

SCHEDULE 4

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:-

"Approval" and "Approved"	means the prior written consent of the Contracting Body
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires
"Breach of Security"	means the occurrence of unauthorised access to or use of the Premises, the Services, the Prime Contractor System or any information and communications technology or data (including the Contracting Body Data) used by the Contracting Body or the Prime Contractor in connection with the Contract
"Change Control Notice"	means the notice referred to in Clause 6.3 (Change Control)
"Commencement Date"	means the date set out in the Order Form
"Commercially Sensitive Information"	<p>[NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY RULES] 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 Prime Contractor and designated as commercially sensitive information by the Contracting Body for the period set out in that Order Form; and/or(b) that constitutes a trade secret
"Confidential Information"	<p>[NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY RULES] 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; and

- (b) the Commercially Sensitive Information

and does not include any information:-

- (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause 5.4 (Confidential Information));
- (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
- (iv) is independently developed without access to the Confidential Information

"Contract"

means the written agreement between the Contracting Body and the Prime Contractor consisting of the Order Form, the Contractor Guidance and these clauses save that, for the purposes of Clause 1.6.4 only, reference to 'Contract' shall not include the Order Form or the Contractor Guidance

"Contract Period"

means the period from the Commencement Date to:-

- (a) the date of expiry set out in Clause 1.3 (Initial Contract Period);
- (b) following an extension pursuant to Clause 6.8 (Extension of Initial Contract Period), the date of expiry of the extended period; or
- (c) such earlier date of termination or partial termination of the Contract in accordance with the Law or the provisions of the Contract

"Contracting Authority"	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 (as amended) other than the Contracting Body
"Contractor Guidance"	means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Contracting Body to the Prime Contractor prior to the Commencement Date, and any other instructions and recommended practices notified by the Contracting Body to the Prime Contractor from time to time
"Contracting Body"	means the customer(s) identified in the Order Form
"Contracting Body Data"	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"> (i) supplied to the Prime Contractor by or on behalf of the Contracting Body; or (ii) which the Prime Contractor is required to generate, process, store or transmit pursuant to the Contract; or <p>(b) any Personal Data for which the Contracting Body is the Data Controller</p>
"Contracting Body Software"	means software which is owned by or licensed to the Contracting Body, including software which is or will be used by the Prime Contractor for the purposes of providing the Services but excluding the Prime Contractor Software
"Contracting Body System"	means the Contracting Body's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Contracting Body or the Prime Contractor in connection with the Contract which is owned by or licensed to the Contracting Body by a third party and which interfaces with the Prime Contractor System or which is necessary for the Contracting Body to receive the Services

"Contractor Guidance"	means the instructions and recommended practices, including any instructions of an operational nature, and/or relating to Sustainable Development and promotion of race equality and non-discrimination, copies of which have been provided by the Contracting Body to the Prime Contractor prior to the Commencement Date, and any other instructions and recommended practices notified by the Contracting Body to the Prime Contractor from time to time
"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
"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
"Directive"	means the European Directive 2001/23/EC as amended
"DPA"	means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
"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 Prime Contractor's equipment, plant, materials and such other items supplied

and used by the Prime Contractor in the performance of its obligations under the Contract

- "Fees"** means the price (exclusive of any applicable VAT), payable to the Prime Contractor by the Contracting Body under the Contract, as set out in the Order Form, for the full and proper performance by the Prime Contractor of its obligations under the Contract
- "Fees Regulations"** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004
- "FOIA"** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
- "Force Majeure"** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:-
- (a) any industrial action occurring within the Prime Contractor'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 employment related support services between the Secretary of State for Work and Pensions and the Prime Contractor dated **[INSERT DATE]** 2010
- "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 Contracting Body

“Guarantee”	means the deed of guarantee in favour of the Contracting Body entered into by the Guarantor on or about the date of the Contract (which is substantially in the form set out in Appendix 1 (Guarantee) or such similar or analogous form acceptable to the Contracting Body from time to time)
“Guarantor”	means [INSERT NAME]
"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
“ICT Environment”	means the Contracting Body System and the Prime Contractor System
“Incumbent Contractor”	means any contractor providing any service which constitutes or which will constitute part of the Services immediately before the Transfer Date
"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, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off
"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 Prime Contractor is bound to comply

“Malicious Software”

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

“Merlin Standard”

means the standard and accreditation process in respect of supply chain management (as further detailed in the Order Form)

"Month"

means calendar month

"Order"

means the order submitted by the Contracting Body to the Prime Contractor in accordance with the Framework Agreement

"Order Form"

means the order submitted to the Prime Contractor by the Contracting Body in accordance with the Framework Agreement which sets out the description of the Services to be supplied including, where appropriate, the Premises, the timeframe, the Deliverables and the Quality Standards

“Original Public Sector Employee”

means a former employee of the Crown or other public sector body who as a result of the application of Transfer of Undertakings (Protection of Employment) Regulations 1981 or of the TUPE Regulations, in relation to what was done for the purposes of carrying out a contract for the provision of services which were the equivalent of or similar to the Services, becomes or became an employee of someone other than the Crown or other public sector body

"Parent Company"

means any company which is the ultimate Holding Company of the Prime Contractor or any other company of which the ultimate Holding Company of the Prime Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Prime Contractor or which is engaged by the same or similar business to the Prime Contractor. 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
"Participants"	means the customers of the Contracting Body who are directly in receipt of the Services
"Party"	means the Prime Contractor or the Contracting Body
"Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Contracting Body or the Prime Contractor prior to or independently of the performance by the Contracting Body or the Prime Contractor of their obligations under the Contract and in respect of the Contracting Body 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
"Prime Contractor"	means the person, firm or company with whom the Contracting Body enters into the Contract as identified in the Order Form
"Prime Contractor Software"	means software which is proprietary to the Prime Contractor, including software which is or will be used by the Prime Contractor for the purposes of providing the Services
"Prime Contractor System"	means the information and communications technology system used by the Prime Contractor in performing the Services including the Software, the Equipment and related cabling (but excluding the Contracting Body System)
"Project Specific IPRs"	means:- <ul style="list-style-type: none"> (a) IPRs in items created by the Prime Contractor (or by a third party on behalf of the Prime Contractor) 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 Prime Contractor's obligations under the Contract
"Property"	means the property, other than real property, issued or made available to the Prime Contractor by the Contracting Body in connection with the Contract

"Quality Standards"	means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for 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 Prime Contractor would reasonably and ordinarily be expected to comply with (as may be further detailed in the Order Form), the Merlin Standard and any other quality standards set out in the Order Form
"Regulatory Bodies"	means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Contracting Body
"Relevant Conviction"	means a conviction that is relevant to the nature of the Services (or as listed by the Contracting Body) and/or relevant to the work of the Contracting Body
"Relevant Employees"	means the employees who are the subject of a Relevant Transfer
"Relevant Transfer"	means a relevant transfer for the purposes of the TUPE Regulations
"Replacement Contractor"	means any third party service provider appointed by the Contracting Body to supply any services which are substantially similar to any of the Services and which the Contracting Body 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)
"Security Plan"	means the Prime Contractor's security plan prepared pursuant to paragraph 3 of Appendix 2 (Security Requirements and Plan)
"Security Policy"	means the Contracting Body's Security Policy annexed to Appendix 2 (Security Requirements and Plan) as updated from time to time

"Services"	means the employment related support services to be supplied as specified in the Order Form
"Staff"	means all persons employed by the Prime Contractor to perform its obligations under the Contract together with the Prime Contractor's servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract
"Staff Vetting Procedures"	means the Contracting Body's procedures and policies for the vetting of personnel as set out in the Order Form and any other procedures and policies as notified by the Contracting Body to the Prime Contractor from time to time
"Sub-contract"	means any contract or agreement or proposed contract or agreement between the Prime Contractor and any third party whereby that third party agrees to provide to the Prime Contractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof
"Sub-contractor"	means the third party with whom the Prime Contractor enters into a Sub-contract or its servants or agents and any third party with whom that third party enters into a Sub-contract or its servants or agents
"Tender"	means the document(s) submitted by the Prime Contractor to the Contracting Body in response to the Contracting Body's invitation to suppliers for formal offers to supply it with the Services pursuant to the Framework Agreement
"Third Party Software"	means software which is proprietary to any third party which is or will be used by the Prime Contractor for the purposes of providing the Services
"Transfer Date"	means the date the Transferring Employee is transferred to the employment of the Prime Contractor
"Transferring Employee"	means an employee of an Incumbent Contractor whose contract of employment becomes, by virtue of the application of the TUPE Regulations in relation to what is done for the purposes of carrying out a Call-Off Contract between the Contracting Body and the Prime Contractor, a contract of employment

	with someone other than the Incumbent Contractor
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)
"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 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;
- 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

1.3 Initial Contract Period

The Contract shall take effect on the Commencement Date and shall expire automatically on the date set out in the Order Form, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under Clause 6.8 (Extension of Initial Contract Period).

1.4 **Prime Contractor's Status**

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

1.5 **Contracting Body's Obligations**

Save as otherwise expressly provided, the obligations of the Contracting Body under the Contract are obligations of the Contracting Body 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 Contracting Body in any other capacity, nor shall the exercise by the Contracting Body of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Contracting Body to the Prime Contractor.

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, the Contractor Guidance and any document referred to in the clauses of the Contract, the conflict shall be resolved in accordance with the following order of precedence:-

- (a) the Order Form;
- (b) the clauses of the Contract;
- (c) the Contractor Guidance; and
- (d) any other document referred to in the clauses of the Contract.

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 by facsimile transmission 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 facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission 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 Contracting Body: the address set out in the Order Form.

(b) for the Prime Contractor: 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

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

1.9 Conflicts of Interest

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

1.9.2 The Prime Contractor shall promptly notify the Contracting Body (and provide full particulars to the Contracting Body) if any conflict

referred to in Clause 1.9.1 above arises or is reasonably foreseeable.

- 1.9.3 The Contracting Body reserves the right to terminate the Contract immediately by giving notice in writing to the Prime Contractor and/or to take such other steps it deems necessary where, in the reasonable opinion of the Contracting Body, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Prime Contractor and the duties owed to the Contracting Body under the provisions of the Contract. The actions of the Contracting Body 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 Contracting Body.
- 1.9.4 This Clause shall apply during the Contract Period and for a period of two (2) years after expiry of the Contract Period.

1.10 Prevention of Fraud

- 1.10.1 The Prime Contractor shall use its best endeavours, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Prime Contractor (including its shareholders, members and directors) in connection with the receipt of monies from the Contracting Body.
- 1.10.2 The Prime Contractor shall notify the Contracting Body immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- 1.10.3 Notwithstanding the general obligations in Clauses 1.10.1 and 1.10.2, the Prime Contractor shall and shall procure that any Sub-contractors shall:
- (a) have an established system that enables its staff to report inappropriate behaviour by colleagues in respect of any claims for payment under the Contract;
 - (b) ensure that the Prime Contractor's (or any Sub-contractor's) performance management systems do not encourage individual staff to make false claims for payment under the Contract;
 - (c) ensure a segregation of duties within the Prime Contractor's (or any Sub-contractor's) operations between those staff directly involved in delivering the Services and those making claims for payment under the Contract; and
 - (d) establish an audit system to provide periodic checks, at a minimum of six (6) monthly intervals, to ensure effective and accurate recording and reporting of performance of the Services.
- 1.10.4 The Prime Contractor shall co-operate fully with the Contracting Body and assist it in the identification of Participants who may be unlawfully claiming state benefits. The Contracting Body may from

time to time brief the Prime Contractor as to the co-operation and assistance it reasonably requires including the provision of information regarding Fraud by Participants. On receipt of the information, further evidence may be collected by the Contracting Body or other government department, office or agency of Her Majesty's Government with a view to prosecution.

