

DATED

2016

(1) THE INFORMATION COMMISSIONER

- and -

(2) DISKLABS LIMITED

AGREEMENT

relating to the supply of
Digital Forensics Services

**Contract Reference Number:
2015CO00074**

THIS AGREEMENT is made on

2016

BETWEEN:

- (1) **THE INFORMATION COMMISSIONER** (a corporation sole appointed by Her Majesty the Queen) whose head office is at Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF ("**Commissioner**").
- (2) **DISKLABS LIMITED** a company registered in England and Wales with company number 03441987 of Disklabs House, Galena Close, Amington Industrial Estate, Tamworth B77 4AS ("**Supplier**").

INTRODUCTION

- A The Commissioner investigates criminal and civil breaches of the Data Protection Act, the Freedom of Information Act and the Privacy and Electronic Communications Regulations. As a result of this, the Commissioner requires digital forensic services.**
- B The Supplier has the necessary skills, expertise and resource to provide such Services to the Commissioner and agrees to do so on the terms of this Agreement.**

IT IS AGREED as follows:

A SECTION A - PRELIMINARIES

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement the definitions set out in Schedule (Definitions) shall apply.
- 1.2 The interpretation and construction of this Agreement shall be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
- 1.2.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

1.2.5 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 assignees or transferees;

1.2.6 the words "**include**", "**includes**" and "**including**" are to be construed as if they were immediately followed by the words "**without limitation**"; and

1.2.7 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of the Agreement.

1.3 In the event of, and only to the extent of, any conflict between the clauses of this Agreement, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

1.3.1 the clauses of any Order called off under this Agreement;

1.3.2 this Agreement and Schedule 1 (Definitions);

1.3.3 Part 1 (Services Requirements) of Schedule 2 (Services Requirements and Supplier Solution);

1.3.4 any other Schedules and their annexes (except for Part 1 of Schedule 2 - Services Requirements and Supplier Solution);

1.3.5 Part 2 (Supplier Solution) of Schedule 2 (Schedule 2 - Services Requirements and Supplier Solution); and

1.3.6 any other document referred to in the clauses or Schedules of this Agreement.

2. DUE DILIGENCE

The Supplier acknowledges that it:

2.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Commissioner;

2.2 has raised all relevant due diligence questions with the Commissioner before the Commencement Date; and

2.3 has entered into this Agreement in reliance on its own due diligence alone.

B SECTION B - SUPPLY OF SERVICES

3. PROVISION OF SERVICES

3.1 The Supplier shall supply the Services on a call-off basis under Orders entered into (including for the avoidance of doubt any Additional Services which

the Commissioner may require and which are agreed to be supplied by the Supplier in accordance with clause 18) throughout the Term and shall ensure that the Services:

- 3.1.1 comply in all respects with the Services Requirements; and
- 3.1.2 are supplied in accordance with the Supplier Solution and the terms of this Agreement.
- 3.2 The Supplier shall at all times perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - 3.2.1 Good Industry Practice; and
 - 3.2.2 all applicable Laws.
- 3.3 The Supplier shall draw any conflict between any of the requirements of clause 3.1 and the requirements of clause 3.2 to the attention of the Commissioner and shall comply with the Commissioner's decision on the resolution of that conflict.
- 3.4 The Commissioner may order Services from the Supplier in accordance with the terms of this Agreement by serving and Order in accordance with Schedule 3 (Pricing, Ordering and Invoicing Procedure). The parties agree that there is no obligation for the Commissioner to place any Orders. This Agreement sets out the Order procedure applicable for any Order which the parties may enter into.
- 3.5 No undertaking or any form of statement, promise, representation or obligation shall be made or deemed to be made by the Commissioner in respect of the total quantities or values of Services that may be Ordered pursuant to this Agreement and the Supplier acknowledges and agrees that it has not entered into this Agreement on the basis of any such undertaking, statement, promise or representation.
- 3.6 If the Commissioner requires Additional Services, it shall notify the Contractor in writing and the parties shall agree any necessary changes to the Agreement in accordance with clause 18.

4. SERVICE FAILURE

- 4.1 If there is a Service Failure, or if the Supplier believes that there will be a Service Failure, the Supplier shall notify the Commissioner promptly of the Service Failure or likely Service Failure, and, at the request of the Commissioner, shall:
 - 4.1.1 submit to the Commissioner for approval a plan detailing the action that the Supplier proposes to take to rectify the Service Failure or to prevent the Service Failure from taking place or recurring ("**Correction Plan**"), within 10 Working Days of the Commissioner's notification;

4.1.2 take all remedial action that is reasonable to rectify or to prevent the Service Failure from taking place or recurring; and

4.1.3 implement the Correction Plan in accordance with its terms following approval by the Commissioner pursuant to clause 4.1.1.

4.2 Without prejudice to its rights under clause 7, where a Service Failure occurs, the Commissioner may, on written notice to the Supplier, withhold a proportionate amount of the Contract Price in respect of such Services until such time as the relevant Service Failure is remedied. Provided that the relevant Service Failure is remedied, the Commissioner shall resume payment of the relevant part of the Contract Price, including payment of the amount retained.

5. EFFECT OF COMMISSIONER CAUSE

5.1 Any disputes about or arising out of whether a Commissioner Cause applies to the Supplier's failure to provide the Services in accordance with this Agreement shall be resolved in accordance with the provisions of clause 19 (Dispute Resolution). Pending the resolution of the dispute both parties shall continue to resolve the causes of, and mitigate the effects of, such failure.

6. QUALITY STANDARDS

The Supplier shall at all times comply with the Quality Standards and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that no Quality Standards have been specified in the Services Requirements, the Supplier shall agree any relevant standards for the Services with the Commissioner prior to the supply of the Services and, in any event, the Supplier shall perform its obligations under this Agreement in accordance with the provisions of clause 3 (Provision of Services).

7. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE

7.1 In the event that the Commissioner is of the reasonable opinion that there has been a breach of this Agreement by the Supplier, then the Commissioner may, without prejudice to its rights under clauses 4 (Service Failure) and 4.2.3 (Termination on Default), do any of the following:

7.1.1 require the Supplier to re-perform the relevant Services or to comply with its obligations, at its own cost;

7.1.2 without terminating this Agreement, itself supply or procure the supply of all or part of the Services by a third party until such time as the Supplier shall have demonstrated to the reasonable satisfaction of the Commissioner that the Supplier will once more be able to supply all or such part of the Services in accordance with this Agreement;

7.1.3 without terminating the whole of this Agreement, terminate this Agreement in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and

thereafter itself supply or procure a third party to supply such part of the Services; and/or

7.1.4 terminate, in accordance with clause 42.3 (Termination on Default), the whole of this Agreement.

7.2 Without prejudice to its right under clause 13 (Recovery of Sums Due), the Commissioner may charge the Supplier for any costs reasonably incurred (including reasonable administration costs) in respect of the supply of any part of the Services by the Commissioner or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Supplier for such part of the Services and provided that the Commissioner uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

8. PROVISION AND REMOVAL OF EQUIPMENT

8.1 Unless the Commissioner specifies otherwise (in which case the Commissioner shall make available to the Supplier the relevant Property in accordance with clause 9) the Supplier shall provide all Equipment necessary for the supply of the Services.

8.2 The Supplier shall not deliver any Equipment, nor begin any work on the Premises, without obtaining prior Approval.

9. PROPERTY

9.1 Where the Commissioner issues Property to the Supplier such Property shall be and remain the property of the Commissioner and the Supplier irrevocably licences the Commissioner and its agents to enter any premises of the Supplier at any time during or after the Term (during normal business hours and on reasonable notice) to recover any such Property. The Supplier shall not, in any circumstances, have a lien on or any other interest in the Property and the Supplier shall at all times possess the Property as fiduciary agent and bailee of the Commissioner. The Supplier shall, at the Commissioner's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Commissioner.

