

Date: 2016

**THE COLLABORATORS**

**[INSERT SERVICE PROVIDER]**

## Legal Panel Framework Agreement



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**NOW IT IS HEREBY AGREED** as follows:

**1. Definitions and Interpretation**

- 1.1 In this Agreement and in each Order the definitions set out in Schedule 1 (Definitions) shall apply (unless the context otherwise requires)
- 1.2 In this Agreement and in each Order, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
  - (b) reference to a gender includes the other gender and the neuter;
  - (c) a reference to a document shall include all authorised amendments, supplements to and replacements to that document;
  - (d) a reference to the Parties shall include their permitted successors and assigns;
  - (e) a reference to GBP or £, shall mean pounds sterling;
  - (f) where a word or a phrase is given a particular meaning, other grammatical forms of that word or phrase have corresponding meanings;
  - (g) references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it; and
  - (h) any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 1.3 The headings in this Agreement and/or any Order are for ease of reference only and shall not affect its interpretation.
- 1.4 References to Clauses and Schedules are, unless otherwise provided, references to the Clauses of and Schedules to this Agreement. References within Schedules to Sections and Paragraphs are, unless otherwise provided, references to Sections and Paragraphs within that same Schedule.
- 1.5 If there is any conflict between the Clauses and the Terms of Trade, the Clauses shall prevail.

## **2. Due Diligence**

2.1 In entering into this Agreement, the Service Provider acknowledges that it:

- (a) has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of The Collaborators, provided that no such information so supplied shall be deliberately or knowingly inaccurate or misleading;
- (b) has raised all relevant due diligence questions with The Collaborators; and
- (c) has relied on its own due diligence alone.

2.2 The Service Provider further acknowledges that in entering into any Order it will be deemed to have acknowledged that it:

- (a) has made its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by the Contracting Bodies in respect of the relevant Order;
- (b) has raised all relevant due diligence questions with the Contracting Bodies and the relevant Contracting Body before entering into the relevant Order; and
- (c) has entered into the relevant Order in reliance on its own due diligence alone.

## **3. Commencement and Duration**

3.1 This Agreement shall commence on the date of this Agreement and shall continue in force until 30 September 2019 or, at the option of The Collaborators, until 30 September 2020 unless terminated earlier in accordance with the provisions of this Agreement.

3.2 The expiry of this Agreement shall not affect any Order placed under it.

## **4. Scope of this Agreement**

4.1 This Agreement governs the terms on which all or any Services shall be supplied to the Contracting Bodies who may require the Service Provider to provide all or any such Services.

4.2 Subject to Clause 4.3, the Contracting Bodies shall be entitled (but not required) at any time during the duration of this Agreement to order Services from the Service Provider

in accordance with the Ordering Procedures and the Framework Competition Procedures.

- 4.3 The Service Provider shall not provide any of the Services to the Contracting Bodies other than pursuant to an Order entered into in accordance with this Agreement.
- 4.4 This Agreement governs the overall relationship of The Collaborators, the Service Provider and the Contracting Bodies with respect to the provision of the Services to the Contracting Bodies.
- 4.5 Any Order that is entered into for the provision of any Services to the Contracting Bodies shall be on the terms of the relevant Order and this Agreement in so far as applicable to an Order.
- 4.6 This Agreement does not give, nor purport to give, the Service Provider any rights of exclusivity or first refusal in relation to the Services. The Contracting Bodies may procure additional services from third parties which are similar or identical to the Services at any time during the term of the Agreement or thereafter. For the avoidance of doubt, The Collaborators are not regarded as 'Contracting Bodies'.

## **5. Effect of an Order**

- 5.1 Each Order shall, upon being entered into between the Service Provider and the Contracting Body, give rise to a separate contract between the Contracting Bodies and the Service Provider.
- 5.2 Where any Order has been entered into, the Service Provider undertakes to both the Contracting Body and The Collaborators to provide the relevant Contracted Services to the Contracting Body in accordance with all the provisions of:
- (a) the relevant Order;
  - (b) the Terms of Trade; and
  - (c) this Agreement (in so far as applicable to the relevant Order).
- 5.3 In the event of any conflict or inconsistency between any term of an Order, the Terms of Trade and any provisions of this Agreement, the terms in the Order shall prevail, but only in relation to the Contracted Services performed under the relevant Order in which such terms are contained.