1.10.5 If the Prime Contractor or its Staff commits any Fraud in relation to the Contract or any other contract with a Contracting Authority or the Contracting Body, the Contracting Body may:-

- (a) terminate the Contract with immediate effect by giving the Prime Contractor notice in writing and recover from the Prime Contractor the amount of any loss suffered by the Contracting Body resulting from the termination including the cost reasonably incurred by the Contracting Body of making other arrangements for the supply of the Services and any additional expenditure incurred by the Contracting Body throughout the remainder of the Contract Period;
- (b) recover in full from the Prime Contractor any other loss sustained by the Contracting Body in consequence of any breach of this Clause 1.10, whether or not the Contract has been terminated; and/or
- (c) where the Contracting Body finds that the Prime Contractor has deliberately submitted false claims for payments, recover in full from the Prime Contractor the amount or value of such payments.

1.10.6 Without prejudice to the foregoing, if the Prime Contractor or its Staff commits any Fraud in relation to the Contract, the Prime Contractor shall also pay the Contracting Body a sum of **[INSERT SUM]** in the event of a minor Fraud or irregularity, or **[INSERT SUM]** in the event of a serious Fraud or irregularity, by way of liquidated damages. The Parties confirm that these sums represent an agreed genuine pre-estimate of the loss that the Contracting Body would suffer in respect of the cost of senior management time in dealing with the act of Fraud or irregularity and damages for loss of reputation to the Contracting Body. For the purposes of this Clause, a minor Fraud or irregularity shall be where the total amount of invalid payments in respect of the act of Fraud or irregularity (or a series of related Frauds or irregularities) is less than **[INSERT SUM]**. A serious Fraud or irregularity shall be any act of Fraud or irregularity (or any series of related acts of Fraud or irregularities) where the total amount of invalid payments is equal to or exceed **[INSERT SUM]**.

1.11 Guarantee

1.11.1 Before the Commencement Date, the Prime Contractor shall procure that the Guarantor shall:

- (a) execute and deliver to the Contracting Body the Guarantee; and

- (b) deliver to the Contracting Body a certified copy extract of the board minutes of the Guarantor approving the execution of the Guarantee.

1.11.2 In the event that the Prime Contractor fails to comply with this Clause 1.11, the Contracting Body reserves the right to terminate the Contract with immediate effect by giving notice in writing to the Prime Contractor.

2. SUPPLY OF SERVICES

2.1 The Services

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

2.1.2 If the Contracting Body informs the Prime Contractor in writing that the Contracting Body 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 Contracting Body, the Prime Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Contracting Body.

2.1.3 Subject to the Contracting Body providing Approval in accordance with Clause 2.3 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

2.1.4 The Prime Contractor shall notify the Contracting Body immediately upon becoming aware of any claim brought against the Prime Contractor arising out of, or relating to, the provision of the Services, including any claim made against any Sub-contractor.

2.2 Volumes

2.2.1 The Prime Contractor acknowledges that, in entering the Contract, no form of volume guarantee has been granted by the Contracting Body in respect of the number or volume of Participants during the Contract Period. The Prime Contractor acknowledges that any volumes referred to in the Order Form shall be indicative only and shall not be binding on the Contracting Body.

2.2.2 The Prime Contractor acknowledges that the volume of Participants may fluctuate.

2.3 Provision and Removal of Equipment

- 2.3.1 Unless otherwise stated in the Order Form, the Prime Contractor shall provide all the Equipment necessary for the supply of the Services.
- 2.3.2 The Prime Contractor shall not deliver any Equipment nor begin any work on the Contracting Body's Premises without obtaining Approval.
- 2.3.3 All Equipment brought onto the Contracting Body's Premises shall be at the Prime Contractor's own risk and the Contracting Body shall have no liability for any loss of or damage to any Equipment unless the Prime Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Contracting Body's Default. The Prime Contractor shall provide for the haulage or carriage thereof to the Contracting Body's Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Contracting Body's Premises will remain the property of the Prime Contractor.
- 2.3.4 The Prime Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- 2.3.5 The Prime Contractor shall, at the Contracting Body'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 Contracting Body is either hazardous, noxious or not in accordance with the Contract; and
 - (b) replace such item with a suitable substitute item of Equipment.
- 2.3.6 On completion of the Services, the Prime Contractor shall remove the Equipment together with any other materials used by the Prime Contractor to supply the Services and shall leave the Contracting Body's Premises in a clean, safe and tidy condition. The Prime Contractor is solely responsible for making good any damage to the Contracting Body's Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Prime Contractor or any Staff.

2.4 Manner of Carrying Out the Services

- 2.4.1 The Prime Contractor shall at all times comply with the Quality Standards, and, where applicable, shall maintain accreditation with the relevant Quality Standard's authorisation body. To the extent that the standard of Services has not been specified in the Contract the Prime Contractor shall agree the relevant standard of the Services with the Contracting Body prior to the supply of the Services and, in any event, the Prime Contractor shall perform its

obligations under the Contract in accordance with the Law and Good Industry Practice.

- 2.3.2 The Prime Contractor 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.

2.5 **Prime Contractor's Staff**

- 2.5.1 The Contracting Body may, by written notice to the Prime Contractor, refuse to admit onto, or withdraw permission to remain on, the Contracting Body's Premises:-

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

whose admission or continued presence would, in the reasonable opinion of the Contracting Body, be undesirable.

- 2.5.2 At the Contracting Body's written request, the Prime Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Contracting Body's Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Contracting Body may reasonably request.
- 2.5.3 The Prime Contractor's Staff, engaged within the boundaries of the Contracting Body's 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 Prime Contractor fails to comply with Clause 2.5.2 within two (2) Months of the date of the request then the Contracting Body 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 Contracting Body.
- 2.5.5 The decision of the Contracting Body as to whether any person is to be refused access to the Contracting Body's Premises and as to whether the Prime Contractor has failed to comply with Clause 2.5.2 shall be final and conclusive.
- 2.5.6 The Prime Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Prime Contractor confirms that all persons employed or engaged by the Prime Contractor shall have complied with the Staff Vetting Procedures prior to commencing the provision of the Services and accessing the Premises.

- 2.5.7 The Contracting Body may require the Prime Contractor to ensure that any relevant staff employed in the provision of the Services has undertaken a Criminal Records Bureau check. The Prime Contractor shall ensure that no member of relevant staff who discloses that he/she has a Relevant Conviction, or is found by the Prime Contractor to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Services.
- 2.5.8 The Prime Contractor shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan.
- 2.5.9 The Prime Contractor shall comply with all applicable legislation relating to safeguarding and protecting vulnerable groups, including the Safeguarding Vulnerable Groups Act 2006, the Safeguarding Vulnerable Groups Order (Northern Ireland) 2007 and the Protecting Vulnerable Groups Act 2007 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 2.5.10 The Prime Contractor shall be responsible for ensuring that its Staff are not claiming any Social Security Benefit, where payment of that Social Security Benefit is precluded due to earnings.
- 2.5.11 The Prime Contractor shall further use all reasonable endeavours to ensure that its Staff who are not EC nationals are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Prime Contractor shall promptly take all reasonable steps to ensure compliance with this Clause.
- 2.5.12 Without prejudice to Clause 2.5.4, if the Prime Contractor fails to comply with this Clause 2.5 (and in the reasonable opinion of the Contracting Body) such failure may be prejudicial to the interests of the Crown, then the Contracting Body 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 Contracting Body.

2.6 Inspection of Premises

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

2.7 Licence to occupy Premises

- 2.7.1 Any land or Premises made available from time to time to the Prime Contractor by the Contracting Body in connection with the Contract shall be made available to the Prime Contractor on a non-exclusive licence basis free of charge and shall be used by the Prime Contractor solely for the purpose of performing its obligations under

the Contract. The Prime Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.

- 2.7.2 The Prime Contractor shall limit access to such land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Prime Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Contracting Body may reasonably request.
- 2.7.3 Should the Prime Contractor require modifications to such land or Premises, such modifications shall be subject to Approval and shall be carried out by the Contracting Body at the Prime Contractor's expense. The Contracting Body shall undertake modification work approved by the Contracting Body in writing without undue delay. Ownership of such modifications shall rest with the Contracting Body.
- 2.7.4 The Prime Contractor 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 land or Premises and conduct of personnel at the land or Premises as determined by the Contracting Body, and the Prime Contractor shall pay for the cost of making good any damage caused by the Prime Contractor 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.
- 2.7.5 The Parties agree that there is no intention on the part of the Contracting Body to create a tenancy of any nature whatsoever in favour of the Prime Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Contracting Body retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

2.8 **Property**

- 2.8.1 Where the Contracting Body issues Property free of charge to the Prime Contractor such Property shall be and remain the property of the Contracting Body and the Prime Contractor irrevocably licences the Contracting Body and its agents to enter upon any premises of the Prime Contractor during normal business hours on reasonable notice to recover any such Property. The Prime Contractor shall not in any circumstances have a lien or any other interest on the Property and at all times the Prime Contractor shall possess the Property as fiduciary agent and bailee of the Contracting Body. The Prime Contractor shall take all reasonable steps to ensure that the title of the Contracting Body 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 Contracting Body's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Contracting Body.

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

2.9 **Offers of Employment**

For the duration of the Contract and for a period of twelve (12) Months thereafter neither the Contracting Body nor the Prime Contractor 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.

2.10 Monitoring of Prime Contractor Performance

- 2.10.1 The Contracting Body shall monitor the Prime Contractor's performance of the Services in accordance with the provisions of Appendix 3 (Monitoring Requirements) or such other requirements as notified by the Contracting Body to the Prime Contractor from time to time. The Contracting Body will organise regular monitoring and spot checks of the Premises at any time to ensure that the Prime Contractor is complying with its obligations under the Contract and the Prime Contractor shall co-operate fully, at its own cost, with the Contracting Body. The Contracting Body shall use all reasonable endeavours to ensure that the onsite monitoring will not interfere with the delivery of the Services by the Prime Contractor.
- 2.10.2 The Contracting Body may also appoint an external assessor, subject to them not being a competitor of the Prime Contractor and entering into a non disclosure arrangement and having the relevant expertise and competence, to participate in the monitoring of the Prime Contractor's performance of the Services and the Prime Contractor will co-operate with the assessor and take all reasonable and necessary steps to implement recommendations made. Any changes to any Services made as a result of a recommendation of any such persons shall be made in writing and in accordance with Clause 6.3 (Change Control).
- 2.10.3 The Prime Contractor shall ensure that the Contracting Body (and its authorised representatives) have access upon reasonable notice to all relevant property, including the Premises, and information (and where requested are given a copy of such information) necessary to carry out the monitoring referred to in this Clause 2.10 including putting in place arrangements to permit legal access to information as may be required.
- 2.10.4 With effect from the date of the Contract the Contracting Body and the Prime Contractor shall meet at the times and with such frequency as specified in Appendix 3 (Monitoring Requirements) or as notified by the Contracting Body to the Prime Contractor from time to time. Such meetings shall be convened by the Contracting Body upon the Contracting Body giving reasonable notice to the Prime Contractor.