9.2 The Property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the Commissioner of any defects within five (5) Working Days of receipt.

9.3 The Supplier shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with this Agreement and for no other purpose without prior Approval.

9.4 The Supplier shall ensure the physical security of the Property whilst in its possession, either on the Premises or elsewhere during the Term, in accordance with the Commissioner's reasonable security requirements as required from time to time and as set out in Schedule 2.

9.5 The Supplier shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Commissioner's Default. The Supplier shall inform the Commissioner within two (2) Working Days of becoming aware of any defects appearing in, or Losses or damage occurring in respect of, the Property.

10. ACCESS TO PREMISES

10.1 Any access to, or occupation of, the Premises which the Commissioner may grant the Supplier from time to time for the purposes of this Agreement shall be on a non-exclusive licence basis and shall be provided free of charge.

10.2 The Supplier shall have the use of the Premises as licensee and shall vacate the same upon expiry or termination of the Agreement. The Parties agree that there is no intention on the part of the Commissioner to create a tenancy of any nature whatsoever in favour of the Supplier or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to this Agreement, the Commissioner retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

10.3 The Supplier shall use the Premises solely for the purpose of performing its obligations under this Agreement and shall limit access to the Premises to such Staff as is necessary for that purpose. The Supplier shall co-operate (and ensure that its Staff co-operate) with any other persons working concurrently on the Premises as the Commissioner may reasonably request and shall comply with its obligations set out in this Agreement in respect of the Premises pursuant to clauses:

10.3.120.7 (Staffing Security);

10.3.223 (Health and Safety);

10.3.335 (Security); and

10.3.437 (Environmental Requirements).

10.4 The Supplier shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Commissioner, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

C SECTION C - PAYMENT

11. CHARGING AND INVOICING

11.1 Without prejudice to its rights under clauses 4.2 (Retention of Contract Price) and 13 (Recovery of Sums Due), in consideration of the Supplier's performance of its obligations under this Agreement, including the provision of the Services,

the Commissioner shall pay the Contract Price to the Supplier in accordance with the Order, payment profile and invoicing procedures specified in Schedule 3.

- 11.2 The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate this Agreement pursuant to clause 42.4 (Termination by the Supplier) for failure to pay undisputed sums of money. Interest shall be payable by the Commissioner on the late payment of any undisputed sums of money properly invoiced at an annual rate of 2% above the base rate of The Royal Bank of Scotland Plc from time to time.
- 11.3 If the Supplier enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under this Agreement, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- 11.4 The Contract Price shall apply for the Term in respect of all Orders entered into.

12. TAX

- 12.1 The Contract Price is stated exclusive of VAT, which shall be added at the prevailing rate as applicable by Law and paid by the Commissioner to the Supplier or Her Majesty's Revenue and Customs ("**HMRC**") (as applicable) following Receipt of a valid UK VAT invoice.
- 12.2 The Supplier shall indemnify the Commissioner on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Commissioner at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Agreement. Any amounts due under this clause 12.2 shall be paid by the Supplier to the Commissioner not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Commissioner.

13. RECOVERY OF SUMS DUE

The Commissioner may retain or set off any amount owed to it by the Supplier against any amount due to the Supplier under this Agreement.

14. EURO COMPLIANCE

- 14.1 Any requirement of Law to account for the Services in Euros (or to prepare for such accounting), instead of and/or in addition to pounds sterling, shall be implemented by the Supplier free of charge to the Commissioner.
- 14.2 The Commissioner shall provide all reasonable assistance to facilitate compliance with clause 14.1 by the Supplier.

D SECTION D - CONTRACT GOVERNANCE

15. SUPPLY CHAIN RIGHTS

- 15.1 The Supplier shall not sub-contract any of its obligations under this Agreement or any Order.
- 15.2 The Supplier shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and accurate management information to the Commissioner. The Supplier grants the Commissioner a non-exclusive, transferable, perpetual, irrevocable royalty free licence to use any management information supplied to the Commissioner for the purposes of the normal operational activities of the Commissioner, including administering this Agreement and any Orders or monitoring public sector expenditure.

16. AUDIT

- 16.1 For the purposes of the examination and certification of the Commissioner's accounts or any examination (pursuant if appropriate to Section 6(1) of the National Audit Act 1983 or any re-enactment thereof, or any equivalent legislation) of the economy, efficiency and effectiveness with which the Commissioner has used its resources, the Commissioner's statutory auditors may examine such documents as they may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanations as they consider necessary provided that the carrying out of an examination, if appropriate, under section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof, or under any equivalent legislation, in relation to the Supplier is not a function exercisable under this clause.
- 16.2 Except where an audit is imposed on the Commissioner in accordance with clause 16.1 or the Supplier is in Default (in which case the Commissioner may undertake the audits it deems to be necessary), the Commissioner may, not more than twice in any calendar year and for a period of 12 Months following the end of the Term, conduct an audit to:
- 16.2.1 verify the accuracy of the Contract Price or any Order; and/or
- 16.2.2 check the Supplier's compliance with the provisions of this Agreement, or any Order including clauses 27 (Protection of Personal Data), 28 (Freedom of Information) and 35 (Security).
- 16.3 Without prejudice to clauses 16.1 and 16.2, the Commissioner may carry out audits of the Supplier's quality management systems (including its compliance with the Quality Standards and any quality manuals and procedures) at regular intervals throughout the Term.
- 16.4 The Commissioner shall endeavour to (but is not obliged to) provide at least five (5) Working Days' notice of its intention to conduct an audit. However, the

Commissioner shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

16.5 Subject to the Commissioner's obligations of confidentiality, the Supplier shall on demand co-operate, and shall procure that its sub-contractors co-operate, with the Commissioner (and/or its agents or representatives) in relation to each audit, including by providing the Commissioner with:

16.5.1 all information requested by the Commissioner within the permitted scope of the audit; and

16.5.2 access to the Staff.

16.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Commissioner for all the Commissioner's reasonable costs incurred in the course of the audit.

16.7 If an audit identifies that:

16.7.1 the Commissioner has overpaid the Contract Price, the Supplier shall pay to the Commissioner the amount overpaid within 30 days. The Commissioner may deduct the relevant amount from the Contract Price if the Supplier fails to make this payment; and

16.7.2 the Commissioner has underpaid the Contract Price the Commissioner shall pay to the Supplier the amount of the under-payment, (less the cost of audit incurred by the Commissioner if such underpayment was due to a Default by the Supplier in relation to invoicing) within 30 days of Receipt of an invoice.

17. RECORDS

The Supplier shall keep and maintain until six (6) years after the end of the Term, or such other period as may be agreed between the Parties, full and accurate records of this Agreement, including the Services supplied under it or under any Order, all expenditure reimbursed by the Commissioner and all payments made by the Commissioner. The Supplier shall on request afford the Commissioner or the Commissioner's representatives such access to those records as may be requested by the Commissioner in connection with this Agreement.

18. CONTRACT CHANGE PROCEDURE

No amendment to the provisions of this Agreement shall be effective unless agreed in writing by the Supplier and the Commissioner.

