

**CONTINGENT LABOUR ONE
GOVERNMENT PROCUREMENT SERVICE: ORDER FORM
AND CALL-OFF FOR SERVICES**

REFERENCE NUMBER

RM 960/L2

RESTRICTED COMMERCIAL
ORDER FORM AND CALL-OFF TERMS

FRAMEWORK SCHEDULE A MANAGED SERVICE PROVISION

ORDER FORM AND CALL-OFF TERMS FOR FRAMEWORK CONTRACT

Part 1 - Order Form for Framework Contract

This Order Form is issued subject to the provisions of the framework agreement RM960/L2 entered into between the Authority and the Service Provider on 19 June 2013 ("**Framework Agreement**"). The Service Provider agrees to supply the Services specified below on and subject to the terms of this Contract and for the avoidance of doubt the Contract consists of the terms set out in this Order Form and the Call-Off Terms, together with the Schedules thereto.

Date	18/10/2017	Order Number	RM960/L2 To be quoted on all correspondence relating to this Order
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FROM

Customer	Department of Health - " Customer "
Customer's Address	Richmond House 79 Whitehall London SW1A 2NS
Invoice Address	Room 530 Richmond House 79 Whitehall London SW1A 2NS
Contact Ref:	Name: [REDACTED] Address: Department of Health, Quarry House, Leeds, LS2 7UE Phone: [REDACTED] E-mail: [REDACTED] Fax: N/A

TO

Service Provider	Brook Street (UK) Limited - " Service Provider "
Service Provider's Address	Clarence House, 134 Hatfield Road, St Albans, AL1 4JB
Account Manager	Name: [REDACTED] Address: As above Phone: [REDACTED] E-mail: [REDACTED] Fax: [REDACTED]

1. TERM
(1.1) Commencement Date 19/06/2013
(1.2) Expiry Date 1.2.1 The Expiry Date shall be 12/06/2016.

2. SERVICES REQUIREMENTS

(2.1) Services required

The Services to be provided to the Customer by the Service Provider are as detailed at Schedule 1 hereto.

(2.2) Lots under which the above Services are being supplied:

Lot 2 - Managed Service Provider – Admin/Clerical

(2.3) Standards

In addition to any Quality Standards and Technical Standards referred to in this Contract, the Service Provider shall comply with the provisions of Schedule 10 hereto

(2.4) Security Requirements

The Service Provider shall comply with the provisions of Schedule 4 hereto

(2.5) Disaster Recovery and Business Continuity

The Service Provider shall comply with the provisions of Schedule 7 hereto

(2.6) Disaster

Disaster means the occurrence of one or more events which, either separately or cumulatively, mean that the Services or a material part thereof will be unavailable for a period of more than three working days or which is reasonably anticipated will mean that the Services or a material part thereof will be unavailable for that period.

(2.7) Staff Vetting Procedures

The Service Provider shall comply with the provisions of Clause 18 of this Contract

3. PERSONNEL

(3.1) Key Personnel of the Service Provider to be involved in the provision of the Services [and Deliverables]

[REDACTED]

[(3.2) TUPE: Transfer of Employees]

The Employment Regulations wording set out in Part A of Clause 15 which will apply to this Contract.

(3.3) Sub-Contractors to be involved in the provision of the Services and Deliverables

[REDACTED]

4. PERFORMANCE OF THE SERVICES [AND DELIVERABLES]

(4.1) Implementation Plan and Milestones (including dates for completion)

1. The Implementation Plan as at the Commencement Date is set out below:

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Customer Responsibilities (if applicable)
1	Submission of Implementation Plan to Authority	5	See the dates within the Implementation Plan sent separately	Customer to review and come back to Service Provider with any comments or amendments required within five days of submission.
2	Technology go live	5		
3	Communication (to Authority, incumbent Suppliers, existing temp workers)	5		
4	Temporary Workers Transition	4 weeks if TUPE transfer, 1 week if non TUPE		
5	Service go live	5 days		
6	Service review	30 – 48 days		To meet the milestones of the Implementation Plan.

2. If so required by the Customer, the Service Provider shall produce a further version of the Implementation Plan (based on the above plan) in such further detail as the Customer may reasonably require. The Service Provider shall ensure that each version of the Implementation Plan is subject to Approval. The Service Provider shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services.
3. The Customer shall have the right to require the Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.
4. The Service Provider shall perform its obligations so as to Achieve each Milestone by the Milestone Date.
5. Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Service Provider shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer's Default which affects the Service Provider's ability to achieve a Milestone by the relevant Milestone Date).

(4.2) Testing

Set out in Schedule 6 hereto

(4.3) Service Levels

Set out in Schedule 8 hereto

(4.4) Critical Service Failure

As set out in the termination provision as outlined in paragraph 5.5 to Schedule 8 hereto

(4.5) Performance Monitoring

Performance Monitoring arrangements are set out in set out in the Appendix to Part B of Schedule 8

(4.6) Continuous Improvement, Value for Money and Benchmarking

- 4.6.1 Further to Schedule 7 of the Framework Agreement, the Service Provider shall regularly benchmark the Contract Charges and performance of the Services, against other service providers providing services substantially the same as the Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services with charges and services offered by third parties so as to provide the Customer with information for comparison purposes.
- 4.6.2 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in paragraph 4.6.1 above.

4.6.3 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Services to the Authority and other Contracting Bodies.

4.6.4 The Service Provider shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking referred to in this paragraph 4.6, such information requirements to be at the discretion of the Customer.

5. CUSTOMER RESPONSIBILITIES

(5.1) Customer's Responsibilities

- Customer to provide accurate Agency Worker Regulation (AWR) information (e.g. Day One Rights, Holiday entitlement (including any privilege days), comparable substantive salaries, confirmation of pay awards etc)
- Customer to provide PO numbers on time
- Customer to update Brook Street on any Fieldglass changes required during the lifetime of the contract (including Customer Users no longer requiring access, new access levels etc)

6. CHARGES AND PAYMENT

(6.1) Contract Charges

The Contract Charges are detailed in Schedule 2 hereto

(6.2) Invoicing and Payment

The requirements for payment and invoicing are set out in Schedule 2 hereto subject to the following amendments:

Payment Terms: Option 2 – 30 days

7. LIABILITY

The total liability of the Service Provider and the Customer shall be as set out in Clause 23 of the Contract.

8. INSURANCE

(8.1) Minimum Insurance Period

Six (6) Years following the expiration or earlier termination of the Contract.

(8.2) To comply with its obligations under Clause 23.3 and as a minimum, where requested by the Customer in writing the Service Provider shall ensure that:

- (i) **professional indemnity insurance** is held by the Service Provider and by any Supplier, agent, Sub-Contractor or consultant involved in the supply of the Services with a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as

required by Law) from time to time;

- (ii) **public liability insurance** adequate to cover all risks in the performance of this Contract from time to time with a minimum limit of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Customer may reasonably require (and as required by Law) from time to time; and
- (iii) **employers' liability insurance** with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time.

9. TERMINATION

(9.1) Undisputed Sums Time Period

The Undisputed Sums Time Period shall be 30 days

The termination notice period shall be at least 30 Working Days of the date of the written notice specified in Clause 24.4.3.

(9.2) Termination Without Cause

At least (3) months in accordance with Clause 24.5.

10. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information or Confidential Information:

- 1) All personal information relating to our organisations Permanent Staff
- 2) All personal information relating to our organisations temporary workers
- 3) All pricing information
- 4) All commercial information
- 5) All personal information relating to users of our services

11. ADDITIONAL AND/OR ALTERNATIVE CLAUSES

(11.1) Supplemental requirements in addition to the Call-Off Terms

11.1.1 With reference to clause 6 above (Charges and Payment) and in consideration of the Contract Charges that are directly related to the agreed payment terms. Should the Customers payments fall outside of the contracted terms then the Service Provider reserves the right to amend the charges to reflect the 30 day payment terms charges as contained within Annex C of Schedule 2.

The Government Contracting Body Customer agrees that any incumbent workers, including non-employed workers as well any legacy, gifted or transitioned workers transitioned from an existing supplier or organisation to Brook Street UK Ltd are deemed to be competent and compliant at the point of transfer & not subject to re-checks under the current terms of reference.

As per the extension granted by the Crown Commercial Service to the Service Provider to extend Services as per the Framework Agreement RM960/L2, signed on 3 February 2016.

The Customer has requested and the Service Provider has agreed to amend term 1.2.1 of the Contract, to set the Expiry Date for a further 12 months from original Expiry Date to 18 June 2017 as

available through the Framework Agreement.

The extension enables the Service Provider to provide Services to the Customer up to December 2017 and allow Temporary Worker/s supplied by the Service Provider to remain in Assignment/s until June 2018, in accordance with the main Framework terms between Service Provider and Crown Commercial Service.

11.1.2 Pursuant to Clause 6.2 of this Order Form, the Parties agree that for the purposes of this Order Form and in applying any 12 week rights for an Temporary Worker the Service Provider will calculate the Qualifying Period as 12 continuous from the start of the relevant, or similar, role with the Customer (or, where the Customer is a crown body, another Contracting Body that is a crown body), regardless of any breaks that would not prevent the Temporary Worker from completing the Qualifying Period as defined in Regulation 7(8) of the Regulations.

(11.2) Variations to the Call-Off Terms

11.2.1 Amend the table in Annex C - Supplier Fees to Schedule 2 (The Contract Charges and Payment) as follows;

Delete

* Extensions to existing requirements (Which require a small amount of administration effort).

And replace with Rate after 6 continuous months of an Assignment irrespective length of original Assignment or whether 6 continuous months is as a result of an extension(s) (Which require a small amount of administration effort).

11.2.2

Amend Clause 2.5.4 of Schedule 2 (The Contract Charges and Payment) as follows:

Delete Pensions Automatic Enrolment – For the first twelve weeks of each Assignment the Service Provider shall, in accordance with the Pensions Act 2008, be responsible for paying the employer's pensions contribution in respect of eligible Temporary Workers. From the thirteenth week of each Assignment where the Temporary Worker has not opted out of pensions automatic enrolment the Service Provider shall levy a charge on the Contracting Body in respect of the employer's contribution calculated as the appropriate percentage of the Temporary Worker Day Rate for each day worked under the Assignment by the Temporary Worker. These charges shall be shown as a separate line item on each invoice to the Contracting Body.

And replace with

Pensions Automatic Enrolment – For the first twelve weeks of each Assignment the Service Provider shall, in accordance with the Pensions Act 2008, be responsible for paying the employer's pensions contribution in respect of eligible Temporary Workers. On the basis that the Supplier of the Temporary Worker is within their staging date in accordance with the Pensions Act 2008, then from the thirteenth week of each Assignment the Service Provider shall levy a charge on the Contracting Body in respect of the employer's contribution calculated as the appropriate percentage of the Temporary Worker Day Rate for each day worked under the Assignment by any and all eligible Temporary Worker(s) irrespective whether or not the Temporary Worker has opted out of the pensions automatic enrolment. The appropriate percentage to be applied shall be 0.45% of the Temporary Worker Day Rate for each day worked under the Assignment and these charges shall be shown as a separate line item on each invoice from the Contracting Body.

(11.3) Alternative and/or Additional Clauses (as set out in Schedule 9)

Not used

12 Conformed Copy

The Customer does not require a conformed copy of this Contract to be produced by the Service Provider.

13. FORMATION OF CONTRACT

13.1 The Customer shall send this Order Form to the Service Provider requesting signature in accordance with schedule 5 of the Framework Agreement.

13.2 The Service Provider shall indicate its willingness to enter into a Contract by returning a signed copy of the Order Form to the Customer in accordance with schedule 5 of the Framework Agreement.

13.3 The Contract shall be formed when the Service Provider receives the Order Form counter-signed by the Customer.

BY SIGNING AND RETURNING THIS ORDER FORM THE SERVICE PROVIDER AGREES to enter a legally binding contract with the Customer to provide the Services. The Parties hereby acknowledge and agree that they have read the Call-off Terms and the Order Form and by signing below agree to be bound by the terms of this Contract.

For and on behalf of the Service Provider :

Name	[REDACTED]
Title	[REDACTED]
Date	[REDACTED]

For and on behalf of the Customer:

Name	[REDACTED]
Title	[REDACTED]
Date	[REDACTED]

Part 2 - Call-Off Terms

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Call-Off Terms

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:

"Achieve"	means in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone in accordance with Clause 5 and "Achieved" and "Achievement" shall be construed accordingly;
"Acquired Rights Directive"	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended;
"Additional Clauses"	means the additional clauses specified in Schedule 11 that have been specified for this Contract to supplement the basic Call-Off Terms;
"Affiliates"	means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;
"Affected Party"	means the party seeking to claim relief in respect of a Force Majeure;
"Agency Workers Regulations" or "AWR"	means the Agency Workers Regulations 2010;
"Alternative Clauses"	means the alternative clauses specified in Schedule 11 that have been specified for this Contract to replace the relevant clauses of the form of Call-Off Terms in schedule 4 of the Framework Agreement;
"Approval"	means the prior written consent of the Customer and "Approve" and "Approved" shall be construed accordingly;
"Assignment"	means the role for which a Temporary Worker is sourced via the Service Provider is providing Temporary Worker Services to the Customer;
"Auditor"	means the National Audit Office or an auditor appointed by the Audit Commission as the context requires;

"Authority"	means THE MINISTER FOR THE CABINET OFFICE (" Cabinet Office ") as represented by Government Procurement Service (formerly Buying Solutions), a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP;
"BCDR Plan"	means any plan relating to business continuity and disaster recovery as referred to in paragraph 2.5 of the Order Form
"Bespoke IPRs"	means IPRs arising specifically as a result of the provision of the Services by the Service Provider;
Business Continuity Plan" "	has the meaning set out in paragraph 1.2.2 of Schedule 7 (Disaster Recovery and Business Continuity);
"Business Rules"	means the business rules specified by paragraph 7 of Schedule 1 of the Framework Agreement;
"Calendar Weeks"	means any period of seven days starting with the same day as the first day of a Temporary Worker's first Assignment;
"Call-Off Terms"	means these terms and conditions in respect of the provision of the Services, together with the Schedules hereto;
"Call-Off Agreement"	means a legally binding agreement (entered into pursuant to the provisions of the Framework Agreement) for the provision of the Services made between a Contracting Body and the Service Provider pursuant to Framework Schedule 5 (Ordering Procedure) of the Framework Agreement;
"Change in Law"	means any change in Law or policy which impacts on the supply of the Services and performance of the Call-Off Terms which comes into force after the Commencement Date;
"Clearance"	means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;
"Commencement Date"	means the date set out in paragraph 1.1 of the Order Form;
"Commercially Sensitive Information"	means the Confidential information listed in paragraph 10 of the Order Form (if any) comprising of commercially sensitive information relating to the Service Provider, its IPR or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant

	commercial disadvantage or material financial loss;
"Comparable Supply"	means the supply of services to another customer of the Service Provider that are the same or similar to the Services;
"Comparator"	Means, in accordance with regulation 5 of the Agency Workers Regulations, an individual who is a permanent employee of the Customer engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualifications or skills and: <ul style="list-style-type: none"> (a) works or is based at the same establishment; or (b) where there is no comparable permanent employee working or based at the same establishment who satisfies the requirements above, works or is based at a different establishment and satisfies those requirements;
"Comparator Information"	means information about the Comparator's terms and conditions of employment relating to pay, , the duration of working time, night work, rest periods, rest breaks, and annual leave (as further defined in regulation 6 of the Agency Workers Regulations);
"Comparator Rate"	means the rate, comparable to the Comparator's rate of pay, which the Temporary Worker will be entitled to be paid as a minimum during an Assignment in accordance with the Agency Workers Regulations if and when s/he completes the Qualifying Period. Such rate will include those elements set out in regulation 6(2) of the Agency Workers Regulations, subject to any deductions as required by Law;
"Confidential Information"	means the Customer's Confidential Information and/or the Service Provider 's Confidential Information;
"Confidentiality Agreement"	means an agreement in substantially the same terms as those at Schedule 12A;
"Continuous Improvement Plan"	means a plan for improving the provision of Services and/or reducing the charges produced by the Service Provider pursuant to Schedule 7 of the Framework Agreement;
"Contract"	means the written agreement between the Customer and the Service Provider consisting of the Order Form and the Call-Off Terms save that for the purposes of Clause 1.2.11 only, reference to Contract shall not include the Order Form;

"Contracting Body"	means the Authority and any other person as listed in paragraph VI.3 of the OJEU Notice;
"Contract Period"	means the period from the Commencement Date until expiry or termination of this Contract;
"Contract Charges"	means the prices (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in paragraph 6.1 of the Order Form, for the full and proper performance by the Service Provider of its obligations under the Contract;
"Control"	means control as defined in section 1124 and 450 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;
"Conviction"	means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);
"Critical Service Failure"	shall have the meaning given in paragraph 4.4 of the Order Form;
"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;
"Customer"	means the customer(s) identified in Part 1 of the Order Form;
"Customer Data"	means: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) are supplied to the Service Provider by or on behalf of the Customer; or (ii) the Service Provider is required to generate, process, store or transmit

pursuant to this Contract; or

- (b) any Personal Data for which the Customer is the Data Controller;

"Customer Employee" means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment for the Customer;

"Customer IPR" shall mean any Intellectual Property Rights vested in or licensed to the Customer including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs save for any Bespoke IPR or Service Provider IPR;

"Customer Responsibilities" means the responsibilities of the Customer set out in paragraph 5.1 of the Order Form;

"Customer Representative" means the representative appointed by the Customer from time to time in relation to the Contract;

"Customer's Confidential Information" means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

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

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

"Data Protection Legislation" or "DPA" means the Data Protection Act 1998 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

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

"Day 1 Rights" means the rights of the Temporary Worker from commencement of an Assignment:

- (a) to be treated no less favourably than the Comparator in relation to the collective facilities and amenities

provided by the Customer; and

- (b) to be informed by the Customer of any relevant vacant posts with the Customer and to have the same opportunity as the Comparator to find permanent employment with the Customer works or is based at the same establishment,

pursuant to regulations 12 and 13 of the Agency Workers Regulations;

“Default”	means any breach of the obligations of this Contract by a Party (including but not limited to any fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of a Party in connection with or in relation to this Contract and in respect of which the Party is liable;
"Deliverables"	means those deliverables listed in paragraph 2.1 of the Order Form (if any);
"Delivery"	means the time at which the Services have been installed by the Service Provider and the Customer has issued a Satisfaction Certificate in respect thereof and "Deliver" and "Delivered" shall be construed accordingly;
“Direct Agreement”	means an agreement with substantially the same terms as that in Schedule 12B;
"Disaster"	shall have the meaning given in paragraph 2.6 of the Order Form;
"Disaster Recovery"	means the process of restoration of the Services by the provision of the Disaster Recovery Services;
"Disaster Recovery Plan"	is as described in paragraph 5.3 of Schedule 7 (Disaster Recovery and Business Continuity);
"Disaster Recovery Services"	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the Service Provider pursuant to Schedule 7 (Disaster Recovery and Business Continuity);
"Disaster Recovery System"	means the system identified by the Service Provider which shall be used for the purpose of delivering the Disaster Recovery Services;
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Clause 48.2;
"Employee Liabilities"	means all claims actions, proceedings, orders, demands, complains, investigations and any award, compensation, damages, tribunal awards, fine, loss, penalty, disbursement, payment made by way of settlement and

costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unlawful deduction of wages;
- (c) unfair, wrongful or constructive dismissal compensation;
- (d) compensation claims for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay;
- (e) compensation for less favourable treatment of part-time workers;
- (f) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Customer or the Replacement Service Provider to a Transferring Service Provider Employee which would have been payable by the Service Provider, or the Sub-Contractor if such payment should have been made prior to the Service Transfer Date;
- (g) claims whether in tort, contract or statute or otherwise;
- (h) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation);

"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;

"Employment Regulations"

means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

["E-Payment Mechanism"]

means the mechanism supporting prompt payment under the Contract and involving provision of embedded commercial payment card(s) technology and associated services to the Service Provider and the Customer by an E-Payment Provider;]

["E-Payment Provider"	means the provider of the embedded commercial payment card(s) technology and services associated with provision of the E-Payment Mechanism;]
"Equipment"	means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract;
"Expiry Date"	means the date set out in paragraph 1.2 of the Order Form;
"Fair Deal Employee"	means (a) the Transferring Customer Employees and (b) those Former Service Provider Employees whose period of continuous employment commenced with and who originally transferred from employment with central or local government or a public sector employer pursuant to a Relevant Transfer under Employment Regulations (or the predecessor legislation to Employment Regulations), and who remain in employment relating to the provision of services to which that Relevant Transfer applied;]
"Final Termination"	means the date of final termination of the Framework Agreement when delivery of all services to the Authority and all Contracting Bodies under the Framework Agreement shall cease, and beyond which no Call-Off Agreement may extend;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
"Force Majeure"	<p>means any event, occurrence or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:</p> <ul style="list-style-type: none"> a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party; b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare; c) acts of government, local government or Regulatory Bodies; d) fire, flood or any disaster; e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available

but excluding:

any industrial dispute relating to the Service Provider, the Service Provider's Staff or any other failure in the Service Provider or the Sub-Contractor's supply chain; and

any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

Former Service Provider"	means any provider of services which are substantially similar to any of the Services which the Customer received before the commencement of this Agreement;
"Former Service Provider Employees"	means any employees of any Former Service Provider to which the Employment Regulations will apply on the Relevant Transfer Date, and in respect of whom written notification has been given by the Former Service Provider to the Service Provider before the Relevant Transfer Date;
"Framework"	means the framework arrangement established by the Authority for the provision of contingent labour sourcing services to Contracting Bodies by the Service Provider and the Neutral Vendor and the Other Managed Service Provider;
"Framework Agreement"	means the framework agreement between the Authority and the Service Provider referred to in the Order Form;
"Framework Agreement Ordering Period"	means the period, specified in the Framework Agreement during which Contracting Bodies may enter into Call-Off Agreements with the Service Provider under the terms of the Framework Agreement;
"Framework Price(s)"	means the price(s) applicable to the provision of the Services set out in Framework Schedule 3 (Charging Structure);
"Fraud"	means any offence under any Laws creating offences in respect of fraudulent acts or in relation to the Misrepresentation Act 1967 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 Body or the Customer;
"General Change in Law"	means a change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Service Provider) or which affects or relates to a Comparable Supply;
"General Principles"	has the meaning set out in paragraph 1.2.1 of Schedule 7 (Disaster Recovery and Business Continuity);
"Good Industry"	means standards, practices, methods and procedures

Practice"	conforming to the Law and the exercise of 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 within the relevant industry or business sector;
"Government e-Marketplace"	means the online service provided by Procserve that enable public bodies to access Authority-managed central agreements and to transact with associated service providers and suppliers
"Holding Company"	shall have the meaning given to it in section 1159 and schedule 6 of the Companies Act 2006;
"HMRC"	means Her Majesty's Revenue and Customs
"ICT Environment"	the Customer Information and Communications Technology System and the Service Provider System;
"Implementation Plan"	means the plan referred to in paragraph 4.1 of the Order Form;
"Information"	has the meaning given under section 84 of the FOIA;
"Intellectual Property Rights" or "IPRs"	means <ul style="list-style-type: none"> (a) patents, inventions, trademarks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, semi-conductor topography rights, rights in inventions, domain names and website addresses, trade or business names, rights in Know-How and moral rights and other similar rights or obligations whether registerable or not; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off;
"Key Personnel"	means the individuals (if any) identified in paragraph 3.1 of the Order Form;
"Know-How"	means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Service Provider's or

the Customer's possession before the Commencement Date;

"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 statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation;
"List x"	means, in relation to a Sub-Contractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that Sub-Contractor undertaking work on its premises marked as "CONFIDENTIAL" or above;
"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;
"Managed Service Provider"	means the Service Provider;
"Managed Service Provider Management Fee"	means the Managed Service Provider Management Fee specified in Schedule 2 at paragraph 2.4;
"Managed Service Provider-Admin/Clerical"	means the Service Provider
"Managed Service Provider-Operational"	means Hays Specialist Recruitment Ltd a company appointed by Government Procurement Service to offer Contingent Labour Services to UK public sector bodies under the terms of the Managed Service Provider-Operational Framework Agreement RM960/L3;
"Managed Service Provider Framework Agreement"	means the Managed Service Provider Framework Agreement –Admin/Clerical and/or the Managed Service Provider Framework Agreement-Operational;
"Managed Service Provider Framework Agreement-Admin/Clerical"	means the agreement RM960/L2 dated 19 June 2013 between the Managed Service Provider-Admin/Clerical and Government Procurement Service under which the Managed Service Provider- Admin/Clerical is appointed to offer Contingent Labour Services to UK public sector

	bodies;
"Managed Service Provider Framework Agreement-Operational"	means the agreement dated RM960/L3 between the Managed Service Provider –Operational and Government Procurement Service under which the Managed Service Provider- Operational is appointed to offer Contingent Labour Services to UK public sector bodies;
"Material Breach"	means a material breach of this Contract and/or, breach by the Service Provider of any of the following Clauses: Clause 8 (Monitoring of Contract Performance), Clause 9 (Continuous Improvement), Clause 21.5 (Protection of Personal Data), Clause 21.7 (Official Secrets Acts 1911 to 1989), Clause 22 (Warranties and Representations), Clause 29 (Prevention of Bribery and Corruption), Clause 30 (Records and Audits Access), Clause 31 (Discrimination), Clause 32 (Prevention of Fraud), Clause 33 (Transfer and Sub-Contracting), shall be a material breach;
"Milestone"	means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;
"Milestone Date"	means the date set against the relevant Milestone in the Implementation Plan;
"Minimum Insurance Period"	has the meaning given in paragraph 8.1 of the Order Form;
"Ministry of Justice Guidance"	means Ministry of Justice Guidance in relation to Section 9 of the Bribery Act 2010 available at http://www.justice.gov.uk/guidance/docs/bribery-act-2010-guidance.pdf ;
"Month"	means a calendar month and "monthly" shall be interpreted accordingly;
Neutral Vendor	<p>means Capita Business Services Limited a company appointed by Government Procurement Service under Framework Agreement RM906/L1 under which</p> <ol style="list-style-type: none"> 1. the Neutral Vendor can supply Contracting Bodies that enter into a call-off agreement for Contingent Labour Services in respect of the sourcing of interim manager and specialist contractor temporary workers; and 2. implement, operate and manage on an ongoing basis the Web Portal;

"Neutral Vendor Framework Agreement"	<p>means the agreement RM960/L1 between the Neutral Vendor and Government Procurement Service under which</p> <ol style="list-style-type: none"> 1. the Neutral Vendor can supply Contracting Bodies that enter into a call-off agreement with Contingent Labour Services in respect of the sourcing of interim manager and specialist contractor temporary workers; and 2. implement, operate and manage on an ongoing basis the Web Portal;
"Order"	means the order submitted by the Customer to the Service Provider in accordance with the Framework Agreement;
"Order Form"	means the form containing details of an Order, together with other information in relation to such Order, including without limitation the description of the Services to be supplied;
"Other Managed Service Provider"	means Hays Specialist Recruitment Ltd, a company appointed by Government Procurement Service to offer Contingent Labour services to UK public sector bodies under the terms of the Framework;
"Parent Company"	means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Supplier. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Service Provider or the Customer and "Parties" shall mean both of them;
"Personal Data"	shall have the same meaning as set out in the Data Protection Act 1998;
"Process"	has the meaning given to "processing" under the Data Protection Act 1998 (but shall include both manual and automatic processing) , and "Process" and "Processed" shall be interpreted accordingly;
"Prohibited Act"	<p>means:</p> <ol style="list-style-type: none"> 1) to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or the Authority a financial or other advantage

to:

- a) induce that person to perform improperly a relevant function or activity; or
 - b) reward that person for improper performance of a relevant function or activity; or
- 2) committing any offence:
- a) under the Bribery Act 2010; or
 - b) under legislation creating offences concerning fraudulent acts; or
 - c) at common law concerning fraudulent acts relating to this Call-Off Agreement or any other contract with the Authority and/or Customer and/or any other Contracting Body; or
 - d) defrauding, attempting to defraud or conspiring to defraud the Authority and/or the Customer or any other Contracting Body;

"Property"

means the property, other than real property and IPR, issued or made available to the Service Provider by the Customer in connection with the Contract;

"Qualifying Period"

means twelve (12) continuous calendar weeks during the whole or part of which the Temporary Worker works temporarily for and under the supervision and direction of the Customer (or, where the Customer is a crown body, another Contracting Body that is a crown body) in the same role as further defined in Regulation 7 of the Agency Workers Regulations;;

"Quality Standards"

means BS EN ISO 9001 Quality Management System Standards and all other 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 Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in paragraph 2.3 of the Order Form) and any other applicable quality standards, Government codes of practice and guidance;

"Qualifying Period Rights"	means the rights to which the Temporary Worker is entitled under the Agency Workers Regulations upon completion of the Qualifying Period;
"Quarantine Period"	means a period of time, either eight (8) weeks from the day after the last Working Day on which a Temporary Worker last worked for the Customer pursuant to being supplied by the Service Provider as part of the Services hereunder, or fourteen (14) weeks from the first day on which the Temporary Worker worked for the Customer pursuant to the supply to the Customer by the Service Provider of the Services, whichever is the longer;
"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 Customer;
"Related Service Provider"	means any person who provides services to the Customer which are related to the Services from time to time, including for the avoidance of doubt the Neutral Vendor/and the Other Managed Service Provider /Managed Service Provider(s);
"Relevant Transfer Date"	means the date upon which the Relevant Transfer takes place;
"Relevant Transfer"	means a transfer of employment to which Employment Regulations applies or is treated as applying;
"Replacement Service Provider"	means any third party service provider of Replacement Services appointed by the Customer from time to time;
"Replacement Services"	means any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of this Contract, whether those services are provided by the Customer internally and/or by any third party;
"Request for Information"	means a request for information or an apparent request relating to this Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;
"Requisition"	means a Customer request for the provision of Temporary Worker Services;
"Requisition Form"	means the requisition form built into the Web Portal for submission of Requisitions by Contracting Bodies;

"Review Report"	is the report to the Authority setting out the information identified at 6.3.1 to 6.3.3 of Schedule 7;
"Satisfaction Certificate"	means the certificate materially in the form of the document contained in the Appendix to Schedule 6 granted by the Customer when the Service Provider has Achieved a Milestone;
"Second Generation Fair Deal Employee"	means any employee whose employment transfers under a Relevant Transfer from the Former Service Provider to the Service Provider on the Relevant Transfer Date and who (i) in relation to previous employment with the Customer, had been accruing pension rights as an active member of [insert name of public sector pension scheme] immediately before a Relevant Transfer of his employment from the Customer to the Former Supplier, or a series of Relevant Transfers starting with employment with the Customer and finishing with employment with the Former Service Provider, and (ii) had elected to transfer such pension rights from [insert name of public sector pension scheme] to the Former Service Provider's Scheme;
This Clause is not applicable to this agreement.	
"Security Requirements"	means the security requirements encapsulated in Schedule 4 hereto;
"Security Tests"	shall have the meaning set out in paragraph 4 of Schedule 4;
"Security Management Plan"	means the Service Provider's security management plan prepared pursuant to paragraph 3 of Schedule 4 as updated from time to time;
"Service Failure"	means a failure by the Service Provider to meet the minimum level for that Service Level as set out in the Appendix to Part A of Schedule 8;
"Service Improvement Notice"	means a Service Improvement Notice served by the Customer in accordance with Schedule 8 hereto;
"Service Improvement Plan"	means a Service Improvement Plan provided by the Service Provider to the Customer in accordance with Schedule 8 hereto;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to in paragraph 4.3 of the Order Form and as set out at Schedule 8 of this Call Off Contract;
"Services"	means the services to be supplied as referred to in paragraph 2.1 of the Order Form;

"Service Provider"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Order Form;
"Service Provider's Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Service Provider's Final Staff List"	has the meaning given to it in Clause 16.1.2;
"Service Provider's Provisional Staff List"	means a list prepared and updated by the Service Provider of all Staff who are engaged in or wholly or mainly assigned to, the provision of the Services or any part of the Services as at the date of such list;
"Service Provider IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;
"Service Provider's Proposals"	has the meaning set out in paragraph 6.3.3 of Schedule 7 (Disaster Recovery and Business Continuity);
"Service Provider System"	means the information and communications technology system used by the Service Provider in performing the Services including the software, the equipment and related cabling (but excluding the Customer System);
"Sites"	means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services or where any part of the Service Provider System is situated or where any physical interface with the Customer System takes place;
Specific Change in Law	means a Change in Law that relates specifically to the business of the Customer and which would not affect a Comparable Supply;

"Staff"	means all persons (other than Temporary Workers) employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract;
"Staffing Information"	means written information about each of the Staff including in particular: the percentage of working time spent by each of them in the provision of the services; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) Years, details of any grievances raised by any of them in the preceding two (2) Years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) Years, any potential proceedings which the Service Provider or its Sub-Contractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) Month or more regardless of the reason at the time the staffing information is requested;]
"Staff Vetting Procedures"	means the procedures and policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989, as set out in HMG's Baseline Security Standards and any policies and procedures notified to the Service Provider by the Customer from time to time;
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Service Provider and any Sub-Contractor whereby that Sub-Contractor agrees to provide to the Service Provider the Services or any part thereof or facilities, 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 each of the sub-contractors listed in Paragraph 3.3 of the Order Form or any person engaged by the Service Provider in connection with the provision of the Services from time to time as may be permitted by the Framework Agreement;
"Sub-Supplier"	means any supplier who contracts with the Supplier for

	performance of the services for which the Supplier has contracted with the Service Provider;
"Supplier"	means a supplier appointed by the Service Provider to supply Temporary Workers to provide Temporary Worker Services to the Customer;
"Supplier Agreement"	shall have the meaning given to it in Clause 5.2.4;
"Supplier Terms"	means the Terms specified at Schedule 18 of the Framework Agreement which the Service Provider shall include in the Supplier Agreement;
"Technical Standards"	means the technical standards set out in paragraph 2.3 of the Order Form;
"Temporary Worker"	means a person supplied to the Customer to provide the Temporary Worker Services pursuant to an Assignment established in relation to this Contract;
"Temporary Worker Agreement"	shall have the meaning set out in clause 5.3.2;
"Temporary Worker Conditions"	means the Temporary Worker Conditions specified at Schedule 18 of the Framework Agreement which a Supplier shall include in the Temporary Worker Agreement;
"Temporary Worker Services"	means the services to be supplied by the Temporary Worker as notified by the Customer to the Temporary Worker from time to time in relation to the Assignment;
"Temporary Worker Day Rate"	means the daily rate applicable to provision by the Temporary Worker of the Temporary Worker Services as set out in section 8 of the completed Requisition Form or as otherwise applicable in accordance with Clause 53.2;
"Temporary Worker Legislation"	all legislation relating to or in connection with the provision of Temporary Worker Services including: <ul style="list-style-type: none"> a) the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax; and b) the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions; and c) the Social Security Contributions (Intermediaries) Regulations 2000

"Temporary Worker's Pay"	means, in relation to any particular period, the amount payable by the Service Provider to the Temporary Worker in respect of or in connection with the provision by the Temporary Worker of the Temporary Worker Services which shall be calculated by multiplying the Temporary Worker's Day Rate by the number of days of Temporary Worker Services agreed to have been provided in such period;
"Temporary Worker Rate Card"	means the rate card controlling Temporary Worker Day Rates as specified in Schedule 3 hereto;
"Tests" and "Testing"	means any tests required to be carried out pursuant to this Contract as set out in the Test Plan and in paragraph 4.2 of the Order Form;
["Test Issue"	means any variance or non-conformity of Services or Deliverables from its requirements as set out in the Contract;]
["Test Plan"	means a plan for the Testing of the Services or Deliverables and other agreed criteria related to the achievement of Milestones as described further in paragraph 4 of Schedule 6;]
["Test Strategy"	means a strategy for the conduct of Testing as described further in paragraph 3 of Schedule 6;]
"Transaction Fee"	means the Transaction Fees specified in Schedule 2 at paragraph 2.1;
"Transferring Service Provider Employees"	means those employees of the Service Provider to which Employment Regulations will apply on the Service Transfer Date, and in respect of whom written notification has been given by the Service Provider to the Customer before the Service Transfer Date;
"Transferring Customer Employees"	means those employees of the Customer to which Employment Regulations will apply on the Relevant Transfer Date, and in respect of whom written notification has been given by the Customer to the Service Provider before the Relevant Transfer Date;
"Undisputed Sums Time Period"	as specified in paragraph 9.1 of the Order Form;
"Valid Invoice"	means an invoice issued by the Service Provider to the Customer that complies with Clause 12.1.2;
"Variation"	means where the Customer requests a variation to the Services ordered, provided that such variation does not amount to a material change to the Order;

"Variation Procedure"	means the procedure set out in Clause 38;
"VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"Web Portal"	means the internet-based common technology platform provided by the :Neutral Vendor under the terms of the Neutral Vendor Framework Agreement to facilitate the delivery of services to Customers by the [Neutral Vendor, the other Managed Service Provider and the Service Provider, providing a single point of access to all three Contingent Labour Framework Agreements for Customers;
"Web Portal Licence"	means the licence to access and use the Web Portal granted by the Neutral Vendor in the form set out in Schedule 16 of the Framework Agreement;
"Working Day"	means any day other than a Saturday or Sunday or public holiday in England and Wales;
"Working Time Regulations"	means the Working Time Regulations 1998;
"Year"	means a calendar year.