## 6. Services

6.1 In respect of each Order, the Service Provider shall provide the relevant Contracted Services in accordance with the terms of the relevant Order and the terms of this Agreement in so far as they apply to that Order. In providing the Services, the Service Provider shall:

- (a) ensure that the Contracted Services comply in all respects with the provisions of Schedule 2 (*Services Requirements*);
- (b) meet all milestones, service levels and standards specified in the Order;
- (c) at all times allocate sufficient resources to provide the Contracted Services in accordance with the terms of this Agreement and the relevant Order;
- (d) supply any goods, materials or articles necessary for the Contracting Body to obtain the full benefit of the Contracted Services (in each case save to the extent expressly identified in this Agreement and/or the relevant Order);
- (e) perform its obligations under the relevant Order with all due, care, skill and diligence and in accordance with Good Industry Practice;
- (f) provide up to the agreed element of the Contracted Services in accordance with the provisions of Schedule 8 (*Pro-bono Fund Criteria and Procedure*); and
- (g) comply with all reasonable directions given to the Service Provider by The Collaborators and/or the Contracting Body during the Term provided that those directions are not inconsistent with the relevant Order.

6.2 In addition to the Contracted Services, the Service Provider shall, at no additional cost to the relevant Contracting Body, provide any incidental services and assume any incidental responsibilities which are not specifically set out in Schedule 2 (*Services Requirements*) and/or the relevant Order provided that they:

- (a) are within the overall scope of the relevant Contracted Services; and
- (b) are consistent with the allocation of responsibilities between the Contracting Body and the Service Provider under the terms of this Agreement and the relevant Order; and
- (c) are services or responsibilities which are inherent to the proper performance

and delivery of the Contracted Services.

- 6.3 The Collaborators may amend, remove or add to the Services in accordance with the Change Control Procedure.

## **7. No Liability on The Collaborators**

- 7.1 The Collaborators shall not be required to make any payment in respect of the provision of any Contracted Services to a Service Provider nor in respect of any other action or activity taken by the Service Provider under or in connection with an Order from a Contracting Body.

## **8. Charges and Invoicing**

- 8.1 The Service Provider's right to be paid for the provision of any Contracted Services shall be solely as set out in the relevant Order.

- 8.2 In entering into any Order, the Service Provider shall not, and shall not be entitled to, require the payment of any charges in excess of the Framework Charges.

- 8.3 The Service Provider shall not suspend the supply of the Services to any Contracting Body for failure to pay Charges unless the Service Provider is entitled to terminate the relevant Order under Clause 22 (Termination Rights) for failure to pay undisputed Charges.

- 8.4 Where an Contracting Body is required to pay the Service Provider in respect of costs, expenses, fees or charges incurred by the Service Provider, the relevant Contracting Body is not obliged to pay:

- (a) any part of those sums which exceeds what is fair and reasonable; or
- (b) any sums which are not supported by such appropriate evidence as the Contracting Body s or as the case may be, The Collaborators may reasonably require.

- 8.5 Save to the extent expressly specified in Clause 8.6 of this Agreement neither the Framework Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any changes to interest rates or any other factor or element (except VAT) which might otherwise increase the cost to the Service Provider or any subcontractors to the Service Provider of the performance of their obligations.

- 8.6 The Charges shall be reviewed annually provided however that any percentage increase in the Charges shall not exceed the increase published in the all items Retail Price Index for the month preceding the month in which the relevant review takes place.
- 8.7 Except as expressly set out in this Agreement or any Order, the Charges include all costs and expenses (except VAT) relating to the relevant Contracted Services and the Service Provider's performance of its obligations under the relevant Order and no further amounts will be payable by the Contracting Body to the Service Provider in respect of such performance.
- 8.8 Payment by the Contracting Body shall be without prejudice to any claims or rights which the Contracting Body may have against the Service Provider and shall not constitute any admission by the Contracting Body to the performance by the Service Provider of its obligations hereunder.
- 8.9 The Contracting Body shall be entitled to withhold payment of the Charges (or any part of the Charges) to the extent that the relevant Contracted Services (or any part of them) are not delivered in accordance with this Agreement and/or the relevant Order by notice to the Service Provider within ten (10) days of receipt of the relevant Invoice. Such notice shall set out:
- (a) the reasons for withholding the relevant Charges; and
  - (b) if the relevant act or omission is capable of being remedied, the remedial action required.
- 8.10 The Service Provider shall indemnify each Contracting Body on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the relevant Contracting Body at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the relevant Order. Any amounts due under this Clause shall be paid in cleared funds by the Service Provider to the relevant Contracting Body not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Contracting Body.