19. DISPUTE RESOLUTION

- 19.1 Subject to the provisions of clause 19.2, any dispute arising under, or in connection with this Agreement shall be dealt with in accordance with this clause 19 (Dispute Resolution), and neither the Commissioner nor the Supplier may commence or pursue any legal proceedings under the jurisdiction of the courts in connection with any such dispute, until the procedures set out in this clause 19 (Dispute Resolution) have been exhausted.
- 19.2 Clause 19.1 shall be without prejudice to the rights of termination stated in clause 41.1 (Termination Rights) and in addition shall not prevent the Commissioner or the Supplier from applying for injunctive relief in the case of:
- 19.2.1 breach or threatened breach of confidentiality;
 - 19.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
 - 19.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the Commissioner or the Supplier to liability.
- 19.3 All disputes between the Commissioner and the Supplier arising out of or relating to this Agreement shall be referred by [REDACTED] Enforcement for the Commissioner or [REDACTED] to the other for resolution in the first instance.
- 19.4 If any dispute cannot be resolved pursuant to the provisions of clause 19.3 within 10 Working Days, that dispute shall be referred to [REDACTED] Operations Directorate for the Commissioner and [REDACTED] for resolution.
- 19.5 If the dispute cannot be resolved pursuant to clause 19.4, the parties will refer the dispute to a suitably qualified and experienced expert for determination ("**Expert**"). Such Expert shall be approved by both parties in writing and the Expert's determination shall (in the absence of being negligent or otherwise breaching the terms of his appointment) be final and binding on the parties.

E SECTION E - PERSONNEL

20. STAFF

- 20.1 The Supplier shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- 20.2 The Supplier acknowledges that access to the Premises for the purposes of providing the Services shall be in line with the Commissioner's Visitor Policy as notified to the Supplier from time to time and that Supplier Staff shall be

accompanied by a member of the Commissioner's staff during all visits to the Premises.

20.3 The Commissioner may refuse to admit onto, or withdraw permission to remain on, the Premises and/or direct the Supplier to end the involvement in the delivery of the Services of any:

20.3.1 member of the Staff; or

20.3.2 person employed or engaged by any member of the Staff,

whom the Commissioner believes represents a security risk or whose admission or continued presence on the Premises would be otherwise undesirable.

20.4 The Supplier shall comply with the Staff Vetting Procedures in respect of Staff, in order that the Commissioner may maintain best information security practice and accreditation for the Government Secure Intranet ("**GSI**").

20.5 The Commissioner and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 5 (*Staff Transfer*) shall apply

Relevant Convictions

20.6 The Supplier shall ensure that no person who discloses that he has any Relevant Convictions, or who is found by the Supplier to have any Relevant Convictions (whether as a result of a police check or through the Disclosure and Barring Service procedures or otherwise), is employed or engaged in the provision of any part of the Services without the Commissioner's prior and express written consent.

Staffing Security

- 20.7 The Staff shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel including any requirements imposed pursuant to clause 35 (Security).
- 20.8 Notwithstanding clause 19 (Dispute Resolution), any decision of the Commissioner relating to the interpretation of this clause 20 (Staff), including in respect of any person refused access to the Premises shall be final and conclusive and it shall not be obliged to provide any reasons for such decision.
- 20.9 The Supplier will ensure that it and its Staff have robust data storage, management and security systems which comply with all applicable security, data protection and confidentiality requirements and undertakes at all times to comply with the DPA and all other applicable domestic or European Union legislation relating to data protection.

21. KEY PERSONNEL

- 21.1 The Parties have agreed to the appointment of the Key Personnel as at the Commencement Date. The Supplier shall obtain Approval before removing or replacing any member of the Key Personnel from their corresponding role during the Term, and reasonable written notice must be provided by the Supplier of its intention to replace any member of Key Personnel from their corresponding role.
- 21.2 The Commissioner shall not unreasonably delay or withhold its consent to the appointment of a replacement to any relevant member of the Key Personnel by the Supplier.
- 21.3 The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the Commissioner. The Supplier shall ensure that the role of any Key Personnel is not vacant for any longer than 10 Working Days and that any replacement shall be as or more qualified and experienced as the previous incumbent of such role and is fully competent to carry out the tasks assigned to the role of the member of Key Personnel whom he or she has replaced.
- 21.4 The Supplier shall ensure that each of the Key Personnel are suitably qualified and experienced and shall work for such a period of time in the performance of the Services that is commensurate with and sufficient to perform the obligation of that person's role unless the Commissioner otherwise gives its prior written consent. To the extent that it can do so without disregarding its statutory obligations, the Supplier shall take all reasonable steps to ensure that it retains the services of all the Key Personnel.
- 21.5 The Commissioner shall not be liable for the cost of replacing any member appointed to a Key Personnel role and the Supplier shall indemnify the Commissioner against all Employee Liabilities that may arise in this respect.

22. EMPLOYMENT INDEMNITY

The Supplier shall indemnify the Commissioner against all Employee Liabilities that may arise as a result of any claims brought against the Commissioner by any of the Commissioner's employees or former employees and/or any of the Staff where such claim arises from any act or omission of the Supplier or any Staff.

23. HEALTH AND SAFETY

- 23.1 The Supplier shall promptly notify the Commissioner of any health and safety hazards which may arise in connection with the performance of its obligations under this Agreement. The Commissioner shall promptly notify the Supplier of any health and safety hazards which may exist or arise at the Premises and which may affect the Supplier in the performance of its obligations under this Agreement.
- 23.2 Whilst on the Premises, the Supplier shall comply with any health and safety measures implemented by the Commissioner in respect of its Staff and other persons working there.
- 23.3 The Supplier shall notify the Commissioner immediately in the event of any incident occurring in the performance of its obligations under this Agreement on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 23.4 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under this Agreement.
- 23.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Commissioner on request.

24. EQUALITY AND DIVERSITY

- 24.1 The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 24.2 The Supplier shall take all reasonable steps to secure the observance of clause 24.1 by all Staff and sub-contractors employed in the execution of this Agreement.

25. NON-SOLICITATION

The Supplier shall not, and the Supplier shall procure that any sub-contractor shall not, during the Term and for 6 Months following the termination or expiry of this Agreement either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) from the employment of the Commissioner any person employed by such other Party in the provision of the Services or (in the case of the Commissioner) in the receipt and/or administration of the Services.

F SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

26. INTELLECTUAL PROPERTY RIGHTS

- 26.1 To the extent that, to benefit from the provision of the Services in the manner anticipated by this Agreement, the Commissioner requires access to and a right to use the Supplier's Intellectual Property Rights, the Supplier grants to the Commissioner a non-exclusive and royalty-free licence for the duration of the Term to use any of the Supplier's Intellectual Property Rights, including the right to grant a sub-licence to all employees, sub-contractors, consultants and professional advisors of the Commissioner.
- 26.2 All Intellectual Property Rights belonging to a party prior to the Commencement Date shall remain vested in that party.
- 26.3 All Intellectual Property Rights created as a result of the performance of this Agreement ("**IP Materials**") shall vest in the Commissioner.
- 26.4 The Supplier hereby assigns to the Commissioner, with full title guarantee, title to and all rights and interest in the IP Materials. This assignment shall take effect immediately on the coming into existence of the relevant Intellectual Property Rights. The Supplier shall execute all documentation necessary to execute this assignment at its own expense.