1.2 Interpretation

The interpretation and construction of this 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 the words "include", "includes" and "including" "for example" and "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;
- 1.2.4 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;
- 1.2.5 the Schedules form part of this Contract and shall have effect as if set out in full in the body of this Contract. Any reference to this Contract includes the Schedules;
- 1.2.6 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;

- 1.2.7 headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 1.2.8 references to “Clauses” and “Schedules” are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to “paragraphs” are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made;
- 1.2.9 terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Clause 1.1 (Definitions) shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector and/or industry as appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;
- 1.2.10 reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
- 1.2.11 in the event of and only to the extent of any conflict between the Order Form, the Clauses of this Contract, any document referred to in the Clauses of this Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.2.11.1 the Framework Agreement;
 - 1.2.11.2 the Clauses of this Contract;
 - 1.2.11.3 the Order Form; and
 - 1.2.11.4 any other document referred to in the Clauses of this Contract.

2. DUE DILIGENCE

2.1 The Service Provider acknowledges and agrees that it:

- 2.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;
- 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
- 2.1.3 has entered into this Contract in reliance on its own due diligence alone.

3. NOT USED

4. CONTRACT PERIOD

- 4.1 This Contract shall take effect on the Commencement Date and shall either expire on:
 - 4.1.1 the Expiry Date; or
 - 4.1.2 the date of Final Termination or expiry of the Framework Agreement, whichever is the earlier, unless terminated earlier pursuant to Clause 24 (Termination).
- 4.2 No new Assignments shall be commenced once the Framework Agreement Ordering Period has been expired or terminated for six (6) months.
- 4.3 No Assignment shall extend beyond the expiry or termination of this Contract.

5. SUPPLY OF SERVICES

5.1 Implementation of the Services

- 5.1.1 The Service Provider shall provide the Services in accordance with the Implementation Plan and Milestones (if any).
- 5.1.2 Where the Order Form requires that the Services are to be carried out in accordance with the Implementation Plan and Milestones then the Parties agree to carry out their respective obligations set out in Schedule 6 (Testing).

5.2 On-going Supply of the Services

- 5.2.1 The Service Provider shall supply the Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration for the payment of the Contract Charges. The Customer shall access the Services via the Web Portal as set out in Schedule 1 (The Services), unless the Web Portal is unavailable, or providing a significantly degraded level of service for an extended period in which case the Service Provider and the Customer, subject to agreement with the Authority, may agree to use an alternative method of performing the functions normally fulfilled by the Web Portal until such time as the Web Portal is available or functioning acceptably once more.
- 5.2.2 If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Services does not meet or differs in any way from the requirements of this Contract, the Service Provider shall at its own expense re-schedule and re-perform

such Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Customer.

5.2.3 The Service Provider acknowledges and agrees that the Customer relies on the skill and judgment of the Service Provider in the supply of the Services and the performance of its obligations under this Contract.

5.2.4 The Service Provider shall ensure that the Supplier Terms or provisions substantially equivalent to them are reflected in all its agreements with Suppliers (and any and all agreements entered into by its Suppliers with Sub-Suppliers) with the necessary changes to reflect the changed context ("**Supplier Agreements**") and in the event that a Supplier Agreement includes other provisions then the Service Provider shall ensure or shall procure that all Suppliers and all Sub-Suppliers ensure that the Supplier Agreement provides that the Supplier Terms prevail over such other provisions.

5.3 Temporary Worker Services

5.3.1 In respect of every Assignment the Service Provider shall procure that the Temporary Worker carries out the Temporary Worker Services.

5.3.2 The Service Provider shall procure that the Temporary Worker Conditions, or terms substantively similar are reflected in any contract between the Service Provider, or any Supplier, or any Sub-Supplier and the Temporary Worker (the "**Temporary Worker Agreement**"). In the event of any conflict between the Temporary Worker Conditions and the other provisions of the Temporary Worker Agreement the former shall prevail

5.3.3 If so requested by the Customer the Service Provider shall procure that the Temporary Worker enters into:

5.3.3.1 a direct Confidentiality Agreement on terms substantively similar to those at Schedule 12; and

5.3.3.2 a Direct Agreement with the Customer on terms substantively similar to those at Schedule 12.

5.3.4 The Service Provider shall procure that all Temporary Worker Agreements and Supplier Agreements include:

5.3.4.1 a provision which reserves, for the Customer, third party rights under the Contracts (Rights of Third Parties) Act 1999 which permit the Customer to enforce the terms of i. the Temporary Worker Agreement, and ii. the Supplier Agreement as if it were the Service Provider or Supplier and the Service Provider and Suppliers shall provide the Customer with such assistance as the Customer may require from time to time in order to exercise such right including to enforce the Temporary Worker Conditions and Supplier Terms.

5.3.4.2 The Service Provider acknowledges that the Customer is entitled to and may contact a Temporary Worker requesting

information to demonstrate that the Temporary Worker has complied and continues to comply with all obligations imposed upon the Temporary Worker by the Temporary Worker Legislation. The Customer may share such data with HMRC, Government departments (including their arm's length bodies) or such other regulatory bodies as may be necessary to determine compliance with the Temporary Worker Legislation.

5.3.4.3 If and to the extent that:

5.3.4.3.1 the Temporary Worker does not provide the information referred to in Clause 5.3.4.2 above within such time period as may reasonably be requested by the Customer; or

5.3.4.3.2 the information provided by the Temporary Worker in accordance with Clause 5.3.4.2 above is inadequate to demonstrate that the Temporary Worker has and continues to comply with the obligations on the Temporary Worker imposed upon the Temporary Worker by the Temporary Worker Legislation; or

5.3.4.3.3 the information provided by the Temporary Worker in accordance with Clause 5.3.4.2 above demonstrates that, at any time the Temporary Worker has not or is not complying with obligations imposed on the Temporary Worker by the Temporary Worker Legislation,

then the Customer may terminate the Assignment by giving written notice to the Service Provider specifying the date on which the Assignment will cease and the Service Provider shall or shall procure termination of the Temporary Worker Agreement relating to the Assignment on the specified date or immediately where no date is specified.

5.3.5 The Service Provider agrees that the Customer shall not have any liability to the Service Provider in respect of any Assignment terminated in accordance with Clause 5.3.4.3, save that the Customer shall pay any Contract Charges due or accruing in respect of the Assignment in relation to Temporary Worker Services rendered prior to termination.

5.3.6 If so requested by the Customer from time to time, the Service Provider shall promptly provide the Customer with a copy of any Supplier Agreement and/or any Temporary Worker Agreement. The Service Provider shall notify the Customer if any variations are made to the Supplier Agreements and/or the Temporary Worker Agreements after the copies of the unvaried versions have been provided to the Customer and if so requested by the Customer shall promptly provide to the Customer a copy of the Supplier Agreement and/or Temporary Worker Agreement as varied.

5.3.7 The Service Provider, its Suppliers and their Sub-Suppliers, its Sub-Contractors and their agents and Staff shall at all times comply with the provisions of the Human Rights Act 1998 in the execution of this

Contract. The Service Provider acknowledges that any breach of this Clause 5.3.7 shall constitute a material breach of the Contract and consequently the Customer may exercise its rights under Clause 24.4 of this Contract as a result of the occurrence of any such failure.

- 5.3.8 The Temporary Worker shall be regarded at all times as having a contract for services with the Service Provider and no relationship of employer and employee shall arise between the Customer and the Temporary Worker under any circumstances regardless of the degree of supervision that may be exercised over the Temporary Worker by the Customer.
- 5.3.9 In the event that the Temporary Worker asserts for any reason that he is or has become an employee of the Customer, then in such circumstances, if the Service Provider is aware of the same, the Service Provider shall notify the Customer in writing as soon as reasonably practicable upon becoming aware of the same. Upon receipt of such written notification, the Service Provider and the Customer agree that they shall consult with each other as soon as reasonably practicable and take such action as the parties mutually agree.
- 5.3.10 The Service Provider will indemnify in full and hold the Customer harmless from and against all and any claims, proceedings, actions, damages, costs, expenses and any other liabilities incurred or suffered by the Customer (whether in respect of remuneration or otherwise) arising out of or in connection with any claim or assertion that the Temporary Worker is or was an employee or worker of the Customer where it arises out of or in connection with any act or omission of the Service Provider. This Clause 5.3.10 shall not apply in circumstances where:
- 5.3.3.3 the Customer offers to employ or engage the Temporary Worker; or
- 5.3.3.4 acts or omissions of the Customer outside the course of ordinary day to day activities cause such claim or assertion.
- 5.3.11 The Service Provider shall provide all the equipment necessary for the supply of the Services. In the event that the Service Provider brings any equipment onto the Customer's premises it shall be at the Service Provider's own risk and the Customer shall have no liability for any loss of or damage to any equipment unless and to the extent that the Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default.
- 5.3.12 The hours of work of the Temporary Worker shall be as agreed between the Temporary Worker and the Customer. Where the Customer requests that additional hours be worked, the Service Provider shall use reasonable endeavours to procure that the Temporary Worker complies with such request. The cost of any additional hours if not previously agreed between the Parties will be subject to the agreement of the Parties.

5.3.13 The Service Provider shall notify the Customer as soon as possible of Temporary Worker absences.

5.4 Quality

5.4.1 The Service Provider shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Services must be provided has not been specified in the Contract, the Service Provider shall agree the relevant standard for the provision of the Services with the Customer prior to the supply of the Services commencing and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

5.4.2 The Service Provider shall ensure that the Staff shall at all times during the Contract Period:

5.4.2.1 faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Services;

5.4.2.2 obey all lawful instructions and reasonable directions of the Customer and provide the Services to the reasonable satisfaction of the Customer; and

5.4.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.

5.4.3 The Service Provider shall perform its obligations under the Contract in a timely manner.

5.4.4 The Service Provider shall supply the Services in accordance with the specification in the Framework Agreement, the Order Form and in accordance with all applicable Laws.

5.4.5 The Service Provider shall at all times during the Contract Period ensure that:

5.4.5.1 the Services conform in all respects with the specifications set out in the Order Form and/or where applicable the Framework Agreement;

5.4.5.2 the Services operate in accordance with the relevant technical specifications and correspond with all requirements and standards as set out in this Contract; and

5.4.5.3 the Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards.

5.5 [Testing

5.5.1 The Parties shall carry out their obligations set out in Schedule 6.]

5.6 Service Levels

5.6.1 The Service Provider shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to initiate remedial action in accordance with the provisions of Schedule 8 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Supplier in accordance with Clause 24.13.

5.6.2 The Service Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.

6. ASSISTANCE ON EXPIRY OR TERMINATION

6 Exit Assistance

6.1 The Service Provider shall provide such support and assistance required in order to achieve a smooth transfer of the Services to the Customer or a Replacement Service Provider before and after the Expiry Date as specified by the Customer at any time prior to (or within ninety (90) days following) the occurrence of a termination or expiry of the Contract, in order to achieve a smooth transfer of the Services to the Customer or any Replacement Service Provider following such termination or expiry.

6.2 The Customer shall reimburse the Service Provider for any reasonable additional costs incurred in providing the assistance referred to in Clause 6.1 above provided that the Service Provider notifies the Customer of such costs in advance of incurring them, the Customer agrees to the Service Provider undertaking the relevant activities and the Service Provider is not required to provide the assistance under any other contractual obligation. The costs shall be calculated by reference to the rates for ad-hoc additional services specified at Annex D to Schedule 2.

7. DISASTER RECOVERY AND BUSINESS CONTINUITY

7.1 The Parties shall comply with the provisions of Schedule 7 (Disaster Recovery and Business Continuity).

8. MONITORING OF CONTRACT PERFORMANCE

8.1 The Service Provider shall comply with the monitoring arrangements referred to in paragraph 4.5 of the Order Form including, but not limited to, providing such data and information as the Service Provider may be required to produce under this Contract.

8.2 The Service Provider shall supply the management information to the Customer set out in Annex 4 of Schedule 1 on such date during the Contract Period as specified in Annex 4 of Schedule 1 or on such other date as is requested by the Customer.

9. CONTINUOUS IMPROVEMENT

- 9.1 The Service Provider shall have an ongoing obligation throughout the Contract Period to identify new or potential improvements to the Services pursuant to which it will regularly review with the Customer the Services and the manner in which it is providing the Services with a view to reducing the Customer's costs (including the Contract Charges) and/or improving the quality and efficiency of the Services and to comply with any specific provisions in accordance with the provisions referred to in paragraph 4.6 of the Order Form.
- 9.2 Any amendments to the Services and/or the Contract Charges, required by the Customer to implement or effect such improvements identified as a result of the Service Provider's compliance with Clause 9.1, shall be implemented by the Service Provider (subject to compliance with EU procurement Law and the Framework Agreement) and the Service Provider shall implement such variation amendment or improvement at no additional cost to the Customer.
- 9.3 The Service Provider shall ensure that the information that it provides to the Customer in accordance with Clause 9.1 shall be sufficient for the Customer to decide whether any improvement to the Services should be implemented. The Service Provider shall provide any further information that the Customer requests in connection with any improvements to the Services identified by the Service Provider.
- 9.4 Notwithstanding the Service Provider's obligations under Clause 9.1 to 9.3 above, the Customer shall be entitled to regularly benchmark the Contract Charges and performance of the Services, against other suppliers providing services substantially the same as the Services during the Contract Period in order to compare the Contract Charges and level of performance of the Services with charges and services offered by third parties so as to provide the Customer with information for comparison purposes.
- 9.5 The Customer shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking evaluation referred to in Clause 9.4 above.
- 9.6 The Customer shall be entitled to disclose the results of any benchmarking of the Contract Charges and provision of the Services carried out under Clause 9.4 to the Authority and any Contracting Body (subject to the Contracting Body entering into reasonable confidentiality undertakings).
- 9.7 The Service Provider shall use all reasonable endeavours and act in good faith to supply information required by the Customer in order to undertake the benchmarking in accordance with Clause 9.4 and such information requirements shall be at the discretion of the Customer.
- 9.8 Where, as a consequence of any benchmarking carried out by the Customer under Clause 9.4, the Customer decides improvements to the Services should be implemented such improvements shall be implemented by way of the Variation procedures set out in Clause 38.
- 9.9 The benefit of any work carried out by the Service Provider to improve or update the Services or to facilitate their delivery to any other Contracting

Body and/or any alterations or variations to the Contract Charges or the provision of the Services, which are identified in the Continuous Improvement Plan produced by the Service Provider and/or as a consequence of any benchmarking carried out by the Authority pursuant to Framework Schedule 7 (Value for Money), shall be implemented by the Service Provider (subject to EU procurement Law and the Framework Agreement) at no additional cost to the Customer.

10. DISRUPTION

- 10.1 The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.
- 10.2 The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Service Provider's own employees or others, which affects or might affect the Service Provider's ability at any time to perform its obligations under the Contract.
- 10.3 In the event of industrial action by the Service Provider's Staff, the Service Provider shall seek Approval to its proposals for the continuance of the supply of the Services in accordance with its obligations under the Contract.
- 10.4 If the Service Provider's proposals referred to in Clause 10.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer, by notice in writing.
- 10.5 If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

11. REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES

- 11.1 Without prejudice to any other right or remedy which the Customer may have, if any Services are not supplied in accordance with, or the Service Provider fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Services have been Delivered) do any of the following:
 - 11.1.1 at the Customer's option, give the Service Provider the opportunity (at the Service Provider's expense) to remedy any failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply Replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;

- 11.1.2 carry out, at the Service Provider's expense, any work necessary to make the Services comply with the Contract;
- 11.1.3 without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
- 11.1.4 without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Services as have been terminated; and/or
- 11.1.5 charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining Replacement Services.

11.2 In the event that the Service Provider:

- 11.2.1 fails to comply with Clause 11.1 and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or
- 11.2.2 persistently fails to comply with Clause 11.1,

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

12. PAYMENT AND CONTRACT CHARGES

12.1 Contract Charges

- 12.1.1 In consideration of the Supplier's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with Clause 12.2 (Payment and VAT).
- 12.1.2 The Customer shall, in addition to the Contract Charges and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
- 12.1.3 If at any time during the Contract Period the Service Provider reduces its Framework Prices for any Services which are provided under the Framework Agreement (whether or not such Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Service

Provider shall immediately reduce the Contract Charges for such Services under this Contract by the same amount. For the avoidance of doubt, this Clause 12.1.3 shall not apply to the Temporary Worker Day Rates for existing Assignments where there are revisions to the rates specified by the Temporary Worker Rate Cards resulting from the operation of the Temporary Worker Rate Card management mechanism specified by schedule 3 of the Framework Agreement.

12.1.4 The benefit of any work being done pursuant to the provisions of Schedule 7 (Value for Money) of the Framework Agreement which is specifically commissioned from the Service Provider by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.

12.2 Payment and VAT

[Drafting Note: Option 1a – where the Customer has adopted the E-Payment Solutions]

12.2.1 The Service Provider and the Customer agree that the payment of the Contract Charges shall be managed via the EPayment Mechanism detailed at Schedule 2 as amended in accordance with paragraph 6.2 of the Order Form. For avoidance of doubt, the Service Provider shall be solely liable for any merchant fee levied by the E-Payment Provider]

[Drafting Note: Option 1b – where the Customer is registered with, and chooses to use the Government eMarket place to raise orders for Assignments]

12.2.1 The Service Provider and the Customer agree that the payment of the Contract Charges shall be managed via the Government eMarket place as detailed at Schedule 2.

[Drafting Note: Option 2 – where the Customer does not adopt the E-Payment Solution]

12.2.1 The Customer shall pay all sums properly due and payable to the Service Provider in cleared funds within the time period specified in paragraph 6.2 of the Order Form and the Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

12.2.2 Where the Service Provider enters into a Sub-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 Service Provider to the Sub-Contractor within a specified period not exceeding thirty (30) calendar days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.

12.2.3 The Service Provider shall add VAT to the Contract Charges at the prevailing rate as applicable.

12.2.4 The Service Provider shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this Clause 12.2.4 shall be paid by the Service Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

12.2.5 The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Contract under Clause 24.4 (Termination on Default) for the Customer's failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

12.3 Recovery of Sums Due

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

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

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

12.3.4 All payments due shall be made in accordance with Schedule 2 (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.

12.4 Euro

12.4.1 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 Service Provider free of charge to the Customer.

12.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with Clause 12.4.1 by the Supplier.

12.5 Staff & Temporary Worker's Pay

12.5.1 The Service Provider shall ensure that Staff and Temporary Workers are paid at least the national minimum wage in accordance with the National Minimum Wage Act 1998.

12.5.2 The Service Provider acknowledges and agrees that the Customer shall be entitled to audit the Service Provider's payment of the Temporary Worker's Pay to the Temporary Worker including the amount and frequency of such payment.

12.5.3 The Service Provider shall on demand provide the Customer with all reasonable co-operation and assistance in relation to the audits which may be carried out pursuant to Clause 12.5.1 above. The Service Provider shall:

12.5.3.1 provide all information requested by the Customer within the scope of the audit; and

12.5.3.2 assist the Customer in obtaining such information directly from the Temporary Worker.

12.6 Travelling time and expenses

Travelling time of the Temporary Worker and expenses incurred by the Temporary Worker in the provision of the Temporary Worker Services shall be chargeable and payable as agreed with the Customer. The Service Provider shall ensure that the calculation of such travelling time and expenses shall be in accordance with the provisions of Schedule 2.

13. KEY PERSONNEL

13.1 The Parties have agreed to the appointment of the Key Personnel. The Service Provider shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.

13.2 The Service Provider shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.

13.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Service Provider or Sub-Contractor.

13.4 The Service Provider acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Services to the Customer. The Service Provider will ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to

carry out the tasks assigned to the Key Personnel whom he or she has replaced.

- 13.5 The Customer may also require the Service Provider to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel.

14. SERVICE PROVIDER 'S STAFF

- 14.1 The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

14.1.1 any member of the Staff; or

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

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

- 14.2 At the Customer's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission to the Customer's Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

- 14.3 Staff engaged within the boundaries of the Customer'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 Customer's Premises.

- 14.4 If the Service Provider fails to comply with Clause 14.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

- 14.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider has failed to comply with Clause 14.2 shall be final and conclusive.

Relevant Convictions

- 14.6 The Service Provider shall ensure that no person who discloses that he has a Conviction, or who is found by the Service Provider to have any Convictions (whether as a result of a police check or through the Criminal Records Bureau procedures or otherwise), is employed or engaged in any part of the provision of the Services without Approval.

- 14.7 For each member of Staff who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Customer owes a special duty of care, the Service Provider shall (and shall procure that the relevant Sub-Contractor shall):

14.7.1 carry out a check with the records held by DfE;

14.7.2 conduct thorough questioning a review of any Convictions; and

14.7.3 ensure a police check is completed and such other checks as may be carried out through the Criminal Records Bureau (or is mandated for by statute.),

and the Service Provider shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Conviction or an inappropriate record.

Offers of Employment

14.8 Other than as provided for in Clause 14.9, the Customer will not, without the prior consent of the Service Provider during the Contract Period and for a period of three (3) Months thereafter, directly or indirectly procure the services of any member of the Service Provider's Staff.

14.9 In the event that the Customer breaches Clause 14.8 above, the Customer shall pay to the Service Provider all unavoidable and reasonable costs incurred by the Service Provider including a sum equal to the gross salary of the employee due during any relevant contractual period of notice to be worked by the member of Service Provider's Staff.

14.10 Other than as provided for in Clause 14.12, the Service Provider will not, without the prior written consent of the Customer during the Contract Period and for a period of three (3) Months thereafter, directly or indirectly procure the services of any Customer Employee.

14.11 In the event that the Service Provider breaches Clause 14.10 above, the Service Provider shall pay to the Customer all unavoidable and reasonable costs incurred by the Customer including a sum equal to the gross salary of the Customer Employee due during any relevant contractual period of notice to be worked.

14.12 No breach of Clauses 14.8 and 14.10 shall be deemed to have occurred where an individual employed or engaged by one Party becomes an employee of the second Party as a result of a response by that individual to an advertisement placed by or on behalf of the second Party where it is apparent that the principal purpose of the advertisement was not the solicitation or recruitment of a person directly engaged in connection with this Contract and that the advertisement was equally likely to attract applications from individuals who were not employed or engaged by the first Party.

15. TUPE

15.1 The Customer shall, based upon a reasonable assessment of the facts, state in paragraph 3.2 of the Order Form which Employment Regulations wording as set out in Parts A, B and C (Parts A and B may both apply) of this Clause 15 will apply to the Contract.

[Guidance Note: Please see Employment Regulations. Clauses in Part B and Part C must be used where Employment Regulations applies at commencement.]

Part A applies where Employment Regulations is not intended to apply at Commencement.

Part B applies where the Customer itself currently carries out the Services and is being replaced by the Service Provider.

Part C applies where the Customer currently engages a third party to provide the Services and is replacing such third party with the Service Provider.

Also consider adding pensions Schedule.]

PART A

[Guidance Note: Only to be used where Employment Regulations is not intended to apply at commencement.]

- 15.2 The Customer and the Service Provider will proceed on the basis that the commencement of the provision of the Services by the Service Provider under this Contract will not be a "Relevant Transfer". In the circumstances, the Customer and the Service Provider agree that no employees of the Customer will transfer to the Service Provider by virtue of the operation of Employment Regulations or the Acquired Rights Directive.
- 15.3 If any employee of the Customer claims or it is determined that his contract of employment has been transferred from the Customer to the Service Provider pursuant to Employment Regulations or the Acquired Rights Directive then:
 - 15.3.1 The Service Provider will, within seven (7) Working Days of becoming aware of that fact, give notice in writing to the Customer;
 - 15.3.2 The Customer may offer employment to such person within twenty one (21) Working Days of the notification by the Service Provider or take such other steps as it considers appropriate to deal with the matter;
 - 15.3.3 If such offer is accepted (or if the situation has otherwise been resolved by the Customer), the Service Provider shall immediately release the person from his employment;
 - 15.3.4 If after the twenty one (21) Working Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Service Provider may within seven (7) Working Days give notice to terminate the employment of such person;
 - 15.3.5 Subject to Clause 15.4 and subject to the Service Provider acting in this way or in such other way as may be agreed between the Customer and the Service Provider, the Customer will indemnify the Service Provider against all Employee Liabilities arising out of such termination provided the Service Provider complies with all applicable proper employment procedures.
 - 15.3.6 If such person is neither re-employed by the Customer nor dismissed by the Service Provider within the time scales set out in this Clause

15.3 such person will be treated as having transferred to the Service Provider by virtue of the operation of Employment Regulations and the Service Provider shall comply with such obligations as may be imposed upon it under Employment Regulations or otherwise by Law.

- 15.4 The indemnity in Clause 15.3.5 shall only apply where the notification referred to in Clause 15.3.1 is made by the Service Provider to the Customer within six (6) Months of the Relevant Transfer Date.

PART B

[Guidance Note: applies where the Customer itself currently carries out the Services and is being replaced by the Service Provider.]

- 15.5 The Customer and the Service Provider will proceed on the basis that the commencement of the provision of the Services by the Service Provider under this Contract will be a "Relevant Transfer". The Customer and the Service Provider further agree that, as a result of the operation of Employment Regulations or the Acquired Rights Directive, the contracts of employment between the Customer and the Transferring Customer Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Service Provider and each such Transferring Customer Employee.
- 15.6 The Customer will perform and discharge all its obligations in respect of all the Transferring Customer Employees prior to the Relevant Transfer Date including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, and any necessary apportionments in respect of any periodic payments will be made.
- 15.7 The Service Provider shall comply with all of its obligations under Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Customer Employees from and after the Relevant Transfer Date. The Service Provider shall indemnify the Customer against all Employee Liabilities arising from the Service Provider's failure to comply with all of its obligations under Employment Regulations and/or perform and discharge any such obligation.
- 15.8 The Customer will indemnify the Service Provider against any Employee Liabilities in respect of the Transferring Customer Employees arising from or as a result of:
- 15.8.1 any act or omission by the Customer relating to a Transferring Customer Employee occurring before the Relevant Transfer Date or any other matter, event or circumstance (other than an act or omission of the Service Provider or any Sub-Contractor) occurring or having its origin before the Relevant Transfer Date;
- 15.8.2 subject to Clause 15.9, any claim made by or in respect of any person employed or formerly employed by the Customer other than a Transferring Customer Employee for which it is alleged the Service

Provider may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

- 15.8.3 any claim made by or in respect of a Transferring Customer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Customer Employee relating to any act or omission of the Customer in relation to its obligations under Regulation 13 of Employment Regulations, except to the extent that the liability arises from the Service Provider's or any Sub-Contractor's failure to comply with Regulation 13(4) of the Employment Regulations.
- 15.9 If any person who is not a Transferring Customer Employee claims, or it is determined, that his contract of employment has been transferred from the Customer to the Service Provider pursuant to Employment Regulations or the Acquired Rights Directive then:
 - 15.9.1 the Service Provider shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer; and
 - 15.9.2 the Customer may offer employment to such person within fifteen (15) Working Days of the notification by the Service Provider, or take such other steps as it considers appropriate to deal with the matter.
 - 15.9.3 If such offer is accepted, or if the situation has otherwise been resolved by the Customer, the Service Provider shall immediately release the person from his employment.
 - 15.9.4 If, after the fifteen (15) Working Day period specified in Clause 15.9.2 has elapsed:
 - 15.9.4.1 no such offer of employment has been made; or
 - 15.9.4.2 such offer has been made but not accepted; or
 - 15.9.4.3 the situation has not otherwise been resolved,the Service Provider may within five (5) Working Days give notice to terminate the employment of such person.
- 15.10 Subject to the Service Provider acting in accordance with the provisions of Clause 15.9 and subject to the Service Provider complying with all applicable proper employment procedures set out in Law, the Customer will indemnify the Service Provider against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 15.9.
- 15.11 If any such person as is described in Clause 15.9 is neither re-employed by the Customer nor dismissed by the Service Provider within the time scales set out in Clause 15.9 such person will be treated as a Transferring Customer Employee.
- 15.12 The Service Provider shall indemnify the Customer against all Employee Liabilities arising from the Service Provider's and any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities

in respect of the Transferring Customer Employees arising from or as a result of any act or omission by the Service Provider or any Sub-Contractor relating to a Transferring Customer Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Transferring Customer Employee.

15.13 The Service Provider shall indemnify the Customer against all Employee Liabilities in connection with or arising from any claim made by or in respect of any Transferring Customer Employee (or, where applicable, any trade union or employee representative (as defined in Employment Regulations) of any Transferring Customer Employee) arising out of or in connection with:

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

15.13.2 in relation to the breach or non-observance by the Service Provider after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Customer Employee;

15.13.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

15.13.3.1 in relation to any Transferring Customer Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

15.13.3.2 in relation to any employee who is not a Transferring Customer Employee, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Customer to the Service Provider, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date; and

- 15.13.4 in relation to his/her employment or its termination arising or occurring on or after the Relevant Transfer Date;
- 15.14 The Service Provider shall notify the Customer of any claims by any Transferring Customer Employee as soon as practicably possible to allow the Customer to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.
- 15.15 The Service Provider will, and will procure that any Sub-Contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Transferring Customer Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance.
- 15.16 The Customer warrants that the information provided to the Service Provider regarding Transferring Customer Employees shall be true and accurate in all material respects.
- 15.17 The Customer agrees that it shall not other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services during the period prior to the Relevant Transfer Date save where legally or contractually obliged to do so:
- 15.17.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
 - 15.17.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
 - 15.17.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 15.17.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees; and
 - 15.17.5 increase or reduce the total number of employees so engaged, replace or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any Transferring Customer Employee save for:
 - 15.17.5.1 the execution of assigned operations as detailed in 15.17.3; and/or
 - 15.17.5.2 replacing voluntary resignations or staff terminated by due disciplinary process to satisfy the fulfilment of

previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;

PART C

[Guidance Note: applies where the Customer currently engages a third party to provide the Services and is replacing such third party with the Service Provider.]

- 15.18 The Customer and the Service Provider will proceed on the basis that the commencement of the provision of the Services by the Service Provider under this Contract will be a “Relevant Transfer”. The Customer and the Service Provider further agree that, as a result of the operation of the Employment Regulations, the contracts of employment between the Former Service Provider and the Former Service Provider’s Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Relevant Transfer Date as if originally made between the Service Provider and each such Former Service Provider Employee.
- 15.19 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Service Provider will perform and discharge all its obligations in respect of all the Former Service Provider Employees, including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, prior to the Relevant Transfer Date and to make any necessary apportionments in respect of any periodic payments due to them.
- 15.20 The Service Provider shall comply with all of its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Former Service Provider Employees including all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions, pension contributions, from and after the Relevant Transfer Date. The Service Provider shall indemnify the Customer for itself and on behalf of the Former Service Provider against all Employee Liabilities arising from the Service Provider’s failure to comply with all of its obligations under the Employment Regulations and/or perform and discharge any such obligation in relation to the Former Service Provider’s Employees.
- 15.21 The Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Service Provider will indemnify the Service Provider against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Service Provider’s Employee (or, where applicable, any trade union or employee representative of any Former Service Provider’s Employees) arising out of or in connection with:
- 15.21.1 any fact or matter concerning or arising from his/her employment, or the termination thereof, before the Relevant Transfer Date, including (but not limited to) any claims of unfair dismissal, wrongful dismissal, unlawful deduction, breach of contract, sex

discrimination, race discrimination or disability discrimination, or any claim for a redundancy payment;

15.21.2 the breach or non-observance by the Former Service Provider during the period prior to the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Service Provider Employees; and

15.21.3 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

15.21.3.1 in relation to any Former Service Provider Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

15.21.3.2 in relation to any employee who is not a Former Service Provider Employees, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Former Service Provider to the Service Provider, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

15.22 If any person who is not a Former Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the Former Service Provider to the Service Provider pursuant to Employment Regulations or the Acquired Rights Directive then:

15.22.1 the Service Provider shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Customer (which may include notice to a Former Service Provider); and

15.22.2 the Former Service Provider may offer employment to such person within fifteen (15) Working Days of the notification by the Service Provider, or take such other steps as it considers appropriate to deal with the matter.

15.22.3 If such offer is accepted, or if the situation has otherwise been resolved by the Former Service Provider, the Service Provider shall immediately release the person from his employment.

15.22.4 If, after the fifteen (15) Working Day period specified in Clause 15.22.2 has elapsed:

15.22.5 no such offer of employment has been made; or

15.22.6 such offer has been made but not accepted; or

15.22.7 the situation has not otherwise been resolved,

the Service Provider may within five (5) Working Days give notice to terminate the employment of such person.

- 15.23 Subject to the Service Provider acting in accordance with the provisions of Clause 15.22 and subject to the Service Provider complying with all applicable proper employment procedures set out in Law, the Customer will use reasonable endeavours to procure (to the extent it has a contractual right to do so) that the Former Service Provider will indemnify the Service Provider against all liabilities, damages, costs (including reasonable legal costs), claims, awards and expenses (save for any claims for personal injury which are covered by insurance) arising out of termination described in Clause 15.22.
- 15.24 If any such person as is described in Clause 15.22 is neither re-employed by the Former Service Provider nor dismissed by the Service Provider within the time scales set out in Clauses 15.22 such person will be treated as a Former Service Provider Employee.
- 15.25 The Service Provider shall indemnify the Customer on behalf of the Former Service Provider against all Employee Liabilities arising from the Service Provider's or any Sub-Contractor's failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Former Service Provider Employees arising from or as a result of any act or omission by the Service Provider or any Sub-Contractor relating to a Former Service Provider Employee occurring before, on or after the Relevant Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Relevant Transfer Date which would give rise to a substantial change in working conditions to the material detriment of a Former Service Provider Employee.
- 15.26 The Service Provider will, and will procure that any Sub-Contractor will, comply with any requirement notified to it by the Customer relating to pensions in respect of any Former Service Provider Employee who is a Second Generation Fair Deal Employee as set down in (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000 and (b) HM Treasury's paper entitled "Fair Deal for Staff Pensions: Procurement of Bulk Transfers and Related Issues" of June 2004 or any other replacement statement of practice, paper or other guidance.
- 15.27 The Service Provider shall indemnify the Customer for itself and on behalf of the Former Service Provider against all Employee Liabilities (save for any claims for personal injury which are covered by insurance) in connection with or arising from any claim by any Former Service Provider Employee (or, where applicable, any trainee or employee representative of any Former Service Provider Employee) arising or in connection with:
- 15.27.1 his/her employment or its termination arising or occurring on or after the Relevant Transfer Date;
- 15.27.2 a failure of the Service Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Former Service Provider Employee in respect of the period on or after the Relevant Transfer Date;

- 15.27.3 any act or omission by the Service Provider or any Sub-Contractor occurring on or after the Relevant Transfer Date;
- 15.27.4 any claim made by or in respect of a Former Service Provider Employee or any appropriate employee representative (as defined in Employment Regulations) of any Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its or their obligations under Employment Regulations whether occurring before, on or after the Relevant Transfer Date including any claim made by or in respect of a Former Service Provider Employee or any appropriate employee representative (as defined in Employment Regulations) of any Former Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its or their obligations under Regulation 13 of the Employment Regulations or in respect of an award of compensation under Regulation 15 of the Employment Regulations except to the extent that the liability arises from the Customer's or any Former Service Provider's failure to comply with their obligations under the Employment Regulations;
- 15.27.5 any statement communicated to or action undertaken by the Service Provider to, or in respect of, any Former Service Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Customer or the Former Service Provider in writing.
- 15.27.6 the breach or non-observance by the Service Provider during the period on or after the Relevant Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Former Service Provider Employee;
- 15.27.7 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- 15.27.7.1 in relation to any Former Service Provider Employee, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- 15.27.7.2 in relation to any employee who is not a Former Service Provider Employee, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Former Service Provider to the Service Provider, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date.