3. PAYMENT AND FEES

3.1 Fees

- 3.1.1 In consideration of the Prime Contractor's performance of its obligations under the Contract, the Contracting Body shall pay the Fees in accordance with Clause 3.2 (Payment and VAT).
- 3.1.2 The Contracting Body shall, in addition to the Fees and following evidence of a valid VAT invoice, pay the Prime Contractor 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 Contracting Body shall pay all sums due to the Prime Contractor in accordance with the payment requirements set out in Appendix 4 (Payment Requirements) within thirty (30) days of

receipt of a valid invoice, submitted in accordance with the payment profile set out in Appendix 5 (Payment Profile).

- 3.2.2 The Prime Contractor 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 required by the Contracting Body to substantiate the invoice.
- 3.2.3 Where the Prime Contractor 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 Sub-contract which requires payment to be made of all sums due by the Prime Contractor to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- 3.2.4 The Prime Contractor shall add VAT to the Fees at the prevailing rate as applicable.
- 3.2.5 The Prime Contractor shall indemnify the Contracting Body on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Contracting Body at any time in respect of the Prime Contractor's failure to account for or to pay any VAT relating to payments made to the Prime Contractor under the Contract. Any amounts due under this Clause 3.2.5 shall be paid by the Prime Contractor to the Contracting Body not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Body.
- 3.2.6 The Prime Contractor shall not suspend the supply of the Services unless the Prime Contractor is entitled to terminate the Contract under Clause 8.2 (Termination on Default) for failure to pay undisputed sums of money.

3.3 Recovery of Sums Due

- 3.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Prime Contractor (including any sum which the Prime Contractor is liable to pay to the Contracting Body in respect of any breach of the Contract), the Contracting Body may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Prime Contractor under the Contract or under any other agreement or contract with the Contracting Body.
- 3.3.2 Any overpayment by either Party, whether of the Fees 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 Prime Contractor shall make any payments due to the Contracting Body without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Prime Contractor has a valid court order requiring an amount equal to

such deduction to be paid by the Contracting Body to the Prime Contractor.

- 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 Prime Contractor free of charge to the Contracting Body.
- 3.4.2 The Contracting Body shall provide all reasonable assistance to facilitate compliance with Clause 3.4.1 by the Prime Contractor.

3.5 **Grossing Up**

- 3.5.1 The Contracting Body may check a reasonably representative (statistically valid) sample of claims for payment made by the Prime Contractor. If the Contracting Body finds proof of an error or over-claim by the Prime Contractor the Contracting Body shall be entitled to gross-up the results of the sample checked, by assuming that the same type and percentage of errors and over-claims have been made in respect of the Prime Contractor's claim form from which the sample was taken.
- 3.5.2 Upon prior notice by the Contracting Body to the Prime Contractor of any error or over-claim that reduces the amount claimed, (unless the Prime Contractor provides sufficient evidence to satisfy the Contracting Body that the error or over-claim has not been the result of grossing-up the results of the representative sample, within thirty (30) days of being notified by the Contracting Body, or such other period as the Parties may agree), the amount due under the claim form shall be reduced accordingly.

4. **STATUTORY OBLIGATIONS AND REGULATIONS**

4.1 **Prevention of Corruption**

- 4.1.1 The Prime Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of the Contracting Body or any other public body or person employed by or on behalf of the Contracting Body 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 Contracting Body or any other public body or person employed by or on behalf of the Contracting Body, or for showing or refraining from showing favour or disfavour to any person in relation to any such contract.

- 4.1.2 The Prime Contractor warrants that it has not paid commission or agreed to pay commission to the Contracting Body or any other public body or any person employed by or on behalf of the Contracting Body or any other public body in connection with the Contract.
- 4.1.3 If the Prime Contractor, its Staff or any person acting on the Prime Contractor's behalf, engages in conduct prohibited by Clauses 4.1.1 or 4.1.2, the Contracting Body may:-
- (a) terminate the Contract with immediate effect by giving notice in writing to the Prime Contractor and recover from the Prime Contractor the amount of any loss suffered by the Contracting Body resulting from the termination;
 - (b) recover in full from the Prime Contractor any other loss sustained by the Contracting Body in consequence of any breach of those Clauses; and/or
 - (c) recover in full from the Prime Contractor the amount or value of any gift, consideration or commission.

4.2 **Non-Discrimination**

- 4.2.1 The Prime Contractor shall not:
- (a) unlawfully discriminate (either directly or indirectly, or by way of victimisation or harassment) on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, gender re-assignment, marital or civil partnership status, religion or belief, or age; and/or
 - (b) without prejudice to the general obligation in Clause 4.2.1, unlawfully discriminate within the meaning and scope of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- 4.2.2 The Prime Contractor shall take all reasonable steps to secure the observance of Clause 4.2.1 by all Staff. Any breach by the Prime Contractor of Clause 4.2.1 shall be a material breach of the Contract for the purposes of Clause 8.2 (Termination on Default).
- 4.2.3 In delivering the Services, the Prime Contractor shall operate at all times in accordance with the diversity and equality requirements set out in Appendix 6 (Diversity and Equality Requirements) or such other diversity and equality requirements as notified by the Contracting Body to the Prime Contractor from time to time. Any breach by the Prime Contractor of paragraphs 3 to 7 (inclusive) of Appendix 6 (Diversity and Equality Requirements) (or such other

diversity and equality requirements which are the equivalent of or similar to paragraphs 3 to 7 (inclusive) of Appendix 6 (Diversity and Equality Requirements) as notified by the Contracting Body to the Prime Contractor from time to time) shall be a material breach of the Contract for the purposes of Clause 8.2 (Termination on Default).

- 4.2.4 Where delivering the Services in Wales, the Prime Contractor shall comply at all times with the requirements set out in Appendix 7 (Welsh Language Scheme) or such other requirements as notified by the Contracting Body to the Prime Contractor from time to time.
- 4.2.5 In delivering the Services, the Prime Contractor shall operate at all times in accordance with the apprenticeships and skills requirements set out in Appendix 9 (Apprenticeships and Skills Requirements) or such other apprenticeships and skills requirements as notified by the Contracting Body to the Prime Contractor from time to time.

4.3 **TUPE Compliance (General) and Employment Matters**

Application of TUPE Regulations

- 4.3.1 The Contracting Body and the Prime Contractor agree that where the identity of a provider (including the Incumbent Contractor) of any service which constitutes or which will constitute part of the Services is changed pursuant to the Contract (including upon termination of the Contract) then the change shall constitute a Relevant Transfer.
- 4.3.2 On the occasion of any Relevant Transfer the Prime Contractor shall and shall procure that any Replacement Contractor shall comply with all of its obligations under the TUPE Regulations and the Directive in respect of the Relevant Employees.
- 4.3.3 The Prime Contractor shall, from the Commencement Date and from the date of any subsequent Relevant Transfer, comply and procure that any Sub-contractor shall comply with the Cabinet Office Statement of Practice on staff transfers in the Public Sector (COSOP) together with Annex A, "Fair Deal on Pensions 2004", and any other relevant Code of Practice or guidance.

Sub-contractors

- 4.3.4 In the event that the Prime Contractor enters into any Sub-contract in connection with the Contract, it shall impose obligations on its Sub-contractor in the same terms as those imposed on it pursuant to Clauses 4.3 and 4.4 and shall procure that the Sub-contractor complies with such terms. The Prime Contractor and the Sub-contractor shall indemnify the Contracting Body and keep the Contracting Body indemnified in full from and against all direct, indirect or consequential liability and any other loss suffered by the Contracting Body as a result of, or in connection with, any failure on the part of the Sub-contractor to comply with such terms.

Emoluments and Outgoings

- 4.3.5 The Contracting Body and the Prime Contractor acknowledge that any other employer of a Relevant Employee is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, up to the date of the Relevant Transfer.
- 4.3.6 The Prime Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commissions, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Transfer Date.

Provision of Information

- 4.3.7 At any time prior to the Relevant Transfer and during the Contract Period, the Prime Contractor shall (and shall procure that any Sub-contractor shall) cooperate with the Contracting Body (and any Incumbent Contractor), or Replacement Contractor, so far as legally permissible, to provide information, including employee liability information under the TUPE Regulations, as and when requested.

Indemnities

- 4.3.8 The Prime Contractor shall indemnify the Contracting Body from and against any and all loss suffered by the Contracting Body in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee on or after the date of the Relevant Transfer.
- 4.3.9 The Prime Contractor shall indemnify the Contracting Body from and against any and all loss suffered by the Contracting Body in connection with or as a result of any claim by any Relevant Employee that the identity of the Prime Contractor or Sub-contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Prime Contractor or any Sub-contractor or any proposed measures of the Prime Contractor or any Sub-contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.

Pension Protection

- 4.3.10 The Prime Contractor shall and shall procure that any Sub-contractor shall ensure, from the Commencement Date and from the date of any subsequent Relevant Transfer during the period that the Contract is in force, that Original Public Sector Employees who are eligible for public sector pension scheme to which COSOP and any other relevant Code of Practice or guidance applies, shall be offered membership of a pension scheme broadly comparable to their pre-transfer pension scheme.

- 4.3.11 The Prime Contractor shall and shall procure that any Sub-contractor shall ensure, from the Commencement Date and from the date of any subsequent Relevant Transfer during the period that the Contract is in force, that, when employing staff who are not Original Public Sector Employees, such staff have access to good quality pension arrangements that comply with relevant legislation from time to time in force including the Pensions Act 2004, the pension provisions of the COSOP and any other relevant Code of Practice or guidance.
- 4.3.12 The Prime Contractor shall ensure, and shall procure that any Sub-contractor shall ensure, that from the Commencement Date, and from the date of any subsequent Relevant Transfer during the period that the Contract is in force, it shall have certification from the Government Actuary's Department, that any pension arrangements provided to Original Public Sector Employees to which COSOP and any other relevant Code of Practice or guidance applies, are at least, broadly comparable to their pre-transfer pension scheme.
- 4.3.13 The Prime Contractor shall ensure, and shall procure that any Sub-contractor shall ensure, that from the Commencement Date, from the date of any subsequent Relevant Transfer during the period that the Contract is in force and on expiry or termination of the Contract, that it will comply with COSOP and any other relevant Code of Practice or Guidance in respect of compliance with bulk transfer agreements received from incumbent providers of the Services and cooperating in the provision of information in respect of relevant bulk transfer agreements with any new provider of the Services.
- 4.3.14 Clauses 4.3.10 to 4.3.13 are intended to confer rights on the Transferring Employees pursuant to the Contracts (Rights of Third Parties) Act 1999.

4.4 Employee Provisions on Expiry or Termination

Handover on Expiry or Termination

- 4.4.1 During the twelve (12) months preceding the expiry of the Contract or after the Contracting Body has given notice to terminate the Contract or at any other time as directed by the Contracting Body, and within ten (10) Working Days of being so requested by the Contracting Body, the Prime Contractor shall fully and accurately disclose to the Contracting Body any and all information in relation to all personnel engaged in the provision of the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Contracting Body may request, in particular but not necessarily restricted to any of the following:-
- (a) a list of employees employed by the Prime Contractor;
 - (b) a list of agency workers, agents and independent contractors engaged by the Prime Contractor;

- (c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and
 - (d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 4.4.2 The Prime Contractor shall warrant the accuracy and completeness of all the information provided to the Contracting Body pursuant to Clause 4.4.1 and authorises the Contracting Body to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).
- 4.4.3 During the twelve (12) months preceding the expiry of the Contract or where notice to terminate the Contract for whatever reason has been given, the Prime Contractor shall allow the Contracting Body or such other persons as may be authorised by the Contracting Body to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Contracting Body may reasonably request.
- 4.4.4 During the twelve (12) months preceding the expiry of the Contract or where notice to terminate the Contract for whatever reason has been given, the Prime Contractor shall not without Approval unless bona fide in the ordinary course of business:
 - (a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with provision of the Services;
 - (b) increase or decrease the number of employees employed in connection with provision of the Services; or
 - (c) assign or redeploy any employee employed in connection with provision of the Services to other duties unconnected with provision of the Services.

