

SCHEDULE 5

CALL-OFF TERMS AND CONDITIONS

1. GENERAL PROVISIONS

1.1 Definitions

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

“Affiliate”	includes in relation to either Party each and any subsidiary or holding company of that Party and each and any subsidiary of a holding company of that Party where the terms “subsidiary” and “holding company” shall have the meaning defined in section 1159 of the Companies Act 2006
“Approval” and “Approved”	means the written consent of the Customer
“Auditor”	means the National Audit Office or an auditor appointed by the Audit Commission or the Customer as the context requires and who in so far as such an appointment is within the control of the Customer shall not be a direct competitor to the Provider
“Customer”	means the customer(s) identified in the Order Form
“Commencement Date”	means the date set out in the Order Form
“Commercially Sensitive Information”	<p>means the Confidential Information listed in the Order Form comprised of information:</p> <ul style="list-style-type: none">(a) Which is provided by the Provider and designated as commercially sensitive information by the Customer for the Period set out in that Order Form and/or(b) that constitutes a trade secret.
“Confidential Information”	<p>Means:</p> <ul style="list-style-type: none">(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all

personal data and sensitive personal data within the meaning of the DPA;

(b) the Commercially Sensitive Information

and does not include any information:

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of clause 5.3 (Confidential Information));
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

“Connected Persons”

Has the meaning given in paragraph 45, Part 3, Schedule 6 of the Act;

“Contract”

means the written agreement between the Customer and the Provider consisting of the Order Form and these clauses and the documents referred to in clause 1.6.4 save that, for the purposes of clause 1.6.4 only, reference to ‘Contract’ shall not include the Order Form

“Contracting Authority”

means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer

“Contract Period”

means the contract period set out in clause 1.3

“Contract Price”

means the price (exclusive of any applicable VAT), payable to the Provider by the Customer under the Contract, as set out in the Order Form, for the full and proper performance by the Provider of its obligations under the Contract

“Crown”

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf

“Debarment List ”

means the list of suppliers referred to in section 62 of

the Act

“Default”

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

“Deliverables”

means those deliverables listed in the Order Form

“DPA”

means the Data Protection Act 2018

“Data Protection Laws”

means the General Data Protection Regulation (Regulation (EC) 2016/679) and any replacement for this that may be implemented in the UK from time to time (“GDPR”), the DPA, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any other applicable privacy and data protection laws and regulations from time to time

“EEA”

means the European Economic Area

“Environmental Information Regulations”

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

“Equipment”

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

“FOIA”

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

“Force Majeure”

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

- (a) any industrial action occurring with the Provider’s or any sub-contractor’s organisation;

or

- (b) the failure by any sub-contractor to perform its obligations under any sub-contract

“Framework Agreement”	means the framework agreement for the provision of Actuarial and Benefit Consultancy Services between Norfolk County Council as administering authority for Norfolk Pension Fund and the Provider dated [INSERT]
“Fraud”	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud a Contracting Authority or the Customer
“Good Industry Practice”	Means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances
“Group”	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.
“Information”	has the meaning given under section 84 of the FOIA
“Initial Contract Period”	means the period from the Commencement Date to the date of expiry set out in clause 1.3 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the provisions of the Contract
“Intellectual Property Rights” and “IPRs”	means patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
“Key Personnel”	means any individual identified in the Order Form as being key personnel
“KPIs”	means the key performance indicators for all and each part of the Services as specified in the Order Form;
“Law”	means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the

Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any Regulatory Body of which the Provider is bound to comply

“Month”

means calendar month

“Order”

means the order submitted by the Customer to the Provider in accordance with the Framework Agreement

“Order Form”

means the order submitted to the Provider by the Customer in accordance with the Framework Agreement which sets out the description of the Services to be supplied including, where appropriate, the Key Personnel, the Premises, the timeframe, the Deliverables and the Quality Standards

“Parent Company”

any company which is the ultimate Holding Company of the Supplier or any other company of which the ultimate Holding Company of the Supplier is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier. The term “Holding Company” shall have the meaning ascribed in section 1159 of the Companies Act 2006 or any statutory re-enactment or amendment thereto

“Party”

means the Provider or the Customer

“Pre-Existing IPR”

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

“Premises”

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

“Project Specific IPRs”

means:

- (a) IPRs in items created by the Provider (or by a third party on behalf of the Provider) specifically for the purposes of the Contract including, any Deliverables and all updates and amendments of these items; and/or

- (b) IPRs arising as a result of the performance of the Provider's obligations under the Contract

"Property"	means the property, other than real property, issued or made available to the Provider by the Customer in connection with the Contract
"Provider"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form
"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation 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 Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form) and any other quality standards set out in the Order Form
"Regulator"	Means the Information Commissioner's Office or any successor body charged with enforcing the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 across the UK; and the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 in England, Wales and Northern Ireland
"Regulatory Bodies"	Means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies including for the avoidance of doubt the Financial Conduct Authority which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer, either active now or created during the term of this Agreement
"Replacement Provider"	means any third party service provider appointed by the Customer to supply any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract
"Request for Information"	shall have the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term "request" shall apply)

“Restricted Transfer”	means any transfer of Personal Data to any country or organisation, where such transfer would be prohibited by Data Protection Laws (or the terms of data protection agreements put in place to address data transfer restrictions in Data Protection Laws) in the absence of use of Standard Contractual clauses or similar protections
“Services”	means the actuarial, benefits and Governance consultancy services to be supplied as specified in the Order Form
“Standard Contractual clauses ”	means contractual clauses that have been approved for use by the relevant supervisory authorities under applicable Data Protection Laws to enable the lawful transfer of personal data to a country or organisation that would otherwise not be regarded as having adequate safeguards for personal data (which includes the controller to processor terms agreed by European Commission C(2010) 593)
“Staff”	means all persons employed by the Provider to perform its obligations under the Contract together with the Provider’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract including for the avoidance of doubt 3 rd party IT providers
“Sub-Processor”	means any third Party appointed by or on behalf of the Provider to Process Customer Personal Data in connection with the Contract where the Provider acts as Processor;
“Target KPI”	Means the minimum level of performance for a KPI which is required by the Customer as set out against the relevant KPI in the Order Form;
“Tender”	means the document(s) submitted by the Provider to the Customer in response to the Customer’s invitation to suppliers for formal offers to supply it with the Services pursuant to the Framework Agreement
“Variation”	has the meaning given to it in clause 6.3(Variation)
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994
“Working Day”	means any day other than a Saturday or Sunday or public holiday in England and Wales

1.2 Interpretation

The interpretation and construction of the Contract 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 Unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 December 2020.
- 1.2.6 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.7 the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- 1.2.8 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

1.3 Contract Period

[DRAFTING NOTES: PLEASE CHOOSE THE OPTION BELOW. THE CONTRACT MAY HAVE A MAXIMUM TOTAL DURATION OF 10 YEARS. NO CONTRACT AWARDED UNDER THE FRAMEWORK AGREEMENT CAN EXTEND BEYOND 30 JUNE 2043]

The Contract shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Contract) shall automatically terminate on **[INSERT]**. The Customer shall have the option to extend the agreement pursuant to clause 6.8.

OR

The Contract shall take effect on the Commencement Date and (unless it is otherwise terminated in accordance with the terms of this Contract) shall renew at the end of the Initial Contract Period for a further period of [X] years (“Extension Period”) on the same terms, subject to a maximum total duration of 10 years. For the avoidance of doubt, there shall be no more than [one (1)] automatic extension.