15.27.8 The Service Provider shall notify the Customer of any claims by any Former Service Provider's Employee as soon as practicably possible to allow the Customer and the Former Service Provider to conduct or control the defence to such claims as well as any settlement negotiations and shall comply with all reasonable instructions of the Customer and provide such co-operation as the Customer may reasonably require in this respect.

15.28 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the indemnities set out in Clauses 15.18 to 15.27 above to the extent necessary that any Former Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Former Service Provider by the Service Provider in its own right pursuant to section 1(1) of that Act.

16. PRE-SERVICE TRANSFER OBLIGATIONS

16.1 The Service Provider agrees that, subject to compliance with the Data Protection Legislation:

16.1.1 within twenty (20) Working Days of the earliest of:

16.1.1.1 receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; or

16.1.1.2 receipt of the giving of notice of early termination of this Contract or any part thereof; or

16.1.1.3 the date which is twelve (12) Months before the due expiry date of this Contract, or

16.1.1.4 receipt of a written request of the Customer at any time, save that any such request may only be made once in any six (6) month period;

it shall provide the Service Provider's Provisional Staff List together with Staffing Information in relation to such persons to the Customer (or, at the direction of the Customer, to an actual or prospective Replacement Service Provider or prospective tenderer for Replacement Services) and it will provide an updated Service Provider's Provisional Staff List at such intervals as are reasonably requested by the Customer;

16.1.2 at least twenty (20) Working Days prior to the Service Transfer Date, the Service Provider shall provide to the Customer and to any Replacement Service Provider a final list of Transferring Service Provider Employees which shall transfer under Employment Regulations (the "**Service Provider's Final Staff List**"); and

16.1.3 the Customer shall be permitted to use and disclose information provided by the Service Provider under Clause 16.1.2 for informing any tenderer or other prospective Replacement Service Provider of any Replacement Services.

- 16.2 The Service Provider's Final Staff List will identify which of the Staff named are Transferring Service Provider Employees. The provision of personal data regarding those individuals detailed on the Service Provider's Final Staff List is subject to the consent of such individuals (which the Service Provider will use its reasonable endeavours to obtain) and being mindful that the final 'Personalised List' can change up to the date of transfer or in the absence of such individual's approval, the Service Provider's Final Staff List being suitably anonymised so as to comply with Data Protection Legislation.
- 16.3 The Service Provider warrants, for the benefit of the Customer and any Replacement Service Provider, that the information provided under Clauses 16.1 and 16.2 of this Contract shall be true and accurate in all material respects.
- 16.4 From the date of the earliest event referred to in Clauses 16.1.1.1 to 16.1.1.4 (inclusive), the Service Provider agrees, for the benefit of the Customer and any Replacement Service Provider, that it shall not, and agrees to procure that its Sub-Contractors shall not, other than in the ordinary course of business, in respect of those employees engaged in the provision of the Services:
- 16.4.1 replace or re-deploy any such employee other than where any replacement is of equivalent grade, skills, experience and expertise;
 - 16.4.2 make, promise, propose or permit any changes to their terms and conditions of employment (including any payments connected with the termination of employment);
 - 16.4.3 increase the proportion of working time spent on the Services (or the relevant part) by any of the Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 16.4.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Service Provider's Provisional Staff List; and
 - 16.4.5 increase or reduce the total number of employees so engaged, replace any Staff listed on the Service Provider's Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or terminate or give notice to terminate the employment or contracts of any persons on the Service Provider's Provisional Staff List save for:
 - 16.4.5.1 the execution of assigned operations as detailed in 16.4.3; and/or
 - 16.4.5.2 replacing voluntary resignations or Staff terminated by due disciplinary process to satisfy the fulfilment of previously agreed work streams provided that any replacement is employed on the same terms and conditions of employment as the person he/she replaces;

- 16.5 The Service Provider will promptly notify or as appropriate will procure that the Sub-Contractor will promptly notify the Customer or, at the direction of the Customer, the Replacement Service Provider of any notice to terminate employment given by the Service Provider or any Sub-Contractor or received from any persons listed on the Service Provider's Provisional Staff List regardless of when such notice takes effect.
- 16.6 During the Contract Period, the Service Provider will provide to the Customer any information the Customer may reasonably require relating to any individual employed, assigned or engaged in providing the Services (subject to any limitations imposed by the Data Protection Legislation) including without limitation the Staffing Information and, upon reasonable request by the Customer and subject only to any limitation imposed by the Data Protection Legislation, the Service Provider will provide, and will procure that its Sub-Contractors will provide, the Customer or at the request of the Customer, the Replacement Service Provider, with access (on reasonable notice and during normal working hours) to such employment records as the Customer reasonably requests and will allow the Customer or any Replacement Service Provider to have copies of any such documents.
- 16.7 Within seven (7) Working Days following the Service Transfer Date, the Service Provider will provide to the Customer or any Replacement Service Provider, in respect of each person on the Service Provider's Final Staff List who is a Transferring Service Provider Employee:
- 16.7.1 the most recent Month's copy pay slip data;
 - 16.7.2 details of cumulative pay for tax and pension purposes;
 - 16.7.3 details of cumulative tax paid;
 - 16.7.4 tax code;
 - 16.7.5 details of any voluntary deductions from pay; and
 - 16.7.6 bank/building society account details for payroll purposes.

17. TUPE EXIT PROVISION

- 17.1 The Customer and the Service Provider will proceed on the basis that the commencement of the provision of the Services by the Replacement Service Provider under a replacement contract will be a "Relevant Transfer". The Customer and the Service Provider further agree that, as a result of the operation of Employment Regulations, the contracts of employment between the Service Provider and the Transferring Service Provider Employees (except in relation to any contract terms relating to occupational pension schemes) will have effect from the Service Transfer Date as if originally made between the Replacement Service Provider and each such Transferring Service Provider Employee.
- 17.2 The Service Provider shall, and shall procure that any Sub-Contractor shall, perform and discharge all its obligations in respect of all the Transferring Service Provider Employees up to the Service Transfer Date and any necessary apportionments in respect of any periodic payments due to them

will be made. The Service Provider shall indemnify the Customer for itself and on behalf of any Replacement Service Provider against all Employee Liabilities arising from the Service Provider's, or any Sub-Contractor's, failure to perform and discharge any such obligation.

17.3 The Service Provider shall indemnify the Customer for itself and on behalf of any Replacement Service Provider against any Employee Liabilities in respect of the Transferring Service Provider Employees arising from or as a result of:

17.3.1 any act or omission by the Service Provider or any Sub-Contractor occurring before the Service Transfer Date;

17.3.2 any claim made by or in respect of any person employed or formerly employed by the Service Provider or any Sub-Contractor other than a Transferring Service Provider Employee for which it is alleged that the Customer or any Replacement Service Provider may be liable by virtue of this Contract and/or Employment Regulations and/or the Acquired Rights Directive;

17.3.3 any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Service Provider or any Sub-Contractor in relation to its or their obligations under Employment Regulations whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13 of the Employment Regulations or in respect of an award of compensation under Regulation 15 the Employment Regulations of except to the extent that the liability arises from the Customer's or any Replacement Service Provider's failure to comply with Regulation 13(4) of the Employment Regulations;

17.3.4 any statement communicated to or action undertaken by the Service Provider to, or in respect of, any Transferring Service Provider Employee on or before the Service Transfer Date regarding the Service Transfer which has not been agreed in advance with the Customer in writing;

17.3.5 in relation to any proposed change by the Service Provider in the working conditions or terms of employment of any Transferring Service Provider Employees to take effect on or after the Service Transfer Date (including any claim for constructive dismissal), whether such change is proposed before, on or after the Service Transfer Date;

17.3.6 a failure of the Service Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and National Insurance contributions relating to the Transferring Service Provider Employees in respect of the period on or before the Service Transfer Date;

17.3.7 in respect of any fact or matter concerning or arising from the Transferring Service Provider Employees employment, or the

termination thereof, before the Service Transfer Date including any claim for a redundancy payment;

17.3.8 in relation to the breach or non-observance by the Service Provider during the period prior to the Service Transfer Date of any collective agreement or other custom or practice with a trade union or staff association in respect of any Transferring Service Provider Employees; and

17.3.9 any proceeding, claim or demand by the HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary National Insurance contributions:

(a) in relation to any Transferring Service Provider Employees, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Service Transfer Date; and

(b) in relation to any employee who is not a Transferring Service Provider Employees, and in respect of whom it is later alleged or determined that Employment Regulations applied so as to transfer his/her employment from the Service Provider to the Customer or the Replacement Service Provider, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Service Transfer Date.

17.4 If any person who is not a Transferring Service Provider Employee claims, or it is determined, that his contract of employment has been transferred from the Service Provider or any Sub-Contractor to the Customer or any Replacement Service Provider pursuant to Employment Regulations or the Acquired Rights Directive, then:

17.4.1 the Customer will and shall use its reasonable endeavours to procure that the Replacement Service Provider will, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Service Provider;

17.4.2 the Service Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Customer or the Replacement Service Provider or take such other steps as it considers appropriate to deal with the matter.

17.4.3 If such offer is accepted, or if the situation has otherwise been resolved by the Service Provider, the Customer shall and shall use its reasonable endeavours to procure that the Replacement Service Provider shall immediately release the person from his employment.

17.4.4 If, after the fifteen (15) Working Day period specified in Clause 17.8.2 has elapsed:

17.4.4.1 no such offer of employment has been made; or

17.4.4.2 such offer has been made but not accepted; or

17.4.4.3 the situation has not otherwise been resolved,

the Customer may and shall advise the Replacement Service Provider that it may within five (5) Working Days give notice to terminate the employment of such person.

17.5 Subject to the Customer or the Replacement Service Provider acting in accordance with the provisions of Clause 17.8 and in accordance with all applicable proper employment procedures set out in Law, the Service Provider shall indemnify the Customer for itself and on behalf of the Replacement Service Provider against all Employee Liabilities arising out of termination pursuant to the provisions of Clause 17.8.4.

17.6 If any such person as is described in Clause 17.8 is neither re-employed by the Service Provider or any Sub-Contractor nor dismissed by the Customer or Replacement Service Provider within the time scales set out in Clause 17.8, such person will be treated as a Transferring Service Provider Employee.

17.7 The Customer shall indemnify the Service Provider against all Employee Liabilities arising from the Customer's, and shall procure that the Replacement Service Provider shall indemnify the Service Provider against all Employee Liabilities arising from the Replacement Service Provider's, failure to perform and discharge any obligation and against any Employee Liabilities in respect of the Transferring Service Provider Employee arising from or as a result of any act or omission by the Customer or a Replacement Service Provider (as appropriate) relating to a Transferring Service Provider Employee occurring before, on or after the Service Transfer Date and/or any other matter, event or circumstance occurring or having its origin on or after the Service Transfer Date which would give rise to a substantial change in working conditions of a Transferring Service Provider Employee to the material detriment of a Transferring Service Provider Employee.

17.8 The Customer shall procure that the Replacement Service Provider shall indemnify the Service Provider against any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Replacement Service Provider or any of its Sub-Contractors in relation to its or their obligations under the Employment Regulations whether occurring before, on or after the Service Transfer Date including any claim relating to its obligations under Regulation 13(4) of Employment Regulations except to the extent that the liability arises from any Service Provider's or Sub-Contractor's failure to comply with its obligations under Employment Regulations.

17.9 The Customer shall indemnify the Service Provider against any claim made by or in respect of a Transferring Service Provider Employee or any appropriate employee representative (as defined in Employment Regulations) of any Transferring Service Provider Employee relating to any act or omission of the Customer in relation to its obligations under the Employment Regulations whether occurring before, on or after the Service Transfer Date including any claim relating to its or their obligations under Regulation 13(4) of Employment Regulations except to the extent that the liability arises from the

Service Provider's or Sub-Contractor's failure to comply with Regulation 13 of the Employment Regulations.

17.10 If, in the event of a Service Transfer to which Employment Regulations or the Acquired Rights Directive do not apply the following provisions shall apply:

17.10.1 the Customer can and shall advise the Replacement Service Provider that it can, in its discretion, make to any of the employees identified on the Service Provider's Provisional Staff List under Clause 17, an offer, in writing, to employ that employee under a new contract of employment to take effect on the Day after the cessation by the Service Provider of the provision of the Services (or the relevant part) in which such employee was employed.

17.10.2 When the offer has been made by the Customer or Replacement Service Provider and accepted by any employee or worker, the Service Provider shall and shall procure that any Sub-Contractor shall permit the employee or worker to leave its employment, as soon as practicable depending on the business needs of the Service Provider, which could be without the employee or worker having worked his full notice period, if the employee so requests.

If the employee does not accept an offer of employment made by the Customer or Replacement Service Provider, or no such offer is made, the employee shall remain employed by the Service Provider (or the relevant Sub-Contractor, as the case may be) and all Employee Liabilities in relation to the employee shall remain with the Service Provider or the relevant Sub-Contractor and the Service Provider shall indemnify the Customer for itself and on behalf of any Replacement Service Provider against any Employment Liabilities that either of them may incur in respect of any such employees of the Service Provider or the relevant Sub-Contractor.

17.11 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the indemnities set out in Clauses 17.5. to 17.14 above to the extent necessary that any Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Service Provider by the Service Provider in its own right pursuant to section 1(1) of that Act.

18. STAFFING & TEMPORARY WORKER SECURITY

18.1 The Service Provider shall comply with the Staff Vetting Procedures in respect of all Service Provider Staff employed or engaged in the provision of the Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

18.2 The Service Provider shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Services in compliance with the Security Requirements.

Temporary Worker Security

- 18.3 The Service Provider agrees that it will not require that the Temporary Worker nor the persons engaged by any Sub-Contractor obtain Clearance who have not previously held Clearance except where there is an urgent priority requirement including:
- 18.3.1 Clearance being genuinely necessary and proportionate; or
 - 18.3.2 the work must be completed by the relevant person within 30 days (in relation to Defence Vetting Agency Security Checks and Defence Vetting Agency Counter Terrorist Checks ("CTC")) and 100 days (in relation to Defence Vetting Agency Developed Vetting) of the commencement date of the relevant Assignment; or
 - 18.3.3 the role of the Temporary Worker or Sub-Contractor requires immediate and routine unsupervised access to:
 - (c) sites or persons at risk of terrorist attack, in which case a CTC can be required; or
 - (d) assets protectively marked as at least "SECRET" in accordance with the Customer's policies.
- 18.4 Save in respect of the circumstances set out in Clause 18.3 above in the event that it will take longer for the Temporary Worker to carry out the work than to secure Clearance and subject to the Customer's agreement, the Customer's existing practices for escorting and supervising un-cleared Temporary Workers or Sub-Contractors will be followed until such time as the Sub-Contractor's or Temporary Worker's Clearance is confirmed.
- 18.5 Where the Temporary Worker or persons engaged by a Sub-Contractor have previously held Clearance, the Service Provider may consider such person's Clearance as current if that person has not worked continuously on jobs where Clearance is required, only where the following conditions are met:
- 18.5.1 that person's existing Clearance is not more than three (3) Years old in relation to non List x or five (5) Years old in relation to List x;
 - 18.5.2 the Temporary Worker or Sub-Contractor has worked on a previous job and had required Clearance in the past twelve (12) Months; or
 - 18.5.3 the Temporary Worker or Sub-Contractor has not resided overseas for more than six (6) Months since its last cleared post.
- 18.6 The Service Provider shall ensure that all Temporary Workers that undertake an Assignment have been subject to a:
- 18.6.1 current and valid check in accordance with the Asylum and Nationality Act 2006;
 - 18.6.2 an identity check - to check a Candidate's full name, signature, date of birth, full permanent address;

18.6.3 a language Check - or other language competency test as maybe required by the department; and

18.6.4 a BPSS check, conducted in accordance with the HMG Baseline Personnel Security Standard:

www.cabinetoffice.gov.uk/sites/default/files/resources/baseline-personnel-security-standard.pdf) comprising of:

- i. an identity check; and
- ii. a verification of nationality and immigration status;
- iii. a verification of employment history; and
- iv. a verification of criminal record.

18.7 The Service Provider shall ensure that all Temporary Workers that undertake an Assignment do not have any unspent Convictions subject to the Rehabilitation of Offenders Act 1974

18.8 An authenticity check - the Service Provider must be able to demonstrate that all documents (not just those for verification of identity) are checked for authenticity and that the verification process is cumulative by the use of intelligent cross-referencing. In doing so the Service Provider must apply the guidance in the Good Practice Guide on Pre-employment screening- Document Verification from the Centre for the Protection of National Infrastructure (see website below) must be applied.

www.cpni.gov.uk/advice/Personnel-security1/Screening/.

18.9 a right to work check- The Service Provider must ensure that Candidates are eligible to work in the United Kingdom. In doing so the guidance in the Good Practice Guide on Pre-employment screening- Document Verification from the Centre for the Protection of National Infrastructure www.cpni.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx must be applied and the Service Provider must carry out all of the following checks on documentation:.

18.9.1 a qualification check – the Service Provider must carry out a qualification check to verify that the information about education, training or essential professional qualifications provided by each candidate in support of their CV is correct. If a candidate has gained their essential qualifications overseas, the Service Provider must check that this qualification exists, that it is equivalent to the stated UK qualification and that the Candidate does, in fact, hold the qualification. Further advice and contact details can be found on the Foreign and Commonwealth website at www.fco.gov.uk. If there is any doubt that qualifications are genuine, the Service Provider must contact the National Academic Recognition Centre (NARIC) at www.naric.org.uk;

18.9.2 vulnerable Groups – When required by the Customer or by Law the Service Provider shall provide information to the Independent Safeguarding Authority under the Safeguarding Vulnerable Groups Act 2006 in relation to Candidates offered to the Customer Further advice and contact details can be found on the Independent Safeguarding Authority website at www.isa-gov.org; and

18.9.3 an employment history and reference check. The Service Provider must ensure that each Candidate's CV must detail the full employment history for a minimum of ten years continuous employment (or all years since their employment history started, if less than ten), with no unexplained gaps. The Service Provider must cross-check each employment history against appropriate employment references, especially in respect of dates of employment and positions held. As a minimum, references are required from the employers for each Candidate's two most recent substantial assignments.

18.10 The Customer shall advise the Service Provider in the relevant Requisition where a higher level of security assurance, such as Clearance is required [and this shall be at the Customer's cost unless agreed otherwise at the commencement of this Contract]

19. INTELLECTUAL PROPERTY RIGHTS

19.1 The Service Provider acknowledges that the Temporary Worker Conditions require the Temporary Worker to assign and licence certain Intellectual Property Rights to the Customer. In the event that the Temporary Worker fails to assign and/or licence (as relevant) such Intellectual Property Rights in accordance with the obligations imposed on the Temporary Worker by the Temporary Worker Conditions then the Service Provider shall procure the assignment and/or licence (as relevant) of such Intellectual Property Rights in accordance with the Temporary Worker Conditions and shall carry out all such acts at its own cost (which may include procuring the execution of documentation) as are necessary in order to procure such assignment and/or licence.

19.2 Save as expressly granted elsewhere under the Contract:

19.2.1 the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Service Provider or its licensors, including the Service Provider IPR; and

19.2.2 the Service Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including the Customer IPR or the Bespoke IPR.

19.3 Where either party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 19.2, it shall assign in writing such Intellectual Property Rights as it has acquired to the other party on the request of the other party (whenever made).

19.4 Subject to Clause 21.6.9, the Service Provider 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 of the Bespoke IPRs to any third party.

- 19.5 The Service Provider hereby grants (and (as necessary) shall procure that any relevant third party shall grant) to the Customer a non-exclusive, irrevocable, transferable and royalty free licence (with the right to grant sub-licences on similar terms) to use the Service Provider IPR for the purpose of receiving the benefit of the Services.
- 19.6 All Intellectual Property rights in and to the Bespoke IPRs shall vest as and when created in the Customer and the Service Provider hereby assigns to the Customer, with full title guarantee, title to and all rights and interest in the Bespoke IPRs or shall procure that the first owner of the Bespoke IPRs assigns them to the Customer on the same basis. Such assignment shall either take effect on the Commencement Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the Bespoke IPRs, as appropriate. The Service Provider shall waive or procure a waiver of any moral rights in the Bespoke IPRs assigned to the Customer under this Contract. The Service Provider shall enter into such documentation and perform such acts as the Customer shall request to properly vest such Bespoke IPRs in the Customer.
- 19.7 The Customer hereby grants to the Service Provider a royalty-free non-exclusive, non-assignable licence to use the Customer's IPR and the Bespoke IPRs during the Contract Period for the sole purpose of enabling the Service Provider to provide the Services and not for any other purpose or for the benefit of any person other than the Customer. Such licence includes the right to grant sub-licences to Sub-Contractors for the same purpose provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Service Provider on the same terms as set out in Clause 21.6 (Confidentiality).
- 19.8 In the event of the termination or expiry of this Contract, the licence referred to in and any sub-licence granted in accordance with Clause 19.7 shall terminate automatically and the Service Provider shall deliver to the Customer all material licensed to the Customer pursuant to Clause 19.7 in the Service Provider's possession or control, save that the Service Provider shall be entitled to retain one copy of such material to enable it to comply with Law or the requirements of a Regulatory Body save that in such circumstances such material shall be kept in a secure environment and shall not be disclosed except as required by Law or pursuant to the requirements of a Regulatory Body.
- 19.9 No Intellectual Property Rights in the trademarks or brands of the Customer shall be used by the Service Provider without the Customer's prior written consent.
- 19.10 To the extent that the Service Provider creates physical embodiments of and tangible materials representing Bespoke IPRs or other items in connection with the provision of the Services (in whatever form or media) ("**Service Materials**"), the Service Provider shall provide copies of all such Service Materials to the Customer promptly. Notwithstanding the provisions of this Clause 19.10, title to all Service Materials shall pass to the Customer upon delivery.

- 19.11 The Service Provider shall on demand, during and after the Contract Period, indemnify and keep indemnified and hold the Customer and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or the Crown may suffer or incur as a result of any claim that the rights granted or transferred to the Customer by the Service Provider pursuant to this Contract and/or the performance by the Service Provider of the Services infringes or allegedly infringes a third party's Intellectual Property Rights ("**Claim**").
- 19.12 The indemnity given in Clause 19.11 above shall not apply where the Claim arises from:
- 19.12.1 items or materials based upon designs supplied by the Customer (provided that the Claim relates to the designs itself); or
 - 19.12.2 the use of data supplied by the Customer which is not required to be verified by the Service Provider under any provision of the Contract; or
 - 19.12.3 any modifications or enhancements made by the Customer to the Service Provider's IPR.
- 19.13 The Customer shall notify the Service Provider in writing of the Claim and the Customer shall not make any admissions which may be prejudicial to the defence or settlement of the Claim. The Service Provider shall at its own expense conduct all negotiations and any litigation arising in connection with the Claim provided always that the Service Provider:
- 19.13.1 shall consult the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 19.13.2 shall take due and proper account of the interests of the Customer; and
 - 19.13.3 shall not settle or compromise the Claim without Approval (not to be unreasonably withheld or delayed).
- 19.14 If a Claim is made in connection with the Contract or in the reasonable opinion of the Service Provider is likely to be made, the Service Provider shall immediately notify the Customer and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:
- 19.14.1 modify the relevant part of the Services 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

19.14.2 procure a licence to use and supply the Services which are the subject of the alleged infringement, on terms which are acceptable to the Customer,

and in the event that the Service Provider is unable to comply with Clauses 19.14.1 or 19.14.2 within 20 Working Days of receipt of the Service Provider's notification the Customer may terminate the Contract with immediate effect by notice in writing and the Service Provider shall, upon demand, refund the Customer with all monies paid in respect of the Services that is subject to the Claim.

19.15 The Service Provider's compliance with Clause 19.14 shall be at its own expense and the Service Provider shall be liable for all costs and expenses that the Customer may incur resulting from the Customer's compliance with Clause 19.14.

19.16 In the event that a modification or substitution in accordance with Clause 19.14.1 is not possible so as to avoid the infringement, or the Service Provider has been unable to procure a licence in accordance with Clause 19.14.2 the Customer shall be entitled to delete the relevant Service from the Contract.

Use of the Web Portal

19.17 The Customer shall enter into the Web Portal Licence with the Neutral Vendor to gain access to and obtain permission to use the Web Portal.

20. NOT USED

21. PROTECTION OF INFORMATION

21.1 Security Requirements

21.1.1 The Service Provider shall comply, and shall procure the compliance of the Staff, with the Security Requirements and the Security Management Plan and the Service Provider shall ensure that the Security Management Plan produced by the Service Provider fully complies with the Security Requirements.

21.2 Malicious Software

21.2.1 The Service Provider 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 between the Parties).

21.2.2 Notwithstanding Clause 21.2.1, 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 Customer Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

21.2.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 21.2.1 shall be borne by the Parties as follows:

21.2.3.1 by the Service Provider, where the Malicious Software originates from the Service Provider's System or the Customer Data (whilst the Customer Data was under the control of the Service Provider) unless the Service Provider can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to the Service Provider; and

21.2.3.2 by the Customer if the Malicious Software originates from the Customer's System or the Customer Data (whilst the Customer Data was under the control of the Customer).

21.3 Security of premises

21.3.1 The Customer shall be responsible for maintaining the security of the Customer's premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Customer while on the Customer's Premises and shall ensure that all Staff, and shall procure that all Temporary Workers comply with such requirements.

21.3.2 The Customer shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

21.4 Customer Data

21.4.1 The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

21.4.2 The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under this Contract or as otherwise expressly Approved by the Customer.

21.4.3 To the extent that the Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.

21.4.4 To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

21.4.5 The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the Security Policy.

21.4.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer may:

21.4.6.1 require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of the Customer Data to the extent and in accordance with the BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or

21.4.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in the BCDR Plan.

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

21.5 Protection of Personal Data

21.5.1 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that the Service Provider is the Data Processor.

21.5.2 The Service Provider shall:

21.5.2.1 Process the Personal Data only in accordance with instructions from the Customer (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer to the Service Provider during the Contract Period);

21.5.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Law or any Regulatory Body;

21.5.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

21.5.2.4 take reasonable steps to ensure the reliability of any Staff who have access to the Personal Data;

- 21.5.2.5 obtain Approval in order to transfer the Personal Data to any Suppliers, Sub-Contractors or Affiliates for the provision of the Services;
- 21.5.2.6 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 21.5;
- 21.5.2.7 ensure that none of the Staff publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer;
- 21.5.2.8 notify the Customer (within five (5) Working Days) if it receives:
 - (a) a request from a Data Subject to have access to that person's Personal Data; or
 - (b) a complaint or request relating to the Customer's obligations under the Data Protection Legislation;
- 21.5.2.9 provide the Customer with full cooperation and assistance in relation to any complaint or request made, including by:
 - (a) providing the Customer with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Customer's instructions;
 - (c) providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and
 - (d) providing the Customer with any information requested by the Customer;
- 21.5.2.10 permit the Customer or the Customer Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, the Service Provider's data Processing activities (and/or those of its agents, subsidiaries, Suppliers and Sub-Contractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Service Provider is in full compliance with its obligations under this Contract;
- 21.5.2.11 provide a written description of the technical and organisational methods employed by the Service Provider for processing Personal Data (within the timescales required by the Customer); and

21.5.2.12 not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Commencement Date, the Service Provider (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:

- (a) the Service Provider shall submit a request for Variation to the Customer which shall be dealt with in accordance with the Variation Procedure and paragraph (b) to (d) below;
- (b) the Service Provider shall set out in its request for a Variation details of the following:
 - (i) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (ii) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (iii) any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (iv) how the Service Provider will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the Customer's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
- (c) in providing and evaluating the request for Variation, the Parties shall ensure that they have regard to and comply with then-current Customer, 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 but, for the avoidance of doubt, the Customer may, in its absolute discretion, refuse to grant Approval of such Process and/or transfer any Personal Data outside the European Economic Area; and

- (d) the Service Provider shall comply with such other instructions and shall carry out such other actions as the Customer may notify in writing, including:
 - (i) incorporating standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the Customer on such terms as may be required by the Customer, which the Service Provider acknowledges may include the incorporation of standard and/or model Clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

21.5.3 The Service Provider shall:

21.5.3.1 comply at all times with the Data Protection Legislation;

21.5.3.2 not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Legislation; and

21.5.3.3 ensure that all steps are taken (including ensuring the accuracy and sufficiency of the Personal Data collected, the provision to Temporary Workers of appropriate privacy notices explaining how Personal Data will be used and obtaining of consents (such notices to contain as a minimum the text explaining the potential uses for any Personal Data as set out in Schedule 13) to ensure that the Processing and disclosure of the Personal Data by the Customer as envisaged by this Contract and as described in the privacy notice referred to above does not result in any breach of the Data Protection Legislation.

21.5.4 The Service Provider acknowledges that, in the event that it breaches (or attempts or threatens to breach) its obligations relating to Personal Data that the Customer may be irreparably harmed (including harm to its reputation). In such circumstances, the Customer may proceed directly to court and seek injunctive or other equitable relief to remedy or prevent any further breach (or attempted or threatened breach).

21.5.5 The Service Provider shall, at all times during and after the Contract Period, indemnify the Customer and keep the Customer fully indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed

to be paid by the Customer arising from any breach of the Service Provider's obligations under this Clause 21.5 except and to the extent that such liabilities have resulted directly from the Customer's instructions.

21.6 Confidentiality

21.6.1 Except to the extent set out in this Clause 21.6 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

21.6.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

21.6.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

21.6.2 Clause 21.6.1 shall not apply to the extent that:

21.6.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Clause 21.8 (Freedom of Information);

21.6.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

21.6.2.3 such information was obtained from a third party without obligation of confidentiality;

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

21.6.2.5 it is independently developed without access to the other Party's Confidential Information.

21.6.3 The Service Provider may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

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

21.6.5 At the written request of the Customer, the Service Provider shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

- 21.6.6 In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings) to demonstrate that the Service Provider is taking appropriate steps to comply with this Clause, including copies of any written communications to and/or from Staff, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.
- 21.6.7 Nothing in this Contract shall prevent the Customer from disclosing the Service Provider's Confidential Information (including the Management Information obtained under Clause 15 of the Framework Agreement):
- 21.6.7.1 to any Crown body or any other Contracting Body. All Crown bodies or Contracting Bodies 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 Body;
 - 21.6.7.2 to any consultant, contractor or other person engaged by the Customer or any person conducting a gateway review;
 - 21.6.7.3 for the purpose of the examination and certification of the Customer's accounts; or
 - 21.6.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.
- 21.6.8 The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or sub-contractor to whom the Service Provider's Confidential Information is disclosed pursuant to Clause 21.6.7 is made aware of the Customer's obligations of confidentiality.
- 21.6.9 Nothing in this Clause 21.6 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

- 21.7 Official Secrets Acts 1911 to 1989, section 182 of the Finance Act 1989
- 21.7.1 The Service Provider shall comply with and shall ensure that its Staff comply with, the provisions of:
- 21.7.1.1 the Official Secrets Acts 1911 to 1989; and
- 21.7.1.2 Section 182 of the Finance Act 1989.
- 21.7.2 In the event that the Service Provider or its Staff fail to comply with this Clause 21.7, the Customer reserves the right to terminate the Contract by giving notice in writing to the Service Provider.
- 21.8 Freedom of Information
- 21.8.1 The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.
- 21.8.2 The Service Provider shall and shall procure that its Sub-Contractors shall:
- 21.8.2.1 transfer to the Customer 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;
- 21.8.2.2 provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and
- 21.8.2.3 provide all necessary assistance as reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 21.8.3 The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other Contract 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.
- 21.8.4 In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 21.8.5 The Service Provider acknowledges that (notwithstanding the provisions of Clause 21.6) the Customer may, acting in accordance with the Ministry of Justice 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 Service Provider, the Services or the Temporary Worker:

21.8.5.1 in certain circumstances without consulting the Service Provider; or

21.8.5.2 following consultation with the Service Provider and having taken their views into account,

provided always that where Clause 21.8.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

21.8.6 The Service Provider shall ensure that all Information is retained for disclosure in accordance with the provisions of this Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

21.8.7 The Service Provider acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with Clause 21.8.5.

21.9 Transparency

21.9.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Customer shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

21.9.2 Notwithstanding any other term of this Contract, the Service Provider hereby gives his consent for the Customer to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

21.9.3 The Customer may consult with the Service Provider to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

21.9.4 The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

22. WARRANTIES AND REPRESENTATIONS

- 22.1 The Service Provider warrants, represents and undertakes to the Customer that:
- 22.1.1 it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;
 - 22.1.2 the Contract is executed by a duly authorised representative of the Service Provider;
 - 22.1.3 in entering the Contract it has not committed any Fraud;
 - 22.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
 - 22.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
 - 22.1.6 all information it provides and it shall procure that all information that the Suppliers and Temporary Workers provide under or in connection with this Agreement will be true, accurate, complete and not misleading;
 - 22.1.7 it shall not and shall procure that the Suppliers and Temporary Workers do not manipulate any information supplied to the Web Portal in a manner that would lead to inaccurate, misleading or discriminating presentation of information being displayed;
 - 22.1.8 as at the Commencement Date, all information, statements and representations contained in the Tender for the Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;
 - 22.1.9 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;
 - 22.1.10 it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;
 - 22.1.11 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 Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

22.1.12 it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

22.2 The Service Provider warrants represents and undertakes to the Customer that:

22.2.1 the Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

22.2.2 it shall discharge its obligations hereunder (including the provision of the Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

22.2.3 in the three (3) Years prior to the Commencement Date:

22.2.3.1 it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

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

22.2.3.3 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; and

- 22.2.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards;
 - 22.2.5 all Temporary Workers [sourced from outside the Service Provider's organisation shall be sourced via a fair competition, and the Service Provider shall at all times comply with the Business Rules;
 - 22.2.6 it will be solely responsible for the payment of remunerations and associated benefits, if any, of the Temporary Worker, where the Temporary Worker is sourced from the Service Provider's own organisation, and for procuring the payment of remunerations and associated benefits, if any, of the Temporary Worker, where the Temporary Worker is sourced from outside the Service Provider's own organisation;
 - 22.2.7 the Customer will not be responsible for the payment of, withholding and remitting of income tax and national insurance contributions (or the relevant local equivalent) relating to the provision of the Temporary Worker Services in conformance with any applicable laws and regulations;
 - 22.2.8 the Temporary Workers will:
 - (a) have the relevant qualifications, experience and training in accordance with requirements notified to the Service Provider by the Customer and will be competent to carry out the duties expected of persons acting in their or a similar capacity; and
 - (b) be vetted and verified in accordance with Clause 18.6,
 - 22.2.9 in providing the Services it will comply with the obligations imposed on employment businesses in the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and if and to the extent that any such obligations conflict with any provisions of this Contract then the obligations in such regulations shall prevail;
 - 22.2.10 it shall procure and ensure that all Temporary Workers (where applicable) comply with the obligations imposed upon them by the Temporary Worker Legislation; and
 - 22.2.11 It shall, and shall procure that its Suppliers, comply with its obligations arising from the Pension Act 2008 regarding pensions automatic enrolment in respect of the Temporary Workers.
- 22.3 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Service Provider.

22.4 The Service Provider acknowledges and agrees that:

22.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

23. LIABILITIES

23.1 Liability

The Service Provider shall not be liable for the supply, or late or purported late supply or non supply by the Temporary Worker of the Temporary Worker Services except to the extent that it arises out of, or in consequence of, any defects in or the late or purported late supply or non supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract.

23.2

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

23.2.1.1 death or personal injury caused by its negligence or that of its Staff;

23.2.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;

23.2.1.3 or

23.2.1.4 any other matter which, by Law, may not be excluded or limited.