## **9. Contract/Order Managers**

- 9.1 The Collaborators and the Service Provider shall each appoint a representative (a "**Contract Manager**") who shall:

- (a) act as the principal liaison between the Contracting Bodies and the Service Provider; and
  - (b) manage the relationship between the Contracting Bodies and the Service Provider in accordance with the provisions of this Agreement.
- 9.2 The initial The Collaborators Contract Manager and the initial Service Provider Contract Manager shall be [INSERT] and [insert name of Service Provider's Contract Manager] respectively who shall be deemed to have been appointed pursuant to Clause 9.1.
- 9.3 Both The Collaborators and the Service Provider may remove their respective Contract Manager by notice in writing to the other Party. The Collaborators shall be entitled to require the Service Provider to remove any person appointed from time to time as the Service Provider Contract Manager.
- 9.4 The Service Provider Contract Manager will be expected to attend a review meeting with The Collaborators Contract Manager once a year, as well as a peer review session with other Service Providers. The Collaborators will not be charged for these sessions by the Service Provider.
- 9.5 In respect of each Order, the Contracting Body and the Service Provider shall each appoint a representative (an “**Order Manager**”) who shall:
  - (a) act as the principal liaison between his appointor and the other Party;
  - (b) manage, on behalf of his appointor, the relationship between the Contracting Body and the Service Provider in accordance with the provisions of the relevant Order; and
  - (c) be deemed to have full authority from his appointor to act in the name of, and on behalf of, his appointor for all purposes of and connected with the Order.
- 9.6 The initial Contracting Body Order Manager and the initial Service Provider Order Manager for each Order shall be specified in the relevant Order.
- 9.7 Both the Contracting Body and the Service Provider may remove their respective Order Manager by notice in writing to the other Party. The Contracting Body shall be entitled to require the Service Provider to remove any person appointed from time to time as the Service Provider Order Manager.
- 9.8 If at any time, a Party shall cease to have a Contract Manager or (as the case may be) an Order Manager, then that Party shall, within 7 days of such cessation, appoint an

alternative Contract Manager (as the case may be) an Order Manager and notify such appointment to the other relevant Party.

## **10. Subcontracting**

- 10.1 The Service Provider shall not sub-contract any of its obligations under this Agreement without the prior written consent of The Collaborators. The Collaborators may attach such conditions to the grant of its consent as it sees fit in its sole discretion. Except to the extent that any such condition permits any further subcontracting, no subcontractor shall subcontract any of its obligations in relation to the Service Provider's obligations under this Agreement. For the avoidance of doubt The Collaborator's consent to the use of the Specified Subcontractors shall be deemed to have been given.
- 10.2 The Service Provider shall not subcontract any of its obligations under any Order without prior written consent of both The Collaborators and the relevant Contracting Body. Both The Collaborators and the Contracting Body may attach such conditions to the grant of its consent as it sees fit in its sole discretion.
- 10.3 The Service Provider shall ensure that each subcontract reflects the terms and conditions of this Agreement (to the extent that it relates to services to be provided under this Agreement) or the relevant Order (to the extent that it relates to the services to be provided under that Order), including obligations no less onerous than those set out in this Agreement, the relevant Order and the Terms of Trade in respect of security, confidentiality, privacy, data security, data protection, Intellectual Property Rights, compliance with laws, compliance with policies and procedures and keeping of records.
- 10.4 The Service Provider shall not replace Specified Subcontractors without The Collaborator's prior written approval. Where a Specified Subcontractor is not longer able, for any reason, to provide the Services the Service Provider must notify The Collaborators of the identity of, and all relevant information relating to, the proposed replacement Specified Subcontractor. The Service Provider shall not enter into any new Orders until such time as a replacement Specified Subcontractor is approved by The Collaborators.
- 10.5 The Service Provider shall not terminate or materially amend the terms of:
- (a) any subcontract to this Agreement without The Collaborator's prior written consent, which shall not be unreasonably withheld or delayed; nor