1.4 Provider’s Status

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

1.5 Customer's Obligations

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

1.6 Entire Agreement

- 1.6.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 1.6.2 Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract. The only remedy available to either Party for any such statements, representation, warranty or understanding shall be for breach of contract under the terms of the Contract.
- 1.6.3 Nothing in clauses 1.6.1 or 1.6.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 1.6.4 In the event of and only to the extent of any conflict between the Order Form, the clauses of the Contract and any document referred to in those clauses, the conflict shall be resolved in accordance with the following order of precedence:
 - (a) the Order Form;
 - (b) the clauses of the Contract;
 - (c) any other document referred to in the clauses of the Contract;
 - (d) the Invitation to tender; and
 - (e) the Provider's tender
- 1.6.5 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

1.7 Notices

- 1.7.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.
- 1.7.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause 1.7.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2)

Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or item of electronic mail.

1.7.3 For the purposes of clause 1.7.2, the address of each Party shall be:

(a) for the Customer: the address set out in the Order Form.

(b) for the Provider: the address set out in the Framework Agreement.

1.7.4 Either Party may change its address for service by serving a notice in accordance with this clause.

1.8 Mistakes in Information

Save where materially inaccurate data has been provided by the Customer (including data procured by the Customer from a 3rd party) the Provider shall be responsible for the accuracy of all documentation and information supplied to the Customer by the Provider in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein.

1.9 Conflicts of Interest

1.9.1 Acting always in the best interests of the Customer the Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the duties owed to the Customer under the provisions of the Contract.

1.9.2 The Provider shall promptly notify the Customer (and subject to any overriding duty of confidentiality provide full particulars to the Customer) if any conflict referred to in clause 1.9.1 above arises or is reasonably foreseeable that cannot be managed in accordance with and by taking the appropriate steps referred to in clause 1.9.1 and in accordance with the Provider's regulatory and statutory obligations. The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

1.9.3 This clause shall apply during the Contract Period.

1.9.4 The Provider will, upon request, provide the Customer with a Conflict of Interest protocol setting out the management of conflicts of interest in accordance with clause 10 hereof for the Customer's approval.

1.10 Prevention of Fraud

1.10.1 The Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

1.10.2 To the extent permitted by law, the Provider shall notify the Customer

immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

1.10.3 If the Provider or its Staff commits any Fraud in relation to the Contract or any other contract with a Contracting Authority or the Customer, the Customer may:

(a) terminate the Contract with immediate effect by giving the Provider notice in writing and recover from the Provider the amount of any loss suffered by the Customer resulting from the termination including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period; and/or

(b) recover in full from the Provider any other loss sustained by the Customer in consequence of any breach of this clause.

2. SUPPLY OF SERVICES

2.1 The Services

2.1.1 The Provider shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in the Contract in consideration for the payment of the Contract Price. The Customer may inspect and examine the manner in which the Provider supplies the Services during normal business hours on reasonable notice.

2.1.2 If the Customer informs the Provider in writing that the Customer reasonably believes that any part of the Services does not meet the requirements of the Contract or differs in any way from those requirements, and this is other than as a result of a Default on the part of the Customer, the Provider shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

2.1.3 Supply of the Services shall be within the time or on a specified date as agreed by the parties.

2.2 Provision and Removal of Equipment

2.2.1 Unless otherwise stated in the Order Form, the Provider shall provide all the Equipment necessary for the supply of the Services.

2.2.2 The Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.

2.2.3 All Equipment brought onto the Premises shall be at the Provider's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless the Provider is able to demonstrate that such loss or damage was caused or contributed to by the Customer's Default. The Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Provider.

2.2.4 The Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

- 2.2.5 The Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 2.2.6 On completion of the Services, the Provider shall remove the Equipment together with any other materials used by the Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Provider or any Staff.
- 2.2.7 The Provider shall use reasonable endeavours to ensure at no additional charge that the Equipment integrates properly with the hardware, software, products or services of the Customer.
- 2.2.8 The Provider shall use reasonable endeavours to prevent the introduction of any computer virus or other contamination whether knowingly or not onto any Customer equipment.

2.3 Manner of Carrying Out the Services

- 2.3.1 The Provider shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract the Provider shall agree the relevant standard of the Services with the Customer prior to the supply of the Services and, in any event, the Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- 2.3.2 The Provider 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.
- 2.3.3 The Provider shall co-operate with:
- (a) the Customer; and
 - (b) subject (in the opinion of the Customer) to adequate protection of the Provider's Confidential Information and Intellectual Property Rights in the form of a third party disclosure letter in reasonable terms, any third party engaged to provide services to the Customer, including a third party which is a competitor to the Provider,

so as to integrate (where reasonably required by the Customer) other services, materials or equipment supplied by the Customer or any third party with the Services. Such co-operation shall include where appropriate the provision of information and, unless expressly agreed to the contrary in an award letter issued pursuant to the Framework Agreement, shall be at no additional charge to the Customer.

- 2.3.4 The Customer will not disclose any advice given or other material supplied by the Provider pursuant to this Contract to any third party (other than the Customer's legal advisers, or participating Scheme Employers, Scheme

Advisory Board, Local Pension Boards who are subject to confidentiality obligations commensurate with those contained in this Contract) without the Provider's prior consent not to be unreasonably withheld which may require such third party to enter into a non-reliance letter with the Provider in respect of advice and information disclosed. For the avoidance of doubt, the Customer may disclose any advice given or other material supplied by the Provider pursuant to this Contract with government departments and the Customer shall, take reasonable steps, where appropriate, to give the Provider advance notice of the purpose and which advice and/or materials are required to be shared, or failing that, to draw the disclosure to the Provider's attention after any such disclosure. The Provider may also require a non-reliance letter to be put in place with such government department if deemed necessary in the circumstances.

2.4 Key Personnel

- 2.4.1 The Parties have agreed to the appointment of the Key Personnel. In so far as is reasonable the Provider shall, and shall procure that any sub-contractor shall, obtain the prior Approval of the Customer before removing or replacing any Key Personnel during the Contract Period, and, where possible, at least three months' written notice must be provided by the Provider of its intention to replace Key Personnel.
- 2.4.2 The Customer shall not unreasonably delay or withhold its consent to the appointment of a replacement for any relevant Key Personnel by the Provider or sub-contractor. The Customer may interview the candidates for Key Personnel positions before they are appointed.
- 2.4.3 The Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Customer. The Provider shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days unless otherwise agreed with the Customer and that any replacement shall be as or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.
- 2.4.4 The Customer may also require the Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

2.5 Provider's Staff

- 2.5.1 The Customer may, by written notice to the Provider, refuse to admit onto, or withdraw permission to remain on, the Premises:
 - (a) any member of the Staff; or
 - (b) any person employed or engaged by any member of the Staff;whose admission or continued presence would, in the reasonable opinion of the Customer, be undesirable.
- 2.5.2 At the Customer's written request, the Provider shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- 2.5.3 The Provider's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Premises.
- 2.5.4 If the Provider fails to comply with clause 2.5.2 within two (2) Months of the date of the request then the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 2.5.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Provider has failed to comply with clause 2.5.2 shall be final and conclusive.
- 2.5.6 The Provider shall apply Staff vetting procedures in respect of all Provider Staff employed or engaged by the Provider in accordance with Good Industry Practice.
- Licence to occupy Premises
- 2.5.7 Any land or Premises made available from time to time to the Provider by the Customer in connection with the Contract shall be made available to the Provider on a non-exclusive licence basis free of charge and shall be used by the Provider solely for the purpose of performing its obligations under the Contract. The Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 2.5.8 The Provider 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 and conduct of personnel at the Premises as determined by the Customer, and the Provider shall pay for the cost of making good any damage caused by the Provider 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.
- 2.5.9 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Provider or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