23.2.2 Subject to Clause 23.2.4 and Clause 23.2.5 and without prejudice to Clause 23.2.6 the Service Provider shall on demand indemnify and keep indemnified the Customer 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 late supply or non supply, of the Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider 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 Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider.

23.2.3 The Service Provider 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 Customer or by breach by the Customer of its obligations under the Contract.

23.2.4 Subject always to Clause 23.2.1 and Clause 23.2.5, and unless otherwise stipulated by the Customer in the Order Form following a further competition the aggregate liability of either Party (whether provisions are expressed as an indemnity or otherwise) for each Year of this Contract under or in relation to this Contract:

23.2.4.1 for all defaults resulting in direct loss or damage to the property of the other Party under or in connection with the Contract shall be £5 Million; and

23.2.4.2 in respect of all other defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed the greater of £5 million pounds (£) or a sum equivalent to one hundred and twenty five percent (125%) of the Contract Charges paid or payable to the Service Provider in the Year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) Months of the Term, the amount estimated to be paid in the first twelve (12) Months of the Term) and subject to the financial limits, if any, set out in paragraph 7.2 of the Order Form.

23.2.5 Subject to Clauses 23.2.1 and 23.2.6, in no event shall either Party be liable to the other for any:

23.2.5.1 loss of profits;

23.2.5.2 loss of business;

23.2.5.3 loss of revenue;

23.2.5.4 loss of or damage to goodwill;

23.2.5.5 loss of savings (whether anticipated or otherwise); and/or

23.2.5.6 any indirect, special or consequential loss or damage.

23.2.6 The Customer may (amongst other things) recover as a direct loss:

23.2.6.1 any additional operational and/or administrative expenses arising from the Service Provider's Default;

23.2.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider's Default;

23.2.6.3 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 Service Provider; and

23.2.6.4 any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Service Provider.

23.2.7 Nothing in this Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

23.2.8 [In the event that the Employment Regulations (as amended) apply in respect of the commencement of this Call-Off Contract, the Service Provider shall indemnify the Customer against any claim made against the Customer at any time by any person currently or previously employed by the Customer or by the Service Provider for breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Customer) resulting from any act or omission of the Service Provider. Where such claim arises as a result of any breach of obligations (whether contractual, statutory, at common law or otherwise) by the Customer arising or accruing before the Contract Commencement Date the Customer shall similarly indemnify the Service Provider.]

23.3 Insurance

23.3.1 The Service Provider 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 Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss (including the insurance policies specified in paragraph 8 of the Order Form). Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the Contract Period and for the Minimum Insurance Period.

23.3.2 The Service Provider shall hold employer's liability insurance in respect of Staff in accordance with paragraph 8 of the Order Form.

23.3.3 The Service Provider shall give the Customer, on request, copies of all insurance policies referred to in this Clause 23 and paragraph 9 of the Order Form 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.

23.3.4 If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

23.3.5 The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. [It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in Clause 23.3.1.]

23.3.6 The Service Provider shall effect and maintain a professional indemnity insurance policy during the Contract Period in accordance with paragraph 8 of the Order Form and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period in accordance with paragraph 8 of the Order Form.

23.3.7 The Service Provider shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Service Provider shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

23.4 Taxation, National Insurance and Employment Liability

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

24. TERMINATION

24.1 Termination on Insolvency

24.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Service Provider where the Service Provider is a company and in respect of the Service Provider:

24.1.1.1 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

- 24.1.1.2 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 24.1.1.3 a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 24.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 24.1.1.5 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
 - 24.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
 - 24.1.1.7 being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
 - 24.1.1.8 any event similar to those listed in Clause 24.1.1.1 to 24.1.1.7 occurs under the law of any other jurisdiction.
- 24.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
- 24.1.2.1 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
 - 24.1.2.2 a petition is presented and not dismissed within fourteen (14) calendar days or order made for the Service Provider's bankruptcy; or
 - 24.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 24.1.2.4 the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or

- 24.1.2.5 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 Service Provider's assets and such attachment or process is not discharged within fourteen (14) days; or
- 24.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
- 24.1.2.7 the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

24.2 Termination on Change of Control

24.2.1 The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

- 24.2.1.1 being notified in writing that a Change of Control has occurred or is planned or in contemplation; or
- 24.2.1.2 where no notification has been made, the date that the Customer becomes aware of the Change of Control,

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

24.2.2 For the purposes of Clause 24.2.1, any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

24.3 Not Used

24.4 Termination on Default

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

- 24.4.1.1 the Service Provider has not remedied the Default to the satisfaction of the Customer within ten (10) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

24.4.1.2 the Default is not, in the opinion of the Customer, capable of remedy; or

24.4.1.3 the Default is a Material Breach of the Contract.

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

24.4.3 If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the Undisputed Sums Time Period, the Service Provider may terminate the Contract in writing subject to giving the length of notice as specified in paragraph 9.1 of the Order Form, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under Clause 12.3 (Recovery of Sums Due).

24.5 Termination without Cause

The Customer shall have the right to terminate the Contract at any time by giving three months notice to the Service Provider.

24.6 Termination of Framework Agreement

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

24.7 Termination on Financial Standing

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider which:

24.7.1 adversely impacts on the Service Provider's ability to supply the Services under this Contract; or

24.7.2 could reasonably be expected to have an adverse impact on the Service Provider's ability to supply the Services under this Contract.

24.8 Termination on Audit

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Service Provider commits a Default of Clauses 30.1 to 30.5 and/or Clause 30.7 (Records and Audit Access).

24.9 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Value for Money).

24.10 Termination on Bribery and Corruption

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where the conduct prohibited in Clause 29 (Prevention of Bribery and Corruption) has occurred.

24.11 Termination in relation to Fraud

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in the notice where the conduct prohibited in Clause 32 (Prevention of Fraud) has occurred.

24.12 Termination for continuing Force Majeure Event

Either Party may, by written notice to the other, terminate this Contract if a Force Majeure Event endures for a continuous period of more than one hundred and twenty (120) Days.

24.13 Termination on Critical Service Failure

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where a Critical Service Failure has occurred.

24.14 Partial Termination

The Customer is entitled to terminate all or part of this Contract pursuant to this Clause 24.14 provided always that the parts of this Contract not terminated can operate effectively to deliver the intended purpose of this Contract.

24.15 Termination of Assignment

The Customer may terminate any Assignment with immediate effect by notice in writing to the Service Provider:

24.15.1 where the Temporary Worker is an individual and:

24.15.1.1 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 Temporary Worker's creditors; or

24.15.1.2 a petition is presented and not dismissed within 14 days or order made for the Temporary Worker's bankruptcy; or

24.15.1.3 a receiver, or similar officer is appointed over the whole or any part of the Temporary Worker's assets or a person

- becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- 24.15.1.4 the Temporary Worker is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or
 - 24.15.1.5 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 Temporary Worker's assets and such attachment or process is not discharged within 14 days; or
 - 24.15.1.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or
 - 24.15.1.7 the Temporary Worker suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business; or
- 24.15.2 where the Temporary Worker is a company or operates through a company and:
- 24.15.2.1 any of the events referred to in Clause 24.15.1 occur in relation to any individual engaged to provide the Temporary Worker Services;
 - 24.15.2.2 a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
 - 24.15.2.3 a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
 - 24.15.2.4 a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or
 - 24.15.2.5 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 24.15.2.6 an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

- 24.15.2.7 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986; or
- 24.15.2.8 being a "small company" within the meaning of Section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- 24.15.2.9 any event similar to those listed in Clause 24.15.2.1 to 24.15.2.8 occurs under the law of any other jurisdiction; or
- 24.15.3 the Customer reasonably believes that the performance of the Temporary Worker is unsatisfactory or the Temporary Worker has committed an act of serious or gross misconduct, wilful neglect in the discharge of his duties or any serious or persistent breach or is guilty of a continuing breach of any of the Temporary Worker Conditions; or
- 24.15.4 the Customer reasonably believes that the Temporary Worker is guilty of any fraud, corruption, dishonesty or conduct tending to bring himself, the Customer and/or the Authority into disrepute; or
- 24.15.5 in the circumstances referred to in Clause 32 (Prevention of Fraud) or Clause 5.3.4.3; or
- 24.15.6 the Temporary Worker is convicted of a criminal offence which in the reasonable opinion of the Customer materially and/or adversely affects his ability to provide the Temporary Worker Services (including bringing himself or the Customer and/or the Authority into disrepute).
- 24.16 On receipt of the notice referred to in Clause 24.15.1 the Service Provider shall immediately remove the Temporary Worker and, if requested by the Customer, replace the Temporary Worker with a more suitable candidate within 10 working days using the process contained in Schedule 1.
- 24.17 The Customer shall at any time be able to terminate an Assignment on a "no-fault" basis subject to a notice period agreed between the Service Provider and the Customer for the Assignment. The Customer shall be responsible for payment to the Service Provider of all charges associated with such notice period ie Temporary Worker Pay, Neutral Vendor/Managed Service Provider Management Fee.

25. CONSEQUENCES OF EXPIRY OR TERMINATION

- 25.1 Where the Customer terminates the Contract under Clauses , 24.4 (Termination on Default), 24.7 (Financial Standing), 24.8 (Audit), 24.9 (Benchmarking), 24.13 (Termination on Critical Service Failure) and then makes other arrangements for the supply of the Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under Clauses 24.3, 24.4, 24.7, 24.8, 24.9 and

24.13, no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.

- 25.2 Where the Customer terminates the Contract under Clause 24.5 (Termination without Cause), the Customer shall indemnify the Service Provider against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Service Provider shall reduce its unavoidable costs by any insurance sums available. The Service Provider shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Service Provider as a result of termination under Clause 24.5 (Termination without Cause).
- 25.3 The Customer shall not be liable under Clause 25.2 to pay any sum which:
- 25.3.1 was claimable under insurance held by the Service Provider, and the Service Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- 25.3.2 when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated prior to the expiry of the Contract Period.
- 25.4 On the termination or expiry of the Contract for any reason, the Service Provider shall:
- 25.4.1 immediately return to the Customer all Confidential Information, Personal Data and Customer IPRs and the Bespoke IPRs 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;
- 25.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Service Provider with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Service Provider;
- 25.4.3 except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or twelve (12) Months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed;
- 25.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Service Provider. Such Property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);

- 25.4.5 provide such assistance and co-operation as the Customer may require to ensure an orderly transition of the provision of the Services to a Replacement Service Provider;
 - 25.4.6 return to the Customer any sums prepaid in respect of the Services not provided by the date of expiry or termination (howsoever arising); and
 - 25.4.7 promptly provide all information concerning the provision of the Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.
- 25.5 If the Service Provider fails to comply with Clauses 25.4.1 to 25.4.7, the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted agents or Sub-Contractors where any such items may be held.
- 25.6 Where the end of the Contract Period arises due to the Service Provider's Default, the Service Provider shall provide all assistance under Clause 25.4.5 and 25.4.7 free of charge. Otherwise, the Customer shall pay the Service Provider's reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.
- 25.7 Save as otherwise expressly provided in the Contract:
- 25.7.1 termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
 - 25.7.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under Clauses 12.2 (Payment and VAT), 12.3 (Recovery of Sums Due), 19 (Intellectual Property Rights), 21.5 (Protection of Personal Data), 21.6 (Confidentiality), 21.7 (Official Secrets Acts 1911 to 1989), 21.8 (Freedom of Information), 23 (Liabilities), 25 (Consequences of Expiry or Termination), 29 (Prevention of Bribery and Corruption), 30 (Records and Audit Access), 32 (Prevention of Fraud), 36 (Cumulative Remedies), 42 (Conflicts of Interest), 44 (The Contracts (Rights of Third Parties Act 1999) and 48.1 (Governing Law and Jurisdiction).

26. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

- 26.1 The Service Provider 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, agents, employees, Suppliers, Service Provider's, professional advisors and consultants comply with this Clause 26. Any such press announcements or publicity proposed under this Clause 26.1 shall

remain subject to the rights relating to Confidential Information and Commercially Sensitive Information.

- 26.2 Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.
- 26.3 The Service Provider shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

27. HEALTH AND SAFETY

The Contract

- 27.1 The Service Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
- 27.2 While on the Customer's Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.
- 27.3 The Service Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 27.4 The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff, Sub-Contractors and other persons working on the Premises in the supply of the Services under the Contract.
- 27.5 The Service Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Customer on request.

Assignments

- 27.6 The Customer shall promptly notify the Temporary Worker, and the Service Provider of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect a Temporary Worker in the performance of the Temporary Worker Services in connection with an Assignment
- 27.7 The Service Provider shall procure that while on the Customer's Premises, the Temporary Worker shall comply with any health and safety measures implemented by the Customer on persons working there.

- 27.8 The Service Provider shall procure that the Temporary Worker shall notify the Customer immediately in the event of any incident occurring in the performance of the Temporary Worker Services where that incident causes any personal injury or damage to property which could give rise to personal injury.

28. ENVIRONMENTAL REQUIREMENTS

The Service Provider shall, and shall procure that the Temporary Workers shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy.

29. PREVENTION OF BRIBERY AND CORRUPTION

- 29.1 The Service Provider shall not:

29.1.1 offer or give, or agree to give, to any employee, agent, servant or representative of the Customer or other Contracting Body, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

29.1.2 engage in and shall procure that all Service Provider's Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption.

- 29.2 The Service Provider warrants, represents and undertakes that it has not:

29.2.1 paid commission or agreed to pay commission to the Customer, Contracting Body or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and

29.2.2 entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or other Contracting Body or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and the Authority before execution of this Contract;

- 29.3 The Service Provider shall:

29.3.1 in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

29.3.2 immediately notify the Customer and the Authority if it suspects or becomes aware of any breach of this Clause 29;

- 29.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this Clause 29 and the Service Provider shall co-operate with any investigation and allow the Customer to audit Service Provider's books, records and any other relevant documentation in connection with the breach;
 - 29.3.4 if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Service Provider and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Contract compliance with this Clause 29. The Service Provider shall provide such supporting evidence of compliance as the Customer may reasonably request;
 - 29.3.5 have, maintain and enforce an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it and any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Service Provider's behalf from committing a Prohibited Act and shall enforce it where appropriate.
- 29.4 If the Service Provider, its Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:
- 29.4.1 this Clause 29; or
 - 29.4.2 the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or Contracting Body or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

- 29.5 Without prejudice to its other rights and remedies under this Clause 29, the Customer shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from and against:
- 29.5.1 the amount of value of any such gift, consideration or commission; and
 - 29.5.2 any other loss sustained by the Customer in consequence of any breach of this Clause 29.

30. RECORDS AND AUDIT ACCESS

- 30.1 The Service Provider shall keep and maintain during the Contract Period and for seven (7) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Services provided under it, and the amounts paid by the Customer.

- 30.2 The Service Provider shall keep the records and accounts referred to in Clause 30.1 above in accordance with Good Industry Practice and generally accepted accounting principles.
- 30.3 The Service Provider shall afford the Customer and the Auditors access to the records and accounts referred to in Clause 30.2 at the Service Provider's premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:
- 30.3.1 to verify the accuracy of the Contract Charges (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Service Provider (including Sub-Contractors) of in relation to the Services;
 - 30.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Service Provider;
 - 30.3.3 to review the Service Provider's compliance with the DPA in accordance with this Contract and any other Laws;
 - 30.3.4 to review the Service Provider's compliance with its continuous improvement and benchmarking obligations set out in Schedule 7 of the Framework Agreement and Clause 9 of the Contract;
 - 30.3.5 to review the Service Provider's compliance with its security obligations set out in Clause 18;
 - 30.3.6 to review any books of account kept by the Service Provider in connection with the provision of the Service;
 - 30.3.7 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;
 - 30.3.8 to inspect the Customer's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or
 - 30.3.9 to ensure that the Service Provider is complying with its obligations under this Contract.
- 30.4 The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.
- 30.5 The Service Provider shall provide such records and accounts (together with copies of the Service Provider's published accounts) on request during the Contract Period and for twelve months after the date of termination or expiry of the Contract Period or the last Assignment (whichever is the later) to the Customer and/or the Auditors.

- 30.6 The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.
- 30.7 Subject to the Service Provider's rights in respect of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit including:
- 30.7.1 all reasonable information requested by the Customer within the scope of the audit;
- 30.7.2 reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Services; and
- 30.7.3 access to the Staff.
- 30.8 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 30, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

31. DISCRIMINATION

- 31.1 The Service Provider shall not unlawfully discriminate within the meaning and scope of any Law, enactment, order or regulation relating to discrimination (whether in race, gender, religion, disability, sexual orientation, age or otherwise).
- 31.2 The Service Provider shall take all reasonable steps to secure the observance of Clause 31.1 by all Staff, servants, employees or agents of the Service Provider and all Suppliers and Sub-Contractors employed in the execution of this Contract.

32. PREVENTION OF FRAUD

- 32.1 The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.
- 32.2 The Service Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Service Provider or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 32.3 If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Body or the Customer, the Customer may:
- 32.3.1 terminate the Contract with immediate effect by giving the Service Provider notice in writing; and/or

- 32.3.2 recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this Clause 32 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

33. TRANSFER AND SUB-CONTRACTING

- 33.1 Subject to Clause 33.4, the Service Provider shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval. The Customer has consented to the engagement of the Sub-Contractors listed in paragraph 3.3 of the Order Form.
- 33.2 The Service Provider shall not substitute or remove a Sub-Contractor or appoint an additional sub-contractor without the prior written consent of the Authority and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this Clause 33, the Service Provider 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 Service Provider to do, or refrain from doing, any act or thing shall include an obligation upon the Service Provider to procure that its employees, Staff, agents and the Sub-Contractors' employees, Staff and agents also do, or refrain from doing, such act or thing.
- 33.3 Sub-Contracting any part of the Contract shall not relieve the Service Provider of any obligation or duty attributable to the Service Provider under the Contract. The Service Provider shall supply such information about proposed Sub-Contractors as the Customer may reasonably require in order to enable the Customer to consider whether to grant Approval.
- 33.4 The Service Provider may assign to a third party ("the Assignee") the right to receive payment of the Contract Charges or any part thereof due to the Service Provider under this Contract (including any interest which the Customer incurs under Clause 12.2.5). Any assignment under this Clause shall be subject to:
- 33.4.1 reduction of any sums in respect of which the Customer exercises its right of recovery under Clause 12.3;
- 33.4.2 all related rights of the Customer under the contract in relation to the recovery of sums due but unpaid; and
- 33.4.3 the Customer receiving notification under both Clauses 33.5 and 33.6.
- 33.5 In the event that the Service Provider assigns the right to receive the Contract Charges under Clause 33.4.1, the Service Provider or the Assignee shall notify the Customer in writing of the assignment and the date upon which the assignment becomes effective.
- 33.6 The Service Provider shall ensure that the Assignee notifies the Customer of the Assignee's contact information and bank account details to which the Customer shall make payment.

- 33.7 The provisions of Clause 33.2 shall continue to apply in all other respects after the assignment and shall not be amended.
- 33.8 The Service Provider shall be responsible for all acts and omissions of its Sub-Contractors and those employed or engaged by the Sub-Contractors as though they are its own.
- 33.9 Where the Customer has consented to the placing of Sub-Contracts, copies of each Sub-Contract shall, at the request of the Customer, be sent by the Service Provider to the Customer as soon as reasonably practicable.
- 33.10 The Customer may, at its sole discretion, require the Service Provider to ensure that each Sub-Contract shall include:
- 33.10.1 a right under the Contracts (Rights of Third Parties) Act 1999 for the Customer to enforce the terms of that Sub-Contract as if it were the Service Provider;
 - 33.10.2 a provision enabling the Service Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-Contract to the Customer;
 - 33.10.3 a provision requiring the Sub-Contractor to enter into a direct confidentiality agreement with the Customer on the same terms as set out in Clause 21.6 (Confidentiality);
 - 33.10.4 a provision requiring the Sub-Contractor to comply with protection of data requirements pursuant to Clauses 21.4 (Customer Data) and 21.5 (Protection of Personal Data);
 - 33.10.5 a provision requiring the Sub-Contractor to comply with the anti-corruption and anti-bribery requirements pursuant to Clause 29 (Prevention of Bribery and Corruption);
 - 33.10.6 a requirement that the Service Provider to pay any undisputed sum due to the relevant Sub-Contractor within a specified period that does not exceed thirty (30) calendar days from the date the Service Provider receives the Sub-Contractor's invoice; and
 - 33.10.7 a provision restricting the ability of the Sub-Contractor to further Sub-Contract elements of the service provided to the Service Provider without first seeking the prior written consent of the Customer and the Authority.
- 33.11 If the Customer is able to obtain from any Sub-Contractor or any other third party more favourable commercial terms with respect to the supply of any goods, software or services used by the Service Provider in the supply of the Services, then the Customer may:
- 33.12 require the Service Provider to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Customer in respect of the relevant item.

- 33.13 If the Customer exercises the option pursuant to Clause 33.11, then the Contract Charges shall be reduced by an amount that is agreed in accordance with the Variation Procedure.
- 33.14 Subject to Clause 33.16, the Customer may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- 33.14.1 any Contracting Body; or
 - 33.14.2 any other body established by the Crown or under statute in order to substantially perform any of the functions that had previously been performed by the Customer; or
 - 33.14.3 any private sector body which substantially performs the functions of the Customer,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Service Provider's obligations under the Contract.
- 33.15 Any change in the legal status of the Customer such that it ceases to be a Contracting Body shall not, subject to Clause 33.16, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Customer.
- 33.16 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 33.14 to a body which is not a Contracting Body or if there is a change in the legal status of the Customer such that it ceases to be a Contracting Body (in the remainder of this Clause both such bodies being referred to as "the Transferee"):
- 33.16.1 the rights of termination of the Customer in Clauses 24.1 (Termination on Insolvency) 24.2 (Termination on Change of Control) and 24.4 (Termination on Default) shall be available to the Service Provider in the event of, respectively, the bankruptcy or insolvency, or default of the Transferee; and
 - 33.16.2 the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the previous consent in writing of the Service Provider.
- 33.17 The Customer may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider's obligations under the Contract. In such circumstances the Customer shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Service Provider's obligations under the Contract and for no other purposes and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- 33.18 For the purposes of Clause 33.16 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.

34. FORCE MAJEURE

- 34.1 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 to the other Party.
- 34.2 Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
- 34.3 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 34.1 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.
- 34.4 If a Force Majeure event affects the Services, the Customer may direct the Service Provider to procure those Services from a third party service provider in which case the Service Provider will be liable for payment for the provision of those Services for as long as the delay in performance continues.
- 34.5 The Service Provider will not have the right to any payment from the Customer under this Contract where the Service Provider is unable to provide the Services because of an event of Force Majeure. However if the Customer directs the Service Provider to use a replacement Service Provider pursuant to sub-Clause 34.4, then the Customer will pay the Service Provider (a) the Contract Charges; and (b) the difference between the Contract Charges and the new Service Provider's costs if, in respect of the Services that are subject to Force Majeure, the new service provider's costs are greater than the Contract Charges.

35. WAIVER

- 35.1 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.
- 35.2 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 45 (Notices).
- 35.3 A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

36. 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.

37. FURTHER ASSURANCES

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

38. VARIATION

38.1 Subject to the provisions of this Clause 38, the Customer may request a variation to the Services ordered provided that such variation does not amount to a material change to the Order. Such a change is hereinafter called a "Variation".

38.2 The Customer may request a Variation by completing and sending the Variation form set out in Schedule 3 ("the Variation Form") to the Service Provider giving sufficient information for the Service Provider to assess the extent of the Variation and any additional cost that may be incurred. The Service Provider shall respond to a request for a Variation within the time limits specified in the Variation Form. Such time limits shall be reasonable having regard to the nature of the Order.

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

38.3.1 agree to continue to perform their obligations under the Contract without the Variation; or

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

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

39. SEVERABILITY

39.1 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.

- 39.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

40. MISTAKES IN INFORMATION

The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Service Provider in connection with the supply of the Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

41. SERVICE PROVIDER 'S STATUS

At all times during the Contract Period the Service Provider shall be an independent contractor and nothing in this 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.

42. CONFLICTS OF INTEREST

- 42.1 The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.
- 42.2 The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in Clause 42.1 above arises or is reasonably foreseeable.
- 42.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.
- 42.4 This Clause 42 shall apply:
- 42.4.1 during the Contract Period; and
- 42.4.2 for a period of two (2) years following the end of the Contract Period or such other period as is agreed in the Order Form.

43. ENTIRE AGREEMENT

- 43.1 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.
- 43.2 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.
- 43.3 The Service Provider acknowledges that it has:
- 43.3.1 entered into the Contract in reliance on its own due diligence alone;
and
- 43.3.2 received sufficient information required by it in order to determine whether it is able to provide the Services in accordance with the terms of the Contract.
- 43.4 Nothing in Clauses 43.1 and 43.2 shall operate to exclude Fraud or fraudulent misrepresentation.
- 43.5 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.

44. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 44.1 A person who is not a Party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- 44.2 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 (CRiTPA) shall apply to Clauses 15, 16 and 17 to the extent necessary that any Former Service Provider and Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Former Service Provider and the Replacement Service Provider by the Service Provider under that Clause 15, 16 and 17 in its own right pursuant to section 1(1) of CRiTPA.
- 44.3 No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more Clauses of it.

45. NOTICES

- 45.1 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.
- 45.2 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), by facsimile transmission or electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause 45.3 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 facsimile transmission or sooner where the other Party acknowledges receipt of such letters or facsimile transmission.
- 45.3 For the purposes of Clause 45.2, the address or fax number of each Party shall be the address and fax number set out in the Order Form.
- 45.4 Either Party may change its address for service by serving a notice in accordance with this Clause 45.
- 45.5 For the avoidance of doubt, any notice given under this Contract shall not be validly served if sent by electronic mail (email) and not confirmed by a letter.

46. STANDARDS

- 46.1 The Service Provider shall provide the Services and meet its responsibilities and obligations hereunder in accordance with the standards as set out in Schedule 10 to this Contract.
- 46.2 The Service Provider shall discuss with the Customer any conflict that the Service Provider reasonably believes that there is or will be between any of the standards and any other obligation under this Contract, and shall comply with the Customer's decision on the resolution of that conflict.

47. LEGISLATIVE CHANGE

47.1

47.1.1 The Service Provider shall neither be relieved of its obligations under this Framework Agreement nor be entitled to an increase in the Contract Charges as the result of:

47.1.1.1 a General Change in Law (subject to Clause 47.1.3); or

47.1.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known at the Commencement Date.

47.1.2 If a Specific Change in Law occurs or will occur during the Contract Period (other than those referred to in Clause 47.1.1.2) then clauses 32.2.3 and 32.2.6 of the Framework Agreement shall apply. Any

resultant increase in the Contract Charges or relief from the Service Provider's obligations agreed under clause 32.2.6 of the Framework Agreement shall be implemented by the Parties as a Variation in accordance with Clause 38.

47.1.3 If a General Change in Law occurs or will occur during the Contract Period that affects the rights, entitlements or obligations of Temporary Workers, the procedures set out in Clause 47.1.2 shall be followed.

48. DISPUTES AND LAW

48.1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

48.2 Dispute Resolution

48.2.1 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 level of representative of each Party specified in the Order Form.

48.2.2 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.

48.2.3 If the dispute cannot be resolved by the Parties pursuant to Clause 48.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in Clause 48.2.5 unless:

48.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or

48.2.3.2 the Service Provider does not agree to mediation.

48.2.4 The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.

48.2.5 The procedure for mediation is as follows:

48.2.5.1 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 (“CEDR”) to appoint a Mediator;

- 48.2.5.2 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 mediation provider specified in Clause 48.2.5.1 to provide guidance on a suitable procedure;
- 48.2.5.3 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;
- 48.2.5.4 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;
- 48.2.5.5 failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. 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
- 48.2.5.6 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.

49. AWR – GENERAL OBLIGATIONS

- 49.1 The Parties acknowledge that the AWR apply to the Temporary Workers engaged by the Customer. The Parties agree that the Temporary Workers will qualify for equal treatment under the AWR including Day 1 Rights and further rights upon their completion of the Qualifying Period. Both Parties agree to comply with their respective obligations under the AWR.
- 49.2 Where either Party receives a complaint or request for information or claim relating to the AWR, it shall inform the other Party immediately and both Parties undertake to work together to respond to the Temporary Worker and resolve any complaints and/or requests for information.
- 49.3 Each Party shall comply with the other Party’s reasonable requests for information and any other reasonable requirements to enable the other Party to comply with the AWR.

- 49.4 Neither Party shall act in such a way that would give rise to a claim under the Regulation 9 (anti-avoidance regulation) of the AWR or any other AWR provision.

50. AWR - CUSTOMER'S OBLIGATIONS

- 50.1 The Customer shall from the commencement of each Assignment comply with the Day 1 Rights including but not limited to: canteen or other similar facilities, child-care facilities, staff rooms, transport services and car parking; and
- 50.1.1 to giving the Temporary Workers access to information on job vacancies with the Customer.
- 50.2 The Customer shall upon completion of the Temporary Worker of the Qualifying Period during an Assignment comply with the Qualifying Period Rights including but not limited to ensuring the Temporary Worker is afforded: equal treatment to the Comparator in respect of pay, the duration of working time, night work, breaks and rest periods and annual leave.
- 50.3 The Customer shall within 7 days of any request from the Service Provider provide the Service Provider with accurate and comprehensive Comparator Information (and updates thereto).
- 50.4 The Customer shall keep the Service Provider updated of any changes to the Comparator Information including, but not limited to any changes to pay scales which impact the Comparator Information.

51. AWR - SERVICE PROVIDER OBLIGATIONS

- 51.1 Upon receipt of any information from the Customer relating to the Day 1 Rights and/or the Customer's job vacancies, the Service Provider shall provide this information to any Temporary Worker on an Assignment when such information is received.
- 51.2 Prior to the commencement of each Assignment and during each Assignment (as appropriate) and at any time upon the Customer's request in writing, the Service Provider shall:
- 51.2.1 inform the Customer of any calendar weeks between 1 October 2011 and prior to the date of commencement of the relevant Assignment which the Temporary Worker believes count or may count towards the Qualifying Period; and
- 51.2.2 provide the Customer with all the details of such work, including (without limitation) details of where, when and the period(s) during which such work was undertaken and any other details requested by the Customer.
- 51.3 The Service Provider shall permit the Temporary Worker to raise concerns to the Service Provider if s/he considers that s/he has not or may not have received equal treatment under the AWR. The Service Provider shall allow the Temporary Worker to raise this in writing with the Service Provider setting

out as fully as possible the basis of his/her concerns. The Service Provider shall forward any such concerns to the Customer within 7 days of receipt.

52. TEMPORARY WORKERS ANNUAL LEAVE

52.1 Under the Agency Workers Regulations, on completion of the Qualifying Period the Temporary Worker may be entitled to paid and/or unpaid annual leave in addition to the Temporary Worker's entitlement to paid annual leave under the Working Time Regulations.

52.2 The Service Provider shall comply with all annual leave provisions for Temporary Workers under the AWR and the Working Time Regulations.

53. TEMPORARY WORKER'S REMUNERATION

53.1 The Service Provider shall pay to the Temporary Worker the rate as set out in section 8 of the completed Requisition Form (the "**Rate**") unless and until the Temporary Worker completes the Qualifying Period.

53.2 Once the Temporary Worker has completed the Qualifying Period during the relevant Assignment, the Service Provider shall pay to the Temporary Worker the greater of

53.2.1 the Rate; or:

53.2.2 the Comparator Rate,

and

shall where necessary make additional payments to the Temporary Worker to comply with the AWR.

SCHEDULE 1: THE SERVICES

MANAGED SERVICE PROVIDER DRAFTING

Contingent Labour Services Overview

1.1.1 Overall Managed Service Provider Service Provision Scope

The scope of the Services extends to the provision of Temporary Workers on a pre-agreed price/call off basis to meet low value/specificity roles. The Service Provider shall provide an end to end sourcing, recruitment and management service for Temporary Workers, utilising the Web Portal provided by the Neutral Vendor in order to create a single point of entry for the Customer. The Service Provider shall comply with the Business Rules.

1.1.2 The service overview diagram at Annex 5 provides a high level overview of the key independencies in the delivery of the Services.

1.1.3 Unless expressly stated to the contrary, in the event of a conflict between the Call Off Terms in the form set out in schedule 4 of the Framework Agreement and the bespoke obligations inserted from the Service Provider's Tender into this Schedule 1 the wording of the Call Off Terms shall prevail.

1.1.4 Role Scope

The tables below shows the Temporary Worker roles which are in/out of scope for the Contingent Labour Services

Table 1 Role Scope

The table below shows the Temporary Worker roles which are in/out of scope for the Services.

In Scope	Out of Scope
<ul style="list-style-type: none">Admin/Clerical Staff and Junior Managers	<ul style="list-style-type: none">Consultancy.Permanent roles including fixed term appointments.Operational and Support StaffInterim managers.Specialist contractors Including "niche" roles, executive/board roles and highly specialist unique roles. e.g. a specialist

	area of expertise which only a few candidates would be able to fill.
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Table 2 Contingent Labour Definitions

Role Types	Civil Service Grade Equivalent	NHS Agenda for Change Equivalent	Description
(A) Admin/Clerical Staff and Junior Managers	AA to EO level, HEO level for non professional/specialist roles.	AfC Band 0 to 5 for non professional/specialist roles.	Staff performing an administrative or junior management role, providing short term cover. Administrative and junior manager roles are from AA to EO level, HEO level for non professional/specialist roles.
(B) Operational and Support Staff	AA to EO level, HEO level for operational and support roles.	AfC Band 0 to 5 for operational and support roles.	Operational staff, typically Auxiliary Staff (e.g.) Support staff covers all support staff grades.

Figure 1 – Contingent Labour Definitions

2. The Contingent Labour Services

2.1 Web Portal

The Service Provider shall utilise the Web Portal to facilitate the delivery of the Contingent Labour Services for the Customer

Annex 1 sets out the key characteristics of the Web Portal.

Delivery of the Services

2.2 Organisation Structure for Delivery

2.2.1 The Service Provider shall structure its organisation to deliver the Service in accordance with its Tender as follows:

2.2.1.1 The Service Provider's organisational structure for delivery of Services is well established.

2.2.1.2 The Framework Centre of Excellence (FCoE) structure proposed was established in 2002 upon award of the Service Provider's 1st CG Framework Agreement (FWA). Managing £71m in FWA spend in 2012 under Master Vend models, this structure reports into the Service Provider's Board of Directors. The FCoE will ensure:

- the Service Provider's developed experience is retained and best practice is shared consistently
- Accountability in all locations through specific KPIs
- Scalable Service Provider and Supply Chain (SCH) capability across the UK to meet expected volumes

2.2.1.3 Each function within the FCoE has a clearly defined area of responsibility, accountability and reporting lines, with individual KPIs as below.

Framework Director (FD)

- Reporting to Service Provider Director
- Complete authority for FWA, accountable for compliant delivery

Business Development Framework Champions

- Reporting into FD
- Responsible for promoting framework benefits, working alongside Authority Category Managers to meet FWA adoption objectives

Service Provider Account Managers (AM)

- Reporting to FD
- Aligned to each Customer
- Analysis of management information
- Quarterly reviews with Customers (monthly for top 10 by spend)
- Responsible for fulfilment in accordance with FWA
- Training Local Delivery Teams, aligned to FWA objectives

Framework Centre of Excellence Manager (FCoEM)

- Reporting to FD
- Accountable for delivery of support services through Supplier Management, Central Ordering, Resourcing and Recruitment Administration teams

Supplier Management Team (SMT)

- Reporting to FCoEM
- Selection, engagement and management of SCH
- Managing SCH performance through MI and quarterly reviews
- Including a SME Manager responsible for proactively engaging SME supplier

Central Order Processing Team Leader (COP)

- Reporting to FCoEM
- Managing Team of Requisition Co-ordinators
- Requisition compliance including e.g. rate card compliance management
- Distribution of vacancies to SCH and / or Service Provider Resourcing Co-ordinators (RC) with minimum 30% / 70% booking allocation
- Monitoring of RC, SCH and Recruitment Administrator (RA) activity against KPIs

Recruitment Administrator (RA)

- Reporting to COP Team Leader
- Screening of candidates pipeline
- Collation of BPSS / BSVR packs and referencing
- Candidate and Temporary Worker (TW) enquiries

Local Delivery Managers (LDM)

- Reporting to AM
- Providing local high touch service
- Complete face-to-face registration of all pre-screened candidates
- Candidate engagement
- Onboarding and aftercare

Service Provider Governance Board

- Director representation from HR, Legal, Finance, IT, Marketing, Compliance, FWA Centre of Excellence
- Confirmation of responsibilities and KPIs for Service Provider
- Review and recommendations for innovation over the lifetime of FWA

Compliance and Audit Management (CAT) - Independent of FCoE organisational structure

- Reporting to Service Provider Governance Board
- Sign-off of all TW packs prior to commencement of assignment
- Audits and reports of Service Provider and SCH delivery teams.