Indemnity

- 4.4.5 The Prime Contractor shall indemnify the Contracting Body and any Replacement Contractor and keep the Contracting Body and any Replacement Contractor indemnified in full from and against all direct, indirect or consequential liability or any other loss suffered by the Contracting Body (or any Replacement Contractor) as a result of, or in connection with, the employment or termination of employment of any employee of the Prime Contractor during any period prior to the date of expiry or termination of the Contract.

4.5 The Contracts (Rights of Third Parties) Act 1999

Without prejudice to Clause 4.3.14, a person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and does not apply to the Crown.

4.6 Environmental Requirements

4.6.1 The Prime Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Contracting Body'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.

4.6.2 In delivering the Services, the Prime Contractor shall comply at all times with the requirements set out in Appendix 9 (Sustainable Development Requirements) or such other requirements as notified by the Contracting Body to the Prime Contractor from time to time.

4.7 Health and Safety

4.7.1 The Prime Contractor shall take all necessary steps to ensure the health, safety and welfare of all Participants to the same extent and in the same manner as an employer is required to do in relation to employees by or under the relevant legislation for the time being in force in that part of the United Kingdom where the Prime Contractor is providing the Services.

4.7.2 Without prejudice to Clause 4.7.1, the Prime Contractor shall promptly notify the Contracting Body of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Contracting Body shall promptly notify the Prime Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Prime Contractor in the performance of its obligations under the Contract.

4.7.3 While on the Contracting Body's Premises, the Prime Contractor shall comply with any health and safety measures implemented by the Contracting Body in respect of Staff and other persons working there.

4.7.4 The Prime Contractor shall notify the Contracting Body 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.

4.7.5 The Prime Contractor 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.

- 4.7.6 The Prime Contractor 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 Contracting Body on request.
- 4.7.7 The Prime Contractor shall ensure that where relevant any Sub-contractors comply with all obligations of the Prime Contractor under this Clause 4.7.

5. PROTECTION OF INFORMATION

5.1 Contracting Body Data

- 5.1.1 The Prime Contractor shall not delete or remove any proprietary notices contained within or relating to the Contracting Body Data.
- 5.1.2 The Prime Contractor shall not store, copy, disclose, or use the Contracting Body Data except as necessary for the performance by the Prime Contractor of its obligations under the Contract or as otherwise expressly authorised in writing by the Contracting Body.
- 5.1.3 To the extent that Contracting Body Data is held and/or processed by the Prime Contractor, the Prime Contractor shall supply that Contracting Body Data to the Contracting Body as requested by the Contracting Body in the format specified by the Contracting Body from time to time.
- 5.1.4 The Prime Contractor shall take responsibility for preserving the integrity of Contracting Body Data and preventing the corruption or loss of Contracting Body Data.
- 5.1.5 The Prime Contractor shall perform secure back-ups of all Contracting Body Data and shall ensure that up-to-date back-ups are stored off-site. The Prime Contractor shall ensure that such back-ups are available to the Contracting Body at all times upon request.
- 5.1.6 The Prime Contractor shall ensure that any system on which the Prime Contractor holds any Contracting Body Data, including back-up data, is a secure system that complies with the Security Policy.
- 5.1.7 If the Contracting Body Data is corrupted, lost or sufficiently degraded as a result of the Prime Contractor's Default so as to be unusable, the Contracting Body may:
 - (a) require the Prime Contractor (at the Prime Contractor's expense) to restore or procure the restoration of Contracting Body Data and the Prime Contractor shall do

so as soon as practicable but not later than 24 hours;
and/or

- (b) itself restore or procure the restoration of Contracting Body Data, and shall be repaid by the Prime Contractor any reasonable expenses incurred in doing so.

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

5.2 Data Protection Act

5.2.1 For the purposes of Clause 5.2, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meanings prescribed under the DPA.

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

5.2.3 Notwithstanding the general obligation in Clause 5.2.2, where the Prime Contractor is Processing Personal Data as a Data Processor for the Contracting Body the Prime Contractor shall:-

- (a) Process the Personal Data only in accordance with instructions from the Contracting Body as set out in the Contract;
- (b) comply with all applicable laws;
- (c) Process the Personal Data only to the extent, and in such manner as is necessary for the provision of the Prime Contractor's obligations under the Framework Agreement;
- (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- (e) take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data and use all reasonable endeavours to ensure that such persons have sufficient skills and training in the handling of Personal Data;

- (f) obtain Approval in order to transfer the Personal Data to any agents, Sub-contractors or suppliers for the provision of the Services;
- (g) not Process or otherwise cause or permit the Personal Data to be transferred outside the European Economic Area without Approval. If, after the Commencement Date, the Prime Contractor (or any Sub-contractor) wishes to Process and/or transfer any Personal Data outside of the European Economic Area, the following provisions shall apply:
 - (i) the Prime Contractor shall comply with then-current Contracting Body, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
 - (ii) the Prime Contractor shall comply with such other instructions and shall carry out such other actions as the Contracting Body may notify in writing.
- (h) ensure that all Staff required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 5.2;
- (i) ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Contracting Body;
- (j) not disclose the Personal Data to any third parties in any circumstances other than with the written consent of the Contracting Body or in compliance with a legal obligation imposed upon the Contracting Body;
- (k) notify the Contracting Body within five (5) Working Days if it receives:
 - (i) a request from a Data Subject to have access to that person's Personal Data; or
 - (ii) a complaint or request relating to the Contracting Body's obligations under the DPA.
- (l) provide the Contracting Body with full cooperation and assistance in relation to any complaint or request made, including by:
 - (i) providing the Contracting Body with full details of the complaint or request;

- (ii) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Contracting Body's instructions;
 - (iii) providing the Contracting Body with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Contracting Body); and
 - (iv) providing the Contracting Body with any information requested by the Contracting Body.
- (m) permit the Contracting Body or the Contracting Body's representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 5.12, the Prime Contractor's data Processing activities (and/or those of its agents, Sub-contractors and suppliers) and comply with all reasonable requests or directions by the Contracting Body to enable the Contracting Body to verify and/or procure that the Prime Contractor is in full compliance with its obligations under the Contract; and
- (n) provide a written description of the technical and organisational methods employed by the Prime Contractor for Processing Personal Data (within the timescales required by the Contracting Body).

5.2.4 The Prime Contractor shall comply at all times with the DPA and shall not perform its obligations under this Framework Agreement in such a way as to cause the Contracting Body to breach any of its applicable obligations under the DPA.

5.2.5 The Prime Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Prime Contractor (or any Sub-contractor) of this Clause 5.2.

5.2.6 The provisions of this Clause shall apply during the Contract Period and indefinitely after its expiry.

5.3 **Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989**

5.3.1 The Prime Contractor shall comply with and shall ensure that its Staff comply with, the provisions of:-

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) Section 182 of the Finance Act 1989.

5.3.2 In the event that the Prime Contractor or its Staff fail to comply with this Clause, the Contracting Body reserves the right to terminate the Contract by giving notice in writing to the Prime Contractor.

5.4 **Confidential Information [NOTE TO TENDERERS: MAY BE MODIFIED IN LIGHT OF NEW TRANSPARENCY RULES]**

5.4.1 Except to the extent set out in this Clause 5.4 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.

5.4.2 Clause 5.4.1 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 5.5 (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 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.

- 5.4.3 The Prime Contractor may only disclose the Contracting Body's Confidential Information to its Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- 5.4.4 The Prime Contractor shall not, and shall procure that its Staff do not, use any of the Contracting Body's Confidential Information received otherwise than for the purposes of this Contract.
- 5.4.5 At the written request of the Contracting Body, the Prime Contractor shall procure that those members of the Staff identified in the Contracting Body's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 5.4.6 Nothing in this Contract shall prevent the Contracting Body from disclosing the Prime Contractor's Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - (b) to any consultant, Prime Contractor or other person engaged by the Contracting Body or any person conducting an Office of Government Commerce gateway review;
 - (c) for the purpose of the examination and certification of the Contracting Body'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 Contracting Body has used its resources.
- 5.4.7 The Contracting Body shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Prime Contractor's Confidential Information is disclosed pursuant to Clause 5.4.6 is made aware of the Contracting Body's obligations of confidentiality.
- 5.4.8 Nothing in this Clause 5.4 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.
- 5.5 Freedom of Information**
- 5.5.1 The Prime Contractor acknowledges that the Contracting Body is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Contracting Body to

enable the Contracting Body to comply with its Information disclosure obligations.

5.5.2 The Prime Contractor shall and shall procure that its Sub-contractors shall:

- (a) transfer to the Contracting Body all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- (b) provide the Contracting Body with a copy of all Information in its possession, or power in the form that the Contracting Body requires within five (5) Working Days (or such other period as the Contracting Body may specify) of the Contracting Body's request; and
- (c) provide all necessary assistance as reasonably requested by the Contracting Body to enable the Contracting Body 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.

5.5.3 The Contracting Body 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.

5.5.4 In no event shall the Prime Contractor respond directly to a Request for Information unless expressly authorised to do so by the Contracting Body.

5.5.5 The Prime Contractor acknowledges that (notwithstanding the provisions of Clause 5.5.2) the Contracting Body may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Prime Contractor or the Services:

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

provided always that where Clause 5.5.2 applies the Contracting Body shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Prime Contractor advance notice, or failing that, to draw the disclosure to the Prime Contractor's attention after any such disclosure.

5.5.6 The Prime Contractor shall ensure that all Information is retained for disclosure and shall permit the Contracting Body to inspect such records as requested from time to time.

5.5.7 The Prime Contractor acknowledges that the Commercially Sensitive Information is of indicative value only and that the Contracting Body may be obliged to disclose it in accordance with Clause 5.5.5.

5.6 **Publicity, Visits, Media and Official Enquiries**

5.6.1 The Prime Contractor shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, employees, agents, Sub-contractors, suppliers, professional advisors and consultants comply with this Clause.

5.6.2 The Contracting Body shall be entitled to publicise the Contract in accordance with any legal obligation upon the Contracting Body, including any examination of the Contract by the Auditor.

5.6.3 The Prime Contractor shall pay the utmost regard to the standing and reputation of the Contracting Body and shall not do anything (by act or omission) which may:-

(a) damage the reputation of the Contracting Body;

(b) bring the Contracting Body into disrepute;

(c) attract adverse publicity to the Contracting Body; or

(d) harm the confidence of the public in the Contracting Body.

5.6.4 The Prime Contractor shall at all times deliver the Services with due regard to the need for those in a public service environment to observe the highest standards of efficiency, economy, courtesy, consideration and hygiene.

5.6.5 Each Party shall give the other advance notice of proposed visits to sites controlled by the other Party or (in the case of the Prime Contractor) any sites of its Sub-contractors (including visits by Members of Parliament, representatives of unemployment centres, members of the press and media).

5.6.6 The Prime Contractor shall undertake the marketing and communications activities as set out in the Order. The Prime Contractor's marketing and communications activities shall support the Contracting Body's objectives in contracting for the Services.

5.6.7 If requested by the Contracting Body, the notepaper and other written material of the Prime Contractor and its Sub-contractors relating to the performance of the Services shall carry only logos and markings approved by the Contracting Body. This may include, but shall not be limited to, such banner or logo as the Contracting Body shall use to identify the Services from time to time. All publicity and marketing material produced by the Prime Contractor

(or its Sub-contractors) in relation the Contract or the Services shall be submitted to the Contracting Body's representative for Approval, and no such items shall be printed (other than for Approval purposes) until such Approval is received..

