provide such supporting evidence of compliance as the Client may reasonably request; and
 - 11.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent the Broker and any of the Broker's Staff or any person acting on the Broker's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 11.4 If the Broker, any member of the Broker's Staff or any person acting on the Broker's behalf, in all cases whether or not acting with the Broker's knowledge breaches:
- 11.4.1 this Clause 11; or
 - 11.4.2 the Bribery Act 2010 in relation to the Contract or any other contract with the Client or any other public body or any person employed by or on behalf of the Client or a public body in connection with the Contract,
- the Client shall be entitled to terminate the Contract by written notice with immediate effect.
- 11.5 Without prejudice to its other rights and remedies under this Clause 11, the Client shall be entitled to recover in full from the Broker and the Broker shall on demand indemnify the Client in full from and against:

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- 11.5.1 the amount of value of any such gift, consideration or commission; and
- 11.5.2 any other loss sustained by the Client in consequence of any breach of this Clause 11.

12. NON-DISCRIMINATION

- 12.1 The Broker shall not unlawfully discriminate within the meaning and scope of any Law (including but not limited to the Equality Act 2010), enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 12.2 The Broker shall take all reasonable steps to secure the observance of Clause 12.1 by all the Broker's Staff employed in the execution of the Contract.

13. PREVENTION OF FRAUD

- 13.1 The Broker shall take all reasonable steps, in accordance with Good Industry Practice and Law, to prevent any Fraud by the Broker and any member of the Broker's Staff.
- 13.2 The Broker shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Broker or any member of the Broker's Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 13.3 If:
 - 13.3.1 the Broker breaches any of its obligations under Clause 13.1 and Clause 13.2; or
 - 13.3.2 the Broker or any member of the Broker's Staff commits any Fraud in relation to the Contract or any other contract with the Client or any other person,

the Client may recover in full from the Broker and the Broker shall on demand indemnify the Client in full against any and all losses sustained by the Client in consequence of the relevant breach or commission of Fraud, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Contract Services and any additional expenditure incurred by the Client in relation thereto.

14. TRANSFER AND SUB-CONTRACTING

- 14.1 The Broker shall not assign, novate, enter into a Sub-Contract in respect of, or in any other way dispose of, the Contract or any part of it without the Client's prior written consent. The Client has consented to the engagement of any Sub-Contractors specifically identified in the Letter of Appointment.
- 14.2 The Broker shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.
- 14.3 The Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
 - 14.3.1 any other Contracting Body; or
 - 14.3.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or

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- 14.3.3 any private sector body which substantially performs the functions of the Client, provided that any such assignment, novation or other disposal shall not increase the burden of the Broker's obligations under the Contract.
- 14.4 Any change in the legal status of the Client such that it ceases to be a Client shall not, subject to Clause 14.5, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.
- 14.5 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 14.3 a body which is not a Contracting Body there is a change in the legal status of the Client such that it ceases to be a Contracting Body (in the remainder of this Clause any such body being referred to as a "**Transferee**"):
- 14.5.1 the rights of termination of the Client in Clause 8 shall be available to the Broker in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
- 14.5.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Broker.
- 14.6 The Client may disclose to any Transferee any Confidential Information of the Broker which relates to the performance of the Broker's obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Broker's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 14.7 For the purposes of Clause 14.5 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.
- 15. WAIVER**
- 15.1 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.
- 15.2 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 22.
- 15.3 A waiver by either Party 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.
- 16. CUMULATIVE REMEDIES**
- Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

17. FURTHER ASSURANCES

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

18. SEVERABILITY

18.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

18.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Client and the Broker shall immediately commence good faith negotiations to remedy such invalidity.

19. BROKER'S STATUS

At all times during the term of the Contract the Broker shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of partnership or a joint venture between the Parties and, accordingly, neither Party shall bind the other Party save as expressly permitted by the terms of the Contract.

20. ENTIRE AGREEMENT

20.1 The Contract, together with a completed, signed and dated Framework Agreement and the other documents referred to in them constitute the entire agreement and understanding between the Parties in respect of the matters dealt with in them and supersede, cancel and nullify any previous agreement between the Parties in relation to such matters.

20.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

20.3 The Broker acknowledges that it has:

20.3.1 entered into the Contract in reliance on its own due diligence alone; and

20.3.2 received sufficient information required by it in order to determine whether it is able to provide the Contract Services in accordance with the terms of the Contract.

20.4 Nothing in Clauses 20.1 and 20.2 shall operate:

20.4.1 to exclude Fraud or fraudulent misrepresentation; or

20.4.2 to limit the rights of the Client pursuant to clause 37 of the Framework Agreement (Rights of Third Parties).