2.6 Property

- 2.6.1 Where the Customer issues Property free of charge to the Provider such Property shall be and remain the property of the Customer and the Provider irrevocably licences the Customer and its agents to enter upon any premises of the Provider during normal business hours on reasonable notice to recover any such Property. The Provider shall not in any circumstances have a lien or any other interest on the Property and at all times the Provider shall possess the Property as fiduciary agent and bailee of the Customer. The Provider shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien

or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

- 2.6.2 The Property shall be deemed to be in good condition when received by or on behalf of the Provider unless the Provider notifies the Customer otherwise within five (5) Working Days of receipt.
- 2.6.3 The Provider shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- 2.6.4 The Provider shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.
- 2.6.5 The Provider 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 Customer's Default. The Provider shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to, the Property.

2.7 Offers of Employment

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Customer nor the Provider shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent. A Party shall not be in breach of this clause 2.7 as a result of running a national advertising campaign open to all comers and not specifically targeted at any of the Staff of the other Party.

3. PAYMENT AND CONTRACT PRICE

3.1 Contract Price

- 3.1.1 In consideration of the Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Price in accordance with clause 3.2 (Payment and VAT).
- 3.1.2 The Customer shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

3.2 Payment and VAT

- 3.2.1 The Customer shall pay all sums due to the Provider within thirty (30) days of receipt of a valid invoice, submitted in accordance with the payment profile set out in the Order Form.
- 3.2.2 The Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.
- 3.2.3 Where the Provider enters into a sub-contract with a supplier or

contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub- contract which requires payment to be made of all sums due by the Provider to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

3.2.4 The Provider shall add VAT to the Contract Price at the prevailing rate as applicable.

3.2.5 The Provider shall indemnify the Customer on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Customer at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under the Contract. Any amounts due under this clause 3.2.5 shall be paid by the Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

3.2.6 The Provider shall not suspend the supply of the Services unless the Provider is entitled to terminate the Contract under clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.

3.2.7 **[DRAFTING NOTES: PLEASE CHOOSE FROM THE OPTIONS BELOW]**

a. [The Contract Price shall remain fixed until the automatic expiry date set out in clause 1.3]

OR

b. [The Contract Price shall remain fixed until [the automatic expiry date set out in clause 1.3] **OR** [insert date], and on that date and thereafter on each anniversary of that date for Services subsequently provided, shall be increased annually, provided that each such increase does not exceed the percentage change in the Office for National Statistics' Consumer Prices Index (or another such index as notified to the Contractor in writing) subject to a minimum increase of 0% [and a maximum increase of [5%]].

3.3 Recovery of Sums Due

3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Provider (including any sum which the Provider is liable to pay to the Customer in respect of any breach of the Contract), the Customer may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Provider under the Contract.

3.3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

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

3.3.4 All payments due shall be made within a reasonable time unless otherwise

specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

3.4 Euro

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

3.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 3.4.1 by the Provider.

3.5 Continuous Improvement

3.5.1 The Provider shall at all times during this Contract:

- (a) to the extent of its obligations in the Contract make arrangements to secure continuous improvement in the way in which the Services are provided;
- (b) use all reasonable endeavours to ensure the Customer receives the benefit of reduced third party costs and charges relevant to the provision of the Services; and
- (c) use all reasonable endeavours to implement the efficiencies to be found in Good Industry Practice

4. STATUTORY OBLIGATIONS AND REGULATIONS

4.1 Prevention of Corruption

4.1.1 The Provider shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or any other public body or person employed by or on behalf of the Customer any gift or consideration of any kind which could act as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Contract or any other contract with the Customer or any other public body or person employed by or on behalf of the Customer, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

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

4.1.3 If the Provider, its Staff or any person acting on the Provider's behalf, engages in conduct prohibited by clauses 4.1.1 or 4.1.2, the Customer may:

- (a) terminate the Contract with immediate effect by giving notice in writing to the Provider and recover from the Provider the amount of any loss suffered by the Customer resulting from the termination; and/or
- (b) recover in full from the Provider any other loss sustained by the Customer in consequence of any breach of those clauses.

4.2 Discrimination

4.2.1 The Provider shall not unlawfully discriminate within the meaning and

scope of any law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).

- 4.2.2 The Provider shall take all reasonable steps to secure the observance of clause 4.2.1 by all servants, employees or agents of the Provider and all suppliers and sub-contractors employed in the execution of the Contract.

4.3 The Contracts (Rights of Third Parties) Act 1999

A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the

Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

4.4 Environmental Requirements

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

4.5 Health and Safety

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

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

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

- 4.5.4 The Provider 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 the Contract.

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

4.6 Authority's Best Value Duty

- 4.6.1 The Provider shall at all times assist the Customer in the achievement of its duty to obtain best value in accordance with the Local Government Act 1999 and shall do all that is reasonably required by the Customer in this regard.

5. PROTECTION OF INFORMATION

5.1 Data Protection Laws

- 5.1.1 For the purposes of this clause 5.1, the terms "Commission", "Controller", "Data Subject", "Member State", "Personal Data", "Personal Data Breach", "Process", "Processing" and "Supervisory Authority" shall have the same meaning as those terms as defined or used in the GDPR, and their related terms shall be construed accordingly.
- 5.1.2 This clause 5.1 makes provisions for the Processing of Customer Personal Data by the Provider save that in respect of Customer Personal Data for which the Customer and the Provider each act as Controllers, the Parties shall comply with their respective obligations as Controllers under Data Protection Laws (except to the extent that this clause 5.1 allocates responsibility under clause 12 for compliance with a particular requirement under Data Protection Law to one Party).
- 5.1.3 The Provider shall, and shall procure that any third Party acting under its authority shall:
- (a) comply with all applicable Data Protection Laws in the Processing of Customer Personal Data;
 - (b) not Process the Customer Personal Data other than as set out in this Contract unless Processing is required by Applicable Laws, in which case the Provider, shall to the extent permitted by Applicable Laws, inform the relevant Contracting Body of that legal requirement before the relevant Processing of that Contracting Body Personal Data; and
 - (c) keep all the Customer Personal Data confidential.
- 5.1.4 Annex 1, which shall be completed by the Provider to the reasonable satisfaction of the Customer, sets out certain information regarding the Provider's Processing of Customer Personal Data as required by article 28(3) of the GDPR. The parties may agree reasonable amendments to Annex 1 from time to time.
- 5.1.5 The Provider shall, immediately inform the Customer if, in its opinion, an instruction infringes the Data Protection Laws. However, the Customer acknowledge that any information the Provider provides is not legal advice or guidance, and that the Provider makes no warranty or representation regarding the information but that such information given will be considered.
- 5.1.6 In the event that a legal requirement prevents the Provider from complying with the instructions of the Customer in connection with the Customer Personal Data (a "Processing Conflict"), the Provider shall not be obliged to carry out the Processing affected by the Processing Conflict and shall, unless such legal requirement prohibits it from doing so, inform the Customer of the relevant legal requirement before carrying out further Processing activities in respect of the affected Personal Data.