- (b) any subcontract to an Order without the relevant Contracting Body's prior written consent, which shall not be unreasonably withheld or delayed.
- 10.6 The Collaborators may require the Service Provider to terminate a subcontract in respect of this Agreement and the relevant Contracting Body may require the Service Provider to terminate a subcontract in respect of an Order:
  - (a) where the acts or omissions of the relevant subcontractor have given The Collaborators (in the case of a subcontract in respect of this Agreement) or the relevant Contracting Body (in the case of a subcontract in respect of an Order) the right to terminate this Agreement or pursuant to Clause 22 (Termination Rights); or
  - (b) if the Service Provider is entitled to terminate the relevant subcontract under its own terms but has not done so.
- 10.7 The Collaborators shall have no obligation to pay any compensation in respect of any termination pursuant to Clause 10.5.
- 10.8 Despite the Service Provider's right to subcontract pursuant to this Clause 10, the Service Provider shall remain responsible for all acts and omissions of its subcontractor and the acts and omissions of those employed or engaged by the subcontractor as if they were its own.

## **11. Quality Assurance**

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

## **12. Maintenance of Records and Audit Rights**

- 12.1 The Service Provider shall, and shall procure that all of its subcontractors shall:
  - (a) maintain a complete and accurate set of records relating to all activities and costs relating to their performance of this Agreement and any Order;
  - (b) maintain reasonably adequate and appropriate security arrangements with a view to ensuring that there is no unauthorised access to and/or destruction of any such records.

12.2 The Service Provider shall, and shall procure that all its subcontractors shall, for the term of this Agreement and for 36 months after the termination or expiry, for whatever reason, of this Agreement, provide to The Collaborators and its staff, Service Providers, agents, auditors, advisers and other nominees (including the National Audit Office):

(a) reasonable access on reasonable notice to:

(i) the records maintained pursuant to Clause 12.1 and/or copies of any such records;

(ii) staff used by the Service Provider in the provision of the Services; and

(b) all reasonable assistance as may be necessary in order to enable The Collaborators to fully and promptly carry out any inspection, audit, check and/or monitoring of the Service Provider's compliance with this Agreement and/or any Order.

12.3 The Service Provider shall promptly provide The Collaborators with such other information, relating to this Agreement and the provision of the Services, as The Collaborators may from time to time reasonably request. Such information shall be provided in such form as The Collaborators may reasonably request.

12.4 Each Contracting Body shall have rights equivalent (*mutatis mutandis*) to those set out in Clauses 12.2 and 12.3 in so far as it relates to the relevant Contracting Body's Order and/or the Contracted Services provided under such Order.

### **13. Changes to this Agreement and/or any Order**

Any change to this Agreement and/or any Order shall only be valid if it is in writing and executed by all the relevant parties.

### **14. Disputes**

14.1 The Parties shall use all reasonable endeavours to resolve all Disputes using their own dispute resolution processes.

14.2 The Collaborators should only be informed of any Dispute which has not been resolved in accordance with Clause 14.1 however this will only be for information purposes. For the avoidance of doubt, The Collaborator's will not act intervene in any Dispute between a Contracting Body and a Service Provider.

## **15. General obligations of the Parties**

- 15.1 In respect of each Order, the Service Provider shall:
- (a) at all times allocate sufficient resources to provide the relevant Contracted Services in accordance with the terms of the relevant Order; and
  - (b) obtain, and maintain throughout the duration of each Order, all the consents, permissions and certificates (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable the provision of the relevant Contracted Services.
- 15.2 In respect of each Order, the Service Provider shall co-operate in good faith with, and provide such assistance to the relevant Contracting Body and any third party providing services to or receiving services from the relevant Contracting Body as the latter shall reasonably consider necessary to enable the Contracting Body and any such third parties to provide or receive services in the manner contemplated by the relevant Order.
- 15.3 The Service Provider shall ensure that no Contracted Services are produced or performed by any method which may bring The Collaborators and/or the relevant Contracting Body into disrepute.

## **16. Warranties**

- 16.1 By entering into this Agreement The Collaborators and the Service Provider each warrants, represents and undertakes that:
- (a) it has full capacity and authority to enter into and to perform this Agreement;
  - (b) this Agreement is executed by a duly authorised representative of that Party;
  - (c) there are no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under this Agreement; and
  - (d) once duly executed, this Agreement will constitute legal, valid and binding obligations.