20.5 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.

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21. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

- 21.1 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, provided that this Clause 18.1 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 21.2 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of the Contract or any one or more Clauses of it.
- 21.3 Without prejudice to the Client's rights as a Client under Clause 31 of the Framework Agreement, the Broker agrees that the Client may enforce any of the provisions of the Framework Agreement referred to in Clause 31.2 as if they were terms of the Contract (reading references in those provisions to Contracting Bodies and the Supplier as references to the Client and the Broker respectively).

22. NOTICES

- 22.1 Any notices given under or in relation to this Contract shall be in writing by letter, (signed by or on behalf of the Party giving it) sent by hand, post, registered post or by the recorded delivery service or by electronic mail to the address or email address and for the attention of the relevant Party set out in Clause 22.4 or to such other address or email address as that Party may have stipulated in accordance with Clause 22.5.
- 22.2 A notice shall be deemed to have been received:
- 22.2.1 if delivered personally, at the time of delivery;
- 22.2.2 in the case of pre-paid first class post, special or other recorded delivery two (2) Working Days from the date of posting; and
- 22.2.3 in the case of electronic communication, two (2) Working Days after posting of a confirmation letter.
- 22.3 In proving service, it shall be sufficient to prove that personal delivery was made, or (including for the purposes of electronic mail, the confirmation letter) that the envelope containing the notice was addressed to the relevant Party set out in Clause 22.4 (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, special or other recorded delivery.
- 22.4 For the purposes of Clause 22.2, the address or email address of each Party shall be the address or email address specified in paragraph **Error! Reference source not found.** of the Letter of Appointment.
- 22.5 Either Party may change its address or email address for service by serving written notice in accordance with this Clause 22.
- 22.6 For the avoidance of doubt, any notice given under the Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

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23. DISPUTES AND LAW

23.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the Laws of the country stipulated in the Letter of Appointment (England & Wales unless otherwise specified) and the parties agree to submit to the exclusive jurisdiction of the courts of that chosen country any dispute that arises in connection with the Contract.

23.2 Dispute Resolution

The Parties shall follow the same dispute resolution procedure as set out in clause 41 of the Framework Agreement.

24. TUPE

24.1 The Contracting Body shall, based upon a reasonable assessment of the facts, which TUPE wording as set out in Parts A, B and C (Parts A and B may both apply) of this Clause will apply to the Contract.

PART A

24.2 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will be a “Relevant Transfer” to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Transferring Customer Employee.

24.3 The Customer will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Relevant Transfer Date including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.

24.4 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Transferring Customer Employees from and after the Relevant Transfer Date. The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier’s failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation.

24.5 The Customer will indemnify the Supplier against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of:

24.5.1 any act or omission by the Customer relating to a Transferring Customer Employee occurring on or before the Relevant Transfer Date or any other matter, event or circumstance (other than an act or omission of the Supplier or any Sub-Contractor) occurring or having its origin before the Relevant Transfer Date;

24.5.2 any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for which it is alleged the Supplier may be liable by virtue of this Contract and/or TUPE and/or the Acquired Rights Directive; and

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- 24.5.3 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under Regulation 13 of TUPE, except to the extent that the liability arises from the Supplier's or any Sub-Contractor's failure to comply with Regulation 13(4) of TUPE.
- 24.6 If any person who is not a Transferring Customer Employee claims, or it is determined, that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
- 24.6.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
- 24.6.2 the Customer may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.
- 24.7 If such offer is accepted, or if the situation has otherwise been resolved by the Customer, the Supplier shall immediately release the person from his employment.
- 24.8 If, after the fifteen (15) Working Day period specified in Clause 24.6.2 has elapsed:
- 24.8.1 no such offer of employment has been made; or
- 24.8.2 such offer has been made but not accepted; or
- 24.8.3 the situation has not otherwise been resolved,
- the Supplier may within five (5) Working Days give notice to terminate the employment of such person.
- 24.9 Subject to the Supplier acting in accordance with the provisions of Clauses 24.2 to 24.16 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will indemnify the Supplier against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 24.7.
- 24.10 If any such person as is described in Clause 24.6 is neither re employed by the Customer nor dismissed by the Supplier within the time scales set out in Clauses 24.2 to 24.16 (inclusive) such person will be treated as a Transferring Customer Employee.
- 24.11 The Supplier shall indemnify the Customer against all Employee Liabilities arising from the Supplier's and any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Transferring Customer Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Customer Employee.
- 24.12 The Supplier shall indemnify the Customer against all Employee Liabilities in connection with or arising from any claim made by or in respect of any Transferring Customer Employee (or, where applicable, any trainee or employee representative (as defined in TUPE) of any Transferring Customer Employee) arising out of or in connection with:
- 24.12.1 any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant

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Transfer Date or any other matter, event or circumstance occurring or having its origin after the Relevant Transfer Date including any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in TUPE) of any Transferring Customer Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 of TUPE except to the extent that the liability arises from the Customer's failure to comply with its obligations under TUPE;

- 24.12.2 in relation to the breach or non-observance by the Supplier after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;
- 24.12.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 24.12.3.0 in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and
 - 24.12.3.1 in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Customer to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.
- 24.12.4 in relation to his/her employment or its termination arising or occurring after the Relevant Transfer Date;
- 24.13 The Supplier shall notify the Customer of any claims by any Transferring Customer Employee as soon as practicably possible to allow the Customer to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.
- 24.14 The Supplier will, and will procure that any Sub-Contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance and relevant provisions of Schedule 8.
- 24.15 The Customer warrants that the information provided to the Supplier regarding Transferring Customer Employees shall be true and accurate in all material respects.
- 24.16 The Customer agrees that it shall not other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services during the period prior to the Relevant Transfer Date save where legally or contractually obliged to do so:
 - 24.16.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;

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- 24.16.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
- 24.16.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the staff save for fulfilling assignments and projects previously scheduled and agreed;
- 24.16.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees; and
- 24.16.5 increase or reduce the total number of employees so engaged, replace or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any Transferring Customer Employee save for:
 - 24.16.5.0 the execution of assigned operations as detailed in 24.16.3; and/or
 - 24.16.5.1 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;

PART B

- 24.17 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will be a “**Relevant Transfer**” to which TUPE and/or the Acquired Rights Directive will apply. The Customer and the Supplier further agree that, as a result of the operation of TUPE, the contracts of employment between the Former Supplier and the Former Supplier’s Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Supplier and each such Former Supplier Employee.
- 24.18 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will perform and discharge all its obligations in respect of all the Former Supplier Employees, including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, prior to the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments due to them will be made.
- 24.19 The Supplier shall comply with all of its obligations under TUPE and shall perform and discharge all its obligations in respect of all the Former Supplier Employees including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, from and after the Relevant Transfer Date. The Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier’s failure to comply with all of its obligations under TUPE and/or perform and discharge any such obligation in relation to the Former Supplier’s Employees.
- 24.20 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier’s Employee (or, where applicable, any trainee or employee representative of any Former Supplier’s Employees) arising out of or in connection with:

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- 24.20.1 any fact or matter concerning or arising from his/her employment, or the termination thereof, on or before the Relevant Transfer Date, including (but not limited to) any claims of unfair dismissal, wrongful dismissal, unlawful deduction, breach of contract, sex discrimination, race discrimination or disability discrimination, or any claim for a redundancy payment;
- 24.20.2 the breach or non-observance by the Former Supplier during the period prior to the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employees; and
- 24.20.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 24.20.3.0 in relation to any Former Supplier Employees, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - 24.20.3.1 in relation to any employee who is not a Former Supplier Employees, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.
- 24.21 If any person who is not a Former Supplier Employee claims, or it is determined, that his contract of employment has been transferred from the Former Supplier to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
 - 24.21.1 the Supplier shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (which may include notice to a Former Supplier); and
 - 24.21.2 the Former Supplier may offer employment to such person within fifteen (15) Working Days of the notification by the Supplier, or take such other steps as it considers appropriate to deal with the matter.
- 24.22 If such offer is accepted, or if the situation has otherwise been resolved by the Former Supplier, the Supplier shall immediately release the person from his employment.
- 24.23 If, after the fifteen (15) Working Day period specified in Clause 24.21.2 has elapsed:
 - 24.23.1 no such offer of employment has been made; or
 - 24.23.2 such offer has been made but not accepted; or
 - 24.23.3 the situation has not otherwise been resolved,the Supplier may within five (5) Working Days give notice to terminate the employment of such person.
- 24.24 Subject to the Supplier acting in accordance with the provisions of Clauses 24.17 to 24.22 (inclusive) and subject to the Supplier complying with all applicable proper employment procedures set out in Law, the Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Supplier will indemnify the Supplier

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against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any employee (or, where applicable, any trainee or employee representative of any employee) in relation to the operation of TUPE upon the contract of employment or upon the employment or termination by the Supplier of the employment of any employee, subject to the provisions of Clause 24.23, who is later alleged or determined to have transferred to the employment of the Supplier pursuant to TUPE.