27. PROTECTION OF PERSONAL DATA

- 27.1 With respect to the Parties' rights and obligations under this Agreement, the Parties agree that the Commissioner is the Data Controller and that the Supplier is the Data Processor.
- 27.2 The Supplier shall:
- 27.2.1 Process the Personal Data only in accordance with instructions from the Commissioner (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Commissioner to the Supplier during the Term);
 - 27.2.2 Process the 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;

- 27.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 27.2.4 take all reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;
- 27.2.5 provide the Commissioner with such information as the Commissioner may reasonably require to satisfy himself that the Supplier or any Supplier Staff is complying with its obligations under the DPA;
- 27.2.6 obtain Approval in order to transfer the Personal Data to any sub-contractors or Affiliates for the provision of the Services;
- 27.2.7 ensure that all 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 27 (Protection of Personal Data);
- 27.2.8 ensure that no Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Commissioner;
- 27.2.9 notify the Commissioner (within five (5) Working Days) if it receives:
 - 27.2.9.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 27.2.9.2 a complaint or request relating to the Commissioner's obligations under the Data Protection Legislation;
- 27.2.10 provide the Commissioner with full cooperation and assistance in relation to any complaint or request made, including by:
 - 27.2.10.1 providing the Commissioner with full details of the complaint or request;
 - 27.2.10.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Commissioner's instructions;
 - 27.2.10.3 providing the Commissioner with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Commissioner); and
 - 27.2.10.4 providing the Commissioner with any information requested by the Commissioner;

- 27.2.11 permit the Commissioner or a Commissioner representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier's data Processing activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Commissioner to enable the Commissioner to verify and/or procure that the Supplier is in full compliance with its obligations under this Agreement;
- 27.2.12 on request, provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Commissioner); and
- 27.2.13 not Process or otherwise transfer any Personal Data outside the European Economic Area without the prior written Approval of the Commissioner and subject to the Supplier entering into a direct data processing agreement with the Commissioner on such terms as may be required by the Commissioner, which the Supplier acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

27.3 The Supplier shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement and/or under any Order in such a way as to cause the Commissioner to breach any of its applicable obligations under the Data Protection Legislation.

28. FREEDOM OF INFORMATION

28.1 The Supplier acknowledges that the Commissioner is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Commissioner to enable the Commissioner to comply with its Information disclosure obligations.

28.2 The Supplier shall and shall procure that any sub-contractors shall:

- 28.2.1 transfer to the Commissioner 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;
- 28.2.2 provide the Commissioner with a copy of all Information in its possession or power in the form that the Commissioner requires within five (5) Working Days (or such other period as the Commissioner may specify) of the Commissioner's request; and
- 28.2.3 provide all necessary assistance as reasonably requested by the Commissioner to enable the Commissioner 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.

- 28.3 The Commissioner shall be responsible for determining in its absolute discretion, and notwithstanding any other provision in this Agreement or any other agreement, whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 28.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Commissioner.
- 28.5 The Supplier acknowledges that (notwithstanding the provisions of clause 29 (Confidential Information)) the Commissioner may be obliged under the FOIA or the Environmental Information Regulations or any statutory codes, including the Code to disclose information concerning the Supplier or the Services in certain circumstances:
- 28.5.1 without consulting the Supplier; or
- 28.5.2 following consultation with the Supplier and having taken their views into account,
- provided always that where clause 28.5.1 applies the Commissioner shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 28.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Commissioner to inspect such records as requested from time to time.

29. CONFIDENTIAL INFORMATION

- 29.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Commissioner shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for the Commissioner to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to this Agreement, to the general public.
- 29.2 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, the Supplier hereby agrees to:
- 29.2.1 treat the Confidential Information as confidential and safeguard it accordingly; and
- 29.2.2 not disclose the Confidential Information to any other person without the owner's prior written consent.

- 29.3 Clause 29.2 shall not apply to the extent that:
- 29.3.1 such disclosure is a requirement of Law making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 28 (Freedom of Information);
 - 29.3.2 such information was in the possession of the Supplier making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 29.3.3 such information was obtained from a third party without obligation of confidentiality;
 - 29.3.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 29.3.5 it is independently developed without access to the Confidential Information.
- 29.4 The Supplier may only disclose the Confidential Information to such of the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of, acknowledge the importance of, and shall comply with these obligations as to confidentiality.
- 29.5 The Supplier shall not, and shall procure that the Staff do not, use any of the Confidential Information received otherwise than for the purposes of this Agreement.
- 29.6 At the written request of the Commissioner, the Supplier shall procure that those members of its Staff identified in the Commissioner's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

30. OFFICIAL SECRETS ACTS 1911 TO 1989, SECTION 182 OF THE FINANCE ACT 1989, CRIMINAL PROCEDURES AND INVESTIGATIONS ACTS 1996

- 30.1 The Supplier shall comply with, and shall ensure that the Staff comply with, the provisions of:
- 30.1.1 the Official Secrets Acts 1911 to 1989;
 - 30.1.2 the Criminal Procedures and Investigations Act 1996; and
 - 30.1.3 Section 182 of the Finance Act 1989.
- 30.2 In the event that the Supplier or the Staff fail to comply with this clause, the Commissioner may terminate this Agreement by giving notice in writing to the Supplier.

G SECTION G - SUPPLIER AND COMMISSIONER PROTECTION

31. SUPPLIERS OBLIGATIONS

31.1 The Supplier shall:

- 31.1.1 at all times allocate sufficient resources to provide the Services in accordance with the terms of this Agreement;
- 31.1.2 subject to clause 34 (Change in Law) obtain, and maintain throughout the Term, all the consents, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary to enable the provision of the Services;
- 31.1.3 provide to the Commissioner's other suppliers as are notified to the Supplier periodically such reasonable co-operation, information (including any documentation), advice and assistance in connection with the Services to enable any such person to create and maintain technical or organisational interfaces with the Services and, on the ending of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to any Replacement Supplier; and
- 31.1.4 provide the Commissioner with such assistance as the Commissioner may reasonably require during the Term in respect of the supply of the Services.

32. WARRANTIES AND REPRESENTATIONS

32.1 The Supplier warrants, represents and undertakes that:

- 32.1.1 it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under this Agreement and any Order;
- 32.1.2 this Agreement is executed by a duly authorised representative of the Supplier;
- 32.1.3 in entering into this Agreement it has not committed any Fraud;
- 32.1.4 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under this Agreement;
- 32.1.5 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement or any Order;

- 32.1.6 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue;
- 32.1.7 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 this Agreement;
- 32.1.8 all Staff used to provide the Services will be vetted in accordance with Good Industry Practice and the Staff Vetting Procedures and as set out in the Supplier Solution;
- 32.1.9 it has and will continue to hold all necessary regulatory approvals (if any) from the Regulatory Bodies necessary to perform the Supplier's obligations under this Agreement; and
- 32.1.10 it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under this Agreement

32.2 Each time an order is entered into, the warranties, representations and undertakings in this clause 32 shall be deemed to be repeated by the Supplier with reference to the circumstances existing at the time they are deemed to be repeated.

33. MISTAKES IN INFORMATION

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

H SECTION H - RISK PROTECTION

34. CHANGE IN LAW

34.1 The Supplier shall bear the cost of ensuring that the Services shall comply with all applicable statutes, enactments, orders, regulations or other similar instruments and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the Supplier at the Commencement Date.

34.2 Where such reasonably unforeseeable amendments are necessary, the Commissioner and the Supplier shall use all reasonable endeavours to agree upon reasonable adjustments to the Contract Price as may be necessary to compensate the Supplier for such additional costs as are both reasonably and necessarily incurred by the Supplier in accommodating such amendments.

35. SECURITY

- 35.1 The Commissioner shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Supplier shall comply with, and shall procure the compliance of the Staff with, all security requirements of the Commissioner whilst on the Premises.
- 35.2 The Supplier shall comply, and shall procure the compliance of the Staff, with any security policy and/or manual made known to the Supplier from time to time and provide the Services in accordance with the provisions of the Service Requirements and Supplier Solution.