Provider and Provider Personnel

- 5.1.7 The Provider Shall:
- (a) take reasonable steps to ensure the reliability of any of its employees, agents or contractors who may have access to Customer Personal Data;

- (b) ensure in each case that access is limited to those individuals who need to know and access Customer Personal Data, as strictly necessary for the purposes of the Contract, and to comply with Applicable Laws in the context of that individual's duties to the Provider; and
- (c) ensure that all such individuals are subject to confidentiality undertakings and/or professional and/or statutory obligations of confidentiality

Security

5.1.8 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Provider shall, and shall procure that each Sub Processor shall, in relation to Customer Personal Data, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate:

- (a) the pseudonymisation and encryption of Customer Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
- (c) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of Processing.

5.1.9 If requested by the Customer, the Provider shall provide a written description of the measures that the Provider has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this clause and provide to the Customer documentation relevant to such compliance.

5.1.10 In assessing the appropriate level of security the Provider shall, and shall procure that each Sub Processor shall, take account in particular of the risks that are presented by Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise Processed.

5.1.11 The Customer shall take appropriate technical and organisational measures to protect the security of Customer Personal Data, including as relates to securely transferring such Customer Personal Data, to the Provider.

Sub Processing

5.1.12 With respect to each Sub Processor, the Provider shall:

- (a) carry out adequate due diligence to ensure that the Sub Processor is capable of providing the level of protection for Customer Personal Data required by this Contract;
- (b) ensure that the arrangements with Sub Processors are governed by a written contract including terms which offer at least the same level of protection for the Customer Personal Data as those set out in this

clause 5.1 and meet the requirements of article 28(3) of the GDPR; and

- (c) The Provider shall remain fully liable to the Customer for the Processing of Customer Personal Data by Sub Processors.

5.1.13 For the purposes of clause 5.1.12, the Customer hereby agrees to the appointment of the Sub Processors set out in the Order Form. The Provider acknowledges and agrees that the provisions of this clause 5.1 apply equally to any Sub Processors already appointed by the Provider. The Provider undertakes that it has undertaken due diligence into their respective technical and organisational measures to ensure processing in compliance with the GDPR (and obtained satisfactory results to such due diligence), and that it has concluded with each a written agreement incorporating provisions equivalent to those in this clause 5.1 relating to confidentiality, data protection and security. The Provider acknowledges that the Customer's agreement to the appointment of such sub-processors is conditional upon the Provider's compliance with the terms of this clause.

Data Subjects Rights of Access

5.1.14 The Provider shall:

- (a) promptly and in any event within five (5) Working Days notify the Customer, if it receives an access request from a Data Subject in respect of Customer Personal Data; and
- (b) not respond to that request except on the documented instructions of the Customer or as required by Applicable Laws, in which case the Provider shall, to the extent permitted by Applicable Laws, inform the Customer of that legal requirement before the Provider and/or Sub Processor responds to the request.

5.1.15 Notwithstanding clause 5.1.14 following receipt of an access request from a Data Subject the Provider may contact the relevant Data Subject to acknowledge receipt of the access request and to notify the Data Subject that it has referred the access request to the Customer, but the Provider shall otherwise not respond to that request.

Personal Data Breach

5.1.16 The Provider shall, notify the Customer without undue delay, and within 48 hours, where feasible, upon becoming aware of a Personal Data Breach affecting the Customer Personal Data. The notification shall at least:

- (a) describe the nature of the Personal Data Breach, including the categories and approximate number of Data Subjects concerned and the categories and approximate number of Data Subjects concerned, and the categories and number of personal data records concerned;
- (b) communicate the name and contact details of the Provider contact from whom more information can be obtained;
- (c) describe the likely consequences of the breach; and
- (d) describe the measures taken or proposed to be taken to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

Where, and in so far as, it is not possible to provide the information at the same

time, the information may be provided in phases without undue further delay.

- 5.1.17 The Provider shall reasonably co-operate with the Customer and take such reasonable commercial steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
- 5.1.18 The Parties agree to coordinate in good faith on developing the content of any related public statements and any required notices to the affected Data Subjects and/or the relevant Regulators in connection with a Personal Data Breach, provided that nothing in this clause 5.1.18 shall prevent either Party from complying with its obligations under Data Protection Laws.

Data Protection Impact Assessment and Prior Consultation

- 5.1.19 The provider shall, provide assistance to the Customer with any action which the Customer reasonably believes are required by reason of article 35 or 36 of the GDPR in connection with the Contract. The assistance shall be as reasonably necessary to the Customer, taking into account the nature of the Processing and the information available to the Provider.

Deletion or return of the Customer Personal Data

- 5.1.20 At the choice of the Customer and not before that choice has been confirmed by the Customer in writing ("Confirmation"), and subject to clause 5.1.21, the Provider shall, and shall procure that the Sub Processors shall promptly and in any event within 14 days of Confirmation either:
 - (a) delete and procure the deletion of all copies of the Customer Personal Data (delete in this clause 5.1 means that the information has been put beyond use, and has been deleted with no intention to use or access it again); or
 - (b) return a complete copy or copies (as directed by the Customer) of all Customer Personal Data to the Customer by secure file transfer in such format as is reasonably notified by the Customer to the Provider.
- 5.1.21 The Provider may retain Customer Personal Data solely for the purpose of storage to the extent required by Applicable Laws or as necessary to defend its work products and only to the extent and for such period as required by Applicable Laws and always provided that the Provider shall ensure the confidentiality of all such Customer Personal Data and shall ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 5.1.22 The Provider shall provide written certification to the Customer that it and each Sub Processor has fully complied with this clause 5.1 within 28 days of Confirmation.

Audit Rights

- 5.1.23 The Provider shall, make available to the Customer on request all information necessary to demonstrate compliance with this clause 5.1, and shall allow audits, including inspections, by the Customer or an auditor mandated by the Customer in relation to Processing of the Customer's Personal Data subject to the following requirements:
 - (a) the Customer may perform such audits once per year or more

frequently if required by the Information Commissioner, other supervisory authority, regulator or Data Protection Laws applicable to the Customer and/or due to a Personal Data Breach;

- (b) audits must be conducted during regular business hours, and may not unreasonably interfere with the Provider's business activities;
- (c) the Customer will provide the Provider with any audit reports generated in connection with any audit at no charge unless prohibited by law; and
- (d) to request an audit, the Customer will consult with the Provider on the audit plan. The audit plan will describe the proposed scope, duration, and start date of the audit and confidentiality arrangements.

5.1.24 The parties agree that nothing under clause 5.1.23 shall require the Provider to disclose information in breach of any duty of confidentiality to other clients.

Restricted Transfers

5.1.25 The Provider shall not make or permit any Restricted Transfer of any Customer Personal Data to be made without the prior written consent of the Customer and subject to the implementation of such measures and the conclusion of all necessary contracts (including Standard Contractual clauses) as are required to enable the Customer to comply with Data Protection Laws in relation to such transfer.

Joint Controllers

5.1.26 The Parties agree that where they are Joint Controllers in relation to Personal Data, they shall determine their respective obligations under the Data Protection Laws by means of an arrangement between them and provide such reasonable cooperation and assistance to each other as may be necessary under that arrangement, in particular (but without limitation) in relation to Data Subject rights. This shall be without prejudice to the Parties' separate obligations under Data Protection Laws.