16.2 When entering into an Order the Service Provider and the relevant Contracting Body shall each be deemed to represent, warranty and undertake to each other that at that time:

- (a) it has full capacity and authority to enter into and to perform the relevant Order;
- (b) the relevant Order has been executed by a duly authorised representative of that Party;
- (c) there are at the time of entering into the relevant Order no actions, suits or proceedings or regulatory investigations pending or, to that Party's knowledge, threatened against or affecting that Party before any court or administrative body or arbitration tribunal that might affect the ability of that Party to meet and carry out its obligations under the relevant Order; and
- (d) once duly executed, the relevant Order will constitute legal, valid and binding obligations.

16.3 In respect of each Order the Service Provider shall be deemed to warrant, represent and undertake to The Collaborators and the relevant Contracting Body that:

- (a) the execution, delivery and performance by the Service Provider of its obligations under the relevant Order shall not constitute a breach of any Law or obligation, or cause or result in a default under any agreement, by which the Service Provider is bound and which would prevent the Service Provider from entering into and performing its obligations under the relevant Order;
- (b) the Service Provider is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation;
- (c) the Service Provider has and will continue to hold all necessary (if any) consents and regulatory approvals from the Regulatory Bodies necessary to perform the Service Provider's obligations under the relevant Order;
- (d) the Service Provider has and will continue to have all rights in and to the Service Provider Software, the Third Party Software, the Service Provider's Background IPRs and the Specially Created IPR and any other materials made or to be made available by the Service Provider to the Contracting Body which are necessary to perform the Service Provider's obligations under the relevant Order;

- (e) the supply of the Contracted Services by the Service Provider to the Contracting Body and any use by the Contracting Body of the Contracted Services shall not infringe the Intellectual Property Rights of any Third Party;
  - (f) the Service Provider has the technical expertise to supply the Contracted Services;
  - (g) any documentation and training provided by the Service Provider shall be supplied in accordance with the terms of the relevant Order and shall enable suitably qualified personnel of the Contracting Body to make full and proper use of the Contracted Services;
  - (h) the Service Provider is not the subject of any other obligation compliance with which will or is likely to have a material adverse effect on the ability of the Service Provider to perform its obligations under the relevant Order;
  - (i) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Service Provider, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- 16.4 The Service Provider warrants, represents and undertakes that as at the date of this Agreement all statements and representations in the Service Provider's Final Tender are to the best of its knowledge, information and belief, true and accurate (having been made after due and careful enquiry with all appropriate sources and after all responses to such enquiries have been diligently reviewed). The Service Provider has advised The Collaborators of any fact, matter or circumstance of which it has become aware since making such proposals which would render any such statement or representation to be false or misleading.
- 16.5 The Service Provider warrants, represents and undertakes that it has and will continue to have full and unrestricted ability to assign the Specially Created IPR to the Contracting Body and/or The Collaborators.
- 16.6 Each of the warranties, representations and undertakings set out in this Clause 16 shall be constructed as a separate warranty, representation and undertaking.
- 16.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

## **17. Force Majeure**

- 17.1 Subject to the remaining provisions of this Clause 17, either Party to this Agreement or to any Order may claim relief from liability for non-performance of its obligations for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event.
- 17.2 The Affected Party shall as soon as reasonably practicable give the other Party notice of the Force Majeure Event. The Notice shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 17.3 Where the Affected Party is the Service Provider, none of the following events and circumstances shall be regarded as a Force Majeure Event that relieves liability under this Clause 17:
- (a) a failure by a subcontractor of the Service Provider to perform any obligation owed to the Service Provider unless and to the extent that the failure is directly caused by a Force Majeure Event directly affecting that subcontractor;
  - (b) an event or circumstance caused by a Default by the Service Provider, a subcontractor of the Service Provider or Service Provider Personnel;
  - (c) any industrial dispute relating to the Service Provider, any of its subcontractors and/or any Personnel;
  - (d) an event or circumstance attributable to the Service Provider's wilful act, neglect or failure to take reasonable precautions against the relevant event; or
  - (e) an event or circumstance whose effect is such that a prudent provider of services similar to the Services or as the case may be the Contracted Services, operating to the standards required by this Agreement or (as the case may be) the relevant Order, could have foreseen and prevented or avoided the consequences of such event or circumstance;
- 17.4 If a Force Majeure Event causes the Service Provider to allocate limited resources between the Service Provider's customers, the Service Provider shall not place the relevant Contracting Body lower in priority to any other similarly affected customer.
- 17.5 As soon as practicable after the Affected Party's notification in accordance with Clause 17.2, and at regular intervals thereafter, the relevant Parties shall consult to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to

enable continued provisions of the Services or (as the case may be) the relevant Contracted Services affected by the Force Majeure Event.