2.3 Sourcing Process

2.3.1 The Service Provider shall use the following process in sourcing Candidates:

- 2.3.2 Upon receipt of a Requisition Form completed by a Customer with which it has entered into a Call Off Agreement, the Service Provider shall ensure that the Requisition Form has been correctly and adequately completed to enable the Service Provider to source suitable Candidates.
- 2.3.3 In the event that the Service Provider needs any information in addition to that contained in the Requisition Form in order to source suitable Candidates the Service Provider shall request the information from the Customer via email and the cycle time of Requisition to Short List will pause for the Service Level measurement purposes until the information has been satisfactorily provided.
- 2.3.4 Upon receipt by the Service Provider of a correctly and adequately completed Requisition Form from the Customer the Service Provider will source suitable Candidates by carrying out a full search and selection activity.
- 2.3.5 The Service Provider will identify suitable Candidates for the Requisition in accordance with the Tender as follows:[
- 2.3.5.1 As one of the most successful suppliers of Administrative and Clerical candidates to Central Government (CG) Customers and the NHS, the Service Provider has a highly-developed search and selection strategy, aligned to the requirements of the Framework.
 - 2.3.5.2 The success achieved by the Service Provider 's proven CG function depends upon robust, pro-active search and selection strategies across the UK, including challenging locations experiencing a shortage of qualified candidates.
 - 2.3.5.3 The Service Provider currently supplies 13,500 Temporary Workers (TW) to the Public Sector with an average tenure of 27 weeks in post, proof of our tacit knowledge of the common skills, experience and expectations required.
 - 2.3.5.4 The Service Provider operates a continuous sourcing programme for CG, based on the most successful routes to market for each key location and Customer. e.g:

- Sheffield – the Service Provider sources via local advertising and direct e-mails
- Liverpool and Glasgow – the Service Provider partners with Ingeus, a leading provider of the Government's Work Programme
- The Service Provider has a strategic partnership with Monster, the organisation recently selected as to partner DWP, to support the Service Provider's development of talent databases
- The Service Provider receives a high volume of direct applications from candidates keen to work within CG, based on its reputation as a leading provider
- In 2012 the Service Provider completed more than 300 open days and roadshows to engage local candidates
- Supply chain usage, through over 500 current suppliers, 70% of whom are approved GPS suppliers

2.3.5.5 These methods, together with traditional approaches such as internal and external job board advertising (the Service Provider receives 25,000 applications per month through www.brookstret.co.uk), referral programmes and direct marketing ensure the Service Provider reaches the widest possible demographic in each geography throughout the UK.

2.3.5.6 Following application, the Service Provider captures and screens candidates thoroughly and efficiently, to a proven process, identifying the most suitable candidates for individual Customer requirements prior to baseline checking, and maintain a positive candidate experience. The following high-touch process is automated to ensure speed, quality and audit trail, and is tailored to meet specific requirements:

Screening

2.3.5.7 Each candidate will attend a mandatory face-to-face interview with the dedicated Local Resourcing Consultant, who will review original documentation to support eligibility criteria.

2.3.5.8 Of the 2,500 TWs currently on assignment within CG, circa 1,000 hold CTC clearance or above.

2.3.5.8 For 'Reserved Posts' within Departments such as the Home Office, the Service Provider adheres to the Nationality Act 1996 in selecting only British Citizens.

Selection

2.3.5.9 Once candidates have completed the registration, they then complete the Service Provider's skills tests to confirm their literacy, numeracy, computer and communication skills. The Service Provider has benchmarked common skill requirements for each grade with its existing CG Customers using the Service Provider's skills assessment award.

2.3.5.10 Candidates achieving the test benchmark then complete the relevant baseline check.

2.3.5.11 The Service Provider partners with the supply chain to develop and maintain a diverse talent pool.

2.3.6 The Service Provider will maintain a bank of appropriately qualified and experienced Temporary Workers in accordance with its Tender as follows *[Insert response to Award Questionnaire Requirement L2/3AQI2c]*

2.3.6.1 The Service Provider operates a continuous sourcing programme for Central Government and the wider Public Sector, focusing on the most successful routes to market for each Customer location.

2.3.6.2 The Service Provider's diverse sourcing methods ensure it reaches the widest possible demographic throughout the UK and are multi-channelled to ensure accessibility, providing candidates with a choice of application methods e.g. telephone, text, e-mail or in person.

- 2.3.6.3 This ongoing strategy has allowed the Service Provider to develop a longstanding reputation as a leading supplier to Central Government departments, ensuring it receives a high volume of direct, unsolicited applications (25,000 applications a month through its website alone) from candidates keen to work within the Public Sector. For many of these candidates, the Service Provider is the first point of contact for temporary assignments.
- 2.3.6.4 The Service Provider's sourcing process is automated, designed to be accessible, supportive and with a high level of interaction, maximising retention during the clearance process.
- 2.3.6.5 Each candidate is assigned an Aftercare Consultant to maximise their positive experience of the process including incentive, reward and recognition programmes.
- 2.3.6.6 Experience with the Service Provider's existing contracts with the Home Office Group (Olympic Clearing House awarded November 2011 and National Call-Off Framework awarded May 2012) has shown that DSU and FCO do not have the capacity to clear 'banks' of contingency staff. Therefore the Service Provider is required to clear candidates 'to order' for CTC level and above.
- 2.3.6.7 To this end, and as with the Service Provider's existing Central Government contracts, once a candidate has been identified as suitable for a specific Customer/s, the Service Provider completes baseline checking to BPSS level, ensuring it continues to build and maintain a bank of appropriately qualified and experienced Temporary Workers (TWs). Where CTC clearance or above is required by a Customer, such as the Home Office Group, prior completion and sign off of the BPSS paperwork ensures the Service Provider is able to finalise and submit a full BSVR pack for each suitable candidate within 24 hours once a vacancy has been requisitioned.

2.3.6.8 Frequent communication with the Service Provider's candidate bank is critical to its maintenance and to the Service Provider's ability to meet the delivery timescales set out in the Framework Agreement. For example, due to the delays that can sometimes be encountered when completing security screening under BPSS and BSVR, it is essential that candidates are fully engaged with each stage of their application. Wherever possible, the Service Provider will place the candidates in other roles while their clearance is processed.

2.3.6.9 Service Provider Account Managers will conduct regular strategic workforce planning with their relevant Customer to develop bespoke sourcing strategies ensuring the Service Provider maintains a suitable level of compliant candidates to meet their requirements at all times.

2.3.6.10 Each Customer will have full access to view the available TW bank. Customers will be able to view the live availability, baseline checking / existing clearance status, CVs, and role type suitability.

2.3.7 The Service Provider shall submit its Short List to the Customer via the Web Portal within the deadline and in accordance with the requirements stipulated by the Customer.

2.3.8 In certain circumstances, when cleared by the Customer's business case approvals process, the Customer may:

- i. Nominate a Temporary Worker; or
- ii. Request highly specialist unique roles where only a small number of candidates are capable of providing the required service via a limited number of suppliers,

In such cases the sourcing process set out in paragraphs 2.3 to 2.8 above will not apply.

2.4 Baseline Verification

2.4.1 The Service Provider shall ensure that all Candidates recommended to the Customer in a Short List have been the subject of a current and valid check in line with the Asylum and Nationality Act 2006 and any other relevant Laws, including but not limited to:

2.4.1.1 An identity check - to check each Candidate's full name, signature, date of birth and full permanent address.

2.4.1.2 a language Check - Or other language competency test as maybe required by the department.

2.4.1.3 a BPSS check conducted in accordance with the HMG Baseline Personnel Security Standard .

www.cabinetoffice.gov.uk/sites/default/files/resources/baseline-personnel-security-standard.pdf

comprising of:

- i. An identity check;
- ii. A verification of national and immigration status;
- iii. A verification of employment history; and
- iv. A verification of criminal record.

2.4.1.4 Unspent Convictions subject to the Rehabilitation of Offenders Act 1974.

2.4.1.5 an authenticity check - The Service Provider must be able to demonstrate that all documents (not just those for verification of identity) are checked for authenticity and that the verification process is cumulative by the use of intelligent cross-referencing. In doing so the Service Provider must apply the guidance in the *Good Practice Guide on Pre-employment screening- Document Verification* from the Centre for the Protection of National Infrastructure.

www.cpni.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx

2.4.1.6 a right to work check. The Service Provider must ensure that Candidates are eligible to work in the United Kingdom. In doing so the Service Provider must apply the guidance in the *Good Practice Guide on Pre-employment screening- Document Verification* from the Centre for the Protection of National Infrastructure.

www.cpni.gov.uk/ProtectingYourAssets/personnelsecurity-268.aspx)

2.4.1.7 a qualification and registration check. The Service Provider must carry out a qualification check to verify that the information about education, training and/or essential professional qualifications provided by each Candidate in their

curriculum vitae (“CV”) is correct. If a candidate has gained an essential qualifications overseas, the Service Provider must check that this qualification exists, that it is equivalent to the stated UK qualification and that the candidate does, in fact, hold the qualification. Further advice and contact details can be found on the Foreign and Commonwealth website at www.fco.gov.uk. If there is any doubt that qualifications are genuine, the Service Provider should contact the National Academic Recognition Centre (NARIC) at www.naric.org.uk.

2.4.1.8. Vulnerable groups – When required by the Contracting Body or by Law the Service Provider shall provide information to the Independent Safeguarding Authority under the Safeguarding Vulnerable Groups Act 2006 in relation to Candidates offered to the Contracting Body.

2.4.1.9. An employment history and reference checks. The Service Provider must ensure that each candidate's CV must detail the full employment history for a minimum of ten years continuous employment (or for all years since their employment history began, if less than ten), with no unexplained gaps. The Service Provider must cross-check each employment history against appropriate employment references especially to confirm dates of employment and positions held. As a minimum, references are required from each Candidate's two most recent substantial assignments.

2.4.2 In the event that a Temporary Worker is required to have a higher level of security Clearance then this shall be at the Customer's cost and included by the Service Provider in its first invoice relating to the Assignment unless otherwise stated in this Contract or unless no charge is to be made to the Customer in accordance with paragraphs 2.5.1 or 2.5.3 of Framework Schedule 3.

Administering Criminal Records Checks

2.4.3 For some Temporary Workers a standard or enhanced disclosure (as appropriate to the role) may be required, if so the Customer will complete the appropriate paragraph of the Requisition Form and will specify at what point in the sourcing process they require the Candidate to be subject to such a check. When required the disclosure information must be no more than twelve months old when the Temporary Worker starts his Assignment.

Standard or enhanced checks must be requested by the Service Provider through the Criminal Records Bureau.

2.4.4 The Service Provider must observe the CRB Disclosure Code of Practice when using disclosure information and must require the Candidate to provide a self-declaration. Basic checks for England and Wales can be requested from Disclosure Scotland. www.disclosurescotland.co.uk

2.4.5 The charge for the Criminal Records check is to be paid by the Customer as an additional cost to be included in the first Invoice from the Service Provider to the Customer in relation to the Assignment, unless otherwise stated within the Order Form or unless no charge is to be made to the Customer in accordance with paragraphs 2.6.1 or 2.6.3 of Framework Schedule 3.

2.4.6 For each Temporary Worker the Service Provider will ensure that an appropriate baseline check has been carried out in line with the requirements of this Schedule 1 before the Temporary Worker takes up an Assignment in accordance with the Tender as follows:

2.4.6.1 The Service Provider's operating procedures are consistent across its organisation and have achieved ISO9001 accreditation. As a proven supplier to 15 Central Government Customers, the Service Provider () has:

- Developed a robust Temporary Worker (TW) Baseline Checking process
- Completed 7,000 BPSS to SC checks, under the NMNC and MoJ contracts in 2012
- Received a 100% rating following an external audit by the MoJ Vetting Team (2012)
- Partnered with senior UKBA stakeholders to deliver two seminars to

2.4.6.2 At vacancy requisition, the Service Provider's Central Order Processing Function will confirm the level of clearance required and will broadcast this to the relevant Service Provider Resourcers or Supply Chain.

2.4.6.3 Completed during a mandatory face-to-face meeting, the Service Provider's process for ensuring each directly supplied TW completes the appropriate Baseline Check in Framework Schedule 1 includes:

- Identity check: Confirming all documentation as bona fide in line with the Documentation Verification Guidance booklet
- Language check: Each candidate is required to complete the relevant language module using the Service Provider's online skills assessment platform, Advantage
- BPSS check: The BPSS which includes Disclosure Scotland (DS) as standard, is completed with copies of original documents (proof of identity, eligibility to work in the UK etc.) retained securely in the candidate's registration file. A duplicate file is presented to the Customer where contractually required, e.g. National Offender Management Service (NOMS)
- Unspent convictions check: All candidates read and sign a Criminal Record Declaration statement in the branch, pursuant to the Rehabilitation of Offenders Act 1974. Where convictions are declared, the Service Provider has a formal escalation process which can result in disclosure to the Customer's Vetting Team where required
- Right to work check: Proof is provided via original British / EU passport, EU identity card and relevant Home Office (HO) visas / paperwork
- Qualifications and registration check: Documentation relating to

educational or professional qualification is verified with the relevant issuing Body

- Vulnerable groups: The Service Provider has developed robust operating processes regarding information disclosure to the ISA
- Employment history and reference check: The Service Provider's candidate registration process requires all employment references for the relevant period (currently increased to five for specific clients) are validated with the referee
- Enhanced checks: In the event that a BPSS check is required, the Service Provider will pay for the DS or DBS and charge back at cost to the Customer as a separate payment on the first invoice. Existing DVs, SCs or CTCs are verified via the 'Confirmation of Clearance' process. The Service Provider recognises that new CTC, SC and DV checks are processed by the Customer

2.4.6.4 Adherence to the Service Provider's Baseline Checking process will be managed independently by its dedicated Compliance Managers. A pre-engagement checklist will be signed off by the Compliance Manager prior to each TW undertaking an assignment.

2.4.7 The Service Provider will ensure that any Suppliers used to provide Temporary Workers ensure that appropriate baseline checks have been carried out in line with the requirements of this Schedule 1 before the Temporary Worker takes up an Assignment in accordance with the Tender as follows:

2.4.7.1 The Service Provider's operating procedures are consistent across its organisation and have achieved ISO9001 accreditation.

2.4.7.2 As part of its Supply Chain (SCH) selection process, the Service Provider will engage Suppliers to analyse their Temporary Worker (TW)

baseline checking capability. One primary criterion for appointment to the Contingent Labour ONE second tier will be the provision of a documented methodology for ensuring compliance, their self-audit / management process and their consent for the Service Provider to audit relevant files with an agreed notice period, together with case studies demonstrating their successful track record.

2.4.7.3 Once the Service Provider's SCH Management Team (SMT) is satisfied with the above, details will be included within the Supplier contract.

2.4.7.4 The Service Provider's robust SCH model requires full compliance packs for all TWs being sent to the Service Provider 'Compliance Manager for sign-off prior to start. This provides total control and visibility of baseline checking, mitigating the risk of non-compliance to the Authority, Customer, the Service Provider and Supplier.

2.4.7.5 The Service Provider recognises that some SME Suppliers may require support with process mapping for enhanced clearances, particularly CTC and above.

2.4.7.6 The Service Provider will provide guidance with process engineering, offering training on its proven best practice baseline checking methodology that has enabled it to complete BPSS, CTC and SC clearances for circa 2,000 Temporary Workers across Central Government in 2012.

2.4.7.7 For CTC clearances and above, the Service Provider will receive and review the completed BSVR paperwork together with associated documents prior to submission to the Customer for sponsoring. Due to the Service Provider's demonstrable experience of the process, this enables the Service Provider to identify and rectify errors in the paperwork with the Supplier before the documentation is received by the Customer.

2.4.7.8 For BPSS checks, the Service Provider will again receive all relevant documentation prior to undertaking its own Disclosure Scotland or Disclosure Barring Service (formerly CRB) prior to the candidate undertaking an assignment. This provides further benefits to all three parties:

- Mitigates the risk of non-adherence to TW baseline checking.
- Provides the Service Provider and the Customer with full visibility and control of compliance.
- With checks funded by the Service Provider, Supplier cash flow is again improved.

2.4.7.9 Where a TW has an existing CTC, SC or DV clearance, the Service Provider will manage the confirmation of clearance process on behalf of the Supplier. This mitigates risk to the Supplier and ensures the Customer retains a single point of contact for all enquiries.

2.4.7.10 The Service Provider has developed a comprehensive candidate tracker for UKBA that details the number of candidates at each grade in each location by their current status in the clearance process. This tool has underpinned the Service Provider's successful delivery to more than 20 UKBA locations throughout the UK since May 2012, providing complete visibility of the talent pool to the Customer. Through the analysis of the days lapsed between each stage of the process, the Service Provider has been able to identify and action areas for efficiency improvement.

2.4.8 The Service Provider will manage and resolve any consistent failures in relation to baseline checking by a Supplier as follows:

2.4.8.1 In order to mitigate the risk of consistent failure, the Service Provider's Supply Chain (SCH) Management means that all baseline checking documentation is sent to the Service Provider's Compliance and Audit Team (CAT) prior to the Temporary Worker (TW) undertaking an assignment. This enables a member of the Service Provider's dedicated

CAT to audit the paperwork prior to assignment start or submission of BSVR documentation for sponsorship. The Service Provider is also then better-positioned to identify areas for improvement in the Supplier's internal processes and support their development.

- 2.4.8.2 The Service Provider takes a pro-active approach to managing TW baseline checking through thorough implementation with its Suppliers to establish a robust SCH that enables it to audit all TW files prior to submission.
- 2.4.8.3 Through this proven approach to appointing a SCH, the Service Provider does not envisage consistent failures in relation to baseline checking. Only Suppliers with demonstrable capability and track record in effective compliance management will be engaged. The Service Provider will document the formal escalation process within the Contract for managing non-adherence to baseline checking.
- 2.4.8.4 The Service Provider recognises from experience that TW baseline checking is a resource-intensive process, requiring attention to detail and diligence in self-auditing. The Service Provider will work with its SCH during implementation to ensure the expectations are clear from the outset and that their own internal processes are robust and consistent with the Service Provider's own best practice.
- 2.4.8.5 The Service Provider's CAT will maintain a report of all TW files they review prior to assignment start, whether supplied by the Service Provider or a Supplier. This report will be reviewed by the Supplier Management Team, Account Managers and Framework Director who will decide on any appropriate remedial course of action dependent upon the seriousness of the non-compliance. Copies of the report together with detail of the chosen course of action will be provided to both the Authority and the Customer.

2.4.8.6 In the unlikely event that the Service Provider does experience consistent failures following its support, it will commence the below formal escalation process:

- First offence - written warning
- Second offence (within a 6 month period) - one month suspension from supply chain
- Third offence (within a 12 month period) - removal supply chain

2.4.8.7 Traditional non-compliance escalation procedures often provide Suppliers with only one or two opportunities prior to termination. With the Service Provider signing off every TW compliance file prior to start, the Service Provider is able to provide its Suppliers with further opportunities for the Service Provider to support their process improvements. This is particularly important for SMEs who may have little or no experience of or resource for recruiting to enhanced levels.

2.4.8.8 Please note however that the Service Provider is confident of not having to invoke this disciplinary process for Suppliers that elect to adopt its 'margin only' model. For Suppliers choosing to payroll TW directly, this robust process is proven to drive adherence to baseline checking standards.

2.5 Recommendations

2.5.1 The Service Provider shall, make recommendations of Candidates to the Customer by submitting a Short List of the CV's of the five most suitable Candidates selected by the Service Provider in accordance with the Business Rules.

2.5.2 In the event that the Customer does not require an interview process, the Service Provider shall select one of the Candidates or reject all the Candidates on the Short List in line with paragraph 2.5.4.

2.5.3 Where a Supplier is used, the Service Provider shall notify the supplier(s) which candidates have been selected for interview, including the time, place and any other

relevant details. The Service Provider shall then provide confirmation of attendance back to the Customer.

2.5.4 Following the interview process the Customer shall either:

- i. select one of the Candidates from the Short List and commence the on-boarding process (see paragraph 2.7); or,
- ii. reject all Candidates on the Short List.

2.5.5 In the event that all Candidates are rejected in accordance with 2.5.4.ii, the Service Provider will re-recommend Candidates to the Customer at the Service Provider's own cost by re-running the sourcing process set out in paragraph 2.3 above as many times as may be necessary until:

- i. the Requisition has been fulfilled; or
- ii. both the Customer and Service Provider agree the Requisition cannot be satisfied.

2.5.6 Where a Requisition cannot be satisfied as set out in paragraph 2.5.5 the Customer, via the Customer will need to seek the Authority's approval to invoke the Exception Process included at Annex F.

2.6 Acceptance and Assignment Establishment

2.6.1 Once the Customer has selected a candidate in accordance with 2.5.4i above, the Customer shall:

- i. Notify the Service Provider of the successful candidate; and
- ii. Provide the Service Provider with feedback regarding any unsuccessful Candidates.

2.6.2 Upon receipt of the information from the Customer set out in 2.6.1 above, the Service Provider shall:

- i. confirm the details of the requirements to the Contracting Body and appoint, or instruct the relevant Supplier to appoint, the Temporary Worker; and.

- ii. notify suppliers of unsuccessful Candidates and relay to them the feedback received from the Customer in accordance with paragraph 2.6.1ii above; or
- iii. ensure that such feedback is in turn relayed directly to any Candidates recommended by the Service Provider or procure that such feedback is relayed by the relevant suppliers to any Candidates recommended by such supplier,

The Service Provider shall ensure that feedback is relayed to suppliers and Candidates in accordance with its Tender as follows:

2.6.2.1 The Service Provider's formal feedback process ensures its full compliance with this requirement, preserving the reputation of the Framework Agreement (FWA) Customers as an Employer of Choice by providing excellent customer service to candidates. The process is conducted in two key stages, as described below:

Stage One: Collating and disseminating feedback

2.6.2.2 To present Central Government as a fair and communicative organisation, whilst balancing productivity for Hiring Managers, the Service Provider's process differentiates between feedback after a candidate is proposed by the Supplier (i.e. at CV submission or interview) and ongoing engagement feedback during the enhanced vetting stage, which may take up to eight weeks.

2.6.2.3 Within the FWA process, it is expected the Hiring Manager will be able to "select" or "reject" candidates proposed through the VMS Web Portal. Again, it is expected the reason for the decision will be captured by an automated drop down field and supporting free-text, which the Hiring Manager or a member of the Framework Centre of Excellence (FCoE) will populate. This will allow personalised feedback to be captured, which is a basic expectation of candidates.

- 2.6.2.4 This personalised feedback will then in turn be relayed by a member of FCoE whom is responsible for the requisition process and / or automatically through VMS web portal to the relevant Supplier.

Stage Two: Ensuring suppliers relay feedback to candidates

- 2.6.2.5 To make stage one effective, the second stage of the Service Provider's process puts the focus on ensuring Suppliers relay the feedback to the candidates correctly and efficiently. The Service Provider educates and trains all Suppliers inducted into its programme on the importance of building FWA Customer employer brand and the role that providing feedback plays in this. All Suppliers are trained on the VMS web portal so that they understand how they will receive the feedback that they are required to relay to their candidates. The Service Provider also provides guidance on the best way of delivering feedback and expectations on the timeframes in which this should be done, so as to achieve a consistent experience whether the candidate is from the Service Provider or through the Supply Chain.
- 2.6.2.6 If the candidate was rejected following CV submission or interview it is expected the Supplier will provide constructive feedback to the candidate based on information provided by the Hiring Manager.
- 2.6.2.7 Outside of the candidate feedback, the FCoE team will also review in general terms, each Suppliers' performance ratios and trends and candidate suitability. This will be used as part of the Service Provider's Supplier Coaching Programme delivered by aligned Relationship Managers to each Supplier.
- 2.6.2.8 To demonstrate the importance of this process to the Supply Chain, the Service Provider will also implement a candidate focused Service Quality Assessment (SQA) survey which will ask the candidate to confirm that they received timely supplier feedback. Candidate response rates will be tracked as an element of a Suppliers overall performance.

2.6.3 The Service Provider shall ensure that it secures email confirmation of the Temporary Worker's Acceptance from the Temporary Supplier if the Candidate was recommended by the Service Provider or from the Supplier if the Candidate was recommended by Supplier. In the event that such Acceptance is not forthcoming the Contracting Body will require the Service Provider to either:

- i. offer the Assignment to any reserve Candidate identified by the Contracting Body; or
- ii. re-run the sourcing process to find an alternative suitable Candidate.

2.6.4 Once the Service Provider has complied with its obligations set out in paragraph 2.6.2 above, the Customer will confirm the purchase order number to be used for Timesheets, expenses claims and invoicing via the Web Portal.

2.6.5 Subject to Clause 53.2 of the Call Off Terms the Temporary Worker Day Rate shall be the same as the rate at which the Temporary Worker was proposed as a Candidate by the Supplier.

2.7 On-boarding of a Temporary Worker

In order to ensure a smooth on-boarding process the Service Provider shall:

2.7.1 develop a full on boarding process which takes into account Customer's requirements and time scales as specified in the Requisition Form. The generic format of the on boarding process will be as agreed between the Authority and Service Provider within four calendar weeks of the Framework Agreement Commencement Date. The Service Provider's proposal for a Temporary Worker on boarding process shall, ensure a smooth induction for the Temporary Worker and the Customer is as follows

2.7.1.1 In 2012 the Service Provider onboarded 7,000 individual Temporary Workers (TW) to 45 Central Government and ALB organisations across over 500 individual UK locations.

2.7.1.2 The Service Provider's TW onboarding approach was clearly demonstrated when, in partnership, with UKBA the Service Provider developed an engagement programme to ensure 100% of workforce

throughout a critical Olympic Clearing House project.

2.7.1.3 These successful best practices have now been adopted across the Service Provider's Central Government Customers and will form the basis for the Service Provider's discussion with the Authority post award.

2.7.1.4 In the Service Provider's experience, to ensure a smooth induction for each TW and Customer, it is important that each Customer's unique onboarding specification is captured, recorded and communicated. This is ensured through the Service Provider's established Account Management processes and procedures.

2.7.1.5 Every TW onboarding experience is consistent and includes, but is not limited to:

- Full Customer briefing including location, health and safety
- Full job description, role expectations and Hiring Manager briefing
- Time recording and holiday procedure
- Escalation procedure
- Code of Conduct

2.7.1.6 A specific Customer briefing pack including a Handbook and Orientation Guide is created including Health and Safety policies, contact details, office hours, pay rates, HMRC taxation adherence, disclosure rules, departmental structure, job description and AWR comparators. This will also include a signed Non-Disclosure Agreement (declaration under the Official Secrets Act where applicable). Current Home Office Group and MoJ approved templates will be available for review.

2.7.1.7 Each TW is given access to a Service Provider portal with supporting information available on both payroll and work details, TW legislation, and information to enhance their employment experience with the Service Provider.

2.7.1.8 Furthermore, the Service Provider works in partnership with each Customer to develop a Hiring Manager (HM) User Guide. Using an established document template (agreed by the Authority), this includes an overview of the recruitment and TW onboarding processes, Service Provider contact details, query and complaint escalation procedure, Web Portal usage and relevant agreed service levels.

2.7.1.9 24 hours before a TW starts a new assignment, the Service Provider will conduct pre-assignment briefings with confirmation of working hours and issue of the TW Handbook and Orientation Guide.

2.7.1.10 On the first day of each new assignment, the Service Provider will:

- Contact the HM within 60 minutes of the agreed start time to confirm safe arrival
- Contact the HM four hours into the first day to confirm the TW is meeting agreed expectations
- Contact both HM and TW at the end of day one to discuss progress and answer any questions.

2.7.1.11 To support the onboarding, wherever possible the Service Provider works with the Customer to establish a 'Buddying Programme' where new TW are aligned to a permanent employee for role shadowing.

2.7.1.12 Continuing throughout the duration of the assignment, the Service Provider keeps in weekly contact with both the HM and TW, also completing regular Surgeries and Service Quality Assessments (which includes the onboarding experience).

2.7.2 Issue the Temporary Worker, prior to commencement of the Assignment, a Customer briefing pack including a broad outline of the Customer organisation and a detailed view of the role and performance objectives, geographic location and who to report to. The generic format of the briefing pack will be as agreed between the Authority and Service Provider under the Framework Agreement.

2.7.3 provide adequate resources to take a proactive role in the on boarding process.

2.7.4 ensure that the on boarding process is streamlined to remove any unnecessary and time consuming meetings, is flexible enough to adapt to Contracting Bodies specific requirements, regarding communication plans/messages, IT and Purchase to Pay systems.

2.7.5 Within 4 hours following commencement of an Assignment undertake a first day check with the Temporary Worker and the Customer to ensure the successful commencement of the Service with minimal impact for the Customer and the Temporary Workers.

2.8 Performance management (Of the Temporary Worker)

2.8.1 During the performance of the Temporary Worker Services, responsibility for performance management of the Temporary Worker rests with the Customer. 2.8.2 In the event that:

- i. the Customer notifies the Service Provider of the unsatisfactory performance of the Temporary Worker; or
- ii. a conflict of interest occurs between the Temporary Worker and the work of the Customer; or
- iii. a relevant change in circumstances occurs in relation to the Temporary Worker's security clearance or base-line checks,

the Service Provider shall immediately, unless otherwise agreed with the Customer, remove the Temporary Worker and offer suitable alternative Candidates to the Customer following the sourcing process set out in paragraph 2.3 so that a replacement Temporary Worker may take up the Assignment within ten Working Days following the sourcing process set out in paragraph 2.3. The Service Provider shall be liable for all costs involved in replacing the Temporary Worker.

Additional Ad hoc Services

- 2.9.1 The Service Provider shall provide the following additional services agreed with the Customer for this Contract.

[insert details of any Customer-specific implementation or service delivery support services]

ANNEX 1

WEB PORTAL

- 1.1.1 Paragraphs 1.1 to 1.4 set out the key characteristics of the Web Portal, which will be provided by the Neutral Vendor, and which will be used by the Service Provider and the Customer as the channel to facilitate the delivery of the Contingent Labour Services;
- 1.1.2 The Web Portal shall include (but not be limited to) the following:-
- i. A landing page for Contracting Bodies which enables a single point of entry.
 - ii. A filter tool which will enable Contracting Bodies to select the Contingent Labour Framework Agreement based on Temporary Worker type.
- 1.2 User Interface
- 1.2.1 The Web Portal shall contain a user log-in screen which is password protected to ensure security of the system is maintained at all times.
- 1.2.2 The Web Portal shall ensure that Contracting Bodies are only able to place Requisitions for role types for which they have set up enabling “call off” contracts under the Framework Agreement. The Neutral Vendor will be responsible for managing the grant of user access to the Web Portal, which will incorporate appropriate user profile management facilities into the Web Portal such that particular categories of user have appropriate access to required functionality.
- 1.2.3 The Web Portal during operational times will be available 24 hours per day, every day of the year.
- 1.2.4 The Web Portal shall, as a minimum, include the fields contained in the Requisition Form at Annex 3 that will be used by users/Contracting Bodies to request Services. The System shall maximise the use of standardised data, for example, tick boxes, drop down menus, pre populated job roles and provide a validation of data activity.

- 1.2.5 The Web Portal shall allow for pre-population of the Requisition Template, suitable for both Neutral Vendor and Managed Service Provision Temporary Worker Rate Cards and include a tracking system to ensure rate card adherence when applicable.
- 1.2.6 The Web Portal shall include appropriate notification flags to be sent via email to the Contracting Body as a minimum at the following trigger points:
- i. 2 weeks prior to completion of the Agency Worker Regulations 12 week Qualifying Period.
 - ii. 8 weeks prior to the expiry of the Assignment and thereafter every 2 weeks.
 - iii. 8 weeks prior to the expiry of an Assignment which last longer than 6 months or more.

The Authority reserves the right to add additional trigger points during the Framework period.

- 1.2.7 The Web Portal shall allow the Contracting Body to re-assign approval rights when there is a period of absence. There will be a defined process to enable the Contracting Body or Managed Service Providers to re-assign rights as necessary.
- 1.2.8 The Neutral Vendor shall provide help functions and/or online user manuals to enable users to use the Web Portal effectively with minimum support.
- 1.2.9 The Web Portal shall allow the Authority and Contracting Body(s) to have electronic access to data and should enable users to be able to run a range of Performance Management Reports similar to those outlined in Annex 4.

1.3 Time Sheets

- 1.3.1 The Web Portal shall export time sheet data, appropriately referenced with purchase order number in the agreed format, per Contracting Body, to the Contracting Body's financial management system (e.g. Oracle, SAP, Agresso).
- 1.3.2 The Web Portal shall include the following functions:
- i. Temporary Worker time sheet submissions

- ii. Contracting Body approval of time sheet submissions
- iii. Expenses approvals
- iv. Supplier access to approved timesheets and expenses
- v. The Web Portal will allow a set total value to be set for an Assignment, with the reduction in remainder of budget tracked as the Assignment progresses and timesheets are approved. Customers will be able to set a notification point at which they will be automatically notified where the budget limit for the assignment is approached.
- vi. The Web Portal functionality will ensure that Contracting bodies will be automatically alerted on approval of the relevant verified timesheet when the value of a timesheet is anomalous in relation to the budget for the relevant Assignment. It will be possible for a customer representative with appropriate user privileges to reset the assignment budget in a straightforward manner to remove the anomaly
- vii. Where stipulated by some Contracting Bodies, the Web Portal must be able to interface directly with the Contracting Body's purchase order system either directly (i.e. Oracle) or indirectly via an order placed within the Government eMarketplace (currently ProcServe). A typical model in existence involves catalogues within iProc (Oracle) that allow users to self requisition the booking requirement. In this scenario, once the budget holder approves, the PO would then be routed to the Supplier via the technology portal without procurement intervention. A three-way match would then follow involving the PO, Invoice & System Receipt

1.3.3 The Web Portal shall enable management of timesheets for the Service Provider, Contracting Body, Supplier and Temporary Worker that does not cause unnecessary complexity or delay for any of the parties.

1.4 Web Portal Maintenance

1.4.1 Planned Maintenance shall be carried out outside Business Hours and be notified to the Service Provider at least 14 days in advance. The Neutral Vendor shall notify the

Service Provider immediately of any incidents or outages causing or likely to cause a loss of service of the Web Portal, either through planned or scheduled maintenance or failure of any part of the service.

1.4.2 A daily secured backup regime shall be in place to safeguard against data loss in the event of hardware failure. In the event of such failure the Neutral Vendor shall ensure restoration of the service and shall restore data from backup to take immediate effect.

1.4.3 The Neutral Vendor will provide a Help Desk facility, to deal with any Web Portal issues. This Help Desk facility will be available to Contracting Bodies, Suppliers and Managed Service Providers during operational business hours (8.00am – 6.00pm), Monday – Friday.

1.5 Mobilisation

1.5.1 The Web Portal shall be subject to fully operational and user acceptance testing, during mobilisation, and shall be approved by the Authority to ensure that it is fit for purpose. It is currently planned that Web Portal mobilisation shall include the following:

- i. Initial Build of Web Portal including integration of Managed Service Providers and acceptance testing.
- ii. Review by the Authority and Contracting Bodies
- iii. User acceptance testing
- iv. Security testing.
- v. Operational Go live date.

1.5.2 The Neutral Vendor shall offer full training packages for its own Staff, Contracting Bodies, Managed Service Providers and Suppliers.

1.5.3 The Neutral Vendor shall provide help functions and/or on-line user manuals to enable users to use the Web Portal effectively with minimum support.