5.1.27 The essence of any arrangement determined by the parties under clause 5.1.26 shall be made available to Data Subjects.

5.1.28 Notwithstanding the generality of 5.1.26, where the Parties are Joint Controllers, each Joint Controller shall, without undue delay (and in any event within 48 hours), notify the other of any actual or suspected Personal Data Breach and shall:

- (a) implement any measures necessary to restore the security of the compromised Personal Data;
- (b) support the other to make any required notifications to the supervisory authority and affected Data Subjects; and
- (c) not do anything which shall damage the reputation of the other, or its relationship with its Data Subjects.

Provider as Independent Controller

5.1.29 The Parties agree that where and to the extent the Provider acts as a Controller in relation to Personal Data:

- (a) clauses 5.1.7 to 5.1.28 inclusive shall not apply to such processing;
- (b) the Customer shall:
 - (a) collect Personal Data and keep it up to date in compliance with the Data Protection Laws (and in particular the principles concerning lawfulness, fairness, transparency and accuracy);
 - (b) where required under the Data Protection Laws, ensure fair processing notices have been made available to (and/or as applicable, consents obtained from) Data Subjects in connection with the Processing; and
 - (c) not knowingly instruct the Provider to carry out any Processing that would cause either the Customer or the Provider to be in breach of the Data Protection Laws.

5.1.30 the Provider shall at all times process such Personal Data in accordance with Data Protection Laws.

5.2

5.2.1 Notwithstanding the generality of 5.1.30, where the Provider acts as a Controller of the Personal Data, the Provider shall, without undue delay (and in any event within 4 business days), notify the Customer of any Personal Data Breach affecting the Customer and shall:

- (a) implement any measures necessary to restore the security of the compromised Personal Data;
- (b) coordinate with the Customer in good faith on developing the content of any related public statements and any required notices to the affected Data Subjects and/ or the relevant Regulators in connection with the Personal Data Breach, provided that nothing in this clause shall prevent either party from complying with its obligations under Data Protection Laws; and
- (c) not do anything, other than as required by Applicable Law, which shall damage the reputation of the Customer, or its relationship with its Data Subjects.

Liability

5.2.2 The Provider shall use its reasonable endeavours to assist the Customer, to comply with any obligations under the Data Protection Laws insofar as they relate to the processing of Personal Data in connection with the Contract and shall not perform its obligations under the Contract in such a way as to cause the Customer, to breach any of the Customer's obligations under the Data Protection Laws to the extent the Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

Changes in Data Protection Laws, etc

5.2.3 The Customer, may, by 14 days' written notice to the Provider propose any variations to this clause 5.2 which the Customer reasonably considers to be necessary to comply with the requirements of the Data Protection Laws.

5.2.4 If the Customer gives notice under clause 5.2.3, the Parties shall promptly

discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Customer's notice as applicable, as soon as is reasonably practicable.

5.2.5 The parties agree that all liabilities between them under this clause 5.2 will be subject to the limitations and exclusions of liability and other terms of the Contract.

5.2.6 Customer agrees that during and after the term of the Agreement, Provider may use (and share with third parties, such as auditors, who assist Provider in connection with these purposes) any information it collects and uses in connection with the Services, together with information from its other clients, for data analytics purposes, including to create insights, reports and other analytics to improve the quality of and market Provider's advice, products and services. The output of such analytics will not identify particular clients or individuals and the Provider agrees it will not resell any of the information collected for revenue generation.

5.3 Confidential Information

5.3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- (b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

5.3.2 clause 5.3.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 5.4 (Freedom of Information);
- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party which to the Party's reasonable knowledge is without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

5.3.3 The Provider may only disclose the Customer's Confidential Information to its Staff or Affiliates or staff or affiliates of Group Companies who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such recipients are aware of and shall comply with these obligations as to confidentiality.

5.3.4 The Provider shall not, and shall procure that its Staff and Affiliates do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

- 5.3.5 At the written request of the Customer, the Provider shall procure that those Affiliates and members of the Staff identified in the Customer's notice and who are not otherwise subject to confidentiality obligations commensurate with this clause 5.3 sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 5.3.6 Nothing in this Contract shall prevent the Customer subject to clause 2.3.4 from disclosing the Provider's Confidential Information:
- (a) to any other Contracting Authority on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority and that any such disclosure is on the basis of non-reliance and without liability to the Provider;
 - (b) to any consultant, contractor or other person engaged by the Customer for the purposes of the Services;
 - (c) for the purpose of the examination and certification of the Customer's accounts;
 - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 5.3.7 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Provider's Confidential Information is disclosed pursuant to clause 5.3.6 is made aware of the Customer's obligations of confidentiality.
- 5.3.8 Nothing in this clause 5.3 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 5.3.9 Nothing in this clause 5.3 shall prevent the Provider from using the information it receives during the term of the Contract to build databases and surveys for its internal use by the Provider's Staff and for external distribution to the Provider's other clients, subject to appropriate anonymization, the prior written consent of the Customer and applying all other reasonable safeguards that the Customer may prescribe.

5.4 Freedom of Information

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

Environmental Information Regulations.

- 5.4.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 5.4.4 In no event shall the Provider respond directly to a Request for Information unless expressly authorised to do so by the Customer.
- 5.4.5 The Provider acknowledges that (notwithstanding the provisions of clause 5.4.3) the Customer may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Provider or the Services:
- (a) in certain circumstances without consulting the Provider; or
 - (b) following consultation with the Provider and having taken their views into account;
- provided always that where 5.4.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Provider advanced notice, or failing that, to draw the disclosure to the Provider's attention after any such disclosure.
- 5.4.6 The Provider shall ensure that all Information is retained for disclosure and shall permit the Customer to inspect such records as requested from time to time.
- 5.4.7 The Provider acknowledges that the Commercially Sensitive Information listed in Schedule 7 is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 5.4.5
- 5.4.8 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 Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. The Customer may consult with the Provider to inform its decision regarding any exemptions but the Customer shall have the final decision in its absolute discretion. The Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.
- 5.5 Publicity, Media and Official Enquiries
- 5.5.1 The Provider shall not make any press announcements or publicise the Contract in any way without the Customer's prior Approval and shall take reasonable steps to ensure that its servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this clause.
 - 5.5.2 The Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
 - 5.5.3 The Provider shall not do anything or cause anything to be done, which may damage the reputation of the Customer or bring the Customer into

disrepute.

5.6 Security

- 5.6.1 The Customer shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Provider shall comply with all reasonable security requirements of the Customer while on the Premises and shall ensure that all Staff comply with such requirements.
- 5.6.2 The Customer shall provide the Provider upon request copies of its written security procedures and shall afford the Provider upon request an opportunity to inspect its physical security arrangements.