- 17.6 The relevant Parties shall at all times following the occurrence of a Force Majeure Event during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Service Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 17.7 If the Affected Party is the Service Provider, the Service Provider shall only be entitled to receive payment of the Charges (or a proportional payment thereof) to the extent that the relevant Contracted Services (or part of the Contracted Services) continue to be performed during the period of Force Majeure in accordance with the provisions of the relevant Order.
- 17.8 The relevant Parties shall be entitled to exercise termination rights pursuant to Clause 22 (Termination Rights) in relation to the continuance of a Force Majeure Event.

## **18. Indemnities**

- 18.1 In respect of each Order, the Service Provider shall at all times indemnify the relevant Contracting Body and each of their respective officers, employees and agents and keep them indemnified in respect of:
- (a) any Loss or Claim by any person that its Intellectual Property Rights are infringed (or are alleged to be infringed) by the receipt, use, reproduction or exploitation of the relevant Contracted Services by or on behalf of The Collaborators or the relevant Contracting Body in the manner contemplated by the relevant Order.
  - (b) any Claim by any person in connection with or any Loss suffered by the relevant Contracting Body as a result of a Default by the Service Provider;
  - (c) any Loss or Claim in connection with death or personal injury caused by any Default by the Service Provider or any Service Provider Personnel;
  - (d) any loss, destruction, corruption or degradation of data (including the Contracting Bodies Data) arising by reason of any Default of the Service Provider or any Service Provider Personnel;
  - (e) any failure by the Service Provider or any of its subcontractors to comply with its obligations under the Freedom of Information Act;

- (f) any Loss or Claim in connection with a failure by the Service Provider or any of its subcontractor to comply with any Laws;
  - (g) any Loss or Claim in connection with loss of, or damage to, property caused by any Default of the Service Provider or any of its subcontractors;
  - (h) any Employee Liabilities arising as a result of or relating to any Claims to the effect that any Service Provider Personnel are engaged (whether solely or jointly) as an employee or Service Provider of the relevant Contracting Body.
- 18.2 The Service Provider shall not be liable under the indemnities referred to in Clause 18.1 to the extent that a Claim or Loss is caused by a Default of a Contracting Body.
- 18.3 If the Service Provider fails to comply with Clause 18.1, the Contracting Body has the right to suspend any payment due under the relevant Order until the Service Provider remedies the failure to comply.
- 18.4 If the Contracted Services become, or in the Service Provider's reasonable opinion are likely to become, the subject of a Claim of a kind described in Clause 18.1(a) the Service Provider shall, at its own expense and in addition to any obligation of the Service Provider to indemnify the relevant Contracting Body in relation to that Claim:
- (a) acting promptly, procure for the relevant Contracting Body the right to continue using the relevant item which is subject to the Claim on terms which are acceptable to the Contracting Body; and
  - (b) if the Service Provider cannot comply with Clause 18.4(a) within a reasonable period replace or modify the relevant item with non-infringing substitutes provided that:
    - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (ii) the replaced or modified item does not have an adverse effect on the Contracted Services;
    - (iii) there is no additional cost to either the Contracting Body; and
    - (iv) the terms of this Agreement and the relevant Order shall apply to the replaced or modified item.

- 18.5 If, due to a Claim arising from, or by reason of infringement or alleged infringement of any Intellectual Property Right, the quiet enjoyment of the Contracted Services is disrupted or impaired and the Service Provider has not:
- (a) within ten (10) Working Days of the commencement of such disruption or impairment commenced all appropriate and effective actions in accordance with Clause 18.4; and
  - (b) subsequently used reasonable endeavours to pursue such actions,
- to restore to the Contracting Body the quiet enjoyment of the Contracted Services, the Contracting Body may, subject to Clause 18.6 conduct negotiations and make a settlement necessary to enable the Contracting Body to continue to receive the Contracted Services.
- 18.6 The negotiations and settlement contemplated under Clause 18.5 shall relate solely to the continued provision of the Contracted Services.
- 18.7 The Service Provider, instead of the Contracting Body, may, with the prior written consent of the Contracting Body (not to be unreasonably withheld), make a settlement contemplated under Clause 18.5 on the basis that the settlement shall not limit any rights the Contracting Body may have against the Service Provider arising out of a breach of Clause 18.