ANNEX 2

EXCEPTION PROCESS FOR CONTINGENT LABOUR FRAMEWORK AGREEMENT RM960

1. Introduction

The Framework has been established to incorporate the Temporary Worker Rate Card, with the intention that the Temporary Worker Day Rates do not exceed the Maximum Rate.

The Authority acknowledges that there may be occasions when Contracting Bodies may need to appoint Temporary Workers at Temporary Worker Day Rates in excess of the Maximum Rate where niche specialist roles are identified or shortage in specialist skill areas occurs or where the Contracting Body and the Service Provider otherwise agree that the requirement for a Temporary Worker cannot be satisfied in accordance with paragraph 4.5.8. To ensure all such cases are considered in a consistent way, a rigorous exception procedure has been established which all Contracting Bodies must follow in order for the Authority to effectively consider and subsequently approve or reject such requests.

The Service Provider shall notify all exceptions to the Authority during the Management Review Meeting and/or the Operational Review Meeting to enable the Authority to track all Assignments where the Maximum Rate is exceeded.

2. Information required to support an exception

When seeking the Authority's approval for an exception, the Contracting Body must present a short but clear comprehensive business case to the Authority to justify the necessity for classifying a specific role as niche and/or specialist or otherwise incapable of fulfilling such as to justify appointment above the Maximum Rate.

Within this short business case, the following details should be provided: -

- **Role title**
- **Role code**
- **Justification**
- **Contracting Body**
- **Whether it is a new placement or extension to an existing placement**
- **Proposed day rate**
- **Length of tenure**

- **Whether or not an extension period is requested**
- **Completion date**
- **Number of roles required**

3. Exception Procedure

In order to protect the Integrity of the Framework, Contracting Bodies should only seek exceptions when an initial sourcing exercise has failed to identify a suitable Candidate for appointment.

Contracting Bodies must send all requests for exceptions via email to the following email address: - contingentlabourOne@gps.gsi.gov.uk. Once received, any such request will firstly be forwarded to the Authority where an initial appraisal of the specific exception request will be made, following which the request will either be accepted or rejected by the Authority with a corresponding email notification sent to the Contracting Body.

Should the request be declined, and the Contracting Body wishes to appeal against the decision then the final escalation point would be for the Contracting Body to raise a formal appeal and to escalate the matter directly to the Authority's Head of Professional Services for consideration. On receipt of such an appeal the Head of Professional Services would consider all facts and make the final decision. A written notification of the outcome will be sent via email to the Contracting Bodies within 5 Working Days.

This process has been introduced to ensure that Contracting Bodies have a clear and simple exceptions process, while at the same time enabling the Authority to both to track and record all instances where the Maximum Rate is exceeded.

ANNEX 3
REQUISITION FORM

1) Type of transaction type

- i. New requirements which require sourcing.
- ii. Extensions to an Assignment.
- iii. Transfers to existing requirements.
- iv. Nomination of a particular individual or a request for a highly specialist unique role (in which case it should not be possible to complete non-applicable fields).

2) Business Unit Details

- i. Department or organisation (available on a drop down menu)
- ii. Business Unit (free text)

3) Requestor Details

- i. Name
- ii. Job Title
- iii. Phone No.
- iv. Email address
- v. Address
- vi. Postcode

4) Hiring Manager Details

- i. Name
- ii. Job Title
- iii. Phone No.
- iv. Email address
- v. Address
- vi. Postcode

5) Business Case Approval Details

- i. Confirmation of business case sign off
- ii. Name of HR person approving
- iii. Name of Financial person approving
- iv. Name of Commercial person approving

6) Budget Holder

- i. Name of budget holder
- ii. Cost Centre

7) Assignment Details

- i. Location where the Assignment shall be based
- ii. Expected Assignment start date
- iii. Expected Assignment end date
- iv. Minimum number of CV's required (default at 3)
- v. Maximum number of CV's required
- vi. Job Specialism (from a drop down list)
- vii. Job Title (from a drop down list, – which will prompted a pre-populated job description provided by the Service Provider)
- viii. Key tasks and deliverables (these will be in addition to standardised, pre-populated job descriptions)
- ix. Special Qualifications Required
- x. Experience Required
- xi. Special Security Clearances Required (Y/N then details)
- xii. CRB Check (Y/N)
- xiii. Maximum Rate (pre-populated)
- xiv. Any further criteria to be applied by the Service Provider when sourcing candidates
- xv. Any other requirements

Final details of the Temporary Worker

To be completed by the Service Provider and sent to the Hiring Manager identified in the Requisition Form once it has been received.

Details for creation of a requisition and purchase order Numbers.

- i. Temporary Worker Name
- ii. Assignment Start Date:
- iii. Assignment End Date
- iv. Daily rate at which the Temporary Worker will be paid (excluding VAT)
- v. NOT USED
- vi. Name of supplier of the Temporary Worker

ANNEX 4

1. The Customer Performance Management Reports

The Service Provider Customer shall, as a minimum, include the following information in each Performance Management Report it provides to the Customer by the 15th of each month: -

- Numbers of professional and technical personnel who have started Assignments with the Customer both:

- i. since the commencement of the Call-Off Agreement; and
- ii. in the previous Month,

broken down by Customer including arms length bodies (“**ALBs**”) and non-departmental public bodies (“**NDPBs**”), Supplier and by generic area of work;

- Numbers of professional and technical personnel who have ended Assignments with the Customer both:

- i. since commencement of the Call-Off Agreement; and
- ii. in the previous Month,

broken down by Customer including ALBs and NDPBs, Supplier and by generic area of work (in accordance with Annex C Part 1);

- Numbers of professional and technical personnel who have had Assignments with the Customer extended both:

- i. since commencement of the Call-Off Agreement; and
- ii. in the previous Month,

broken down by Customer Including ALBs and NDPBs, Supplier and by generic area of work (in accordance with Annex C Part 1), including the length of the extension and the expected end date.

- Numbers of professional and technical personnel, who have completed Assignments with the Customer early both:

- i. since commencement of the Call-Off Agreement; and
- ii. in the previous Month,

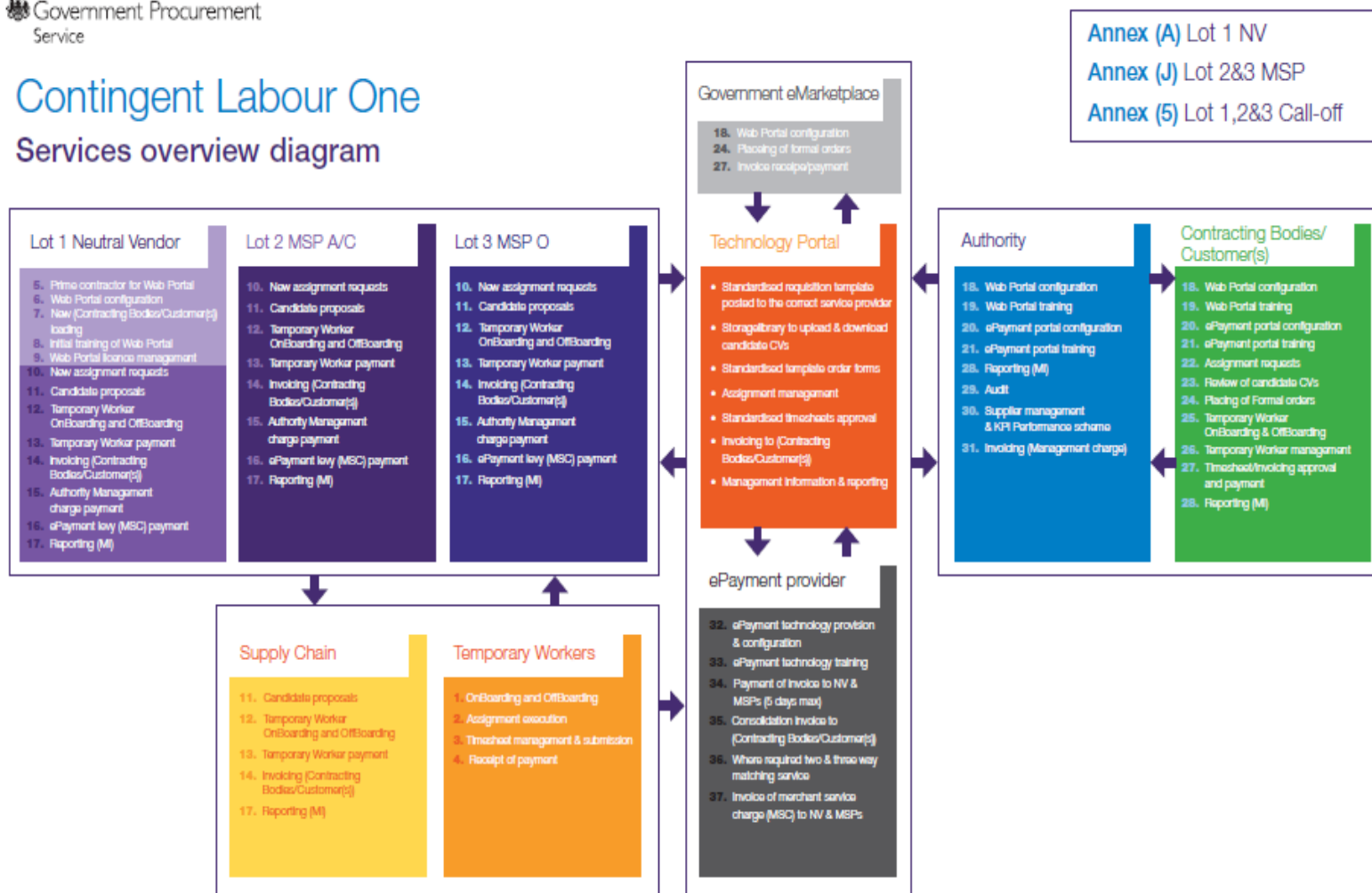
broken down by Customer Including ALB's and NDPB's, Supplier and by generic area of work (in accordance with Annex C Part 1).

- Total value of the Customer's Requisitions fulfilled within the previous Month, broken down by Supplier and business unit.

- A list of all Temporary Workers currently providing Temporary Worker Services to the Customer, including details of all period for which they have provided Temporary Workers Services to the Customer, with the dates, charging rates and the cost centre the charges were allocated to.
- A record of any failures by the Service Provider to to fulfil a Requisition.
- A savings report to show by role and Customer departments/ALB's how much was saved against the Service Provider's 2009/10 baseline – i.e. the Service Provider's cost and pricing models, discount levels and structures and prices paid and volumes transacted by customers for services equivalent to the Services that were provided by the Service Provider in the financial year 2009/10.
- Returns required under Call Off Contract Schedule 9 (if required by the Customer Monthly)
- Length of tenure period report detailing the duration of current Assignments
- Service Level report Customer in accordance with paragraph 2.1 of Call-Off Terms Schedule 8 Annex B.

ANNEX 5 – SERVICE OVERVIEW DIAGRAM

Contingent Labour One Services overview diagram



Contingent Labour One

Services Overview Comments Sheet

N o.	ORGANISATION	DESCRIPTION	COMMENTS
1	Temporary Worker	On Boarding & Off Boarding	At the start and end of each assignment the worker has a duty to cooperate with all parties to ensure smooth on boarding & off boarding.
2	Temporary Worker	Assignment Execution	During the assignment the Temporary Worker has a duty to work within the rules set by the Contracting Bodies/Customer(s) to fulfil their assigned tasks to a high standard.
3	Temporary Worker	Timesheet Management & Submission	The Temporary Worker will be required to record their time worked on a daily basis and to submit an electronic timesheet directly in to the Web Portal on a weekly basis.
4	Temporary Worker	Receipt of Payment	Assuming an accurate timesheet has been submitted on time and in the correct format the Temporary Worker will be paid by the Neutral Vendor or Managed Service Provider(s) within 5 working days at the agreed payment intervals i.e. weekly or monthly.
5	Neutral Vendor	Prime Contractor for Web Portal	The Neutral Vendor will submit a suitable proposal for the Web Portal and will act as the Prime Contractor for the system, its hosting and support. The Neutral Vendor will propose licence/access agreements for the Managed Service Provider(s) and Contracting Bodies/Customer(s). These agreements will be required to be approved by the Authority before issuing to all users.

6	Neutral Vendor	Configuration of Web Portal	Working with the Authority, the Neutral Vendor will take responsibility for configuring the Web Portal to ensure it operates in an optimised way. Where required, the Neutral Vendor will also build an interface, at their own cost, between the Web Portal and the Government eMarketplace (currently Procserve) to allow Contracting Bodies/Customer(s) to place orders directly from this system. Additionally Contracting Bodies/Customer(s) should be set-up in a way which allows the Authority to have top level access to the data within the hierarchical structure, with all other departments and Arms Length Bodies structured below the Authority following the concept of parent/child relationships.
7	Neutral Vendor	New Contracting Bodies/Customer(s) Loading into Web Portal	Working with the Authority, the Neutral Vendor will take responsibility for initial loading and configuring of all new Contracting Bodies/Customer(s) onto the Web Portal, or provide access rights and training for the Authority to undertake this role.
8	Neutral Vendor	Initial Training of Web Portal	Working with the Authority, the Neutral Vendor will provide initial training to the Authority, the Managed Service Provider(s) and key Contracting Bodies/Customer(s) following a "Train the Trainer" approach.
9	Neutral Vendor	Web Portal Licence management	The Neutral Vendor shall be responsible for all costs associated with the provision of the Web Portal including payment of all license fees. The Neutral Vendor shall not make any charge to the Authority, Contracting Bodies/Customer(s), the Managed Service Provider(s), Suppliers or Temporary Workers for access to the Web Portal.
10	Neutral Vendor & Managed Service Provider	New Assignment Requests	The Neutral Vendor and Managed Service Provider(s) will receive requests for new assignments via the Web Portal. The Web Portal will have predesigned requisition templates for the customers to populate. Where requested by Contracting Bodies/Customer(s), some requests may come directly from the Government eMarketplace.
11	Neutral Vendor & Managed Service Provider	Candidate Proposals	The Neutral Vendor and Managed Service Provider(s) will upload a short list of candidate CV's in to the Web Portal, making them available for the Contracting Bodies/Customer(s) to access.

12	Neutral Vendor & Managed Service Provider	Temporary Worker On Boarding & Off Boarding	Once an official order is placed from the Contracting Bodies/Customer(s) and submitted in to the Web Portal the Neutral Vendor and Managed Service Provider(s) will be required to fully manage the on boarding process at the start of the assignment and the off boarding process at the end of the assignment.
13	Neutral Vendor & Managed Service Provider	Temporary Worker Candidate Payment	The Neutral Vendor and Managed Service Provider(s) will be required to pay the Supplier/Temporary worker in accordance with the specification.
14	Neutral Vendor & Managed Service Provider	Invoicing (Contracting Bodies/Customer(s))	The Neutral Vendor and Managed Service Provider(s) will be required to invoice the Contracting Bodies/Customer(s) in accordance with the specification.
15	Neutral Vendor & Managed Service Provider	Authority Management Charge Payment	The Neutral Vendor and Managed Service Provider(s) will be required to pay the Authority Management Levy in accordance with the Framework Agreement
16	Neutral Vendor & Managed Service Provider	ePayment Levy (MSC) Payment	Where a Contracting Bodies/Customer(s) opts to pay with Option 1 the ePayment Solution, then the Neutral Vendor and Managed Service Provider(s) will be required to absorb the Merchant Service Charge (MSC) within the overall charges invoice to the Contracting Bodies/Customer(s) . The ePayment provider will invoice the Neutral Vendor and Managed Service Provider(s) on a monthly basis for the MSC.
17	Neutral Vendor & Managed Service Provider	Reporting (MI)	The Neutral Vendor and Managed Service Provider(s) will be required to produce Performance Management reports to both the Authority and the Contracting Bodies/Customer(s) by the 15th of each calendar month. Additionally the Neutral Vendor and Managed Service Provider(s) will be required to report monthly MI data to the Authority via MISO no later than the 7th of each calendar month.

18	Authority & Contracting Bodies/Customer(s)	Web Portal Configuration (from Neutral Vendor and Managed Service Provider(s))	The Neutral Vendor will be required to configure the Web Portal to meet the needs of the Authority and the Contracting Bodies/Customer(s). We expect to see proposals from the Neutral Vendor how they would approach the configuration of the Web Portal both at the start and ongoing throughout the life of the Framework Agreement. Where required, the Neutral Vendor will also build an interface, at their own cost, between the Web Portal and the Government eMarketplace (currently Procserve) to allow Contracting Bodies/Customer(s) to place orders directly from this system.
19	Authority & Contracting Bodies/Customer(s)	Web Portal Training (from Neutral Vendor)	The Authority and the Contracting Bodies/Customer(s) will be required to nominate key users of the Web Portal who will be trained by the Neutral Vendor. This approach will follow "Train the Trainer" with the appointed staff required to train other staff within their own organisations.
20	Contracting Bodies/Customer(s)	e-Payment Solution Configuration	Where required, the Contracting Bodies/Customer(s) will be required to work with the e-Payment Provider to help configure their systems with within their own financial systems. Depending upon the complexity of the configuration this will require a change management approach by the Contracting Bodies/Customer(s).
21	Contracting Bodies/Customer(s)	e-Payment Solution Training	Where required, the Authority and the Contracting Bodies/Customer(s) will be required to nominate key users of the ePayment Technology to be trained by the ePayment Provider. This approach will follow "Train the Trainer" with the appointed staff required to train other staff within their own organisations.
22	Contracting Bodies/Customer(s)	Assignment Requests	Using standard templates within the Web Portal, the Contracting Bodies/Customer(s) will submit an Assignment Request which will automatically be routed to the most appropriate supplier as defined within the Lotting Structure of the Framework Agreement. Where requested by the Contracting Bodies/Customer(s), some requests may come directly from the Government eMarketplace.
23	Contracting Bodies/Customer(s)	Review of Candidates CVs	The Contracting Bodies/Customer(s) will use the Web Portal to access all CVs submitted by the Neutral Vendor and Managed Service Provider(s).

24	Contracting Bodies/Customer(s)	Placing of formal orders	Once a suitable candidate has been identified by the Contracting Bodies/Customer(s), using standard templates within the Web Portal, the Contracting Bodies/Customer(s) will place a formal order which will include the detailed Purchase Order number. Where requested by the Contracting Bodies/Customer(s), some orders may come directly from the Government eMarketplace.
25	Contracting Bodies/Customer(s)	Temporary Worker On Boarding & Off Boarding	Customer Briefing pack to be provided in line with the induction training as per specification.
26	Contracting Bodies/Customer(s)	Temporary Worker Management	The Contracting Bodies/Customer(s) will use the Web Portal to help programme manage all Temporary Workers.
27	Contracting Bodies/Customer(s)	Invoice Approval & Payment	On receipt of the detailed and accurate timesheet submitted by the Temporary Worker within the Web Portal, the Contracting Bodies/Customer(s) will approve accordingly. The Neutral Vendor will then automatically submit and invoice for payment. All invoices will be required to pass through the Web Portal and recorded accordingly. Invoices submitted via Option 1 the e-Payment Solution, will include full Line Item Detail as described within the specification. Where Contracting Bodies/Customer(s) process orders for Temporary Worker(s) via the Government eMarketplace, the Neutral Vendor & Managed Service Provider(s) will direct invoices to this system, which in turn will direct the invoice to the appropriate financial system for payment.
28	Contracting Bodies/Customer(s) & Authority	Reporting (MI)	The Contracting Bodies/Customer(s) & Authority will require a suite of Management Information reports to help them manage their programme effectively.
29	Authority	Audit	From time to time, and at least annually, the Authority will arrange to carry out systems audits on the Web Portal.
30	Authority	Supplier Management & KPI(S)	The Authority will carry out regular supplier management activities including Vendor Rating on the Neutral Vendor & Managed Service Provider(s).

31	Authority	Invoicing (GPS Levy)	On receipt of the monthly MI data submitted by the Neutral Vendor & Managed Service Provider(s) within MISO, the Authority will invoice the supplier for the GPS Levy at the appropriate level.
32	e-Payment Provider, Neutral Vendor & Managed Service Provider	e-Payment Configuration	The e-Payment Provider will be required to configure their system to integrate with the Web Portal to meet the needs of the Authority and the Contracting Bodies/Customer(s). We also expect the Neutral Vendor & Managed Service Provider(s) to cooperate with the ePayment Provider to ensure system integration runs smoothly.
33	e-Payment Provider	e-Payment Training	Where required, the e-Payment Provider will be required to provide initial training to the Neutral Vendor & Managed Service Provider(s) and the Contracting Bodies/Customer(s).
34	e-Payment Provider	Payment to Neutral Vendor and Managed Service Provider(s)	Upon receipt of an invoice presented by the Neutral Vendor & Managed Service Provider(s), which has been approved by the customer, the ePayment Provider will pay the Neutral Vendor & Managed Service Provider(s) within 5 working days.
35	e-Payment Provider	Consolidated Invoice to Contracting Bodies/Customer(s)	The e-Payment Provider will invoice the Contracting Bodies/Customer(s) on a monthly basis and will present full Line Item Detail within the Invoice. The Contracting Bodies/Customer(s) will be required to enter in to a Call Off Contract with the ePayment Provider nominated by the Authority prior to invoices being paid via Option1.
36	e-Payment Provider	e-Payment Technology	Where required, the ePayment Provider will be required to implement a Technology Solution that will match off all transactions submitted for payment against the approved timesheet. This technology will integrate directly in to the Contracting Bodies/Customer(s) financial systems.
37	e-Payment Provider	Consolidated Invoice to Neutral Vendor and Managed Service	The e-Payment Provider will invoice the Neutral Vendor & Managed Service Provider(s) for the MSC on a monthly basis.

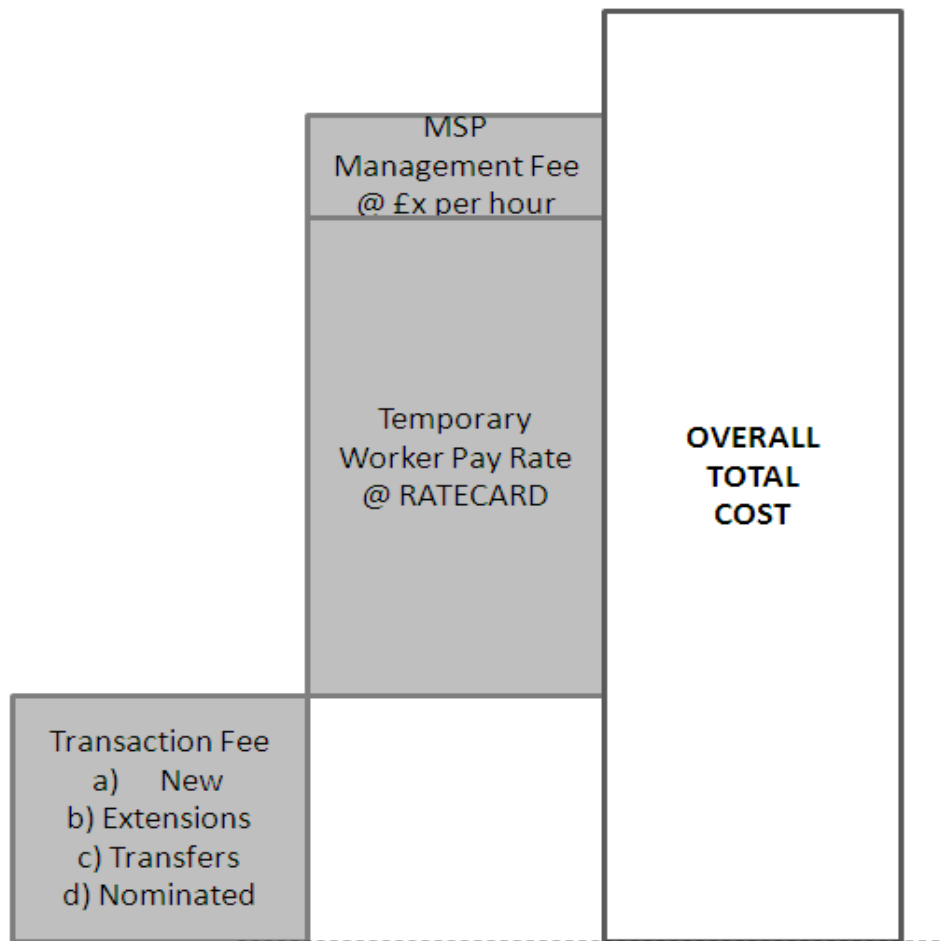
		Provider(s) for MSC	
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SCHEDULE 2: THE CONTRACT CHARGES AND PAYMENT

Charging Structure-MSP

1. Charging Structure Principles

- 1.1.1 The Charging Structure below shall be used within this Contract. Each element represents a core component of the charges that may be payable by the Customer in respect of an Assignment: Payments in respect of any additional services outside of the core Contingent Labour Service shall be determined in accordance with Paragraph 2.4.



2. Charging Structure Components

2.1 Transaction Fee

2.1.1 For each of the transaction types below, the Service Provider shall be paid the Transaction Fee which shall be a one off charge for the effort expended by it in arranging the transaction as set out in Annex B. The Transaction Fee shall be included in the first invoice for the relevant Assignment following the transaction.

- i. New Requirements which require the sourcing of Temporary Workers to establish an Assignment.
- ii. Extensions to existing Requirements which require a small amount of administrative effort by the Service Provider to extend an existing Assignment.
- iii. Transfer of a Temporary Worker to meet a Requisition established under an existing Requirement which require a small amount of administrative effort by the Service Provider.
- iv. A Temporary Worker nominated by the Customer under paragraph 3.3.9(i) of Framework Agreement Schedule 1 for a new Requirement which requires some administrative effort by the Service Provider to establish the Assignment.

2.2 Temporary Worker Day Rate

2.2.1 The Temporary Worker Day Rates shall be controlled by the use of the following regional Temporary Worker Rate Cards (as amended from time to time in accordance with the Framework Agreement) which are set out in Schedule 1

Inner London; Outer London; West Midlands; South West; South East; North West; North East; Yorkshire & Humberside; East Midlands; East; Wales; Northern Ireland; and Scotland.

As part of its Framework Agreement management function the Authority shall manage the Temporary Worker Rate Card. The Authority shall update these rate cards from time to time. The Service Provider shall, on an annual basis, make recommendations to the Authority for any changes to the Temporary Worker Rate Cards based on actual rates paid in order to dynamically track the market. The Authority, acting reasonably but at its sole option, shall decide whether or not it accepts the recommendations and thus whether the changes to the Temporary Worker Rate Cards will be implemented.

2.2.2 During the Qualifying Period the Temporary Workers shall be paid the applicable fixed Temporary Worker Rate Card rate unless (a) otherwise determined by the Customer or (b) approved by the Authority in accordance with paragraph 2.5.9 of Schedule 1. Contracting Bodies aligned to Agenda for Change or other role grading structures may have to upwardly adjust the fixed pay rate to meet their internal pay points. The Authority will update these Rate Cards from time to time. The Service Provider shall not make recommendations that would result in a Temporary Worker Day Rate that exceeds the applicable fixed Temporary Worker Rate Card rate.

2.2.3 Once the Temporary Worker has completed the Qualifying Period the Temporary Worker shall be paid the greater of such rate as is payable in accordance with paragraph 2.2.2 above or the Comparator Rate and shall where necessary receive additional payments to which they are entitled under the AWR.

2.2.4 The Service Provider shall ensure that there is an obligation on the Temporary Worker to allow the Customer to seek assurances that tax and National Insurance has been paid in accordance with all HMRC taxation rules.

2.2.5 The Temporary Worker Day Rates applicable at the Commencement Date are set out at Annex A.

2.2.6 The Service Provider shall charge the Customer, by agreement, for work carried outside of normal working hours including nights, weekends and bank holidays/public holidays in accordance with the policies and rates that the Customer applies to its own staff.

2.3 Managed Service Provider's Management Fee

2.3.1 A Management Fee shall be paid by the Customer in respect of each Assignment. The Management Fee shall be payable as a fixed fee for each hour worked by a Temporary Worker under an Assignment in a working week irrespective of the Temporary Worker Day Rate to take account of:

- i. Management Costs incurred or to be incurred by the Service Provider in providing the required Services.
- ii Statutory charges including any charges payable in accordance with the Agency Worker Regulations.

- iii Administrative Costs including payroll and overheads.
- iv Ongoing account management of the Customer.
- v Cash flow funding of the supply chain.
- vi Profit margin and risk costing.

2.3.2 The Service Provider's Management Fee shall be as detailed at Annex C and should be included within the Service Provider's weekly invoice.

2.4 Additional Charges

2.4.1 Temp to Perm – Where the Customer converts a temporary role into a permanent role and subsequently recruits the Temporary Worker in the temporary role into this permanent role and the Temporary Worker has been deployed into the temporary role (that is converted into a permanent role) for less than 3 Months the Service Provider may charge the Customer a fee.. The Customer shall not pay any fees for Temporary Workers who have been deployed in the temporary role for longer than 3 months. The Customer shall not pay a fee at anytime if the Temporary Worker is recruited for the permanent role via an open and fair competition process in line with the Principles of the Office for Civil Service Commissioner.

The fee payable under this paragraph 2.4.1 has been set at [REDACTED] of the applicable Temporary Workers Day Rate x [REDACTED].

2.4.2 Temp to Temp - This Contract does not make provision for a fee to be paid when a Temporary Worker is recruited to another temporary post and such fees may not be levied under the Framework Agreement.

2.4.3 Travel & Subsistence – where the Customer has approved the payment of travel and subsistence costs in respect of an Assignment the Service Provider shall charge the Customer the actual costs incurred by Temporary Workers in travelling to and from a place to perform the Temporary Worker Services that is different to the base place of work detailed in the Requisition Form. Payment of any such charge shall only be made where charges are:

- i. Evidenced by original receipts; and

- ii. In accordance with the policies and rates that the Customer applies to its own staff performing similar roles to that of the relevant Temporary Worker unless different arrangements have been explicitly agreed in advance in writing between the Customer and the Service Provider.
- 2.4.4 The Service Provider may be requested by the Customer to provide additional customer-specific ad-hoc services, over and above the level specified within Schedule 1, in respect of the implementation or on-going delivery of the Contingent Labour Services. The charges for such ad-hoc services shall be determined by application of the charging rates at Annex D.
- 2.4.5 Pensions Automatic Enrolment – For the first twelve weeks of each Assignment the Service Provider shall, in accordance with the Pensions Act 2008, be responsible for paying the employer's pensions contribution in respect of eligible Temporary Workers. From the thirteenth week of each Assignment where the Temporary Worker has not opted out of pensions automatic enrolment the Service Provider shall levy a charge on the Contracting Body in respect of the employer's contribution calculated as the appropriate percentage of the Temporary Worker Day Rate for each day worked under the Assignment by the Temporary Worker. These charges shall be shown as a separate line item on each invoice to the Contracting Body.
- 2.4.6 Where the Customer has Customer specific requirements for the services to be provided by the Service Provider that will involve the Service Provider providing additional services over and above the Services specified in the Neutral Vendor Framework Agreement then, subject to the Customer's Approval of a costed proposal from the Service Provider, such effort shall be charged to the Customer on a "pass-through" basis from the Neutral Vendor via the Service Provider and based on the ad hoc service rates specified within Schedule 3 of the Neutral Vendor Framework Agreement.
- 2.5 No Charges or Fees
 - 2.5.1 the Service Provider shall make no charge to the Customer in the event that a Temporary Worker:
 - i. Fails to attend an Assignment at any time.

- ii. Is rejected by the Customer for specified Assignments at the end of any trial period that has been agreed between the Customer and the Service Provider.
- iii. Is found not to meet the specified requirements for the role including qualifications, eligibility to work, CRB/ISA checks.
- iv. Is found not to have correct and valid credentials required under any applicable Law that would allow them to legally work.
- v. Is identified by the Customer as unfit to work or not capable of carrying out the relevant Temporary Worker Services.
- vi. Is unable to attend work if the site of their work is shut down for any reason.

2.5.2 In any of the above circumstances listed in paragraph 2.5.1(i) to (v) above the Customer shall have the option of cancelling the Assignment or shall find a suitable replacement Temporary Worker as quickly as possible, using the process as contained at paragraph 2 of Schedule 1. This replacement and all other associated costs shall be at the Service Providers own cost. If the circumstances in 2.5.1(v) apply the Customer shall have the option of cancelling the Assignment.

2.5.3 The Service Provider shall make no charge to the Customer if the requirement is:

- i. Cancelled by the Customer prior to notifying the Service Provider of acceptance of the Temporary Worker
- ii. Cancelled within a reasonable period of time in advance of the Assignment start date specified in the Requisition.

3. Payment Process

3.1 The Authority intends that three payment process options will be available to customers. The Customer has indicated in paragraph 6.2 the Order Form which of the following options shall apply to this Contract.

3.2.1 Option 1a – E-Payment Solution

In this option 1a the E-Payment Provider will be solely responsible for the cost of funding all supply chain payments in line with provisions outlined within this specification.

- 3.2.1.1 The Customer has chosen to use the E-Payment Mechanism to manage the processing of payment of the Contract Charges.
- 3.2.1.2 The Customer has/will enter into an agreement with the E-Payment Provider to utilise the E-Payment Mechanism, and the Service Provider has entered into an agreement with the E-Payment Provider to establish themselves as a card accepting merchant for the E-Payment Mechanism.
- 3.2.1.3 In terms of the invoice data from the Service Provider to the E-Payment Provider, the Authority expects full line item detail to be presented as part of the invoice to the E-Payment Provider, in the format as contained at Annex E.
- 3.2.1.4 For the avoidance of doubt, the E-Payment Provider merchant service charge will be absorbed within the Service Provider's Management Fee and no additional charges shall be payable by the Customer to the Service Provider in respect thereof.

3.2.2 Option 1b – Payment via Government e-Marketplace

In this option 1b, where the Customer is registered to use the Government eMarketplace and chooses to use the Government eMarketplace to raise orders and pay invoices for Assignments, the Customer has the option to pay the Service Provider within 5 working days.

- 3.2.2.1 Where the Customer has chosen to use the Government eMarketplace to pay invoices for Assignments, and has chosen the option to pay the Service Provider within 5 working days:
- 3.2.2.2 On receipt of an time sheet approved by the Customer and where applicable an claim for travel and subsistence approved by the Customer, the Service Provider will raise an invoice for such charges on the Customer via the Government eMarketplace which will be paid within 5 working days. (Invoices raised would not need to be presented in a consolidated manner).

- 3.2.2.3 In terms of the invoice data from the Service Provider to the Customer, the Authority would expect full line item detail to be presented as part of the invoice. This would be in the format as contained at Annex E.

3.3 **Option 2 – Funding by Service Provider**

In this option 2 the Service Provider will be solely responsible for the cost of funding all supply chain payments in line with the provisions outlined within this Contract.

- 3.3.1 On receipt of a time sheet approved by the Customer the Service Provider shall produce a weekly consolidated invoice for all Assignments procured for the Customer on a net weekly in arrears basis, supported with the line item detail defined within Annex E.
- 3.3.2 The Customer shall pay the consolidated invoice and any other costs agreed between the Service Provider and a Contracting Body which have been Approved in line with the terms stated in Paragraph 6.2 of the Order Form.
- 3.3.3 Ad hoc Customer requirements over and above the basic charging structure stated within this Schedule shall be agreed between the Customer and the Service Provider as required but shall not amend the components of the basic charging structure

4. **Payments to Suppliers and Temporary Workers**

In order to ensure cash flows through the supply chain at the quickest possible rate;

- 4.1.1 The Service Provider shall pay the Supplier of any Temporary Worker within 5 working days from receipt of a timesheet verified by the Customer supported by an invoice.
- 4.1.2 The Service Provider shall ensure that the Supplier pays the Temporary Worker within 5 working days of the Service Provider notifying the Supplier that it has received a verified timesheet.
- 4.1.3. For the avoidance of doubt, the Framework Agreement does not permit any “pay when paid” scheme.

- 4.1.4 The Service Provider shall not receive any payment whatsoever from any Suppliers or 3rd Party in relation to these services including retrospective rebates, over-riders or royalty bonus payments.