36. FORCE MAJEURE

- 36.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under this Agreement (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under this Agreement for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under this Agreement for a period in excess of six (6) Months, the Party not suffering from Force Majeure may terminate this Agreement with immediate effect by notice in writing.
- 36.2 Any failure or delay by the Supplier in performing its obligations under this Agreement which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Supplier.
- 36.3 A Party cannot claim relief in respect of Force Majeure pursuant to this clause 36 (Force Majeure) where the Force Majeure in question is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.
- 36.4 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause 36.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

37. ENVIRONMENTAL REQUIREMENTS

- 37.1 The Supplier shall comply in all material respects with all applicable environmental Laws in force from time to time in relation to the Services. Without prejudice to the generality of the foregoing, the Supplier shall:
- 37.1.1 when working on the Premises, perform its obligations under this Agreement in accordance with the Commissioner's environmental policy, which is to conserve energy, water, wood, paper and other

resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment; and

37.1.2 promptly provide all such information regarding the environmental impact of the Services as may be reasonably requested by the Commissioner.

37.2 The Supplier shall meet all reasonable requests by the Commissioner for information evidencing compliance with the provisions of this clause 37 (Environmental Requirements) by the Supplier.

I SECTION I - INDEMNITIES, LIABILITIES AND INSURANCE

38. INDEMNITIES

38.1 Subject to clauses 39.2 and 39.3, the Supplier shall indemnify the Commissioner and keep the Commissioner indemnified fully against all Losses (including legal fees) which may arise out of, or in consequence of, any IPR Claim, the supply, installation and/or commissioning of the Services or the performance or non-performance by the Supplier of its obligations under this Agreement or the presence of the Supplier or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, or any other loss which is caused directly or indirectly by any act or omission of the Supplier.

39. LIMITATIONS OF LIABILITY

39.1 Neither Party excludes or limits liability to the other Party for:

39.1.1 death or personal injury caused by its negligence or that of its employees, agents or sub-contractors (as applicable); or

39.1.2 Fraud or fraudulent misrepresentation by it or its employees; or

39.1.3 any breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.

39.2 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Commissioner or by breach by the Commissioner of its obligations under this Agreement.

39.3 Subject always to clause 39.1, the Supplier's liability for Defaults shall be subject to the following financial limits:

39.3.1 in respect of the indemnity in clause 12.2 (Tax) and the indemnity in clause 38.1 for all Losses (including legal fees) which may arise out of, or in consequence of, any IPR Claim, shall be unlimited;

39.3.2 in respect of Defaults resulting in direct loss of or damage to the Premises, property or assets of the Commissioner under or in connection with this Agreement shall in no event exceed £1 million pounds;

39.3.3 in respect of all other Defaults (other than those governed by clauses 39.3.1 to 39.3.2) shall in no event exceed one hundred and twenty five per cent (125%) of the Contract Price paid or payable by the Commissioner to the Supplier in the year in which the liability arises.

39.4 Subject always to clause 39.1, the Commissioner's total aggregate liability under this Agreement, in addition to its obligation to pay the Contract Price, shall in no event exceed the Contract Price paid and properly invoiced in the 12 Month period immediately preceding the event giving rise to the liability.

39.5 Subject always to clause 39.1, in no event shall either Party be liable to the other for any:

39.5.1 loss of profits, business, revenue or goodwill; and/or

39.5.2 indirect, special or consequential loss or damage.

39.6 Subject to clause 39.3 the Commissioner may recover as a direct loss:

39.6.1 any additional operational, marketing, public relations and/or administrative costs and expenses arising from the Supplier's Default;

39.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Commissioner arising from the Supplier's Default;

39.6.3 the additional cost of procuring Replacement Services for the remainder of the Term; and/or

39.6.4 any anticipated savings.

40. INSURANCE REQUIREMENTS

40.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of its performance of its obligations under this Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Term and for a minimum of six (6) years following the expiration or earlier termination of this Agreement.

40.2 The Supplier shall hold employer's liability insurance in respect of Staff in accordance with all applicable Laws in force from time to time.

- 40.3 The Supplier shall give the Commissioner, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 40.4 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this clause 40 (Insurance Requirements) the Commissioner may make alternative arrangements to protect its interests and may recover the reasonable costs of such arrangements from the Supplier.
- 40.5 The Supplier shall effect and maintain appropriate professional indemnity insurance cover during the Term and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. Such insurance shall be maintained for a minimum of six (6) years following the expiration or earlier termination of this Agreement.
- 40.6 The provisions of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Agreement. It shall be the Supplier's responsibility to determine the amount of insurance cover that will be adequate to enable it to satisfy any liability referred to in clause 38 (Indemnities).

J SECTION J - TERM, TERMINATION AND EXIT MANAGEMENT

41. TERM

- 41.1 This Agreement shall take effect on the Commencement Date and shall expire automatically on the second anniversary of the Commencement Date ("Initial Term"), unless terminated at an earlier date by operation of Law or in accordance with the provisions of this Agreement **or** extended pursuant to clause 41.2 ("Term").
- 41.2 The Commissioner may, by giving written notice to the Supplier not less than 1 Month prior to the last day of the Initial Term, extend this Agreement for a further period of up to 12 Month(s). The provisions of this Agreement will apply.

42. TERMINATION RIGHTS

42.1 Termination on Insolvency

42.1.1 The Commissioner may terminate this Agreement by giving written notice of termination to the Supplier if one or more of the circumstances set out in clause 42.1.2 exist.

42.1.2 The circumstances giving rise to the Commissioner's right to terminate are:

42.1.2.1 where the Supplier is a company, an Insolvency Event occurs in respect of the Supplier;

42.1.2.2 where the Supplier is an individual, a Bankruptcy Event occurs in respect of the Supplier;

42.1.2.3 where the Supplier is a partnership or a limited liability partnership and in respect of the Supplier:

42.1.2.3.1 a proposal is made for a voluntary arrangement within Article 4 of the Insolvent Partnerships Order 1994 or a proposal is made for any other composition, scheme or arrangement with, or assignment for the benefit of, its creditors; or

42.1.2.3.2 it is for any reason dissolved; or

42.1.2.3.3 any applicable Insolvency Event or Bankruptcy Event occurs, such determination to be made by the Commissioner in its sole discretion.

42.2 Termination on Change of Control

42.2.1 The Supplier shall notify the Commissioner immediately if the Supplier undergoes a change of control within the meaning of section 450 of the Income and Corporation Taxes Act 2010 ("**change of control**").

42.2.2 The Commissioner may terminate this Agreement by notice in writing with immediate effect if there is a change of control to which the Commissioner reasonably objects, except where the Commissioner:

42.2.2.1 has given its prior written consent to the particular change of control, which subsequently takes place as proposed; or

42.2.2.2 has not served its notice within six (6) Months of the later of the date the change of control took place or the date on which the Commissioner was given notice of the change of control.

42.3 Termination on Default

42.3.1 The Commissioner may terminate this Agreement by written notice to the Supplier with immediate effect if the Supplier:

42.3.1.1 commits a Default and if:

42.3.1.1.1 the Supplier has not remedied the Default to the reasonable satisfaction of the Commissioner within 25 Working Days, or such other period as may be specified by the Commissioner, after issue of a written notice specifying the Default and requesting it to be remedied; or

42.3.1.1.2 the Default is not, in the opinion of the Commissioner, capable of remedy; or

42.3.1.1.3 the Default is a material breach of this Agreement;

42.3.1.2 fails to comply with a Correction Plan in respect of a material Service Failure because:

42.3.1.2.1 the Supplier does not submit or resubmit a Correction Plan for Approval within the timescales required or at all; or

42.3.1.2.2 the Commissioner (acting reasonably) does not approve the proposed Correction Plan on the second occasion of seeking Approval; or

42.3.1.2.3 within a reasonable period following Approval, the Correction Plan fails to remedy the relevant Service Failure; or

42.3.2 Where the Commissioner terminates this Agreement pursuant to this clause 42.3 (Termination on Default) and makes alternative arrangements for the supply of Services, the Commissioner may recover from the Supplier the cost reasonably incurred of making such alternative arrangements and any additional expenditure incurred by the Commissioner throughout the remainder of the Term. The Commissioner shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by the Commissioner to the Supplier in respect of the Services supplied by the Supplier prior to termination and in accordance with this Agreement but where the payment has yet to be made by the Commissioner, until the Commissioner has established the final cost of making the alternative arrangements envisaged under this clause.