5.7 Intellectual Property Rights

- 5.7.1 Save as granted elsewhere under the Contract, neither the Customer nor the Provider shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 5.7.2 All Intellectual Property Rights in the Customer's Confidential Information and any other documents assets designs or data provided to the Provider by the Customer pursuant to this Contract shall remain vested in and the property of the Customer or licensed to the Customer as appropriate.
- 5.7.3 The Provider hereby grants to the Customer a royalty-free, perpetual, non-exclusive licence to use and modify the Provider's Pre-Existing IPR (to the extent that it relates to the provision of receipt of the Services but not so as to allow the Customer or any other third parties to commercially exploit the Provider's Pre-Existing IPR) during and after the termination of this Contract (howsoever caused). The Customer shall be entitled to sub-licence such Provider's Pre-Existing IPR to the extent required to enable the Customer to receive the benefit of Services or services similar to the Services during and after the termination of this Agreement (howsoever caused) but not so as to allow the sub-licensee to commercially exploit the Provider's Pre-Existing IPR.
- 5.7.4 The Provider hereby grants to the Customer a royalty-free, perpetual, non-exclusive, irrevocable licence to use and modify the Project Specific IPR ((to the extent that it relates to the provision of receipt of the Services) during and after the termination of this Contract (howsoever caused). The Customer shall be entitled to sub-licence such Project Specific IPRs to the extent required to enable the Customer to receive the benefit of Services or services similar to the Services during and after the termination of this Contract (howsoever caused).
- 5.7.5 The Provider shall waive or procure a waiver of any moral rights in any copyright works assigned to the Customer under the Contract.
- 5.7.6 If requested to do so by the Customer, the Provider shall without charge to the Customer execute all documents and do all such further acts as the Customer may require to perfect the provisions of clause 5.7.4 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 5.7.7 The Provider shall, during and after the Contract Period, indemnify and keep indemnified and hold the Customer harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and

expenses and other liabilities which the Customer may suffer or incur as a result of any claim that the performance by the Provider of the Services and/or the possession or use by the Customer of the Deliverables infringes or allegedly infringes a third party's Intellectual Property Rights ("Claim") except where the Claim arises from:

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

5.7.8 The Customer shall notify the Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Provider:

- (a) shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Customer; and
- (c) shall not settle or compromise the Claim without the Customer's prior Approval (not to be unreasonably withheld or delayed).

5.7.9 If a Claim is made in connection with the Contract or in the reasonable opinion of the Provider is likely to be made, the Provider shall immediately notify the Customer and, at its own expense and subject to the consent of the Customer (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify the relevant part of the Services or the Deliverables without reducing the performance or functionality of the same, or substitute alternative services or deliverables of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply with any necessary changes to such modified services or deliverables or to the substitute services or deliverables; or
- (b) procure a licence to use and supply the Services or the Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer;

and in the event that the Provider is unable to comply with clauses 5.7.9(a) or 5.7.9(b) within 20 Working Days of receipt of the Provider's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Provider shall, upon demand, refund the Customer with all monies paid in respect of the Services or Deliverables that are subject to the Claim.

5.7.10 In the event that a modification or substitution in accordance with clause 5.7.9(a) is not possible so as to avoid the infringement, or the Provider has been unable to procure a licence in accordance with clause 5.7.9(b) the Customer shall be entitled to delete the relevant Service from the Contract.

5.7.11 This clause 5.7 sets out the entire financial liability of the Provider with

regard to the infringement of any Intellectual Property Right as a result of the provision of the Services or the provision of the Deliverables hereunder. This shall not affect the Provider's financial liability for other Defaults or causes of action that may arise hereunder.

5.8 Records and Audit Access

- 5.8.1 The Provider shall keep and maintain until six (6) years after the end of the Contract Period (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, the Call-Off Contracts entered into with the Contracting Authority and the amounts paid by each Contracting Authority.
- 5.8.2 The Provider shall keep the records and accounts referred to in clause 5.8.1 above in accordance with good accountancy practice.
- 5.8.3 The Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor such access to such records and accounts as may be required by the Customer from time to time.
- 5.8.4 The Provider shall provide such records and accounts (together with copies of the Provider's published accounts) during the Contract Period and for a period of six (6) years after the expiry of the Contract Period to the Customer and the Auditor.
- 5.8.5 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services, that the Auditor appointed is not subject to a professional conflict of interest as an existing direct competitor of the Provider and that reasonable arrangements to protect the duty of confidentiality to the Provider's clients are put in place save insofar as the Provider accepts and acknowledges that control over such appointments, arrangements or conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 5.8.6 Subject to the Customer's rights of Confidential Information, the Provider shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each audit, including:
 - (a) all information requested by the Customer within the scope of the audit;
 - (b) reasonable access to sites used in the provision of the Services and controlled by the Provider and to Equipment used in the provision of the Services; and
 - (c) access to Staff.
- 5.8.7 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 5.8, unless the audit reveals a material Default by the Provider in which case the Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

[DRAFTING NOTE – THIS PROVISION WILL ONLY APPLY WHERE THE VALUE OF THE CONTRACT MEETS OR EXCEEDS £5million]

5.9 Key Performance Indicator Publication Responsibilities

- 5.9.1 Pursuant to section 71 of the Act, and notwithstanding any of the other obligations contained herein, the Customer shall publish the Provider's Performance against the KPIs set out in the Order Form at least on a 12 monthly basis.]

6. CONTROL OF THE CONTRACT

6.1 Transfer and Sub-Contracting

- 6.1.1 Save as expressly set out in the Framework award letter or as otherwise expressly agreed in advance the Provider shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it. Sub-contracting any part of the Contract shall not relieve the Provider of any of its obligations or duties under the Contract. In order to provide the Services in the most efficient manner the Provider may sub-contract appropriate parts of the Services to a Group company or trusted third party or parties who may be located in the EEA or elsewhere provided always that the Provider obtains the prior written consent of the Customer to such sub-contracting subject always to clause 5. The Provider shall remain liable to the Customer for all acts omissions of its subcontractors in relation to the Services provided.
- 6.1.2 The Provider shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- 6.1.3 Subject to clause 6.1.5 and subject to the prior written consent of the Provider which shall not be unreasonably withheld, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Customer; or
 - (c) any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under the Contract.
- 6.1.4 Any change in the legal status of the Customer such that it ceases to be a Contracting Authority shall not, subject to clause 6.1.6, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 6.1.5 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause 6.1.3 to a body which is not a Contracting Authority or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as "the Transferee"):
- (a) the rights of termination of the Customer in clauses 8.1 (Termination on insolvency and change of control) and 8.2 (Termination on Default) shall be available to the Provider in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and

- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Provider.

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

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

6.2 Waiver

6.2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

6.2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 1.7 (Notices).

6.2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

6.3 Variation

6.3.1 Subject to the provisions of this clause 6.3, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

6.3.2 The Customer may request a Variation by completing and sending the Variation form attached at Appendix 1 ("the Variation Form") to the Provider giving sufficient information for the Provider to assess the extent of the Variation and any additional cost that may be incurred. The Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

6.3.3 In the event that the Provider is unable to provide the Variation to the Services or where the Parties are unable to agree a change to the Contract Price, the Customer may:

- (a) agree to continue to perform their obligations under the Contract without the Variation; or

- (b) terminate the Contract with immediate effect, except where the Provider has already delivered part or all of the Order in accordance with the Order Form or where the Provider can show evidence of substantial work being carried out to fulfil the Order, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at clause 9.2.

- 6.3.4 If the Parties agree the Variation and any variation in the Contract Price, the Provider shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

6.4 Severability

- 6.4.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
- 6.4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Provider shall immediately commence good faith negotiations to remedy such invalidity.