ANNEX A

RATE CARDS

Region: Inner London	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]

Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: Outer London	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]

Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: West Midlands	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]

Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: South-West	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]

Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: South-East	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]

Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: North-West	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

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Region: North-East	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]

Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: Yorkshire/Humberside	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]

Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: East Midlands	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]

Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: East	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]

Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: Wales	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

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Region: Northern Ireland	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]
Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]

Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

Region: Scotland	
Grade:	Hourly Pay Rate (Weeks 1-12)
Clerical/Admin Assistant	[REDACTED]
Clerical/Admin Officer	[REDACTED]
Executive Officer (Junior Office Manager)	[REDACTED]
Higher Executive Officer (Middle Office Manager)	[REDACTED]

Exec Secretary/PA	[REDACTED]
Senior Secretary	[REDACTED]
Secretary	[REDACTED]
Support Worker eg Receptionist, Messenger, Telephonist	[REDACTED]
Data Processor	[REDACTED]
Audio Typist	[REDACTED]
Call Centre Operative	[REDACTED]
Court Usher	[REDACTED]

ANNEX B TRANSACTION CHARGES

Pricing Schedule - Managed Service Provision Transaction Fee(£/per transaction) & Prompt Payment Discounts

Transaction Types	* Transaction Fee based on settlement of invoice within 30 days. (Option2) Bidder to insert Transaction Fee (£/per transaction)	Indicate percentage discount on settlement of invoice within 10 days. (Option 2)	* Transaction Fee based on settlement of invoice within 10 days. (Option2) (£/per transaction)	Indicate percentage discount on guaranteed payment of invoice within 5 days. (Option 1a)	* Transaction Fee based on settlement of invoice within 5 days. (Option 1a) (£/per transaction)	Indicate percentage discount on guaranteed payment of invoice within 5 days. (Option 1b)	* Transaction Fee based on settlement of invoice within 5 days. (Option1b) (£/per transaction)
New requirement (Which require a specific competitive process)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Extensions to existing requirements (Which require a small amount of administrative effort)	[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]
Transfers to existing requirements (Which require a small amount of administrative effort)	[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]

Customer nominated Temporary Workers for new requirements (Which require some administrative effort)	[REDACTED]		[REDACTED]		[REDACTED]		[REDACTED]
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ANNEX C MANGEMENT FEE

Pricing Schedule - MSP Management Fee (£/per hour) & Prompt Payment Discounts						
* MSP Management Fee based on settlement of invoice within 30 days. (Option2) Bidder to insert Management Fee (£/per hour)	Indicate percentage discount on settlement of invoice within 10 days. (Option 2)	* MSP Management Fee based on settlement of invoice within 10 days. (Option 2) Fee (£/per hour)	Indicate percentage discount on guaranteed payment of invoice within 5 days. (Option 1a)	* MSP Management Fee based on guaranteed payment of invoice within 5 days. (Option 1a) Fee (£/per hour)	Indicate percentage discount on guaranteed payment of invoice within 5 days. (Option 1b)	* MSP Management Fee based on guaranteed payment of invoice within 5 days. (Option 1b) Fee (£/per hour)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ANNEX D

Ad-HOC SERVICES RATES

Service Provider Staff Grade	Description	Charging Rate per Day
Technical/Implementation/Service Delivery Consultant/	Demonstrable expertise/qualifications in their specialist field. Evidence of range of experience. Typically a member of a team	[REDACTED]
Senior Technical/Implementation/Service Delivery Consultant/	Substantial demonstrable expertise in their specialist field. Wide range of customer-facing experience and sound knowledge of business environment, including impact on business performance of service performance. Typically leads a team	[REDACTED]
Managing Technical/Implementation/Service Delivery Consultant/	Extensive expertise in their specialist field. Depth of experience and in-depth understanding of business environment including sector-specific issues and how they may impact on service delivery. Typically responsible for a number of teams	[REDACTED]

- Note – Charging Rate Per Day is based on an 8 hour working day excluding lunch break.

ANNEX E

Invoice Format

The Service Provider shall produce a weekly consolidated invoice for each Customer on a net weekly in arrears basis, supported with a line for each item set out below: -

- i. a booking reference (where provided);
- ii. the name of the Service Provider;
- iii. the Customer organisation;
- iv. the name of the Temporary Worker and, where the Temporary Worker is a company, the name of the company, company registration number and VAT number;
- v. the title of the Temporary Worker's role;
- vi. the number of hours worked and being invoiced;
- vii. the number of days worked by the Temporary Worker ;
- viii. The Managed Service Providers Transaction Fee (only applicable to the first invoice in respect of an Requirement);
- ix. the hourly rate based on the Temporary Worker Day Rate ;
- x. the Temporary Worker's automatic pension enrolment charge;
- xi. the Managed Service Providers Management Fee (per hour);
- xii. the Total Hourly Rate Charged (Temporary Workers Hourly Rate + Managed Service Providers Management Fee;
- xiii. the total Invoice value;
- xiv. where the Temporary Worker is an employee of the Service Provider, the Temporary Worker's National Insurance details;
- xv. details of any travel time, expenses, other disbursements or accommodation payments;
- xvi. details of VAT calculation; and
- xvii. any other documentation reasonably required by the Customer to substantiate the invoice.

SCHEDULE 3: VARIATION FORM

No of Order Form being varied:.....

Variation Form No:.....

BETWEEN:

[insert name of Customer] ("**the Customer**")

and

[insert name of Service Provider] ("**the Service Provider** ")

The Customer and the Service Provider entered into a contract for the provision of services for the sourcing of temporary workers dated [date] (the "**Contract**")

1. The Order is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note to Customer: Insert details of the Variation]

2. Words and expressions in this Variation shall have the meanings given to them in the Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Customer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Service Provider

Signature

Date

Name (in Capitals)

Address

SCHEDULE 4: SECURITY REQUIREMENTS AND SECURITY MANAGEMENT PLAN

The Service Provider shall comply with its obligations arising from Schedule 15 of the Framework Agreement, which for avoidance of doubt are reproduced below:

1. INTRODUCTION

1.1 This Schedule covers:

- 1.1.1 principles of protective security to be applied in delivering the Services;
- 1.1.2 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.1.3 the creation and maintenance of the Security Management Plan;
- 1.1.4 audit and testing of ISMS compliance with the Security Requirements;
- 1.1.5 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC 27002 (Information Security Code of Practice) (Standard Specification);
- 1.1.6 obligations in the event of actual, potential or attempted Breach of Security; and
- 1.1.7 obligations in relation to Malware.

2. PRINCIPLES OF SECURITY

- 2.1 The Service Provider acknowledges that the Authority and all Contracting Bodies place great emphasis on confidentiality, integrity and availability of information (including Contracting Body Confidential Information) and consequently on the security provided by the Service Provider and ISMS.
- 2.2 The Service Provider shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:
 - 2.2.1 is in accordance with Good Industry Practice, the Law, the Standards and this Framework Agreement ;
 - 2.2.2 complies with ISO/IEC 27001, ISO/IEC 27002 and the Security Policy Framework; and
 - 2.2.3 meets any specific security threats to the ISMS and Breach of Security.
- 2.3 Without limiting Paragraph 2.2 above, the Service Provider shall at all times ensure that the level of security employed in the provision of the Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Authority from time to time):
 - 2.3.1 loss of integrity and confidentiality of Contracting Body Confidential Information;

- 2.3.2 unauthorised access to, use or disclosure of, or interference with Contracting Body Confidential Information by any person or organisation;
 - 2.3.3 unauthorised access to network elements, buildings, the sites and tools (including equipment) used by the Service Provider and any Sub-Contractors in the provision of the Services;
 - 2.3.4 use of the Service Provider's System or Services by any third party in order to gain unauthorised access to any computer resource or Customer Data; and
 - 2.3.5 loss of availability of Contracting Body Confidential Information due to any failure or compromise of the Services.
- 2.4 Where the Authority determines, acting reasonably, that certain equipment used by the Service Provider in the provision of the Services is inadequate to provide the level of security required by the Authority for the provision of the Services, the Authority may require the Service Provider to replace such equipment with equipment which meets such level of security at the Service Provider's own cost.
- 2.5 The references to standards, guidance and policies set out in Paragraph 2.2 above 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.
- 2.6 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Service Provider shall notify the Authority in writing of such inconsistency within three (3) Working Days of becoming aware of the same. The Authority Representative shall, as soon as practicable, advise the Service Provider which provision the Service Provider shall be required to comply with.

3. ISMS AND SECURITY MANAGEMENT PLAN

3.1 Introduction

- 3.1.1 Throughout the Term the Service Provider shall develop, implement, comply with (and ensure that all service provider personnel and Sub-Contractors implement and comply with) and maintain and continuously improve and maintain an ISMS which shall, without prejudice to Paragraphs 2.2 above and 4.1 below, be:
- 3.1.1.1 Approved by the Authority;
 - 3.1.1.2 tested in accordance with Paragraph 4; and
 - 3.1.1.3 periodically updated and audited in accordance with ISO/IEC 27001.
- 3.1.2 The Service Provider shall develop and maintain a Security Management Plan in accordance with this Schedule to apply during the Term (and after

the end of the Term (as applicable) in both this Framework Agreement and all Call-Off Agreements.

- 3.1.3 The Service Provider shall comply with its obligations set out in the Security Management Plan and the other elements of this Framework Agreement relevant to security (including the Security Requirements).
- 3.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified in writing by the Authority, aim to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Sites, the Service Provider System and any ICT, information and data (including the Contracting Body Confidential Information) to the extent used by the Authority, the Contracting Body or the Service Provider in connection with this Framework Agreement.
- 3.1.5 The Service Provider is responsible for monitoring and ensuring that it is aware of changes to the Security Policy Framework. The Service Provider shall keep the Security Management Plan up-to-date with the Security Policy Framework as amended from time to time.

3.2 Development

- 3.2.1 Within thirty (30) Working Days after the Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and in accordance with Paragraphs 3.3 and 3.4 below, the Service Provider shall prepare and deliver to the Authority and (if required by the Authority) the Pan-Government Accreditor for approval a fully complete and up-to-date Security Management Plan, relating specifically to the Services provided under this Framework Agreement. In this instance the “Pan Government Accreditor” refers to the service provided by CESG, the National Technical Authority for Information Assurance, concerned with effective management of information risk associated with adoption of pan-government shared services
- 3.2.2 If the Security Management Plan or any subsequent revision to it in accordance with Paragraph 3.4 below, is approved by the Authority and (if required by the Authority) approved by the Pan-Government Accreditor, it shall be adopted immediately. If the Security Management Plan is not approved in accordance with the foregoing, the Service Provider shall amend it within eight (8) Working Days (or such other period as the Parties agree in writing) of a notice of non-approval (and the reason(s) for non-approval) and re-submit it to the Authority and (if required by the Authority) the Pan-Government Accreditor for approval. The Parties shall 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 agree in writing) from the date of its first submission in accordance with Paragraph 3.2.1 above. If the Service Provider does not achieve approval of the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure.

3.3 Content

- 3.3.1 The Security Management Plan shall set out the security measures to be implemented and maintained by the Service Provider in relation to all aspects of the Services and all processes associated with the delivery of the Services. Furthermore, the Security Management Plan shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with this Schedule (including the principles set out in Paragraph 2.2 above) and the other elements of this Framework Agreement relevant to security.
- 3.3.2 The Security Management Plan (including the draft version) shall also set out the plans for transiting all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the ISMS at the date agreed between the Parties for the Service Provider to meet its security obligations set out in this Framework Agreement (including the Available Services).
- 3.3.3 The Security Management Plan shall be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002 or equivalent, cross-referencing if necessary to other Schedules of this Framework Agreement which cover specific areas included within that standard and shall accord with the Security Policy Framework.
- 3.3.4 The Security Management Plan shall be written in plain English and in a manner which is readily comprehensible to Service Provider Personnel and the Authority's staff engaged in the Services and shall not reference any other documents which are not either in the possession of the Authority or otherwise specified in this Framework Agreement.

3.4 Amendment and Revision

- 3.4.1 In addition to its obligations under Paragraph 3.1 above the Service Provider shall review and update the ISMS and the Security Management Plan annually (or such other period as agreed by the Parties in writing) to reflect:
 - 3.4.1.1 emerging changes in Good Industry Practice;
 - 3.4.1.2 any change or proposed change to the Service Provider System, the Services and/or associated processes;
 - 3.4.1.3 any new, perceived or changed Breach of Security; and
 - 3.4.1.4 any reasonable requests by the Authority.
- 3.4.2 The Service Provider shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include:

3.4.2.1 suggested improvements to the effectiveness of the ISMS;

3.4.2.2 updates to the risk assessments;

3.4.2.3 proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and

3.4.2.4 suggested improvements in measuring the effectiveness of controls.

3.4.3 On receipt of the results of such reviews, the Authority shall approve any amendments or revisions to the ISMS and/or Security Management Plan in accordance with the process set out at Paragraph 3.2.2 above.

3.4.4 Any change or amendment which the Service Provider proposes to make to the ISMS and/or the Security Management Plan shall be subject to Clause 32 of this Framework Agreement and shall not be implemented until approved by the Authority.

4. TESTING

4.1 The Service Provider shall conduct tests of the ISMS ("Security Tests") on an annual basis or as otherwise agreed in writing by the Parties. The date, timing, content and conduct of such Security Tests shall be Approved by the Authority.

4.2 The Authority may send a representative to witness the Security Tests (or any parts thereof). The Service Provider shall provide the Authority with the results of such tests (in a form Approved by the Authority) 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 Authority pursuant to this Framework Agreement, the Authority may and/or its authorised representatives may, at any time and on reasonable notice to the Service Provider, carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Service Provider's compliance with and implementation of the ISMS and Security Management Plan. The Authority may notify the Service Provider in writing 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 of the Services.

4.4 Where any Security Test carried out pursuant to Paragraph 4.2 or 4.3 above or any audit under Paragraph 5 below, reveals any actual or potential Breach of Security and/or security failure or weaknesses, the Service Provider shall determine what changes to the ISMS and Security Management Plan are required to remedy (as applicable) such Breach of Security and/or security failure or weakness. The Service Provider shall promptly notify the Authority in writing of any such proposed changes. Subject to the Authority's approval in accordance with Paragraph 3.4.4 above, the Service Provider shall implement such changes to the ISMS and Security Management Plan in accordance with the timetable agreed in writing with the Authority or, otherwise, as soon as

reasonably possible. Where the change to the ISMS and/or Security Management Plan addresses a non-compliance with the Security Requirements set out in this Framework Agreement, the Service Provider shall implement the change at no additional cost to the Authority or any Contracting Body.

- 4.5 If required by the Authority, on each anniversary of the Commencement Date the Service Provider shall provide to the Authority a letter from its managing director (or equivalent officer) confirming that having made due and careful inquiry it:

4.5.1 has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Framework Agreement; and

4.5.2 is confident that its security and risk mitigation procedures with respect to the Services remain effective.

5. COMPLIANCE WITH ISO/IEC 27001 AND AUDITING

- 5.1 If required by the Authority, the Service Provider shall obtain independent certification of the ISMS to ISO/IEC 27001 within twelve (12) months of the Commencement Date (or such other period specified in the Implementation Plan or as otherwise agreed by the Parties in writing) and shall maintain such certification for the Term. If certain parts of the ISMS do not conform to Good Industry Practice or the controls as described in ISO/IEC 27002 are not consistent with the Security Requirements and, as a result the Service Provider reasonably believes that it is not compliant with ISO/IEC 27001, the Service Provider shall promptly notify the Authority in writing of this and the Authority in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

Authority Audit

- 5.2 The Authority shall be entitled to carry out such regular security audits as may be required, and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO/IEC 27001.
- 5.3 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Service Provider, then the Authority shall notify the Service Provider in writing of the same and give the Service Provider a reasonable period of time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Service Provider does not become compliant within the required time then the Authority has the right to obtain an independent audit against these standards in whole or in part.
- 5.4 If, as a result of any such independent audit as described in Paragraph 5.3 above, the Service Provider is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Service Provider 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 Authority in obtaining such audit.

Service Provider Audit

- 5.5 If required by the Authority, the Service Provider shall carry out regular security audits as may be required in order to maintain delivery of the Services and the ISMS in compliance with:

5.5.1 security aspects of ISO/IEC 27002:2005 or equivalent;

5.5.2 ISO/IEC 27001 or equivalent;

5.5.3 the Security Policy Framework; and

5.5.4 the requirements issued by the National Technical Authority for Information Assurance,

and shall promptly provide to the Authority any associated security audit reports and shall otherwise notify the Authority in writing of the results of such security audits. The provisions set out in Paragraphs 5.3 and 5.4 above shall apply mutatis mutandis to this Paragraph 5.5.

6. BREACH OF SECURITY

- 6.1 Either Party shall (which shall include the Service Provider procuring that the Service Provider Personnel shall) notify the other (in each case notification must go to the individual(s) designated in the Security Management Plan (as amended)) in writing immediately upon becoming aware of any Breach of Security including an actual, potential or attempted breach, or threat to, the Security Management Plan and/or the ISMS.

- 6.2 Without prejudice to any security incident notification and management process set out in this Framework Agreement, upon becoming aware of any of the circumstances referred to in Paragraph 6.1 above, the Service Provider shall:

6.2.1 immediately take all reasonable steps necessary to:

6.2.1.1 remedy such breach or protect the Services and integrity of the ISMS against any such potential or attempted breach or threat;
and

6.2.1.2 prevent an equivalent breach in the future.

Such steps shall include any action or changes required by the Authority. If such action is taken in response to a Breach of Security that is determined by the Authority, acting reasonably, not to be covered by the obligations of the Service Provider under this Framework Agreement, then the Service Provider may refer the matter to the Change Control Procedure, but this shall not delay the Service Provider in taking steps to comply with Paragraph 6.2; and

- 6.2.2 as soon as reasonably practicable provide to the Authority full details (using such reasonable reporting mechanisms as may be specified by the Authority from time to time) of the Breach of Security or the potential or attempted Breach of Security and of the steps taken to mitigate or resolve them.

7. **MALICIOUS SOFTWARE**

- 7.1 The Service Provider shall comply i) with its obligations under Clause 43 of this Framework Agreement, and ii) with its obligations under Clause 21.2 of all Call-Off Agreements

SCHEDULE 5- NOT USED

[Schedule 6 - OPTIONAL – TESTING]

1. INTRODUCTION

This schedule sets out the approach to Testing and the different Testing activities to be undertaken, including the preparation and agreement of the Test Strategy and Test Plans. The primary purpose of Testing shall be to demonstrate to the Customer's satisfaction that the Contingent Labour Services have been implemented in accordance with the requirements of this Contract, and that they are ready for operational use.

2. TESTING OVERVIEW

2.1 All Tests conducted by the Service Provider shall be conducted in accordance with the Test Strategy and the Test Plans.

2.2 Any disputes between the Service Provider and the Customer regarding this Testing shall be referred to the Dispute Resolution Procedure.

3. TEST STRATEGY

3.1 The Service Provider shall develop the final Test Strategy as soon as practicable but in any case no later than the date specified in the Implementation Plan (or such other period as the Parties may agree).

3.2 The final Test Strategy shall include:

3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;

3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;

3.2.3 the procedure to be followed should a Deliverable fail a Test or where a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;

3.2.4 the procedure to be followed to sign off each Test; and

3.2.5 the process for the production and maintenance of reports relating to Tests.

4. TEST PLANS

4.1 The Service Provider shall develop Test Plans for the Approval of the Customer as soon as practicable but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise) prior to the start date for the relevant Testing as specified in the Implementation Plan.

4.2 Each Test Plan shall include as a minimum:

4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested;

- 4.2.2 a detailed procedure for the Tests to be carried out, including:
 - 4.2.2.1 the timetable for the Tests including start and end dates;
 - 4.2.2.1 the Testing mechanism and the detailed success criteria ;
 - 4.2.2.2 dates and methods by which the Customer can inspect Test results;
 - 4.2.2.3 the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - 4.2.2.4 the process with which the Customer will review Test Issues and progress on a timely basis; and
 - 4.2.2.5 the re-Test procedure, the timetable and the resources which would be required for re-Testing.
- 4.3 The Customer shall not unreasonably withhold or delay its Approval of the Test Plans and the Service Provider shall implement any reasonable requirements of the Customer in the Test Plans.

5. TESTING

- 5.1 When the Service Provider has completed the Services in respect of a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 5.2 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Customer shall be entitled to recover from the Service Provider, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 5.3 If the Service Provider successfully completes the requisite Tests, the Customer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Service Provider shall remain solely responsible for ensuring that the Services are implemented in accordance with this Contract.

6. TEST ISSUES

Where a Test Issue is identified by the Service Provider, the Parties shall agree how such Test Issue shall be dealt with and any failure to agree by the Parties shall be resolved in accordance with the Dispute Resolution Procedure.

7. TEST QUALITY AUDIT

- 7.1 Without prejudice to its rights pursuant to Clause 30, the Customer or an agent or Temporary Worker appointed by the Customer may perform on-going quality audits in respect of any part of the Testing.
- 7.2 If the Customer has any concerns following an audit in accordance with paragraph 7.1 above the Customer will discuss such concerns with the Service Provider, giving the

Service Provider the opportunity to provide feedback in relation to specific activities, and subsequently prepare a written report for the Service Provider detailing the same to which the Service Provider shall, within a reasonable timeframe, respond in writing.

- 7.3 In the event of an inadequate response to the written report from the Service Provider, the Customer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Customer.

8. OUTCOME OF TESTING

- 8.1 The Customer will issue a Satisfaction Certificate when it is satisfied that a Milestone has been Achieved.

- 8.2 If any Milestones (or any relevant part thereof) do not pass the Test in respect thereof then:

8.2.1 the Service Provider shall rectify the cause of the failure and re-submit the Deliverables (or the relevant part) to Testing, provided that the Parties agree that there is sufficient time for that action prior to the relevant Milestone Date;
or

8.2.2 the Parties shall treat the failure as a Service Provider's Default.

APPENDIX: SATISFACTION CERTIFICATE

To: [insert name of Service Provider]

FROM: [insert name of Customer]

[insert Date dd/mm/yyyy]

Dear Sirs,

SATISFACTION CERTIFICATE

Milestones: **[Guidance Note to Customer: Insert description of the relevant Deliverables/Milestones]**

We refer to the agreement ("**Contract**") relating to the provision of the [] Services between the [insert Customer name] ("**Customer**") and [insert Service Provider name] ("**Service Provider**") dated [insert contract start date dd/mm/yyyy].

The definitions for terms capitalised in this certificate are set out in the Contract.

[We confirm that all of the Milestones have been successfully Achieved by the Service Provider in accordance with the Test relevant to those Milestones.]

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Customer]

SCHEDULE 7: DISASTER RECOVERY AND BUSINESS CONTINUITY

The Service Provider shall comply with the requirements of the Framework Agreement Schedule 10 which for the avoidance of doubt is reproduced below:

1. PURPOSE OF THIS SCHEDULE

- 1.1 This Schedule sets out the Authority's requirements for ensuring continuity of the business processes and operations supported by the Services in circumstances of Service disruption or failure and for restoring the Services through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the Service Provider to develop, review, test, change and maintain a BCDR Plan in respect of the Services.
- 1.2 The BCDR Plan shall be divided into three parts:
 - 1.2.1 Part A which shall set out general principles applicable to the BCDR Plan ("**General Principles**").
 - 1.2.2 Part B which shall relate to business continuity ("**Business Continuity Plan**"); and
 - 1.2.3 Part C which shall relate to disaster recovery ("**Disaster Recovery Plan**"); and
- 1.3 The BCDR Plan shall detail the processes and arrangements which the Service Provider shall follow to ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services and the recovery of the Services in the event of a Disaster.

2. DEVELOPMENT OF BCDR PLAN

- 2.1 The BCDR Plan shall unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of paragraphs 3 and 5 of this Schedule 10 (Business Continuity and Disaster Recovery Provisions).
- 2.2 The Service Provider shall ensure that its Sub-Contractors' disaster recovery and business continuity plans are integrated with the BCDR Plan.

3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS

- 3.1 The BCDR Plan shall:
 - 3.1.1 set out how its business continuity and disaster recovery elements link to each other;
 - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Services;

- 3.1.3 contain an obligation upon the Service Provider to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
- 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the Authority and any of its other Related Service Providers as notified to the Service Provider by the Authority from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- 3.1.6 contain a risk analysis, including:
 - 3.1.6.1 failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - 3.1.6.2 identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - 3.1.6.3 identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider; and
 - 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Service Provider (and any Sub-Contractors) and for the Authority;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the Authority has agreed that it, or Contracting Bodies will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority and Contracting Bodies as notified by the Authority and Contracting Bodies from time to time to inform decisions in support of the Authority and Contracting Bodies business continuity plans.

- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Agreement and any Call-Off Agreement at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority and Contracting Bodies is minimal as far as reasonably possible;
 - 3.2.3 it aligns with the relevant provisions of ISO/IEC17799:2000, BS15000 (as amended) and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.
- 3.4 The Service Provider shall not be entitled to any relief from its obligations under the KPIS or Service Levels or to any increase in the Framework Prices or the charges payable under any Call-Off Agreement to the extent that a Disaster occurs as a consequence of any breach by the Service Provider of this Agreement or the relevant Call-Off Agreement.

4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including but not limited to and unless the Authority expressly states otherwise in writing:
- 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
 - 4.1.2 the steps to be taken by the Service Provider upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Services and the services to be provided and the steps to be taken to remedy the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Service Provider ensures continuity of the business operations of the Authority and Contracting Bodies supported by the Services following any Disaster or

during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

- 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall to the extent agreed as necessary with the Authority include the following:
 - 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Service Provider and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - 5.3.2.1 data centre and disaster recovery site audits;
 - 5.3.2.2 backup methodology and details of the Service Provider's approach to data back-up and data verification;
 - 5.3.2.3 identification of all potential disaster scenarios;
 - 5.3.2.4 risk analysis;
 - 5.3.2.5 documentation of processes and procedures;
 - 5.3.2.6 hardware configuration details;
 - 5.3.2.7 network planning including details of all relevant data networks and communication links;
 - 5.3.2.8 invocation rules;
 - 5.3.2.9 Services recovery procedures;
 - 5.3.2.10 steps to be taken upon Services resumption to address any prevailing effect of the Services failure or disruption;
 - 5.3.3 any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
 - 5.3.4 details of how the Service Provider shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.3.5 access controls (to any disaster recovery sites used by the Service Provider or any Sub-Contractor in relation to its obligations pursuant to this Schedule 10); and
 - 5.3.6 testing and management arrangements.

6. PROVISION, REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The Service Provider shall provide a draft of the BCDR Plan within forty (40) Working Days following the Commencement Date.
- 6.2 The Service Provider shall review part or all of the BCDR Plan (and the risk analysis on which it is based):
 - 6.2.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.2.2 within three (3) Months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
 - 6.2.3 where the Authority requests any additional reviews (over and above those provided for in paragraphs 6.2.1 and 6.2.2 of this Schedule) by notifying the Service Provider to such effect in writing, whereupon the Service Provider shall conduct such reviews in accordance with the Authority's written requirements. The costs of both Parties for any such additional reviews will be met by the Authority.
- 6.3 Each review pursuant to paragraph 6.1 of the BCDR Plan shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to the occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Service Provider within the period required by the BCDR Plan or if no such period is required within such period as the Authority shall reasonably require. The Service Provider shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Authority a report ("**Review Report**") setting out:
 - 6.3.1 the findings of the review;
 - 6.3.2 any changes in the risk profile associated with the Services; and
 - 6.3.3 the Service Provider's proposals ("**Service Provider's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the Service Provider can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.
- 6.4 The Service Provider shall as soon as is reasonably practicable after receiving the Authority's approval of the Service Provider's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Service Provider's Proposals. Any such change shall be at the Service Provider's expense unless it can be

reasonably shown that the changes are required because of a material change to the project's risk profile.

7. TESTING OF THE BCDR PLAN

- 7.1 The Service Provider shall test the BCDR Plan on a regular basis (and in any event not less than once in every year during the Term). Subject to paragraph 7.2, the Authority may require the Service Provider to conduct additional tests of some or all aspects of the BCDR Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the BCDR Plan.
- 7.2 If the Authority requires an additional test of the BCDR Plan it shall give the Service Provider written notice and the Service Provider shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the BCDR Plan. The Service Provider's costs of the additional test shall be borne by the Authority unless the BCDR Plan fails the additional test in which case the Service Provider's costs of that failed test shall be borne by the Service Provider.
- 7.3 Following each test, the Service Provider shall send to the Authority a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the Authority considers to be necessary as a result of those tests.
- 7.4 The Service Provider shall undertake and manage testing of the BCDR Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Where required by the Authority, each test shall be carried out under the supervision of the Authority or its nominee.
- 7.5 The Service Provider shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 7.6 The Service Provider shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
 - 7.6.1 the outcome of the test;
 - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.6.3 the Service Provider's proposals for remedying any such failures.
- 7.7 Following each test, the Service Provider shall take all measures requested by the Authority, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Service Provider, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the Service Provider of any of its obligations under this Schedule 10 or otherwise.

7.9 The Service Provider shall also perform a test of the BCDR Plan as part of the commissioning of the Services.

8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

8.1 In the event of a complete loss of service or in the event of a Disaster, the Service Provider shall immediately invoke the BCDR Plan (and shall inform the Authority promptly of such invocation). In all other instances the Service Provider shall only invoke or test the BCDR Plan with the prior consent of the Authority.

8.2 Following a request from the Authority, the Service Provider shall provide a written incident report and the BCDR Plan review following a plan invocation, but in any event within twenty (20) Working Days of full business recovery.

SCHEDULE 8: SERVICE LEVELS

1. SCOPE

This Schedule 8 sets out the Service Levels which the Service Provider is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Service Provider's performance of the Services by the Service Provider will be monitored. This Schedule comprises:

- 1.1 Part A: Service Levels;
- 1.2 Part B: Performance Monitoring.

Part A: Service Levels

2. GENERAL PROVISIONS

- 2.1 The Service Provider shall provide a proactive contract manager who shall be a member of the Key Personnel to ensure that all Service Levels are met to the highest standard throughout the Contract Period.
- 2.2 The Service Provider shall provide support and advice through the provision of a dedicated contract manager, where required on matters relating to:
 - 2.2.1 Service availability;
 - 2.2.2 Accessibility;
 - 2.2.3 Turnaround times of all Services;
 - 2.2.4 Essential downtime;
 - 2.2.5 Customer support; and
 - 2.2.6 Accurate and timely billing of customers.

3. PRINCIPAL POINTS

- 3.1 The objectives of the Service Levels remedial action provisions at paragraph 5 are to:
 - 3.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
 - 3.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Service Provider's failure to deliver the level of Service for which it has contracted to deliver; and
 - 3.1.3 incentivise the Service Provider to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

4. SERVICE LEVELS

- 4.1 The Appendix to this Part A of this Schedule sets out Service Levels for the Services, the performance of which the Parties have agreed to measure.
- 4.2 The Service Provider shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report (a “**Service Level Performance Report**”) detailing the level of service which was achieved in accordance with the provisions of part B of this Schedule 8.
- 4.3 The Service Provider shall, at all times, provide the Services in such a manner that the Service Level for each Service is achieved.
- 4.4 If the level of performance of the Service Provider of any element of the Services during Contract Period constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to Clause 24.13.

5. REMEDIES FOR FAILURE TO ACHIEVE SERVICE LEVELS

- 5.1. Without prejudice to any other rights or remedies arising under this Contract in particular the rights set out in Clause 24 if the Service Provider fails to achieve any of the Service Levels in accordance with paragraph 4 above the Service Provider acknowledges and agrees that the Customer shall have the right to exercise (in its absolute sole discretion) all or any of the following remedial actions set out in paragraphs 5.2 to 5.7 below.
- 5.2. The Customer shall be entitled to require the Service Provider, and the Service Provider agrees to attend, within a reasonable time one (1) or more meetings at the request of the Customer in order to resolve the issues raised by the Customer in its notice to the Service Provider requesting such meetings.
- 5.3. Subject to the Customer consulting initially with the Authority, the Customer shall be entitled to require the Service Provider, and the Service Provider agrees to prepare and provide to the Customer, an improvement plan (a “Service Improvement Plan”) within fourteen (14) days of a formal written request by the Customer for such improvement plan, invoking this paragraph 5.3 to Schedule 8. The Customer shall be entitled to approve such improvement plan and require that the Service Provider implement such improvement plan as soon as reasonably practicable.
- 5.4. Subject to the Customer consulting initially with the Authority, the Customer shall be entitled to serve a formal written Service Improvement Notice on the Service Provider invoking this paragraph 5.4 to Schedule 8. and the Service Provider shall implement such requirements for improvement as set out in the Service Improvement Notice.
- 5.5. In the event that the Customer has, in its absolute sole discretion, invoked one or more of the remedies set out in paragraphs 5.2 to 5.4 above and the Service Provider either:
 - 5.5.1 fails to implement an improvement plan approved by the Customer pursuant to paragraph 5.3; and/or
 - 5.5.2 fails to implement such requirements for improvement as set out in the Service Improvement Notice; and/or

5.5.3 fails to comply with any reasonable request made by the Customer within such reasonable timescales as have been specified by the Customer;

then (without prejudice to any other rights and remedies of termination provided for in the Contract), the Service Provider's shall be deemed to be in material Default and the Customer shall be entitled to by notice in writing terminate this Framework Agreement in accordance with Clause 24.4.

Part B Performance Monitoring

Performance Monitoring arrangements shall be as specified in Appendix B to this Schedule

APPENDIX: TO PART A

SERVICE LEVELS

Performance Metric	Min Level	Measure
Request to Shortlist - Cycle Time of 5 working days	99%	Service Provider – to provide monthly report showing Request to Shortlist Cycle Time.
Shortlist to Selection - Cycle Time of 5 working days	99%	Service Provider – to provide monthly report showing Shortlist to Selection Cycle Time
Selection to Acceptance – Cycle Time of 1 working day	99%	Service Provider – to provide monthly report showing Selection to Acceptance Cycle Time
Fulfilment Rate	100%	Service Provider – to provide monthly report showing Fulfilment Rate
Temporary Workers rejected within 10 working days	No more than 2%	Service Provider – to provide monthly report showing level of Temporary Worker rejection
Complaints responded to in 5 working days	100%	Service Provider – to provide fully detailed monthly complaints report
Complaints resolved within 5 working days	100%	
Sourcing – All Recommendations are within the agreed Rate Card.	100%	Service Provider - to provide Report on Compliance to Rate Card
Service Provider to make all Supplier payments (where used) within 5 working days of verified timesheet	100%	Service Provider to provide Supplier Payment Profile reports for all exceptions
Service Provider to ensure that 100% of payments are made to Temporary Workers within 5 working days from approval of time sheets by the Hiring Manager	100%	Service Provider to provide Temporary Worker Payment Profile reports for all exceptions
Provision of Customer Performance Management Report MI by the 15 th of each month	100%	Service Provider – to provide. Performance Management Report MI as below.
Ensure any ad hoc request for M.I is delivered with 72 hours from request	100%	Service Provider – to provide MI as per ad hoc request

APPENDIX: PART B - PERFORMANCE MONITORING

1. PRINCIPAL POINTS

- 1.1 This Appendix to Part B provides the methodology for monitoring the Services:
 - 1.1.1 to ensure that the Service Provider is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Service Provider and/or delivery of the Services.

2. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 2.1 The Service Provider shall provide the Customer with Service Level Performance Report in the format below on a monthly basis by the fifteenth (15th) of each Month following the Commencement Date.
- 2.2 The Parties shall attend meetings to discuss Service Levels ("Performance Review Meetings") as agreed between the Parties. The Performance Review Meetings will be a forum for the review by the Service Provider and the Customer of the Service Level Performance Report.
- 2.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 2.4 The Service Provider shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance of the Service.