- 24.25 If any such person as is described in Clause 24.21 is neither re-employed by the Former Supplier nor dismissed by the Supplier within the time scales set out in Clauses 24.21 to 16.23 (inclusive) such person will be treated as a Former Supplier Employee.
- 24.26 The Supplier shall indemnify the Customer on behalf of the Former Supplier against all Employee Liabilities arising from the Supplier's or any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Former Supplier Employees arising from or as a result of any act or omission by the Supplier or any Sub-Contractor relating to a Former Supplier Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Former Supplier Employee.
- 24.27 The Supplier will, and will procure that any Sub-Contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Former Supplier Employee who is a Second Generation Fair Deal Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance.
- 24.28 The Supplier shall indemnify the Customer for itself and on behalf of the Former Supplier against all Employee Liabilities (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Supplier Employee (or, where applicable, any trainee or employee representative of any Former Supplier Employee) arising or in connection with:
- 24.28.1 his/her employment or its termination arising or occurring after the Relevant Transfer Date;
 - 24.28.2 a failure of the Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Former Supplier Employee in respect of the period after the Relevant Transfer Date;
 - 24.28.3 any act or omission by the Supplier or any Sub-Contractor occurring on or after the Relevant Transfer Date;
 - 24.28.4 any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under TUPE whether occurring before, on or after the Relevant Transfer Date including any claim made by or in respect of a Former Supplier Employee or any appropriate employee representative (as defined in TUPE) of any Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its or their obligations under Regulation 13 of TUPE or in respect of an award of compensation under Regulation 15 except to the extent that the liability arises

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from the Customer's or any Former Supplier's failure to comply with their obligations under TUPE;

- 24.28.5 any statement communicated to or action undertaken by the Supplier to, or in respect of, any Former Supplier Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer in writing.
- 24.28.6 the breach or non-observance by the Supplier during the period after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Supplier Employee;
- 24.28.7 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - 24.28.7.0 in relation to any Former Supplier Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and
 - 24.28.7.1 in relation to any employee who is not a Former Supplier Employee, and in respect of whom it is later alleged or determined that TUPE applied so as to transfer his/her employment from the Former Supplier to the Supplier, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date.
- 24.28.8 The Supplier shall notify the Customer of any claims by any Former Supplier's Employee as soon as practicably possible to allow the Customer and the Former Supplier to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

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- 24.29 The Customer and the Supplier will proceed on the basis that the commencement of the provision of the Services by the Supplier under this Contract will not be a "Relevant Transfer" to which TUPE will apply in relation to any employees of the Customer. In the circumstances, the Customer and the Supplier agree that no employees of the Customer will transfer to the Supplier by virtue of the operation of TUPE or the Acquired Rights Directive.
- 24.30 If any employee of the Customer claims or it is determined that his contract of employment has been transferred from the Customer to the Supplier pursuant to TUPE or the Acquired Rights Directive then:
 - 24.30.1 The Supplier will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Customer;
 - 24.30.2 The Customer may offer employment to such person within twenty one (21) Working Days of the notification by the Supplier or take such other steps as it considers appropriate to deal with the matter;

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- 24.30.3 If such offer is accepted (or if the situation has otherwise been resolved by the Customer), the Supplier shall immediately release the person from his employment;
- 24.30.4 If after the twenty one (21) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Supplier may within seven (7) Working Days give notice to terminate the employment of such person;
- 24.30.5 Subject to Clause 24.31 and subject to the Supplier acting in this way or in such other way as may be agreed between the Customer and the Supplier, the Customer will indemnify the Supplier against all Employee Liabilities arising out of such termination provided the Supplier complies with all applicable proper employment procedures.
- 24.30.6 If such person is neither re employed by the Customer nor dismissed by the Supplier within the time scales set out in this Clause 24.30 such person will be treated as having transferred to the Supplier by virtue of the operation of TUPE and the Supplier shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.
- 24.31 The indemnity in Clause 24.30.5 shall only apply where the notification referred to in Clause 24.30.1 is made by the Supplier to the Customer within six (6) Months of the Relevant Transfer Date.

25. FEEDBACK TO UNSUCCESSFUL INSURERS

- 25.1 The Client and or Broker is to provide unsuccessful Insures at the Market Presentation stage feedback in line with EU Regulations within 10 working days of being informed that they were unsuccessful.

26. COUNTERPARTS

- 26.1 The Contract may, if the Laws of the chosen country so permits, 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.