42.4 Termination by the Supplier

42.4.1 The Supplier may terminate this Agreement in writing with immediate effect only if the Commissioner is in material breach of its obligation to pay any undisputed element of the Contract Price by giving the Commissioner 60 days written notice specifying the breach and requiring its remedy, save that such right of termination shall not apply where the failure to pay is due to the Commissioner exercising its rights under clause 13 (Recovery of Sums Due).

42.4.2 The Supplier shall not exercise, or purport to exercise, any right to terminate this Agreement (or accept any repudiation of this Agreement) except as expressly set out in this Agreement.

42.5 Termination for Convenience

- 42.5.1 The Commissioner shall have the right to terminate this Agreement at any time by giving one (1) Month's written notice to the Supplier.
- 42.5.2 Subject to the limitations of liability in clause 39 (Limitations of Liability), where the Commissioner terminates the Agreement pursuant to this clause 42.5 (Termination for Convenience), the Commissioner shall compensate the Supplier in respect of any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Supplier by reason of the termination of this Agreement, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Commissioner shall only compensate the Supplier for those unavoidable direct costs that are not covered by the insurance available. The Supplier shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Commissioner, with supporting evidence, of Losses reasonably and actually incurred by the Supplier as a result of termination under this clause 42.5 (Termination for Convenience).
- 42.5.3 The Commissioner shall not be liable under clause 42.5.2 to pay any sum which:
- 42.5.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
 - 42.5.3.2 when added to any sums paid or due to the Supplier under this Agreement, exceeds the total sum that would have been payable to the Supplier if the Agreement had not been terminated prior to the expiry of the Term.

42.6 Right to terminate in part

- 42.6.1 In any of the circumstances in clause 41.1 in which the Commissioner may terminate this Agreement, the Commissioner may instead terminate any element or part of the Services. In the event of partial termination, the Commissioner and the Supplier shall implement a corresponding reduction in the Contract Price in accordance with Schedule 3. The Supplier shall perform its obligations under clause 43 (Consequences of Expiry or Termination) in relation to the terminated portion of the Agreement only.

43. CONSEQUENCES OF EXPIRY OR TERMINATION

- 43.1 Save as set out in clause 41.1 (Termination Rights), the Commissioner shall not be required to pay any sums to the Supplier in respect of the termination or expiry of this Agreement by way of compensation or otherwise.

- 43.2 Termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.
- 43.3 Termination or expiry of this Agreement shall not affect the continuing rights, remedies or obligations of the Commissioner or the Supplier pursuant to clauses 12 (Tax), 13 (Recovery of Sums Due), 16 (Audit), 25 (Non-solicitation), 26 (Intellectual Property Rights), 27 (Protection of Personal Data), 28 (Freedom of Information), 29 (Confidential Information), 30 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 38 (Indemnities), 39 (Limitations of Liability), 40 (Insurance Requirements), 43 (Consequences of Expiry or Termination), 44 (Recovery upon Expiry or Termination), 45 (Transfer of Terms), 51 (Prevention of Corruption), 52 (Third Party Rights), 54 (Severance), 55 (Entire Agreement) and 58 (Governing Law and Jurisdiction).

44. RECOVERY UPON EXPIRY OR TERMINATION

- 44.1 Following the service of a notice to terminate for any reason the Supplier shall continue to be under an obligation to provide the Services and to ensure that there is no degradation in the standards of the Services until the date of the termination.
- 44.2 In the event of termination or expiry of this Agreement the Supplier shall:
- 44.2.1 repay to the Commissioner any aspect of the Contract Price it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination;
- 44.2.2 subject to clause 44.2.4 below, cease to use the Commissioner Data and, at the direction of the Commissioner provide the Commissioner and/or the Replacement Supplier with a complete and uncorrupted version of the Commissioner Data in electronic form in the formats and on media agreed with the Commissioner and/or the Replacement Supplier;
- 44.2.3 subject to clause 44.2.4 below, upon the earlier of:
- 44.2.3.1 the receipt of the Commissioner's written instructions; or
- 44.2.3.2 12 Months after the date of expiry or termination,
- destroy all copies of the Commissioner Data, excepting a copy of any such Commissioner Data which is also a record as set out in clause 17 (Records) and promptly provide written confirmation to the Commissioner that the data has been destroyed;
- 44.2.4 immediately return to the Commissioner (or such other party as nominated by the Commissioner) all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under

the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;

44.2.5 immediately deliver to the Commissioner (or such other party as nominated by the Commissioner) all Property (including materials, documents, information and access keys) provided to the Supplier. Such property shall be handed back in good working order;

44.2.6 assist and co-operate with the Commissioner (or such other party as nominated by the Commissioner) to ensure an orderly transition of the provision of the Services to the Replacement Supplier and/or the completion of any work in progress; and

44.2.7 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Commissioner for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Commissioner or the Replacement Supplier to conduct due diligence.

44.3 If the Supplier fails to comply with clauses 44.2.2 to 44.2.5, the Commissioner may recover possession of the relevant materials and the Supplier grants a licence to the Commissioner or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier or its permitted suppliers or sub-contractors where any such items may be held.

44.4 Except where the end of the Term arises as result of the Commissioner's exercise of its option pursuant to clause 42.5 (Termination for Convenience), the Supplier shall meet all of its obligations under this clause 44 (Recovery Upon Expiry or Termination) at no charge to the Commissioner.

K SECTION K - MISCELLANEOUS AND GOVERNING LAW

45. TRANSFER OF TERMS

45.1 Notwithstanding any other provision of this Agreement, to the extent that at any time during the Term the Commissioner is mandated by the Ministry of Justice, the Department of Culture, Media and Sport (or any other Governmental body) to transfer this Agreement onto any other form of standard Government agreement ("**New Agreement**") the Supplier hereby agrees to:

45.1.1 terminate this Agreement in the timescales notified by the Commissioner; and

45.1.2 continue providing the Services set out in this Agreement (as specified in the Services Requirements) pursuant to the terms of the New Agreement for the unexpired Term of this Agreement and in consideration for payment by the Commissioner of the Contract Price set out in Schedule 3 of this Agreement (pro-rated to the extent necessary for the purposes of the New Agreement).

46. ASSIGNMENT AND NOVATION

- 46.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without Approval.
- 46.2 The Commissioner may:
- 46.2.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated third party licences to any other Contracting Authority; or
 - 46.2.2 novate this Agreement and any associated third party licences to any other body which substantially performs any of the functions that previously had been performed by the Commissioner. If this transfer increases the burden of the Supplier's obligations under this Agreement the Supplier may be entitled to a reasonable increase in the Contract Price by way of compensation which can be agreed pursuant to clause 18.
- 46.3 A change in the legal status of the Commissioner shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Commissioner.