APPENDIX: PERFORMANCE REPORT

			Performance		
Performance Metric	Min Level	Measure	Achieved	Not Achieved	ACTUAL LEVEL ACHIEVED
Request to Shortlist - Cycle Time of 5 working days	99%	Service Provider – to provide monthly report showing Request to Shortlist Cycle Time.			
Shortlist to Selection - Cycle Time of 5 working days	99%	Service Provider – to provide monthly report showing Shortlist to Selection Cycle Time			
Selection to Acceptance – Cycle Time of 1 working day	99%	Service Provider – to provide monthly report showing Selection to Acceptance Cycle Time			
Fulfilment Rate	100%	Service Provider – to provide monthly report showing Fulfilment Rate			
Temporary Workers rejected within 10 working days	2%	Service Provider – to provide monthly report showing level of Temporary Worker rejection			
Complaints responded to in 5 working days	100%	Service Provider – to provide fully detailed monthly complaints report			
Complaints resolved within 5 working days	100%	Service Provider – to provide fully detailed monthly complaints report			
Sourcing – All Recommendations are within the agreed Rate Card.	100%	Service Provider - to provide Report on Compliance to Rate Card			

APPENDIX: – PERFORMANCE REPORT (CONT.)

APPENDIX:

			Performance		
Performance Metric	Min Level	Measure	Achieved	Not Achieved	ACTUAL LEVEL ACHIEVED
Service Provider to make all Supplier payments (where used) within 5 working days of verified timesheet	100%	Service Provider to provide Supplier Payment Profile reports for all exceptions			
Service Provider to ensure that 100% of payments are made to Temporary Workers within 5 working days from approval of time sheets by the Hiring Manager	100%	Service Provider to provide Temporary Worker Payment Profile reports for all exceptions			
Provision of Customer Performance Management Report MI by the 15 th of each month	100%	Service Provider – to provide. Performance Management Report MI as below.			
Ensure any ad hoc request for M.I is delivered with 72 hours from request	100%	Service Provider – to provide MI as per ad hoc request			

SCHEDULE 9: DIVERSITY & EQUALITY

1. INTRODUCTION

This Schedule sets out the Diversity and Equality requirements which are applicable to the provision of the Services. This Schedule comprises:

- 1.1 Part A: Low Risk and / or Low Value Procurement**
- 1.2 Part B: High Risk and / or High Value Procurement**

PART A

Low Risk and / or Low Value Procurement

1. GENERAL

- 1.1 The Service Provider acknowledges that the Customer has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Service Provider must ensure that each of its Sub-Contractors and Suppliers involved in delivery of this Contract are aware of, and acknowledge, that the Customer has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Service Provider shall, and shall procure that its Sub-Contractors and Suppliers, assist and cooperate with the Customer in satisfying Equality duties by fully complying with the requirements of this Schedule.

2. COMPLIANCE

- 2.2 The Service Provider acknowledges the provisions of the Equality Legislation.
- 2.3 The Service Provider shall provide a copy of their Diversity and Equality Policy in accordance with paragraphs 2.5 and 2.6 (and sub paragraphs) of this Schedule, within six (6) Months of the Commencement Date, and on any revision within the Contract Period thereafter.
- 2.4 The Service Provider will provide workforce monitoring data in accordance with paragraph 3 (and sub paragraphs) of this Schedule, within six (6) Months of the Commencement Date and annually thereafter during the Term of the Contract.
- 2.5 The Customer will consider and agree the submissions made by the Service Provider when complying with paragraphs 2 and 3 of this Schedule. Any issues will be raised with the Service Provider by the contract manager acting on behalf of the Customer. If an issue relates to a Sub-Contractor or Supplier, the Service Provider must raise and resolve the issue with the Sub-Contractor or Supplier. Once submissions are approved by the Customer the Service Provider will formally review, revise and resubmit all information required in paragraph 2.2 and paragraph 2.3 on an annual basis. Diversity and equality aspects will also be discussed jointly by the Customer and the Service Provider as an ongoing item at the Contract review meetings.
- 2.6 The Service Provider shall produce a Diversity and Equality Policy within six (6) Months of the Commencement Date to which it shall adhere in delivering the Services, though it does not have to be specific to the contract, the Policy, as a minimum shall:
- a) address the prevention of unlawful discrimination and promoting equality of opportunity in respect of:
 - i) Race
 - ii) Gender
 - iii) Gender reassignment

- iv) Disability
- v) Age
- vi) Sexual orientation
- vii) Religion/Belief
- viii) Pregnancy and Maternity
- ix) Marriage and Civil Partnerships,

- b) Contain commitment and sign off from senior management,
- c) Apply to the treatment of Staff, Customers, Sub-Contractors, Suppliers and other stakeholders,
- d) Identifies the structures (if any) already in place, or which will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Service Provider 's organisation including in relation to:
 - i. Harassment
 - ii. Bullying
 - iii. Victimisation
 - iv. Recruitment procedures
 - v. Staff training and development, and
- e) Provides for the setting and monitoring of targets in relation to diversity and equality, and
- f) Details how the policy will be (and by when) communicated to Staff, Sub-Contractors and Suppliers.

2.7 In delivering the Services, the Service Provider shall provide written evidence that demonstrate:

- a) reasonable adjustments are made, as required by Equality Legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Customer's standards;
- b) all Staff have had appropriate training so that they understand the duties required by Equality Legislation not to discriminate and to promote equality

2.8 The Customer may request further information and assurance relating to Diversity & Equality at any point during the duration of this Contract.

2.9 The Service Provider shall notify the Customer of the details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Service Provider and any Sub-Contractors or Suppliers.

3. MONITORING AND REPORTING

3.1 The Service Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of this Schedule. A template for data collected in paragraphs

3.2, 3.3 and 3.4 will be provided by the Customer. Completed templates for the Service Provider and each Sub-Contractor will be submitted by the Service Provider with the Diversity and Equality Delivery Plan within six (6) Months of the Commencement Date and annually thereafter. Service Providers are required to provide workforce monitoring data for the workforce involved in delivery of this Contract. Data in respect of the candidates offered to the Customer in accordance with the terms of this Contract would however be well received by the Customer. Service Providers and any Sub-Contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).

3.2. The Service Provider and Sub-Contractors will each provide separate information detailing:

- a) the proportion of employees who are:
 - i) female; and/or
 - ii) disabled;
 - iii) those who prefer not to state gender and/or disability.

- b) the proportion of Staff who in terms of ethnicity are:

White

- i) white British;
- ii) white Irish;
- iii) of any other white background.

Mixed

- iv) white and black Caribbean;
- v) white and black African;
- vi) white and Asian;
- vii) of any other mixed background.

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) of any other Asian background.

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background.

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group.

Prefer not to state

xvii) Prefer not to state ethnicity.

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each template in respect of the Service Provider's employees and each Sub-Contractors employees) should total one hundred percent (100%).

- c) The Service Provider will provide details of the proportion of i) its Sub-Contractors and ii) Suppliers retained in relation to this Contract that are:
- i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);
 - (ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Schedule: and
 - iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of this Schedule.

For the avoidance of doubt, any given Sub-Contractor or Supplier may fall into one (1), two (2), or three (3) of the categories i) to iii) listed in paragraph 3.2(c) of this Schedule, depending on its composition

- 3.3 The Service Provider shall, and shall procure that its Sub-Contractors and Suppliers will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Customer.

PART B

High Risk and / or High Value Procurement

This Schedule sets out the Diversity and Equality requirements which are applicable to the provision of the Services.

1. GENERAL

- 1.1 The Service Provider acknowledges that the Customer has a 'duty to promote' equality and must at all times be seen to be actively promoting equality of opportunity for, and good relations between, all persons, irrespective of their race, gender, gender reassignment, disability, age, sexual orientation or religion/belief or in terms of pregnancy and maternity or marriage and civil partnership. The Service Provider must ensure that each of its Sub-Contractors and Suppliers involved in delivery of this Contract are aware of, and acknowledge, that the Customer has a 'duty to promote' equality.
- 1.2 In delivering the Services, the Service Provider shall, and shall procure that its Sub-Contractors and Suppliers, assist and cooperate with the Customer in satisfying Equality duties by fully complying with the requirements of this Schedule.

2. COMPLIANCE

- 2.1 The Service Provider acknowledges the provisions of the Equality Legislation.
- 2.2 The Service Provider shall produce a Diversity and Equality Delivery Plan in accordance with paragraphs 2.5 and 2.6 of this Schedule, within six (6) Months of the Commencement Date, and annually thereafter. The Diversity and Equality Delivery Plan must be specific to this Contract and include details for all Sub-Contractors involved in delivery of this Contract and indicate whether workforce monitoring data will be provided on an annual or monthly basis.
- 2.3 The Service Provider will provide workforce monitoring data in accordance with paragraph 3 of this Schedule, within six (6) Months of the Commencement Date and annually or monthly thereafter as indicated in the Diversity and Equality Delivery Plan.
- 2.4 The Customer will consider and agree the submissions made by the Service Provider when complying with paragraphs 2 and 3 of this Schedule. Any issues will be raised with the Service Provider by the contract manager acting on behalf of the Customer. If an issue relates to a Sub-Contractor or Supplier, the Service Provider must raise and resolve the issue with the Sub-Contractor or Supplier. Once submissions are approved by the Customer the Service Provider will formally review, revise and resubmit all information required in paragraphs 2.2 and 2.3 on an annual basis. Diversity and equality aspects will also be discussed jointly by the Customer and the Service Provider as an ongoing item at the Contract review meetings.
- 2.5 In delivering the Services, the Service Provider shall prepare the Diversity and Equality Delivery Plan which as a minimum includes:

- a) an overview of Service Provider and any Sub-Contractor's policy/policies and procedures for preventing unlawful discrimination and promoting equality of opportunity in respect of:
 - i) Race
 - ii) Gender
 - iii) Gender reassignment
 - iv) Disability
 - v) Age
 - vi) Sexual orientation
 - vii) Religion/Belief
 - viii) Pregnancy and Maternity
 - ix) Marriage and Civil Partnerships
- b) an overview of Service Provider and any Sub-Contractor's policy/policies and procedures covering:
 - i) Harassment
 - ii) Bullying
 - iii) Victimisation
 - iv) Recruitment procedures
 - v) Staff training and development

Full policy documents must be made available to the Customer on request;

- c) details of the way in which the above policy/policies and procedures are, or will be (and by when), communicated to the Staff;
- d) details of what general diversity and equality related training has been, or will be delivered (and by when), to Staff;
- e) details of what structure is already in place, or will be in place (and by when) and what resources are, or will be (and by when), directed towards diversity and equality within the Service Provider and any Sub-Contractor's organisation; and
- f) details of any diversity and equality cases and tribunals (including volumes and outcomes) relating to the Service Provider and any Sub-Contractors and Suppliers.

2.6 In delivering the Services, the Service Provider shall provide written evidence within the Diversity and Equality Delivery Plan:

- a) Equality Impact Assessments have been carried out in conjunction with the Customer prior to the Services being delivered and will be carried out in the event of any changes to the Services, in accordance with Equality Legislation;

- b) reasonable adjustments are made, as required by Equality Legislation to make those Services accessible to disabled people and that in the case of Information Technology services, those services are in accordance with the Customer's standards;
 - c) all Staff have had appropriate training so that they understand the duties required by the Equality Legislation.
- 2.7 The Customer may request further information and assurance relating to Diversity & Equality at any point during the duration of this Contract.

3. MONITORING AND REPORTING

- 3.1 The Service Provider shall provide workforce monitoring data as detailed in paragraph 3.2 of Part B of this Schedule. A template for data collected in paragraphs 3.2, 3.3 and 3.4 will be provided by the Customer. Completed templates for the Service Provider and each Sub-Contractor will be submitted by the Service Provider with the Diversity and Equality Delivery Plan within six (6) Months of the Commencement Date and annually or monthly thereafter as indicated in the Diversity and Equality Delivery Plan. Service Providers are required to provide workforce monitoring data for the workforce involved in delivery of this Contract. Data in respect of the candidates offered to the Customer in accordance with the terms of this Contract would however be well received by the Customer. Service Providers and any Sub-Contractors are required to submit percentage figures only in response to paragraphs 3.2(a), 3.2(b) and 3.2(c).
- 3.2 The Service Provider and Sub-Contractors will each provide separate information detailing:
- a) the proportion of employees who are:
 - i) female; and/or
 - ii) disabled;
 - iii) those who prefer not to state gender and/or disability.
 - b) the proportion of Staff who in terms of ethnicity are:

White

- i) white British;
- ii) white Irish;
- iii) of any other white background.

Mixed

- iv) white and black Caribbean;
- v) white and black African;
- vi) white and Asian;
- vii) of any other mixed background.

Asian or Asian British

- viii) Indian;
- ix) Pakistani;
- x) Bangladeshi;
- xi) of any other Asian background.

Black or Black British

- xii) Caribbean;
- xiii) African;
- xiv) of any other Black background.

Chinese or other ethnic group

- xv) Chinese;
- xvi) of any other ethnic group.

Prefer not to state

- xvii) Prefer not to state ethnicity

For the avoidance of doubt, the seventeen (17) percentage figures submitted under categories i) to xvii) of this paragraph 3.2(b) (in each template in respect of the Service Provider's employees and each Sub-Contractors employees) should total one hundred percent (100%).

- c) The Service Provider will provide details of the proportion of its Sub-Contractors and Suppliers that are:
 - i) small to medium sized enterprises (meaning enterprises with less than two hundred and fifty (250) employees and a maximum annual turnover of forty (40) million pounds);

- ii) ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of one (1) or more ethnic minority groups, or, if there are few owners, where at least fifty percent (50%) of the owners are members of one (1) or more ethnic minority groups). For this purpose, ethnic minority groups means ethnic groups other than White as referred to at paragraph 3.2(b) of this Schedule: and
- iii) black ethnic minority enterprises (in each case meaning an enterprise fifty one percent (51%) or more of which is owned by members of the Black or Black British ethnic group, or, if there are few owners, where at least fifty percent (50%) of the owners are members of the Black or Black British ethnic group). For this purpose, the Black or Black British ethnic group has the meaning referred to at categories xii) to xiv) in paragraph 3.2(b) of this Schedule.

For the avoidance of doubt, any given Sub-Contractor or Supplier may fall into one (1), two (2), or three (3) of the categories i) to iii) listed in paragraph 3.2(c) of this Schedule, depending on its composition.

- 3.3 The Service Provider and any Sub-Contractors will compare their figures, in all categories listed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Schedule, and provide (where possible) comparisons against any official national/regional statistics that are publicly available.
- 3.4 The Service Provider and any Sub-Contractors will provide evidence of activities undertaken, or planned, in order to try and improve their current position in the categories detailed in paragraphs 3.2(a), 3.2(b) and 3.2(c) of this Schedule.
- 3.5 The Service Provider shall, and shall procure that its Sub-Contractors and Suppliers will ensure at all times that they comply with the requirements of the DPA in the collection and reporting of the information to the Customer.

SCHEDULE 10: STANDARDS

1. INTRODUCTION

1.1 This Schedule 10 sets out the Standards with which the Service Provider shall comply with in its provision of the Services and details the Service Provider's obligations to comply with future Government requirements and standards.

2. COMPLYING WITH FUTURE GOVERNMENT REQUIREMENTS AND STANDARDS

2.1 The Service Provider shall comply with current and future Government requirements and standards in accordance with any Government guidance issued during the Contract Period and as developed and updated, from time to time.

3. CURRENT QUALITY AND TECHNICAL STANDARDS

3.1 The Service Provider shall at all times comply with the Quality Standards and the Technical Standards.

3.2 The Service Provider shall use its best endeavours to use the best applicable techniques and standards and execute the Call-Off Agreements with all reasonable care, skill and diligence, and in accordance with Good Industry Practice.

3.3 The Service Provider warrants and represents that all Staff assigned to the delivery of the Services shall possess and exercise such qualifications, skill and experience as are necessary for the proper delivery of the Services.

3.4 The introduction of new methods or systems which impinge on the delivery of the Services shall be subject to prior Approval.

SCHEDULE 11: ALTERNATIVE AND/OR ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1 This Schedule 11 specifies the Alternative Clauses and Additional Clauses that were requested in the Order Form and that shall apply to this Contract.

2. CLAUSES SELECTED

- 2.1 The Customer, in the Order Form, requested that the following Alternative Clauses should apply:

2.1.1 Law and Jurisdiction:

2.1.2 **[[English Law (default)] [Scots Law] [Northern Ireland Law]]**

2.1.3 **[Non-Crown Bodies]; and**

2.1.4 **[Private Authorities].**

- 2.2 The Customer, in the Order Form, requested that the following Additional Clauses should apply:

2.2.1 **[Security Measures]; and**

2.2.2 **[Access to MOD Sites].**

3. IMPLEMENTATION

The appropriate changes have been made in this Contract to implement the Alternative Clauses specified in paragraph 2.1 and the Additional Clauses specified in paragraph 2.2 shall be deemed to be incorporated into this Contract.

4. ALTERNATIVE CLAUSES

SCOTS LAW

- 4.1 For Scots Law, make the following changes:

4.1.1 Delete Clause 48.1 and insert:

48.1. SCOTS LAW AND JURISDICTION

48.1.1 Subject to the provisions of Clause 48.2, this Contract shall be considered as a contract made in Scotland, the Customer and the Service Provider accept the exclusive jurisdiction of the Scottish Courts and agree that this Contract is to be governed by and construed according to Scots Law.

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

NORTHERN IRELAND LAW

4.2 For Northern Ireland Law, make the following changes:

4.2.1 Delete Clause 48.1 and insert:

48.1 LAW AND JURISDICTION OF NORTHERN IRELAND

48.1.1 Subject to the provisions of Clause 49.2 this Contract shall be considered as a contract made in Northern Ireland, the Customer and the Service Provider accept the exclusive jurisdiction of the Northern Ireland Courts and agree that this Contract is to be governed by and construed according to Northern Ireland Law.

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

4.2.2 Termination

4.2.2.1 In Clause 24.1.1.6 delete "...Section 123 of the Insolvency Act 1986." and insert [Article 103 of the Insolvency (NI) Order 1989.]

4.2.3 Racial Discrimination

4.2.3.1 Delete Clause 31 and insert:

31. DISCRIMINATION

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

31.2 The Service Provider shall take all reasonable steps to ensure the observance of the provisions of Clause 32.1 by the Sub-Contractors employed in the execution of this Contract.

NON-CROWN BODIES

4.3 Where the Customer is not a Crown Body, the following changes should be made:

4.3.1 Delete the following wording in the definition of Staff Vetting Procedures:

", including but not limited to, the provisions of the Official Secrets Act 1911 to 1989".

4.3.2 Official Secrets Act

Delete Clause 21.7.1.1 and insert "Not used"

PRIVATE AUTHORITIES

4.4 For Contracts formed with Private Authorities make the following changes:

FREEDOM OF INFORMATION

[Guidance Note: Where the Customer is exempt from the FOIA, and notifies the Service Provider accordingly in the Order Form, the following should be inserted to replace Clauses 22.8.1, 22.8.2 and 22.8.3]

"21.8.1 The Customer has notified the Service Provider that the Customer is exempt from the provisions of FOIA."

5. ADDITIONAL CLAUSES

SECURITY MEASURES

[Guidance Note: number given as example. Insert as next available contract Clause number]

55.1 In this Clause 55:

55.1.1 "secret matter" means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the Customer to the Service Provider be designated 'top secret', 'secret', or 'confidential';

55.1.2 "document" includes specifications, plans, drawings, photographs and books;

55.1.3 references to a person employed by the Service Provider shall be construed as references to any person employed or engaged by the Service Provider to do anything in connection with this Contract, whether under a contract of service with the Service Provider or under any other contract or arrangement whatsoever; and

55.1.4 "servant" where the Service Provider is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

55.2 The Service Provider shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:

55.2.1 without the prior consent in writing of the Customer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;

- 55.2.2 disclosed to or acquired by a person as respects whom the Customer has given to the Service Provider a notice in writing which has not been cancelled stating that the Customer requires that secret matters shall not be disclosed to that person;
 - 55.2.3 without the prior consent in writing of the Customer, disclosed to or acquired by any person who is not a servant of the Service Provider; or
 - 55.2.4 disclosed to or acquired by a person who is an employee of the Service Provider except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.
- 55.3 Without prejudice to the provisions of Clause 55.2, the Service Provider shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:
- 55.3.1 that no such person as is mentioned in Clauses 55.2.1, 55.2.2 or 55.2.3 hereof shall have access to any item or document under the control of the Service Provider containing information about a secret matter except with the prior consent in writing of the Customer;
 - 55.3.2 that no visitor to any premises in which there is any item to be supplied under this Contract or where Services are being supplied shall see or discuss with the Service Provider or any person employed by him any secret matter unless the visitor is authorised in writing by the Customer so to do;
 - 55.3.3 that no photograph of any item to be supplied under this Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Customer, and that no such photograph shall, without such consent, be published or otherwise circulated;
 - 55.3.4 that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Customer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item shall be placed thereon; and
 - 55.3.5 that if the Customer gives notice in writing to the Service Provider at any time requiring the delivery to the Customer of any such document, model or item as is mentioned in Clause 55.3.4, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Customer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.

- 55.4 The decision of the Customer on the question whether the Service Provider has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 55.3 shall be final and conclusive.
- 55.5 If and when directed by the Customer, the Service Provider shall furnish full particulars of all people who are at any time concerned with any secret matter.
- 55.6 If and when directed by the Customer, the Service Provider shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act, 1955, apply to the person signing the statement both during the carrying out and after expiry or termination of a Contract.
- 55.6 If at any time either before or after the expiry or termination of this Contract it comes to the notice of the Service Provider that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Service Provider to the Customer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Service Provider shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Service Provider with a statement of the facts as aforesaid.
- 55.7 The Service Provider shall place every person employed by it, other than a Sub contractor, who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the Service Provider to observe the same obligations in relation to that matter as are imposed on the Service Provider by Clauses 55.2 and 55.3, and shall, if directed by the Customer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause 55.7 observes the said obligations, and the Service Provider shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Service Provider with all necessary particulars.
- 55.8 The Service Provider shall, if directed by the Customer, include in the Sub-Contract provisions in such terms as the Customer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Service Provider by this Clause 55, but with such variations (if any) as the Customer may consider necessary. Further the Service Provider shall:
- 55.8.1 give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this

Clause 55.8 into operation in such cases and to such extent as the Customer may direct;

55.8.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause 55, notify such breach forthwith to the Customer; and

55.8.3 if and when so required by the Customer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 55.11.

55.9 The Service Provider shall give the Customer such information and particulars as the Customer may from time to time require for the purposes of satisfying the Customer that the obligations imposed by or under the foregoing provisions of this Clause 55 have been and are being observed and as to what the Service Provider has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Service Provider shall secure that a representative of the Customer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.

55.10 Nothing in this Clause 55 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.

55.11 If the Customer shall consider that any of the following events has occurred:

55.11.1 that the Service Provider has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause 55; or

55.11.2 that the Service Provider has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Customer, or with any department or person acting on behalf of the Crown; or

55.11.3 that by reason of an act or omission on the part of the Service Provider, or of a person employed by the Service Provider, which does not constitute such a breach or failure as is mentioned in Clause 55.11.1, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the Customer, ought not to have such information,

and shall also decide that the interests of the State require the termination of this Contract, the Customer may by notice in writing terminate this Contract forthwith.

55.12 A decision of the Customer to terminate this Contract in accordance with the provisions of Clause 55.11 shall be final and conclusive and it shall not be

necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Customer's decision is based.

55.13

55.13.1 The Service Provider may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause 55.11, give the Customer notice in writing requesting the Customer to state whether the event upon which the Customer's decision to terminate was based is an event mentioned in Clauses 55.11.1, 55.11.2 or 55.11.3 and to give particulars of that event; and

55.13.2 the Customer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Service Provider containing such a statement and particulars as are required by the request.

55.14

55.14.1 The termination of this Contract pursuant to Clause 55.11 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;

55.14.2 the Service Provider shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the Customer at the date of such termination either at the price which would have been payable under this Contract if the Contract had not been terminated, or at a reasonable price;

55.14.3 the Customer may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the Customer may by notice in writing to the Service Provider given within thirty (30) Working Days from the time when the provisions of this Clause 55 shall have effect, elect to take over, and the Service Provider shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Service Provider shall in accordance with directions given by the Customer, deliver any work or thing taken over under this Clause 55.14.3, and take all such other steps as may be reasonably necessary to enable the Customer to have the full benefit of any work or thing taken over under this Clause 55.14.3; and

55.14.4 save as aforesaid, the Service Provider shall not be entitled to any payment from the Customer after the termination of this Contract.

55.15 If, after notice of termination of this Contract pursuant to the provisions of Clause 55.11:

55.15.1 the Customer shall not within ten (10) Working Days of the receipt of a request from the Service Provider, furnish such a statement and particulars as are detailed in Clause 55.13.1; or

55.15.2 the Customer shall state in the statement and particulars detailed in Clause 55.13.2 that the event upon which the Customer's decision to terminate this Contract was based is an event mentioned in Clause 55.11.3,

the respective rights and obligations of the Service Provider and the Customer shall be terminated in accordance with the following provisions:

55.15.3 the Customer shall take over from the Service Provider at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the Service Provider upon the termination of this Contract under the provisions of Clause 55.11 and properly provided by or supplied to the Service Provider for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Service Provider shall, with the concurrence of the Customer, elect to retain;

55.15.4 the Service Provider shall prepare and deliver to the Customer within an agreed period or in default of agreement within such period as the Customer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Customer and shall deliver such materials and items in accordance with the directions of the Customer who shall pay to the Service Provider fair and reasonable handling and delivery charges incurred in complying with such directions;

55.15.5 the Customer shall indemnify the Service Provider against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Service Provider in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Service Provider by reason of the termination of this Contract;

55.15.6 if hardship to the Service Provider should arise from the operation of this Clause 55.15 it shall be open to the Service Provider to refer the circumstances to the Customer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Customer on any matter arising out of this Clause 55.15.6 shall be final and conclusive; and

55.15.7 subject to the operation of Clauses 55.15.3, 55.15.4, 55.15.5, and 55.15.6, termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

[Guidance Note: If Clause 55 is used, ensure that the termination right under Clause 55.11 and Clause 55.15 is included in Clause 24 of the Contract.]

ACCESS TO MOD SITES

56. [Guidance Note: number given as example. Insert as next available Contract Clause number]

56.1 In this Clause 56:

56.1.1 "Site" shall include any of Her Majesty's Ships or Vessels and Service Stations.

56.1.2 "Officer in charge" shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

56.2 The Customer shall issue passes for those representatives of the Service Provider who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Customer and shall be surrendered on demand or on completion of the supply of the ordered Services.

56.3 The Service Provider's representatives when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

56.4 The Service Provider shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Customer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Service Provider's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Service Provider. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Customer and shall be obtained by the Service Provider from the Officer in charge. Such certificate shall be presented to the Customer with other evidence relating to the costs of this Contract.

56.5 Where the Service Provider's representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Service Provider shall make such arrangements through the Technical Branch named for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the Service Provider wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Service Provider shall make its own

transport arrangements. The Customer shall reimburse the Service Provider's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Service Provider's representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 56.6 Out-patient medical treatment given to the Service Provider's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Service Provider's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Service Provider at rates fixed in accordance with current Ministry of Defence regulations.
- 56.7 Accidents to the Service Provider's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 56.8 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Service Provider's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 56.9 The Service Provider shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Customer shall, upon request by the Service Provider and subject to any limitation required by the Service Provider, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Service Provider's representatives are attached. All such advances made by the Customer shall be recovered from the Service Provider.

[Guidance Note: If Clause 56 is used ensure that the term *Technical Branch* used in Clause 56.5 is defined in the Contract definitions]

SCHEDULE 12: A) MODEL CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made on the [] day of [] 20 [] between:

A) [] ("the CUSTOMER"); and

B) [] ("the RECIPIENT")

WHEREAS:

WHEREAS:

- 1) The CUSTOMER has entered into a Contract with [name] ("the SERVICE PROVIDER") for provision of Temporary Worker Services;
- 2) the SERVICE PROVIDER has engaged the RECIPIENT to provide the Temporary Worker Services;
- 3) the CUSTOMER may have made available and may wish to make available to the RECIPIENT certain Confidential Information (as defined below). The CUSTOMER wishes to protect such information in the manner set out in this Confidentiality Agreement.

In consideration of the mutual promises contained herein, **IT IS HEREBY AGREED AS FOLLOWS:-**

1. DEFINITIONS

- 1.1. "Confidential Information" means any information, however it is conveyed or received by the RECIPIENT from the CUSTOMER that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of either party, including Intellectual Property Rights, of the CUSTOMER together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.
- 1.2. "Party" means either party to this Confidentiality Agreement as specified in A), and B) above.

2. HANDLING OF CONFIDENTIAL INFORMATION

- 2.1. The RECIPIENT shall, and shall ensure and procure that its servants or agents shall, maintain the Confidential Information in strict confidence, including requiring its servants or agents to enter into a confidentiality agreement on substantially the same terms as this Confidentiality Agreement[, and shall, without limitation to the generality of this obligation exercise in relation thereto no less security measures and degree of care than those which it applies to its own confidential information which it warrants as providing adequate protection against unauthorised disclosure, copying or use].

- 2.2. The RECIPIENT shall return such Confidential Information and all copies of it to the Customer at the end of the provision of Services..

3. RECIPIENT OBLIGATIONS

- 3.1. The RECIPIENT shall:-
- 3.1.1. not divulge the Confidential Information to any party other than as provided for in this Confidentiality Agreement;
 - 3.1.2. use the Confidential Information only for the purposes necessary in providing the services for which he is engaged by the CUSTOMER; and
 - 3.1.3. make no commercial use of the Confidential Information or any part thereof.
- 3.2. Notwithstanding the foregoing, the RECIPIENT shall be entitled to make any disclosure required by law of the Confidential Information and shall notify the CUSTOMER of so doing in accordance with the provisions of paragraph 6.

4. EXCLUSIONS

- 4.1. This Confidentiality Agreement shall not apply to information which:
- 4.1.1. is or becomes public knowledge without breach of this Confidentiality Agreement; or
 - 4.1.2. is already in the possession of the RECIPIENT without restriction in relation to disclosure before the date of its receipt with restriction from the CUSTOMER.
- 4.2. Notwithstanding the provisions of paragraph 4.1.2, where information disclosed to the RECIPIENT by the CUSTOMER without restriction is subsequently disclosed by the CUSTOMER with restriction, the RECIPIENT shall treat all such information in accordance with the provisions of this Confidentiality Agreement with effect from the date of its disclosure with restriction. In all such cases, the Parties shall use all reasonable endeavours to restore and maintain the confidentiality of that information.

5. DISCLAIMER

- 5.1. All rights in Confidential Information are reserved and no rights or obligations other than those expressly recited herein are granted or to be implied from this Confidentiality Agreement.
- 5.2. In particular, no licence or other interest is hereby granted directly or indirectly under any invention, discovery, patent, design right, copyright or other industrial property right now or in the future held, made, obtained or licensable by the CUSTOMER or the SERVICE PROVIDER.

6. NOTICES

- 6.1. Except as otherwise expressly provided, no communication from one Party to the other shall have any validity under this Confidentiality Agreement unless made in writing by or on behalf of the relevant Party.

7. TERMINATION

- 7.1. This Confidentiality Agreement shall continue in force until terminated by consent of the Parties. The provisions of paragraphs 1, 2, 3 and 4 shall survive any such termination.

8. NON-ASSIGNMENT

- 8.1. This Confidentiality Agreement is personal to the RECIPIENT and shall not be assigned or otherwise transferred in whole or in part by the RECIPIENT.

9. ENTIRE AGREEMENT

- 9.1. This Confidentiality Agreement constitutes the entire agreement and understanding between the Parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect.
- 9.2. As witness this Confidentiality Agreement has been executed on behalf of each Party by its duly authorised representative on the date first above written.

10. RECIPIENT RIGHTS

- 10.1. Except where expressly provided to the contrary, this Confidentiality Agreement is not intended to be for the benefit of, and shall not be enforceable by, any person who is not named at the date of this Confidentiality Agreement as a party to it, or any person who claims rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise and neither party can declare itself a trustee of the rights under it for the benefit of any RECIPIENT. The parties to this Confidentiality Agreement reserve the right to rescind or vary this Confidentiality Agreement without the consent of any RECIPIENT who is expressly entitled to enforce this Confidentiality Agreement.

For the RECIPIENT:

Signed by: _____

Date: _____

Name: _____

Title: _____

For the CUSTOMER:

Signed by: _____

Date: _____

Name: _____

Title: _____

SCHEDULE 12: B) DIRECT AGREEMENT

[To Be Typed On The Customer's Notepaper]

STRICTLY PRIVATE AND CONFIDENTIAL

To: **[* Insert Name and Address of Temporary Worker]**

[* Insert Date]

Dear

Non Permanent Services

As you are aware, we have concluded a contract with **[Insert name of Service Provider]** (the "**Service Provider**") for the provision of certain non permanent services (the "**Services**") and we understand that you have entered into a contract for such Services with **[Insert name of Supplier]** (the "**Supplier**") which has contracted with the Service Provider to provide such non-permanent services on the Service Provider's behalf.

Without prejudice to the terms of the contract between you and the Supplier and in consideration of us engaging and continuing to engage the Service Provider who has contracted with the Supplier to provide the Services who has in turn engaged you, you agree as follows:

1. The Services will be provided with all due skill, care and diligence.
2. You will comply with such policies and procedures in connection with the provision of the Services as we notify to you from time to time.
3. You will take reasonable care of all our assets and will return any provided to you by us as and when required by us.
4. All intellectual property rights generated by you as a result of the provision of the Services shall be owned by us and you hereby assign to us, with full title guarantee, all such intellectual property rights. You agree that all such intellectual property rights shall be original to you and shall not infringe the rights of any third party.
5. If we allow you to use any intellectual property rights owned or licensed to us then such use shall be strictly in accordance with any terms that we notify to you and in any event such use by you shall only be in connection with and for the duration of the provision of the Services and you will not allow any other person to use such rights without our prior written consent.
6. You shall treat as confidential all information provided by us to you which is indicated to be confidential or would reasonably be considered to be confidential. You shall only use such information in connection with the provision of the Services and shall not disclose it to any other person without our prior written consent. You will return such information and all copies of it to us at the end of the provision of the Services.
7. You acknowledge and agree that we have procured the Services under a contract for the provision of services with the Service Provider and you shall not under any

circumstances become an employee of ours as a result of the provision of the Services.

8. You will comply with the provisions of the contract between you and the Supplier in respect of the provision of the Services.
9. The provisions of this agreement shall be governed and construed by English law, and any disputes arising out of it shall be subject to the exclusive jurisdiction of the English Courts.

Please indicate your acceptance of the above by signing and returning the enclosed copy of this letter.

Yours faithfully

For and on behalf of [*Insert name of Customer*]

I confirm that I have read, understand and agree to the terms set out above:

.....
[*Insert name of other party*]

.....
Date

SCHEDULE 13: MINIMUM INFORMATION TO BE INCLUDED IN PRIVACY NOTICE TO BE PROVIDED TO TEMPORARY WORKERS

This schedule sets out the details of the processing of Personal Data to be given to Temporary Workers in accordance with Clause 21. The Service Provider may alter and add to this notice to match its specific processing requirements but the notice given to data subjects must contain at least the information set out in paragraph 2 without change. The Customer reserves the right to amend its processing notices in paragraph 2 by giving notice in writing to the Service Provider. Within 5 days of receipt of such notice the Service Provider will update all privacy notices and notify data subjects of the same.

Service Provider's potential uses of Temporary Worker Personal Data:

1. We will use your information to:

- 1.2 offer you as a candidate for temporary worker assignments for customers of the Contingent Labour Framework Agreement;
- 1.3 manage any temporary worker assignments set up for you including submission and recording of timesheet data for payment purposes; and
- 1.4 undertake research, assessment and analysis on behalf of customers and Government Procurement Service to facilitate the oversight of their temporary worker sourcing activity and workforce management.

Customer potential uses of Temporary Worker Personal Data:

2. We will provide your information to our customers who may use your information by:

- 2.1 administering the Contingent Labour Framework Agreement;
- 2.2 sharing your information with other Government departments (including their arms length bodies) and public authorities including disclosure to HMRC of any information relating to your compliance with legislation, regulations and guidance in relation to income tax and National Insurance Contributions;
- 2.3 undertaking research, assessment and analysis including in relation to the types of temporary worker roles that have been filled via the web-portal;
- 2.4 undertaking payroll and invoicing arrangements following completion by you of your [contracted work];
- 2.5 ***[Note: include any other uses of temporary worker personal data which contracting bodies might need to rely on, e.g. contacting temporary workers in relation to future vacancies, using their data for any marketing purposes etc.].***