5.7 European Social Fund and Other Funding

5.7.1 Where the Contracting Body is funding the delivery of the Contract using European Social Fund ("ESF") monies (or, in its role as a co-financing organisation, is using the Contract as a match for ESF provision), the Prime Contractor shall observe the European Commission's (and the Contracting Body's) requirements and the regulations regarding ESF projects as notified by the Contracting Body to the Prime Contractor prior to the Commencement Date and as notified by the Contracting Body to the Prime Contractor from time to time during the Contract Period. The Prime Contractor shall ensure that sufficient publicity is given to all ESF supported activity so that Participants and the general public are made aware of ESF and what it has achieved. This requirement applies to both domestic provision funded by ESF monies and provision used as a match for ESF purposes. Upon request by the Contracting Body, the Prime Contractor shall provide a copy of its formal publicity policy clearly setting out the publicity arrangements used by the Prime Contractor and its Sub-contractors. Whether or not a copy of the Prime Contractor's formal publicity policy is requested by the Contracting Body pursuant to this Clause 5.7.1, the Prime Contractor shall retain copies of such policy (as revised from time to time) as part of the Prime Contractor's record keeping obligations under Clause 5.12.

5.7.2 The Prime Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in respect of or in connection with, any breach by the Prime Contractor (or any Sub-contractor) of this Clause 5.7.

5.8 Security of Premises

5.8.1 Without prejudice to Clause 5.9, the Prime Contractor shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Prime Contractor shall comply with all reasonable security requirements of the Contracting Body while on the Premises and shall ensure that all Staff comply with such requirements.

5.8.2 The Prime Contractor shall provide the Contracting Body upon request copies of its written security procedures and shall afford the Contracting Body upon request an opportunity to inspect its physical security arrangements.

5.9 Security Requirements and Plan

- 5.9.1 The Prime Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Prime Contractor in the performance of the Services.
- 5.9.2 Whilst on the Contracting Body's Premises, Staff shall comply with all security measures implemented by the Contracting Body in respect of Staff and other persons attending those Premises.
- 5.9.3 The Prime Contractor shall comply, and shall procure the compliance of the Staff, with the Security Policy and the Security Plan. The Prime Contractor shall ensure that the Security Plan fully complies with the Security Policy.
- 5.9.4 The Contracting Body shall notify the Prime Contractor of any changes or proposed changes to the Security Policy.
- 5.9.5 If the Prime Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may request a variation to the Contract by written notice to the Contracting Body in accordance with the Change Control procedure set out in Clause 6.3. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Fees shall then be agreed in accordance with Change Control procedure set out in Clause 6.3.
- 5.9.6 Until and/or unless a change to the Fees is agreed by the Contracting Body pursuant to Clause 6.3, the Prime shall continue to perform the Services in accordance with its existing obligations.

5.10 Malicious Software

- 5.10.1 The Prime Contractor shall, as an enduring obligation throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the Parties).
- 5.10.2 Notwithstanding Clause 5.10.1, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Contracting Body Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.
- 5.10.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 5.10.2 shall be borne by the Parties as follows:
 - (a) by the Prime Contractor where the Malicious Software originates from the Prime Contractor Software, the Third Party Software supplied by the Prime Contractor (except

where the Contracting Body has waived the obligation set out in Clause 5.10.1) or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Prime Contractor) unless the Prime Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Contracting Body when provided to the Prime Contractor; and

- (b) by the Contracting Body if the Malicious Software originates from the Contracting Body Software (in respect of which the Contracting Body has waived its obligation set out in Clause 5.10.1) or the Contracting Body Data (whilst the Contracting Body Data was under the control of the Contracting Body).

5.11 Intellectual Property Rights

- 5.11.1 Save as granted elsewhere under the Contract, neither the Contracting Body nor the Prime Contractor shall acquire any right, title or interest in the other's Pre-Existing IPR.
- 5.11.2 The Prime Contractor shall not, and shall procure that the Staff shall not, (except when necessary for the performance of the Contract) without Approval, use or disclose any Contracting Body Pre-Existing IPR or the Project Specific IPRs to any third party.
- 5.11.3 All title to and all rights and interest in the Project Specific IPRs shall vest in the Contracting Body. The Prime Contractor hereby assigns to the Contracting Body, with full title guarantee, title to and all rights and interest in the Project Specific IPRs and/or shall procure that the first owner of the Project Specific IPRs also does so.
- 5.11.4 The assignment under Clause 5.11.3 shall either take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs, as appropriate.
- 5.11.5 The Prime Contractor shall waive or procure a waiver of any moral rights in any copyright works assigned to the Contracting Body under the Contract.
- 5.11.6 If requested to do so by the Contracting Body, the Prime Contractor shall without charge to the Contracting Body execute all documents and do all such further acts as the Contracting Body may require to perfect the assignment under Clause 5.11.3 or shall procure that the owner of the Project Specific IPRs does so on the same basis.
- 5.11.7 The Contracting Body hereby grants to the Prime Contractor a non-exclusive, revocable, non assignable licence to use the Contracting Body Pre-Existing IPR and the Project Specific IPRs during the Contract Period for the sole purpose of enabling the Prime Contractor to provide the Services.

- 5.11.8 Prior to using any third party Intellectual Property Rights, the Prime Contractor shall obtain the Approval of the Contracting Body. The Prime Contractor shall provide the Contracting Body with details of any third party licence required by the Prime Contractor and/or the Contracting Body in order for the Prime Contractor to carry out its obligations under the Contract using the third party Intellectual Property Rights. The Contracting Body reserves the right to withhold Approval in the event that it does not agree to the terms of the third party licence or where any additional charges will be incurred.
- 5.11.9 Where the Prime Contractor is granted Approval by the Contracting Body to use the third party rights, the Prime Contractor shall procure that the owner of third party rights grants to the Contracting Body a licence upon the terms informed to the Contracting Body when seeking the Approval.
- 5.11.10 The Prime Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Contracting Body and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Contracting Body or the Crown may suffer or incur as a result of any claim that the performance by the Prime Contractor of the Services and/or the possession or use by the Contracting Body 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 Contracting Body; or
 - (b) the use of data supplied by the Contracting Body which is not required to be verified by the Prime Contractor under any provision of the Contract.
- 5.11.11 The Contracting Body shall notify the Prime Contractor in writing of the Claim and the Contracting Body shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Prime Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Prime Contractor:-
- (a) shall consult the Contracting Body 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 Contracting Body; and
 - (c) shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).
- 5.11.12 If a Claim is made in connection with the Contract or in the reasonable opinion of the Prime Contractor is likely to be made, the Prime Contractor shall immediately notify the Contracting Body and,

at its own expense and subject to the consent of the Contracting Body (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 Contracting Body;

and in the event that the Prime Contractor is unable to comply with Clauses 5.11.12(a) or 5.11.12(b) within twenty (20) Working Days of receipt of the Prime Contractor's notification the Contracting Body may terminate the Contract with immediate effect by notice in writing and the Prime Contractor shall, upon demand, refund the Contracting Body with all monies paid in respect of the Services or Deliverable that is subject to the Claim.

5.11.13 In the event that a modification or substitution in accordance with Clause 5.11.12(a) is not possible so as to avoid the infringement, or the Prime Contractor has been unable to procure a licence in accordance with Clause 5.11.12(b) the Contracting Body shall be entitled to delete the relevant Service from the Contract.

5.11.14 This Clause 5.11 sets out the entire financial liability of the Prime Contractor 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 Prime Contractor's financial liability for other Defaults or causes of action that may arise hereunder.

5.12 Provision of Management Information

5.12.1 Throughout the Contract Period, the Prime Contractor shall promptly make full disclosure to the Contracting Body of any and all information as may be specified in Appendix 8 (Information Requirements) and any other information which may come into its possession or otherwise come to its attention during the Contract Period which may be beneficial to and/or assist the Contracting Body ("Management Information").

5.12.2 The Contracting Body may share the Management Information with any Crown Body, any other Contracting Authority and any other third party as may be agreed by the Contracting Body and the Prime Contractor from time to time.

- 5.12.3 The Contracting Body may make changes to the Management Information which the Prime Contractor is required to supply and shall give the Prime Contractor at least one (1) Month's written notice of any changes

5.13 **Records and Audit Access**

- 5.13.1 The Prime Contractor shall at all times keep and maintain until seven (7) years after the end of the Contract Period (or such other period as specified in the Order Form), 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 Body and the amounts paid by the Contracting Body and such other items as the Contracting Body may reasonably require from time to time.
- 5.13.2 Without prejudice to Clause 5.13.1, where the Contracting Body is funding the delivery of the Contract using ESF monies (or in its role as a Co-financing Organisation is using the Contract as a match for ESF provision), the Prime Contractor and any sub-contractors engaged by it shall maintain the records and accounts referred to in this Clause 5.13 until at least 31 December 2022.
- 5.13.3 Notwithstanding the general obligation in Clause 5.13.1, the Prime Contractor shall and shall procure that any of its Sub-contractors shall at all times:
- (a) maintain a full record of the costs of performing the Services;
 - (b) when requested by the Contracting Body, provide a summary of any of the costs of performing the Services in such form and detail as the Contracting Body may reasonably require; and
 - (c) provide such facilities as the Contracting Body may reasonably require for its representatives (such representatives shall not be a competitor of the Prime Contractor and shall enter into a non disclosure agreement and have the relevant expertise and competence) to visit any place where the records and accounts maintained under this Clause 5.13 are held and to examine the records and accounts for the purposes of carrying out an examination into the economy, efficiency and quality of the Services and effectiveness with which the Prime Contractor has used the Contracting Body's resources in the performance of the Contract.
- 5.13.4 The Prime Contractor shall keep the records and accounts referred to in this Clause 5.13 in accordance with best accountancy practice.
- 5.13.5 The Prime Contractor shall provide (or procure provision of) access at all reasonable times to the Contracting Body's internal auditors or other duly authorised staff or agents to inspect such records and accounts (including those of Sub-contractors) as the Contracting

Body may require from time to time. The Contracting Body shall be entitled to interview the Staff in order to obtain appropriate oral explanations of the records and accounts and the Prime Contractor shall provide (or procure provision of) access to the relevant Staff at such times as may be reasonably required to enable the Contracting Body to do so.

- 5.13.6 Duly authorised staff or agents of the Prime Contractor shall have the right to visit sites controlled by the Prime Contractor and to be given free access to the Staff and to Participants during the hours when the Prime Contractor is delivering the Services with a view to verifying that the Prime Contractor is delivering the Services in accordance with the Contract.
- 5.13.7 The Prime Contractor shall provide the records and accounts referred to in this Clause 5.13 (together with copies of the Prime Contractor's published accounts) during the Contract Period and for a period of seven (7) years (or such other period as specified in the Order Form) after the expiry of the Contract Period to the Contracting Body and the Auditor.
- 5.13.8 The Contracting Body shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Prime Contractor or delay the provision of the Services, save insofar as the Prime Contractor accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Contracting Body.
- 5.13.9 The Prime Contractor shall ensure that all of its contracts with Sub-contractors include obligations reflecting the requirements of the Contracting Body under this Clause 5.13.
- 5.13.10 The Prime Contractor shall provide the rights set out in this Clause 5.13 to any duly authorised staff or agents of the Contracting Body, the National Audit Office, the European Court of Auditors, the European Commission and any third parties as notified by the Contracting Body to the Prime Contractor from time to time.
- 5.13.11 Without prejudice to the foregoing, in the event of an investigation into fraudulent activity or other impropriety by the Prime Contractor or any third party in relation to performance of the Services, the Contracting Body reserves for itself and any statutory auditors of the Contracting Body and their respective authorised agents or any government department the right of immediate access to all records and accounts referred to in this Clause 5.13 and the Prime Contractor agrees to render all necessary assistance to the conduct of such investigation at all times during the Contract Period or at any time thereafter.
- 5.13.12 The Prime Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, losses, costs and expenses and all loss of profits, business revenue or goodwill (whether direct or indirect) and all consequential or indirect loss howsoever arising out of, in

respect of or in connection with, any breach by the Prime Contractor (or any Sub-contractor) of this Clause 5.13.