6.5 Remedies in the event of inadequate performance

- 6.5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Provider's obligations under the Contract, then the Customer shall take all reasonable steps to investigate the complaint. The Customer may, in its sole discretion, uphold the complaint, and may, acting reasonably, take further action in accordance with clause 8.2 (Termination on Default) of the Contract. If reasonable to do so, the Provider shall be given an opportunity in the first instance to rectify any issues raised.
- 6.5.2 In the event that the Customer is of the reasonable opinion that there has been a material breach of the Contract by the Provider, then the Customer may, without prejudice to its rights under clause 8.2 (Termination on Default), do any of the following:
 - (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
 - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services;

- (c) terminate, in accordance with clause 8.2 (Termination on Default), the whole of the Contract; and/or
- (d) charge the Provider for and the Provider shall pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Provider for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- (e) The above provisions of sub-clause 6.5.2(a) to 6.5.2(d) shall be subject to the following: in the event the Provider does not complete the Services in accordance with the Contract the Provider will re- perform the Services and rectify the breach at no additional cost to the Customer until the Services are compliant with the Contract. In the event that the Services have not been provided in accordance with the Contract either within the timescale agreed by the Customer or 20 Working Days of the breach whichever shall be the sooner the Customer may take the actions listed in (a) to (d) above and only be liable to pay for the Services properly rendered.

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

6.5.4 In the event that the Provider:

- (a) fails to comply with clause 6.5.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- (b) persistently fails to comply with clause 6.5.3 above;

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

6.6 Cumulative Remedies

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. For the avoidance of doubt, neither party shall be entitled to recover on more than one occasion or under more than one remedy for the same loss.

6.7 Monitoring of Contract Performance

6.7.1 The Provider shall comply with the monitoring arrangements set out in the Order Form including, but not limited to, providing such data and information as the Provider may be required to produce under the Contract.

- 6.7.2 Where any Service is stated in the Order Form to be subject to a specific KPI, the Supplier shall provide that Service in such a manner as will ensure that the Achieved KPI in respect of that Service is equal to or higher than the corresponding Target KPI to such specific KPI.
- 6.7.3 If the existing Services are varied or new Services are added, Target KPIs for the same will be determined by the parties and included within the form of Variation.
- 6.7.4 The Provider shall provide [monthly/quarterly/six-monthly/annual] reports summarising the Achieved KPIs. For the avoidance of doubt, a failure by the Provider to provide the required monthly reports which prevents the Authority from publishing any KPI data required pursuant to the Act, then the Customer reserves the right to terminate this framework agreement for material default.
- 6.7.5 In the event that any Achieved KPI falls short of the relevant Target KPI, without prejudice to any other rights the Customer may have, the provisions of clause 6.5 shall apply.

6.8 Extension of Initial Contract Period

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

7. LIABILITIES

7.1 Liability, Indemnity and Insurance

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

- (a) death or personal injury caused by its negligence;
- (b) Fraud or fraudulent misrepresentation;
- (c) any claim under clause 7.3; or
- (d) any claim under the indemnity in clause 5.7.9.

- 7.1.2 Subject always to clause 7.1.1 and clause 7.1.4, the liability of the Provider to the Customer and any third party, of whatever nature arising out of or in connection with the Contract (including as a result of breach of contract, negligence or any other tort, under statute or otherwise) shall in no event [exceed £5 million/ or INSERT as set out in Order Form], in aggregate.

- 7.1.3 For the avoidance of doubt the Provider shall not be liable under both the Framework Agreement and the Contract in respect of the same loss.

- 7.1.4 Subject to clause 7.1.1, in no event shall either Party be liable to the other for any:

- (a) loss (whether direct or indirect) of profits;
- (b) loss (whether direct or indirect) of business;
- (c) loss (whether direct or indirect) of revenue;
- (d) loss (whether direct or indirect) of or damage to goodwill;

- (e) loss (whether direct or indirect) of anticipated savings; and/or
 - (f) any indirect or consequential loss or damage.
- 7.1.5 The Customer may, amongst other things, recover as a direct loss:
 - (a) any additional operational and/or administrative expenses arising from the Provider's Default;
 - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Provider's Default; and
 - (c) the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Provider.
- 7.1.6 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.
- 7.1.7 The Provider shall effect and maintain with a reputable insurance company a policy or policies of public liability insurance to a minimum amount of £5,000,000 (five million pounds) (or such sum required by the Customer's applicable Contract Standing Orders or similar policy) each and every claim in respect of all risks which may be incurred by the Provider, arising out of the Provider's performance (or default in performance) of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of the Contract Period and to the extent reasonably possible for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- 7.1.8 The Provider shall hold employers' liability insurance in respect of Staff with a minimum limit of indemnity of £5,000,000 (five million pounds) each and every claim and as required by law from time to time.
- 7.1.9 The Provider shall give the Customer, on request, copies of all insurance policies referred to in clause 7.1 and clause 7.2 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.
- 7.1.10 If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 7.1.11 The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Contract. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability referred to in clause 7.1.2.

7.2 Professional Indemnity

The Provider shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Provider shall ensure

professional indemnity insurance held by the Provider and by any agent, sub- contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £5,000,000 (five million pounds) for each individual claim or such higher limit as the Customer may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

7.3 Taxation, National Insurance and Employment Liability

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

7.4 Warranties and Representations

7.4.1 Each party warrants and represents that:

- (a) It is validly constituted and has it has full power and authority to enter into this agreement and fulfil its obligations under it
- (b) it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Agreement;
- (c) to the best of its knowledge, its entry into this Agreement does not, and will not, constitute a breach or cause it be in breach of any express or implied obligation to any third party.

7.4.2 The Provider warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorised representative of the Provider;
- (c) in entering the Contract it has not committed any Fraud;
- (d) as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- (e) neither it nor any Connected Person is or has been placed on the Debarment List;
- (f) no mandatory or discretionary exclusion ground applies to it or any

Connected Person;

- (g) to the best of its knowledge and belief no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;
- (h) it is not subject to any contractual obligation, compliance with which is likely to have an adverse affect on its ability to perform its obligations under the Contract;
- (i) 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 Provider 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 Provider's assets or revenue;
- (j) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (k) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (l) in the three (3) years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts; and
 - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (m) it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

7.1.2 The Provider shall promptly notify the Customer in writing if, during the Term:

- (a) the Provider, the Provider's Connected Persons or any sub-contractor is placed on the Debarment List;
- (b) a mandatory or discretionary exclusion ground applies to the Provider, the Provider's Connected Persons or any Sub-Contractor.

7.1.3 The Provider shall promptly notify the Customer in writing within 7 days of any changes to the Provider's Connected Persons together with information regarding the identity of the new Connected Persons.

8. DEFAULT, DISRUPTION AND TERMINATION

8.1 Termination on insolvency and change of control

8.1.1 The Customer may terminate the Contract with immediate effect by giving

notice in writing where in respect of the Provider:

- (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 the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in clause 8.1.1(a) – 8.1.1(g) occurs under the law of any other jurisdiction.

8.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Provider is an individual and:

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Provider's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Provider's bankruptcy; or
- (c) a receiver, or similar officer is appointed over the whole or any part of the Provider'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 Provider 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 Provider'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) the Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Provider shall notify the Customer immediately if the Provider undergoes a change of control within the meaning of section 450 or 1124 of the Corporation Tax Act 2010 ("Change of Control") and obtain the Customer's Approval to such Change of Control, such approval not to be unreasonably withheld. The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a Change of Control has occurred; or
- (b) where no notification has been made, the date that the Customer becomes aware of the Change of Control;

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

8.2 The Customer may give the Provider written notice of its intention to terminate if it considers that a termination ground listed in section 78(2) of the Act applies. A notice of intention to terminate under this clause must:

- 8.2.1 set out which termination ground the Customer considers applies pursuant to section 78(2) of the Act together with the Customer's reasons for deciding to terminate on this basis;
- 8.2.2 invite the Provider to make representations to the Customer about the existence of the termination ground and the Customer's decision to terminate;
- 8.2.3 specify the means by which, and the time by which, such representations must be made; and
- 8.2.4 insofar as it states the Customer's intention to terminate by reference to the status of a Sub-Contractor under section 78(2)(b) or (c) of the Procurement Act 2023, specify a time by which the Provider may terminate the Subcontract and, if necessary, appoint an alternative Subcontractor.