47. WAIVER AND CUMULATIVE REMEDIES

- 47.1 The rights and remedies provided by this Agreement may be waived only in writing by an authorised representative of the relevant Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 47.2 Unless a right or remedy of the Commissioner is expressed to be an exclusive right or remedy, the exercise of it by the Commissioner is without prejudice to the Commissioner's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 47.3 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at Law or in equity or otherwise under this Agreement.

48. RELATIONSHIP OF THE PARTIES

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

49. COMMISSIONER'S OBLIGATIONS

Save as otherwise expressly provided, the obligations of the Commissioner under this Agreement are obligations of the Commissioner in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Commissioner in any other capacity, nor shall the exercise by the Commissioner of its duties and powers in any other capacity lead to any liability under this Agreement howsoever arising on the part of the Commissioner to the Supplier.

50. CONFLICTS OF INTEREST

- 50.1 The Supplier shall take appropriate steps to ensure that neither it nor any member of the Staff is placed in a position where, in the reasonable opinion of the Commissioner, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Commissioner under the provisions of this Agreement. The Supplier will disclose to the Commissioner necessary particulars of any actual or potential conflict of interest which may arise as soon as reasonably practicable after becoming aware that such actual or potential conflict exists.
- 50.2 The Commissioner may, in its reasonable opinion, terminate this Agreement (or any Order) immediately by notice in writing and/or to take such other steps as it deems necessary where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Commissioner under the provisions of this Agreement. The actions of the Commissioner pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Commissioner.

51. PREVENTION OF CORRUPTION

- 51.1 The Supplier, its Staff and the Supplier's agents and contractors, including each sub-contractor shall not, in connection with this Agreement:
- 51.1.1 directly or indirectly offer, promise or give any person working for or engaged by the Commissioner a financial or other advantage to:
 - 51.1.1.1 induce that person to perform improperly a relevant function or activity; or
 - 51.1.1.2 reward that person for improper performance of a relevant function or activity;
 - 51.1.2 directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity.
- 51.2 The Supplier shall not enter into this Agreement if it has knowledge that, in connection with it, any financial or other advantage has been, or will be, given

to any person working for or engaged by the Commissioner, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Commissioner before execution of this Agreement.

51.3 The Supplier shall have an anti-bribery policy and procedure (details of which shall be disclosed to the Commissioner) to prevent any of its Staff, agents or sub-contractors from bribing another person or being bribed.

51.4 If any of the Supplier, its Staff, agents or sub-contractors, (in all cases whether or not acting with the Supplier's knowledge):

51.4.1 breaches clause 51.1;

51.4.2 breaches any applicable legal and regulatory anti-bribery obligations, including the Bribery Act 2010; or

51.4.3 commits a Prohibited Act;

the Commissioner may terminate this Agreement by written notice with immediate effect.

51.5 If any breach of clause 51.4 is suspected or known the Supplier shall notify the Commissioner of such suspected or known breach immediately.

51.6 In the event that the Supplier notifies the Commissioner that it suspects or knows that there may be a breach of clause 51.4 the Supplier shall respond promptly to the Commissioner's enquiries, co-operate with any investigation and allow the Commissioner to audit books, records, and any other relevant documentation.

51.7 Any termination under clause 51.4 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the Commissioner.

51.8 Notwithstanding clause 19 (Dispute Resolution), any dispute relating to:

51.8.1 the interpretation of clauses 51.1 to 51.4 inclusive; or

51.8.2 the amount or value of any gift, consideration or commission,

shall be determined by the Commissioner and the decision shall be final and conclusive.

51.9 **Termination for Prohibited Acts**

51.9.1 If a Prohibited Act is committed by the Supplier or by an employee not acting independently of the Supplier, then the Commissioner may terminate this Agreement by giving notice to the Supplier.

- 51.9.2 If a Prohibited Act is committed by;
- 51.9.2.1 an employee of the Supplier acting independently of the Supplier;
 - 51.9.2.2 a sub-contractor or by an employee of that sub-contractor not acting independently of that sub-contractor;
 - 51.9.2.3 an employee of a sub-contractor acting independently of that sub-contractor; or
 - 51.9.2.4 any other persons connected to the Supplier not specified in clauses 51.9.2.1 to 51.9.2.3,

then the Commissioner may give notice to the Supplier of termination and this Agreement will terminate, unless within twenty (20) Working Days of receipt of such notice the Supplier procures the termination of such person's employment and of the appointment of their employer (where not employed by the Supplier or its sub-contractors) and (if necessary) procures the performance of such part of the relevant obligations under this Agreement by another person.

- 51.9.3 Any notice of termination under this clause 51.9 (Termination for Prohibited Acts) shall specify:

- 51.9.3.1 the nature of the Prohibited Act;
- 51.9.3.2 the identity of the party whom the Commissioner believes has committed the Prohibited Act;
- 51.9.3.3 the date on which this Agreement will terminate, in accordance with the applicable provision of this clause.

- 51.9.4 In this clause 51.9 (Termination for Prohibited Acts), the expression "not acting independently of" (when used in relation to the Supplier or its sub-contractors) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Supplier or the sub-contractor (as the case may be).

52. THIRD PARTY RIGHTS

- 52.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

- 52.2 Any rights created under clause 52.1 may be altered or extinguished by the parties without the consent of the third party beneficiaries.

53. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 53.1 The Contractor shall not make any press announcement in relation to this Agreement or the provision of the Services, except with prior Approval.
- 53.2 The Contractor shall take reasonable steps to ensure that its Staff, suppliers, professional advisors and consultants comply with clause 53.1.

54. SEVERANCE

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.

55. ENTIRE AGREEMENT

- 55.1 This Agreement together with any Orders and any documents referred to in them, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 55.2 Each of the Parties acknowledges and agrees that in entering into this Agreement and the documents referred to in it, 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 this Agreement. The only remedy available to either Party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.
- 55.3 Nothing in this clause 55 (Entire Agreement) shall operate to exclude any liability for Fraud or negligent misstatement.

56. NOTICES

- 56.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally or by sending it by pre-paid first class post, recorded delivery or registered post or by fax or by email to the address and for the attention of the relevant Party as set out in clause 56.4 below or such other address as that Party may have stipulated in accordance with this clause.
- 56.2 A notice shall be deemed to have been received:
- 56.2.1 if delivered personally, at the time of delivery;

- 56.2.2 in the case of pre-paid first class post, recorded delivery or special delivery, three (3) Working Days after the day on which the letter was posted;
- 56.2.3 in the case of facsimile transmissions, on the day of transmission if sent before 16:00 hours on any Working Day and otherwise at 09:00 hours on the next Working Day and provided that, at the time of transmission of a fax, an error-free transmission report has been received by the sender; and
- 56.2.4 in the case of electronic mail, at the time that the email enters the Information System of the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within 24 hours of transmission a hard copy of the email signed by or on behalf of the person giving it is sent by pre-paid first class post, recorded delivery or special delivery to the intended recipient.
- 56.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant Party at the address as set out in clause 56.4 below (or such other address as that Party may have stipulated in accordance with this clause) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax, to the fax number of the relevant Party as set out in clause 56.4 below (or such other fax number as that Party may have stipulated in accordance with this clause).
- 56.4 As at the Commencement Date, the address of each Party shall be:

56.4.1 For the Commissioner:

The Information Commissioner
Address: Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
For the attention of: [REDACTED]
Tel:
Email: [REDACTED]

56.4.2 For the Supplier:

Disklabs Ltd
Address: Disklabs House, Galena Close, Tamworth, B77 4AS.
For the attention of: [REDACTED]
Tel: [REDACTED]
Email: [REDACTED]

57. COUNTERPARTS

This Agreement 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.