5.13.13 Without prejudice to Clause 5.13.12 the Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5.13.

6. CONTROL OF THE CONTRACT

6.1 Transfer and Sub-Contracting

6.1.1 The Prime Contractor shall not assign, novate, sub-contract or in any other way dispose of the Contract or any part of it without Approval. Sub-contracting any part of the Contract shall not relieve the Prime Contractor of any of its obligations or duties under the Contract.

6.1.2 For the avoidance of doubt, and without prejudice to Clause 6.1.1, the Contracting Body may withhold or delay Approval under Clause 6.1.1 where it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Contracting Body; and/or
- (b) the proposed Sub-contractor is considered to be unreliable and/or has not provided reasonable services to its other customers.

6.1.3 In making a request pursuant to Clause 6.1.1 the Prime Contractor shall provide the Contracting Body with the following information about the proposed Sub-contractor:

- (a) its name, registered office and company registration number;
- (b) a copy of the proposed sub-contract;
- (c) the purposes for which the proposed Sub-contractor will be employed, including the scope of any services to be provided by the proposed Sub-contractor; and
- (d) any further information reasonably requested by the Contracting Body.

6.1.4 The Prime Contractor shall ensure that each Sub-contract shall include:

- (a) a right under the Contracts (Rights of Third Parties) Act 1999 for the Contracting Body to enforce the terms of that Sub-contract as if it were the Prime Contractor;
- (b) a provision enabling the Prime Contractor to assign, novate or otherwise transfer any of its rights and/or

obligations under the Sub-contract to the Contracting Body or any other third party;

- (c) a provision requiring the Sub-contractor to enter into a direct confidentiality agreement with the Contracting Body on the same terms as set out in Clause 5.4;
- (d) a provision requiring the Sub-contractor to comply with protection of data requirements pursuant to Clauses 5.1 and 5.2;
- (e) a provision requiring the Sub-contractor to comply with the restrictions on corrupt gifts and payments pursuant to Clause 4.1;
- (f) a provision restricting the ability of the Sub-contractor to further sub-contract elements of the services provided to the Prime Contractor without first seeking Approval;
- (g) a provision restricting the ability of the Sub-contractor to terminate the Sub-contract without first informing the Contracting Body and giving the Contracting Body at least thirty (30) days to discuss with the Prime Contractor any issues raised by the Sub-contractor; and
- (h) a provision requiring the sub-contractor to notify the Contracting Body promptly in writing of any material non-payment or late payment of any sums properly due to the Sub-contractor from the Prime Contractor under the Sub-contract, under a specified valid invoice and not subject to a genuine dispute.

6.1.5 The Prime Contractor shall not terminate or materially amend the terms of any Sub-contract without Approval.

6.1.6 The Contracting Body may require the Prime Contractor to terminate a Sub-contract where the acts or omissions of the relevant Sub-contractor have given rise to the Contracting Body's right of termination pursuant to Clause 8.2 (Termination on Default).

6.1.7 Despite the Prime Contractor's right to sub-contract pursuant to this Clause 6.1, the Prime Contractor shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. An obligation on the Prime Contractor to do, or to refrain from doing, any act or thing shall include an obligation upon the Prime Contractor to procure that its employees, staff, agents and Sub-contractors' employees, staff and agents also do, or refrain from doing, such act or thing.

6.1.8 Where the Contracting Body has consented to the placing of Sub-contracts, copies of each Sub-contract shall, at the request of the Contracting Body, be sent by the Prime Contractor to the Contracting Body as soon as reasonably practicable.

- 6.1.9 Where the Contracting Body has consented to the placing of Sub-contracts, the Prime Contractor shall at all times comply with the Merlin Standard (and any other guidance and/or codes of practice issued by the Contracting Body) and, where applicable, shall maintain accreditation with the relevant Merlin Standard authorisation body. Any breach by the Prime Contractor of this Clause 6.1.9 shall be a material breach of the Contract for the purposes of Clause 8.2 (Termination on Default).
- 6.1.10 Subject to Clause 6.1.12, the Contracting Body may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:-
- (a) any Contracting Authority;
 - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Contracting Body; or
 - (c) any private sector body which substantially performs the functions of the Contracting Body,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Prime Contractor's obligations under the Contract.
- 6.1.11 Any change in the legal status of the Contracting Body such that it ceases to be a Contracting Authority shall not, subject to Clause 6.1.12, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Contracting Body.
- 6.1.12 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 6.1.10 to a body which is not a Contracting Authority or if there is a change in the legal status of the Contracting Body 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 Contracting Body in Clauses 8.1 (Termination on insolvency and change of control) and 8.2 (Termination on Default) shall be available to the Prime Contractor in the event of, respectively, the bankruptcy or insolvency, or Default of the Transferee; and
 - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Prime Contractor.
- 6.1.13 The Contracting Body may disclose to any Transferee any Confidential Information of the Prime Contractor which relates to the performance of the Prime Contractor's obligations under the Contract. In such circumstances the Contracting Body shall

authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Prime Contractor'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.

6.1.14 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 Change Control

6.3.1 The Contracting Body has the right to propose variations to the Contract (including a request by the Contracting Body for the Prime Contractor to cease any part of the Services) in accordance with this Clause 6.3. Where the Contracting Body proposes to vary any part of the Services the Contracting Body shall serve a Change Control Notice on the Prime Contractor, and the Prime Contractor shall promptly comply with such Change Control procedure as detailed in this Clause 6.3.

6.3.2 The Prime Contractor shall comply with any changes to the needs and requirements of the Contracting Body provided that (subject to the agreement of the Contracting Body which shall not be unreasonably withheld) it shall be entitled to amend its delivery plans, performance targets and key performance indicators as necessary as a result of any such changes on the basis set out in this Clause 6.3.

6.3.3 Without prejudice to the generality of the Contracting Body's right to vary the Contract, such variations shall include, but shall not be limited to the following:-

- (a) cessation of any part of the Services, subject to Clause 8.5.4;

- (b) additions to any part of the Services;
- (c) change of the Contracting Body's business or policies imposed by Her Majesty's Government;
- (d) quality of the Services; and/or
- (e) change or addition to any Contractor Guidance, the Staff Vetting Procedures or any other guidance and/or codes of practice issued by the Contracting Body.

6.3.4 The Change Control Notice shall:-

- (a) set out the change to the Services required by or served upon the Contracting Body in sufficient detail to enable the Prime Contractor to provide an estimate in accordance with Clause 6.3.5 below; and
- (b) require the Prime Contractor to provide the Contracting Body with an estimate ("the Estimate") in accordance with Clause 6.3.5 below including the effect on the Fees.

6.3.5 The Prime Contractor shall provide the Contracting Body with the Estimate within ten (10) Working Days of the receipt of the Change Control Notice or such longer period as is reasonable in all the circumstances. The Estimate shall include a statement of opinion of the Prime Contractor on:-

- (a) the impact of the proposed change on the delivery of the Services;
- (b) any amendment required to the Contract or the Appendices to accommodate the proposed change including, without limitation, any changes to the labour requirements, delivery plans, performance targets and key performance indicators;
- (c) (having regard to the Prime Contractor's general duty of cost efficiency under the Contract) the overall part year and/or full year cost of, savings from, implementing the proposed change as the case may be;
- (d) any other information reasonably requested by the Contracting Body or appearing to the Prime Contractor to be relevant; and
- (e) any capital or other one off expenditure requirements.

6.3.6 As soon as practicable after the Prime Contractor provides the Contracting Body with the Estimate, the Contracting Body and the Prime Contractor shall meet to discuss any issues arising from the Change Control Notice or from the Estimate provided by the Prime Contractor.

- 6.3.7 Following discussions pursuant to Clause 6.3.6 above, the Contracting Body may acting reasonably determine:-
- (a) to proceed with the Change Control Notice; or
 - (b) to withdraw the Change Control Notice.
- 6.3.8 As soon as practicable after any part of the contents of the Estimate have been discussed in accordance with Clause 6.3.6 above the Contracting Body shall confirm in writing that it wishes:-
- (a) to proceed with the Change Control Notice (or that part of it which has been agreed or determined as above); or
 - (b) to withdraw the Change Control Notice (or the relevant part).
- 6.3.9 If the Contracting Body confirms that it wishes to proceed with the Change Control Notice, the Services shall be deemed to have been amended accordingly. The annual cost of, or savings from, implementing the variation (as agreed or determined) shall be added to or deducted from payments under the Contract, as appropriate.
- 6.3.10 If the Contracting Body has not confirmed that it wishes to proceed with the Change Control Notice within thirty (30) calendar days of the date of the discussion in Clause 5.6 above or has not withdrawn the Change Control Notice within thirty (30) calendar days of the date of the discussion in Clause 5.6 above, and the Prime Contractor is content for the Change Control Notice (or the relevant part) to be withdrawn, then it shall be deemed to have been withdrawn.
- 6.3.11 The Contracting Body shall not be liable for any costs incurred by the Prime Contractor in implementing the procedures pursuant to this Clause 6.3, save that the Contracting Body shall be liable for any reasonable costs incurred by the Prime Contractor in implementing the procedures pursuant to this Clause 6.3 where the Contracting Body withdraws the Change Control Notice in accordance with Clause 6.3. The Contracting Body reserves the right to access all records to validate a claim under this Clause 6.3.
- 6.3.12 Variations of a minor or temporary nature may be required to the Services from time to time and such variations shall be agreed in writing between the Contracting Body and the Prime Contractor. The Prime Contractor shall comply with such minor or temporary variations, which shall normally be accommodated at no extra cost to the Contracting Body, provided they do not involve additional cost to the Prime Contractor.
- 6.3.13 Without prejudice to any of the other rights of the Prime Contractor, the Prime Contractor may propose variations to the Services which shall be referred to the Contracting Body for

consideration. Such variations shall be detailed in a Change Control Notice between the Contracting Body and the Prime Contractor and the Contract may be varied in accordance with the Change Control procedure as detailed in this Clause 6.3.

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 Contracting Body and the Prime Contractor 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 Prime Contractor's obligations under the Contract, then the Contracting Body shall take all reasonable steps to investigate the complaint. The Contracting Body may, in its sole discretion, uphold the complaint, or take further action in accordance with Clause 8.2 (Termination on Default) of the Contract.

6.5.2 In the event that the Contracting Body is of the reasonable opinion that there has been a material breach of the Contract by the Prime Contractor, then the Contracting Body 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 Prime Contractor shall have demonstrated to the reasonable satisfaction of the Contracting Body that the Prime Contractor 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 Fees 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 Prime Contractor for and the Prime Contractor shall pay any costs reasonably incurred by the Contracting Body (including any reasonable administration costs) in

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

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

6.5.4 In the event that the Prime Contractor:-

(a) fails to comply with Clause 6.5.3 above and the failure is materially adverse to the interests of the Contracting Body or prevents the Contracting Body from discharging a statutory duty; or

(b) persistently fails to comply with Clause 6.5.3 above;

the Contracting Body may terminate the Contract with immediate effect by giving the Prime Contractor 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.