8.3 On the expiry of the time for the Provider to make representations under clause 8.2.3, if, after considering any representations, the Customer is satisfied that the termination ground applies, it may terminate the agreement with immediate effect by giving final notice to the Provider.

8.4 Termination on Default

8.4.1 The Customer may terminate the Contract by giving written notice to the Provider with immediate effect if the Provider commits a Default and if:

- (a) the Provider has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days, or such other period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, in the opinion of the Customer, capable of remedy.

8.4.2 In the event that through any Default of the Provider, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Provider shall be liable for the cost of

reconstitution of that data and shall reimburse the Customer in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

- 8.4.3 If the Customer fails to pay the Provider undisputed sums of money when due, the Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within ninety (90) days of the date of such written notice, the Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 3.3 (Recovery of Sums Due).

8.5 Break

The Customer shall have the right to terminate the Contract at any time by giving three Months' written notice to the Provider.

8.6 Framework Agreement

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

8.7 Consequences of Expiry or Termination

- 8.7.1 Where the Customer terminates the Contract under clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Customer may recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause 8.2 (Termination on Default), no further payments shall be payable by the Customer to the Provider until the Customer has established the final cost of making those other arrangements.

- 8.7.2 Subject to clause 7, where the Customer terminates the Contract under clause 8.5(Break), the Customer shall indemnify the Provider against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Provider by reason of the termination of the Contract, provided that the Provider takes all reasonable steps to mitigate such loss. Where the Provider holds insurance, the Provider shall reduce its unavoidable costs by any insurance sums available. The Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Provider as a result of termination under clause 8.5(Break).

- 8.7.3 The Customer shall not be liable under clause 8.7.2 to pay any sum which:

- (a) was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- (b) when added to any sums paid or due to the Provider under the Contract, exceeds the total sum that would have been payable to the Provider if the Contract had not been terminated prior to the expiry of the Contract Period.

8.7.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Provider under clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Data Protection Act), 5.3 (Confidential Information), 5.4 (Freedom of Information), 5.7 (Intellectual Property Rights), 5.8 (Records and Audit Access), 6.6 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 7.2 (Professional Indemnity), 8.7 (Consequences of Expiry or Termination), 8.9 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction).

8.8 Disruption

- 8.8.1 The Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 8.8.2 The Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- 8.8.3 In the event of industrial action by the Staff, the Provider shall seek the Customer's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 8.8.4 If the Provider's proposals referred to in clause 8.8.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.
- 8.8.5 If the Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Provider as a direct result of such disruption.

8.9 Recovery upon Termination

8.9.1 On the termination of the Contract for any reason, the Provider shall:

- (a) promptly return to the Customer all Confidential Information, Personal Data and Customer's Pre-Existing IPR's and the Project Specific IPR's in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services (the "Client Information"), except where the Provider is retaining copies where it has a legal or regulatory obligation to do so and to defend its work product, provided such storage is for archiving purposes only and not ordinarily accessible on a day to day basis.

Prior to returning the Client Information, the Provider and the Customer shall first agree which of the Client Information shall be handed over, and if not deleted;

- (b) immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Provider under clause 2.2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Provider and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Provider to conduct due diligence.

8.9.2 If the Provider fails to comply with clauses 8.9.1(a) and 8.9.1(b), the Customer may recover possession thereof and the Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Provider or its permitted suppliers or sub-contractors where any such items may be held.

8.9.3 Where the end of the Contract Period arises due to the Provider's Default, the Provider shall provide all assistance under clauses 8.9.1(c) and 8.9.1(d) free of charge. Otherwise, the Customer shall pay the Provider's reasonable costs of providing the assistance and the Provider shall take all reasonable steps to mitigate such costs.

8.9.4 Force Majeure

- (a) Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 30 Working Days, either Party may terminate the Contract with immediate effect by notice in writing.
- (b) Any failure or delay by the Provider in performing its obligations under the Contract 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 Provider.
- (c) If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in clause 8.9.4(a) it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

9. DISPUTES AND LAW

9.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the English courts and agree that the Contract is to be governed exclusively by and construed under English law.

Alternative clause: Scots law and Jurisdiction [TO BE CONFIRMED]

9.1.1 Subject to the provisions of clause 9.2, this Contract shall be considered as a contract made in Scotland, the Customer and the Provider accept the exclusive jurisdiction of the Scottish Courts and agree that this Contract is to be governed by and construed according to Scots Law.

9.1.2 This Contract shall be binding upon the Customer and its successors and assignees and the Provider and the Provider's successors and permitted assignees.

Alternative clause: Northern Ireland Law [TO BE CONFIRMED]

For Northern Ireland Law, make the following changes:

Delete clause 9.1 and insert:

"9.1 Law and Jurisdiction of Northern Ireland

9.1.1 Subject to the provisions of clause 9.2 this Contract shall be considered as a contract made in Northern Ireland, the Customer and the Provider accept the exclusive jurisdiction of the Northern Ireland Courts and agree that this Contract is to be governed by and construed according to Northern Ireland Law.

9.1.2 This Contract shall be binding upon the Customer and its successors and assignees and the Provider and the Provider's successors and permitted assignees."

Term and Termination

In clause 8.1.1(f) delete "...Section 123 of the Insolvency Act 1986." and insert "...Article 103 of the Insolvency (NI) Order 1989".

4.2.3 Racial Discrimination

4.2.3.1 Delete clause [] and insert:

"DISCRIMINATION

4.2.1 The Provider shall not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, Fair Employment (NI) Acts 1976 and 1989, the Sex Discrimination (NI) Orders 1976 and 1988, the Equal Pay Act (NI) 1970, or any statutory modification or re-enactment thereof relating to discrimination in employment.

4.2.2 The Provider shall take all reasonable steps to ensure the observance of the provisions of clause 4.2.1 by the Sub-contractors employed in the execution of this Contract."

9.2 Dispute Resolution

9.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.

9.2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 9.2.3 If the dispute cannot be resolved by the Parties pursuant to clause 9.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 9.2.5 unless:
- (a) the Customer considers that the dispute is not suitable for resolution by mediation; or
 - (b) the Provider does not agree to mediation.
- 9.2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Provider and the Staff shall comply fully with the requirements of the Contract at all times.
- 9.2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator;
 - (b) the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;
 - (e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and
 - (f) if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

10. TERMS OF BUSINESS

To the extent that any Services provided by Provider are regulated for the purposes of the Financial Services and Markets Act 2000 ("Regulated Services"), and for the avoidance of doubt without prejudice to the Provider's obligations pursuant to clause 2 (Supply of Services) the additional terms

set out in the Provider document(s) 'Terms of Business for the Provision of Investment Services' and/or 'Terms of Business for the Provision of Insurance Services' and appended as Appendix 4 to the Order Form shall apply.

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