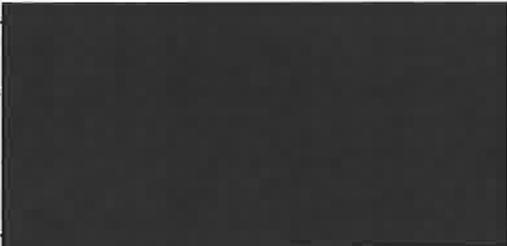
58. GOVERNING LAW AND JURISDICTION

Subject to the provisions of clause 19 (Dispute Resolution), the Commissioner and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Agreement and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

IN WITNESS of which this Agreement has been duly executed by the Parties.

SIGNED for and on behalf of the Information Commissioner

Signature...
Name:
Position: ...
Date.....



SIGNED for and on behalf of Disklabs Limited

Signature...
Name: ...
Position: D...
Date.....



DEFINITIONS

- "Additional Services"** means any services to be provided by the Supplier beyond those Services agreed as at the Commencement Date, which shall be agreed and documented pursuant to clause 18;
- "Affiliate"** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
- "Agreement"** means this written agreement between the Commissioner and the Supplier consisting of these clauses and any attached Schedules;
- "Approval"** means the written consent of the Commissioner;
- "Bankruptcy Event"** means the occurrence of any of the following event (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the relevant entity:
- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Supplier's creditors; or
 - (b) a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or
 - (c) a receiver, or similar officer is appointed over the whole or any part of the Supplier's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - (d) the Supplier is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business;

"Breach of Security"

means the occurrence of:

- (a) any unauthorised access to or use of the Services, the Premises, the Supplier's premises from which the Services are provided, the Supplier System and/or any ICT, information or data (including the Confidential Information and the Commissioner Data) used by the Commissioner and/or the Supplier in connection with this Agreement; and/or
- (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Commissioner Data), including any copies of such information or data, used by the Commissioner and/or the Supplier in connection with this Agreement;

"Bribery Act"

the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the relevant government department in relation to such legislation;

"change of control"

has the meaning given to it at clause 42.2.1;

"Code"

means the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000;

"Commencement Date"

means the date of this Agreement;

"Commissioner Cause"

any breach by the Commissioner of any of the Commissioner's responsibilities set out in this Agreement (except to the extent that it is the result of any act or omission by the Commissioner to which the Supplier has given its prior consent);

"Commissioner Data"

means:

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

"Commissioner System"

means the Commissioner's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Commissioner or the Supplier in connection with this Agreement which is owned by or licensed to the Commissioner by a third party and which interfaces with the Supplier System or which is necessary for the Commissioner to receive the Services;

"Confidential Information"

means all 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 Commissioner, 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;

"Contract Price"

means the price (exclusive of any applicable VAT) payable to the Supplier by the Commissioner under this Agreement, as set out in Schedule 3 (for the full and proper performance by the Supplier of its obligations under or in connection with an Order, calculated in a manner consistent with the charging structures set out in Schedule 3;

"Contract Year"

means a period of 12 months commencing on the Commencement Date or on an anniversary of the Commencement Date;

"Contracting Authority"

means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006;

"Control"

means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Conviction"

other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being made the subject of a prohibition or restriction under section 218(6) of the Education Reform Act 1988);

"Crown Body"

means any department, office or agency of the Crown;

"Data Controller"

shall have the same meaning as set out in the Data Protection Act 1998;

"Data Processor"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Subject"	shall have the same meaning as set out in the Data Protection Act 1998;
"Default"	means any breach of the obligations of the relevant Party (including fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;
"Data Protection Legislation"	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations from time to time relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
"Environmental Information Regulations"	means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations;
"Employee Liabilities"	all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and

expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any legal costs and expenses;

"Equipment"

means the Supplier's equipment, plant, materials and such other items supplied and used by the Supplier in the performance of its obligations under this Agreement and any Order;

"FOIA"

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

"Force Majeure"

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

- (a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract;

"Fraud"

means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud a Crown Body;

"Good Industry"

means standards, practices, methods and procedures conforming to the Law and the

Practice"	exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;
"ICT Environment"	means the Commissioner System and the Supplier System;
"Information"	has the meaning given under section 84 of the FOIA;
"Information System"	means a system for generating, sending, receiving, storing or otherwise processing electronic communications;
"Initial Term"	has the same set out in clause 41;
"Insolvency Event"	<p>means the occurrence of any of the following event (or any event analogous to any of the following events in a jurisdiction other than England and Wales) in relation to the relevant entity:</p> <ul style="list-style-type: none"> (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or (d) a receiver, administrative receiver or similar officer is appointed over the whole

- or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
 - (g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986;

"Intellectual Property Rights" or "IPR" means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including the United Kingdom) and the right to sue for passing off;

"IP Materials" has the meaning given to it in clause 26.1;

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to in connection with the Services or as otherwise provided by the Supplier (or to which the Supplier has provided access) to the Commissioner in the fulfilment of its obligations under this Agreement;

"Key Personnel" means those persons named in the Services Requirements as being key personnel;

"Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;

"Losses"	(without limitation) any damages, liabilities, claims, demands, proceedings, actions, costs, charges, losses and/or expenses;
"Month"	means a calendar month;
"Order"	means a legally binding agreement made pursuant to the terms of this Agreement for the provision of Services to the Commissioner by the Supplier, containing a statement of Services requirements from the Commissioner;
"Ordering Procedure"	means the procedure by which the Commissioner may order Services as set out in Schedule 3;
"Party"	means a party to this Agreement and "Parties" shall be interpreted accordingly;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Premises"	means premises owned, controlled or occupied by the Commissioner which are made available for use by the Supplier or its sub-contractors for provision of the Services (or any of them) on the terms set out in this Agreement or any separate agreement or licence, as set out in the Services Requirements;
"Process"	has the meaning given to it under the Data Protection Act 1998 but, for the purposes of this Agreement, it shall include both manual and automatic processing and "Processing" shall be construed accordingly;
"Prohibited Act"	means: <ul style="list-style-type: none"> (a) directly or indirectly offering, promising or giving any person working for or engaged by the Commissioner a financial or other advantage to: <ul style="list-style-type: none"> (i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;

- (b) directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;
- (c) entering into this Agreement or any other contract with the Commissioner in connection with which commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Commissioner;
- (d) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under any other Laws creating offences in respect of Fraud; or
 - (iii) at common law in respect of Fraud in relation to this Agreement or any other contract with the Commissioner; or
- (e) defrauding or attempting to defraud or conspiring to defraud the Commissioner;

"Property"

means any equipment, hardware, software, databases, materials, documents, tools, information or other property (whether owned by the Commissioner or not), other than real property, issued or made available to the Supplier by the Commissioner in connection with this Agreement or any Order;

"Quality Standards"

means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of

industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with, as may be further detailed in the Services Requirements and Supplier Solution;

- "Receipt"** means the physical or electronic arrival of an invoice at the address of the Commissioner detailed in Schedule 3 or any other address notified to the Supplier for the submission of invoices;
- "Regulatory Bodies"** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Commissioner and **"Regulatory Body"** shall be construed accordingly;
- "Relevant Convictions"** means a Conviction that is relevant to the nature of the Services;
- "Replacement Services"** any services which are substantially similar to any of the Services and which the Commissioner receives in substitution for any of the Services following the expiry or termination or partial termination of this Agreement, whether those services are provided by the Commissioner internally and/or by any third party;
- "Replacement Supplier"** any third party service provider of Replacement Services appointed by the Commissioner from time to time;
- "Request for Information"** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
- "Schedule"** means a schedule attached to, and forming part of, this Agreement;
- "Service Failure"** the Supplier's failure to deliver any part of the Services in accordance with its obligations under this Agreement;