6.7 **Monitoring of Contract Performance**

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

6.8 **Extension of Initial Contract Period**

Subject to satisfactory performance of its obligations under the Contract by the Prime Contractor during the Initial Contract Period, the Contracting Body may, by giving written notice to the Prime Contractor not less than three Month(s) 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 breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
- (d) any claim under the indemnity in Clause 5.2.5;
- (e) any claim under the indemnity in Clause 5.7.2;
- (f) any claim under the indemnity in Clause 5.11.10;
- (g) any claim under the indemnity in Clause 5.13.12;
- (h) any claim under Clause 5.4;
- (i) any claim under Clause 5.5; or
- (j) any claim under Clause 7.2.

7.1.2 Subject to Clause 7.1.3 and Clause 7.1.4 the Prime Contractor shall indemnify and keep indemnified the Contracting Body in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported supply, of the Services or the performance or non-performance by the Prime Contractor of its obligations under the Contract or the presence of the Prime Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Prime Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Prime Contractor. The Prime Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Body or by breach by the Contracting Body of its obligations under the Contract.

7.1.3 Subject always to Clause 7.1.1 and Clause 7.1.4, the liability of either Party for Defaults shall be subject to the following financial limits:-

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other under or in connection with the Contract shall in no event exceed **[INSERT SUM]**; and

- (b) the annual aggregate liability under the Contract of either Party for all Defaults shall in no event exceed the greater of **[INSERT SUM]** or **[INSERT PERCENTAGE]** per cent of the Fees payable by the Contracting Body to the Prime Contractor in the year in which the liability arises.
- 7.1.4 Subject to Clause 7.1.1, in no event shall either Party be liable to the other for any:-
 - (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss of or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect or consequential loss or damage.
- 7.1.5 The Contracting Body may, amongst other things, recover as a direct loss:-
 - (a) any additional operational and/or administrative expenses arising from the Prime Contractor's Default;
 - (b) any wasted expenditure or charges rendered unnecessary and/or incurred by the Contracting Body arising from the Prime Contractor'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 Prime Contractor.
- 7.1.6 Nothing in the Contract shall impose any liability on the Contracting Body in respect of any liability incurred by the Prime Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Contracting Body to the Prime Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Contracting Body, or the Contracting Body's employees, servants or agents.
- 7.1.7 The Prime Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Prime Contractor, arising out of the Prime Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies must cover the Prime Contractor's potential liabilities arising out of, or in connection with, the Contract and, without prejudice to Clause 7.1.11, the amount of cover should not be less than **[£[INSERT AMOUNT] million]** for claims arising from a single event or series of related events in a single calendar year. Such

policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Prime Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.

- 7.1.8 The Prime Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- 7.1.9 The Prime Contractor shall give the Contracting Body, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 7.1.10 If, for whatever reason, the Prime Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Contracting Body may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Prime Contractor.
- 7.1.11 The provisions of any insurance or the amount of cover shall not relieve the Prime Contractor of any liabilities under the Contract. It shall be the responsibility of the Prime Contractor to determine the amount of insurance cover that will be adequate to enable the Prime Contractor to satisfy any liability referred to in Clause 7.1.2.

7.2 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 Prime Contractor shall at all times indemnify the Contracting Body and keep the Contracting Body 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 Contracting Body 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.

7.3 Warranties and Representations

- 7.3.1 The Prime Contractor 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 Prime Contractor;

- (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 Contracting Body prior to execution of the Contract and it will advise the Contracting Body 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) 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;
- (f) 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;
- (g) 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 Prime Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Prime Contractor's assets or revenue;
- (h) 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;
- (i) the Services (and the Contracting Body's permitted use thereof) shall not infringe any third party's Intellectual Property Rights;
- (j) the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (k) 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

- (l) 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.

8. DEFAULT, DISRUPTION AND TERMINATION

8.1 Termination on insolvency and change of control

8.1.1 The Contracting Body may terminate the Contract with immediate effect by giving notice in writing where the Prime Contractor is a company and in respect of the Prime Contractor:-

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986;
- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets;
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- (f) it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986;
- (g) being a "small company" within the meaning of Section 382 of the Companies Act 2006, 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 Contracting Body may terminate the Contract with immediate effect by notice in writing where the Prime Contractor is an individual and:-

- (a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Prime Contractor's creditors;
- (b) a petition is presented and not dismissed within 14 days or order made for the Prime Contractor's bankruptcy;
- (c) a receiver, or similar officer is appointed over the whole or any part of the Prime Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets;
- (d) the Prime Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986;
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Prime Contractor's assets and such attachment or process is not discharged within 14 days;
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- (g) the Prime Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

8.1.3 The Prime Contractor shall notify the Contracting Body immediately if the Prime Contractor undergoes a change of control within the meaning of Section 1124 of the Corporation Tax Act 2010 ("**Change of Control**"). The Contracting Body 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 Contracting Body 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 Termination on Default

8.2.1 The Contracting Body may terminate the Contract by giving written notice to the Prime Contractor with immediate effect if the Prime Contractor commits a Default and if:-

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

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

8.2.3 If the Contracting Body fails to pay the Prime Contractor undisputed sums of money when due, the Prime Contractor shall notify the Contracting Body in writing of such failure to pay. If the Contracting Body fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Prime Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Contracting Body exercising its rights under Clause 3.3 (Recovery of Sums Due).

8.3 **Break**

The Contracting Body shall have the right to terminate the Contract at any time by giving three (3) Months' written notice to the Prime Contractor.

8.4 **Framework Agreement**

The Contracting Body may terminate the Contract by giving written notice to the Prime Contractor with immediate effect if the Framework Agreement is terminated for any reason whatsoever.

8.5 **Consequences of Expiry or Termination**

8.5.1 Where the Contracting Body terminates the Contract under Clause 8.2 (Termination on Default) and then makes other arrangements for the supply of Services, the Contracting Body may recover from the Prime Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Contracting Body throughout the remainder of the Contract Period. The Contracting Body 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 Contracting Body to the Prime Contractor until the Contracting Body has established the final cost of making those other arrangements.

- 8.5.2 Subject to Clause 7, where the Contracting Body terminates the Contract under Clause 8.3 (Break), the Contracting Body shall indemnify the Prime Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Prime Contractor by reason of the termination of the Contract, provided that the Prime Contractor takes all reasonable steps to mitigate such loss. Where the Prime Contractor holds insurance, the Prime Contractor shall reduce its unavoidable costs by any insurance sums available. The Prime Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Prime Contractor as a result of termination under Clause 8.3 (Break).
- 8.5.3 The Contracting Body shall not be liable under Clause 8.5.2 to pay any sum which:-
- (a) was claimable under insurance held by the Prime Contractor, and the Prime Contractor 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 Prime Contractor under the Contract, exceeds the total sum that would have been payable to the Prime Contractor if the Contract had not been terminated prior to the expiry of the Contract Period.
- 8.5.4 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 Contracting Body or the Prime Contractor under Clauses 3.2 (Payment and VAT), 3.3 (Recovery of Sums Due), 4.1 (Prevention of Corruption), 5.1 (Contracting Body Data), 5.2 (Data Protection Act), 5.3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), 5.4 (Confidential Information), 5.5 (Freedom of Information), 5.7 (European Social Funding and Other Funding), 5.11 (Intellectual Property Rights), 5.12 (Records and Audit Access), 6.6 (Cumulative Remedies), 7.1 (Liability, Indemnity and Insurance), 8.5 (Consequences of Expiry or Termination), 8.7 (Recovery upon Termination) and 9.1 (Governing Law and Jurisdiction).

8.6 Disruption

- 8.6.1 The Prime Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Contracting Body, its employees or any other Prime Contractor employed by the Contracting Body.
- 8.6.2 The Prime Contractor shall immediately inform the Contracting Body 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.
- 8.6.3 In the event of industrial action by the Staff, the Prime Contractor shall seek the Contracting Body's Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 8.6.4 If the Prime Contractor's proposals referred to in Clause 8.6.3 are considered insufficient or unacceptable by the Contracting Body acting reasonably then the Contract may be terminated with immediate effect by the Contracting Body by notice in writing.
- 8.6.5 If the Prime Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Contracting Body, an appropriate allowance by way of extension of time will be approved by the Contracting Body. In addition, the Contracting Body will reimburse any additional expense reasonably incurred by the Prime Contractor as a direct result of such disruption.

8.7 Recovery upon Termination

- 8.7.1 On the expiry or termination of the Contract for any reason, the Prime Contractor shall:
 - (a) immediately return to the Contracting Body all Confidential Information, Personal Data and Contracting Body'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;
 - (b) without prejudice to Clause 8.7.1 (a), if requested by the Contracting Body, transfer to the Contracting Body (or such other person as the Contracting Body may direct) all Participants' records (or specific Participant's records as identified by the Contracting Body). Where ownership of such records is not vested in the Contracting Body, the Prime Contractor shall transfer, or procure the transfer of, all rights, title and interest in and to such records to the Contracting Body (or such other person as the Contracting Body may direct) at no cost to the Contracting Body (or the third person as the case may be);
 - (c) immediately deliver to the Contracting Body all Property (including materials, documents, information and access keys)

provided to the Prime Contractor under Clause 2.2. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);

- (d) assist and co-operate with the Contracting Body to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress;
- (e) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Contracting Body for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Contracting Body or the Replacement Contractor to conduct due diligence;
- (f) if requested by the Contracting Body, use all reasonable endeavours to procure the transfer of any licences, or the granting of an appropriate licence or sub-licence, to the Contracting Body or the Replacement of any third party Intellectual Property Rights that are necessary for the continued performance of the Services following termination or expiry of the Contract. Where the owner of the third party Intellectual Property Rights requires payment in consideration for transferring or granting such licence or sub-licence (the "Transfer Fee") the Prime Contractor shall first notify the Contracting Body. If the Contracting Body informs the Prime Contractor that the transfer/granting of a licence should proceed, the Contracting Body shall (unless the end of the Contract Period arises due to the Prime Contractor's Default) be responsible for paying the Transfer Fee. For the avoidance of doubt, the Contracting Body shall have no liability for any Transfer Fee that the Prime Contractor has incurred without obtaining Approval; and
- (g) repay to the Contracting Body the Fees (or any part(s) thereof) the Prime Contractor has been paid in advance in respect of Services not provided by the Prime Contractor as at the date of expiry or termination.

8.7.2 If the Prime Contractor fails to comply with Clauses 8.7.1 (a) - (c), the Contracting Body may recover possession thereof and the Prime Contractor grants a licence to the Contracting Body or its appointed agents to enter (for the purposes of such recovery) any premises of the Prime Contractor or its permitted suppliers or Sub-contractors where any such items may be held.

8.7.3 Where the end of the Contract Period arises due to the Prime Contractor's Default, the Prime Contractor shall provide all assistance under Clause 8.7.1 (d) and (e) free of charge. Otherwise, the Contracting Body shall pay the Prime Contractor's reasonable costs of providing the assistance and the Prime Contractor shall take all reasonable steps to mitigate such costs.

8.7.4 At the end of the Contract Period (howsoever arising) the licence granted pursuant to Clause 5.11.7 shall automatically terminate without the need to serve notice.

8.8 Force Majeure

- 8.8.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract with immediate effect by notice in writing.
- 8.8.2 Any failure or delay by the Prime Contractor 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 Prime Contractor.
- 8.8.3 If either Party becomes aware of a Force Majeure event or occurrence which gives rise to, or is likely to give rise to, any such failure or delay on its part as described in Clause 8.8.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

9. DISPUTES AND LAW

9.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the law of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

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 Contracting Body considers that the dispute is not suitable for resolution by mediation; or

- (b) the Prime Contractor 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 Prime Contractor 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 ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution to appoint a Mediator;
 - (b) the Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the Centre for Effective Dispute Resolution to provide guidance on a suitable procedure;
 - (c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;
 - (d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be 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.

APPENDIX 1

GUARANTEE

**[TO BE INSERTED BY THE CONTRACTING BODY CONDUCTING THE MINI-
COMPETITION]**

APPENDIX 2

SECURITY REQUIREMENTS AND PLAN

[MAY BE MODIFIED BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

1 Introduction

1.1 This Appendix covers;

- a) principles of security for the Prime Contractor System, derived from the Security Policy, including without limitation principles of physical and information security;
- b) the creation of the Security Plan;
- c) audit and testing of the Security Plan;
- d) conformance to ISO/IEC:27002 (Information Security Code of Practice) and ISO/IEC 27001 (Information Security Requirements Specification) (Standard Specification); and
- e) Breaches of Security.

2 Principles of Security

2.1 The Prime Contractor acknowledges that the Contracting Body places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Premises and the security for the Prime Contractor System. The Prime Contractor also acknowledges the confidentiality of the Contracting Body Data.

2.2 The Prime Contractor shall be responsible for the security of the Prime Contractor System and shall at all times provide a level of security which;

- a) is in accordance with Good Industry Practice and Law;
- b) complies with the Security Policy;
- c) meets any specific security threats to the Prime Contractor System; and
- d) complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 5 of this Appendix.

2.3 Without limiting paragraph 2.2, the Prime Contractor shall at all times ensure that the level of security employed in the provision of the Services is appropriate to minimise the following risks:

- a) loss of integrity of Contracting Body Data;
- b) loss of confidentiality of Contracting Body Data;
- c) unauthorised access to, use of, or interference with Contracting Body Data by any person or organisation;

- d) unauthorised access to network elements and buildings;
- e) use of the Prime Contractor System or Services by any third party in order to gain unauthorised access to any computer resource or Contracting Body Data; and
- f) loss of availability of Contracting Body Data due to any failure or compromise of the Services.

3 Security Plan

Introduction

- 3.1 The Prime Contractor shall develop, implement and maintain a Security Plan to apply during the Contract Period, which will be approved by the Contracting Body, tested, periodically updated and audited in accordance with this Appendix.
- 3.2 A draft Security Plan provided by the Prime Contractor as part of its bid is set out in Part B.

Development

- 3.3 Within twenty (20) Working Days after the Commencement Date and in accordance with paragraphs 3.10 to 3.12 (Amendment and Revision), the Prime Contractor will prepare and deliver to the Contracting Body for approval the full and final Security Plan which will be based on the draft Security Plan set out in Part A.
- 3.4 If the Security Plan is approved by the Contracting Body it will be adopted immediately. If the Security Plan is not approved by the Contracting Body the Prime Contractor shall amend it within ten (10) Working Days of a notice of non-approval from the Contracting Body and re-submit to the Contracting Body for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Contracting Body. If the Contracting Body does not approve the Security Plan following its resubmission, the matter will be resolved in accordance with Clause 43 (Dispute Resolution). No approval to be given by the Contracting Body pursuant to this paragraph 3.4 of this Appendix may be unreasonably withheld or delayed. However any failure to approve the Security Plan on the grounds that it does not comply with the requirements set out in paragraphs 3.1 to 3.9 shall be deemed to be reasonable.

Content

- 3.5 The Security Plan will set out the security measures to be implemented and maintained by the Prime Contractor in relation to all aspects of the Services and all processes associated with the delivery of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with:
 - a) the provisions of the Contract and this Appendix (including the principles set out in paragraph 2);

- b) the provisions set out in the Order Form relating to security;
 - c) ISO/IEC27002 and ISO/IEC27001; and
 - d) the data protection compliance guidance produced by the Contracting Body;
- 3.6 The references to standards, guidance and policies set out in paragraph 3.5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 3.7 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Prime Contractor should notify the Contracting Body's representative of such inconsistency immediately upon becoming aware of the same, and the Contracting Body's representative shall, as soon as practicable, advise the Prime Contractor which provision the Prime Contractor shall be required to comply with.
- 3.8 The Security Plan will be structured in accordance with ISO/IEC27002 and ISO/IEC27001.
- 3.9 Where the Security Plan references any document which is not in the possession of the Contracting Body, a copy of the document will be made available to the Contracting Body upon request. The Security Plan shall be written in plain English in language which is readily comprehensible to the staff of the Prime Contractor and the Contracting Body engaged in the Services and shall not reference any other documents which are not either in the possession of the Contracting Body or otherwise specified in this Appendix.

Amendment and Revision

- 3.10 The Security Plan will be fully reviewed and updated by the Prime Contractor annually, or from time to time to reflect:
- a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Prime Contractor System, the Services and/or associated processes;
 - c) any new perceived or changed threats to the Prime Contractor System; and
 - d) a reasonable request by the Contracting Body.
- 3.11 The Prime Contractor will provide the Contracting Body with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Contracting Body.
- 3.12 Any change or amendment which the Prime Contractor proposes to make to the Security Plan as a result of an Contracting Body request or change to the Services or otherwise shall be subject to the Change Control procedure set out in Clause 6.3 and shall not be implemented until approved in writing by the Contracting Body.

4 Audit and Testing

- 4.1 The Prime Contractor shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an annual basis or as otherwise agreed by the Parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Contracting Body.
- 4.2 The Contracting Body shall be entitled to send a representative to witness the conduct of the Security Tests. The Prime Contractor shall provide the Contracting Body with the results of such tests (in a form approved by the Contracting Body in advance) as soon as practicable after completion of each Security Test.
- 4.3 Without prejudice to any other right of audit or access granted to the Contracting Body pursuant to the Contract, the Contracting Body shall be entitled at any time and without giving notice to the Prime Contractor to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Prime Contractor's compliance with and implementation of the Security Plan. The Contracting Body may notify the Prime Contractor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery Services. If such tests impact adversely on its ability to deliver the Services to the agreed Service Levels, the Prime Contractor shall be granted relief against any resultant under-performance for the period of the tests.
- 4.4 Where any Security Test carried out pursuant to paragraphs 4.2 or 4.3 above reveals any actual or potential security failure or weaknesses, the Prime Contractor shall promptly notify the Contracting Body of any changes to the Security Plan (and the implementation thereof) which the Prime Contractor proposes to make in order to correct such failure or weakness. Subject to the Contracting Body's approval in accordance with paragraph 3.12, the Prime Contractor shall implement such changes to the Security Plan in accordance with the timetable agreed with the Contracting Body or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Contracting Body. For the purposes of this paragraph 4, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

5 Compliance With ISO/IEC 27001

- 5.1 The Prime Contractor shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Contracting Body any associated security audit reports and shall otherwise notify the Contracting Body of the results of such security audits.
- 5.2 If it is the Contracting Body's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Prime Contractor, then the Contracting Body shall notify the Prime Contractor of the same and give the Prime Contractor a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Prime

Contractor does not become compliant within the required time then the Contracting Body has the right to obtain an independent audit against these standards in whole or in part.

- 5.3 If, as a result of any such independent audit as described in paragraph 5.2 the Prime Contractor is found to be non-compliant with the principles and practices of ISO 27001 then the Prime Contractor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Contracting Body in obtaining such audit.

6 Breach of Security

- 6.1 Either Party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

- 6.2 Upon becoming aware of any of the circumstances referred to in paragraph 6.1, the Prime Contractor shall;

- a) immediately take all reasonable steps necessary to;
 - i) remedy such breach or protect the Prime Contractor System against any such potential or attempted breach or threat; and
 - ii) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Contracting Body. In the event that such action is taken in response to a breach that is determined by the Contracting Body acting reasonably not to be covered by the obligations of the Prime Contractor under the Contract, then the Prime Contractor shall be entitled to refer the matter to the Change Control procedure set out in Clause 6.3; and

- b) as soon as reasonably practicable provide to the Contracting Body full details (using such reporting mechanism as may be specified by the Contracting Body from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

Part A – DWP Security Policy For Suppliers Of Services

[MAY BE MODIFIED BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

The Department for Work and Pensions treats its information as a valuable asset and considers that it is essential that information must be protected, together with the systems, equipment and processes which support its use. These information assets may include data, text, drawings, diagrams, images or sounds in electronic, magnetic, optical or tangible media, together with any Personal Data for which the Department for Work and Pensions is the Data Controller.

In order to protect Departmental information appropriately, our suppliers must provide the security measures and safeguards appropriate to the nature and use of the information. All suppliers of services to the Department for Work and Pensions must comply, and be able to demonstrate compliance, with the Department's relevant policies and standards.

The Chief Executive or other suitable senior official of each supplier must agree in writing to comply with these policies and standards. Each supplier must also appoint a named officer who will act as a first point of contact with the Department for security issues. In addition all staff working for the supplier and where relevant sub-Prime Contractors, with access to Departmental IT Systems, Services or Departmental information must be made aware of these requirements and must comply with them.

All suppliers must comply with the relevant Standards from the DWP Information Systems Security Standards. The Standards are based on and follow the same format as International Standard 27001, but with specific reference to the Department's use.

The following are key requirements and all suppliers must comply with relevant DWP policies concerning:

Personnel Security

- Staff recruitment in accordance with government requirements for pre-employment checks;
- Staff training and awareness of Departmental security and any specific contract requirements.

Secure Information Handling and Transfers

- Physical and electronic handling, processing and transferring of DWP Data, including secure access to systems and the use of encryption where appropriate.

Portable Media

- The use of encrypted laptops and encrypted storage devices and other removable media when handling Departmental information.

Offshoring

- The Department's Data must not be processed outside the United Kingdom without the prior written consent of DWP and must at all times comply with the Data Protection Act 1998.

Premises Security

- Security of premises and control of access.

Security Incidents

- Includes identification, managing and agreed reporting procedures for actual or suspected security breaches.

All suppliers must implement appropriate arrangements which ensure that the Department's information and any other Departmental assets are protected in accordance with prevailing statutory and central government requirements. These arrangements will clearly vary according to the size of the organisation.

It is the supplier's responsibility to monitor compliance of any sub-contractors and provide assurance to DWP.

Failure to comply with any of these Policies or Standards could result in termination of current contract.

Part B – Outline Security Plan

[TO BE INSERTED]

APPENDIX 3

MONITORING REQUIREMENTS

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

APPENDIX 4

PAYMENT REQUIREMENTS

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

APPENDIX 5

PAYMENT PROFILE

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

APPENDIX 6

DIVERSITY AND EQUALITY REQUIREMENTS

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

APPENDIX 7

WELSH LANGUAGE SCHEME

**[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-
COMPETITION]**

APPENDIX 8

INFORMATION REQUIREMENTS

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

APPENDIX 9

SUSTAINABLE DEVELOPMENT REQUIREMENTS

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

APPENDIX 10

APPRENTICESHIPS AND SKILLS REQUIREMENTS

[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-COMPETITION]

[APPENDIX 11

ACCREDITATION REQUIREMENTS

**[TO BE SET BY THE CONTRACTING BODY CONDUCTING THE MINI-
COMPETITION IF REQUIRED]]**