## **19. Limitations on Liability**

- 19.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or subcontractors, (as applicable);
  - (b) fraud or fraudulent misrepresentation; or
  - (c) breach of any obligation under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 19.2 Subject to Clause 19.1, The Collaborators shall have no liability to the Service Provider in respect of any breach by The Collaborators of the terms of this Agreement and/or any Order.
- 19.3 Subject to Clause 19.1, no Party will be liable to any other Party for:

- (a) any indirect special or consequential loss or damage;
- (b) any loss of profits, turnover, business opportunities, or damage to goodwill (whether direct or indirect).

19.4 The Contracting Body shall be entitled to recover as a direct loss:

- (a) any additional operational and/or administrative costs and expenses arising from the Service Provider's Default, including costs relating to the time spent by the Contracting Body's management and employees in dealing with the consequences of the Default; and
- (b) reasonable costs and expenses incurred by the Contracting Body in rectifying a Default of the Service Provider, and, where considered in the absolute discretion of the Contracting Body to be reasonable or necessary, in re running any process in respect of which the Contracted Services had been procured.

19.5 The Parties expressly agree that if any limitation or provision contained or expressly referred to in this Clause 19 is held to be invalid under any law, it will be deemed omitted to that extent, and if any Party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this Clause 19.

19.6 The Parties have considered the exclusions and limitations of liability in this Agreement in the context of all the circumstances of the transaction to which this Agreement relates (including the Parties' respective insurance cover) and all the factors referred to in Schedule 2 of the Unfair Contracts Terms Act 1977. The Parties consider that such exclusions and limitations of liability are fair and reasonable and that, but for such exclusions and limitations, the Parties would not have entered into this Agreement.

## **20. Insurance**

20.1 The Service Provider shall effect and maintain the insurances referred to in Clause 20.2 with insurers who are, in the reasonable opinion of The Collaborator's, of good financial standing and reputation and for a period of insurance which includes:

- (a) for all insurances, the period from the Effective Date until at least the expiry or termination of this Agreement but shall provide cover for obligations that survive expiry or termination of this Agreement; and

- (b) for professional indemnity insurance, the period of 3 years following the expiry or termination of this Agreement.

20.2 The Service Provider shall maintain:

- (a) professional indemnity insurance:
  - (i) covering liability arising in connection with the provision of the Contracted Services or breach of professional duty by the Service Provider in supplying the Contracted Services, which extends to any liability the Service Provider may have to the Contracting Body, as a result of, any failure on the part of the Service Provider and its subcontractor to exercise Good Industry Practice in supplying the Contracted Services; and
  - (ii) for an amount not less than £5,000,000 per occurrence and in the aggregate annually.
- (b) public liability insurance for an amount of not less than £5,000,000 for any one occurrence and unlimited in the aggregate annually as to the number of occurrences; and
- (c) employment liability insurance for an amount not less than £5,000,000 for any one occurrence and unlimited in the aggregate annually as to the number of occurrences.

20.3 The terms and conditions of the insurance cover held by the Service Provider shall not include any provision which would require the Service Provider to discharge any liability before being entitled to recover from its insurers or any other provision which might adversely affect the right of any person to recover under the Third Parties (Rights Against Insurers) Act 1930.

20.4 The Insurances shall be maintained from time to time on terms no less favourable than those generally available to a prudent Service Provider in respect of risks insured in the international insurance market from time to time.

20.5 The Service Provider shall pay all insurance premiums as soon as they are due for payment.

20.6 If the Service Provider fails to effect or maintain the insurances, the relevant Contracting Body under any Order may at its option obtain or maintain that insurance and may:

- (a) recover the cost of doing so as a debt due from the Service Provider; or
  - (b) deduct the premiums payable for the relevant insurances from amounts payable to the Service Provider.
- 20.7 The Service Provider shall provide to The Collaborators or (as the case may be) the Contracting Body copies of evidence from the Service Provider's broker endorsed by the Insurer of the insurances set out in Clause 20.2:
- (a) within ten (10) Working Days after a request by The Collaborators or (as the case may be) the Contracting Body; and
  - (b) from time to time within ten (10) Working Days if any of those policies are materially changed, altered or renewed.
- 20.8 On request, the Service Provider shall provide to The Collaborators or (as the case may be) the Contracting Body such details of the insurances maintained in accordance with this Clause 20 as they may reasonably require.
- 20.9 The Service Provider shall not take any action, or make any omission, or permit anything to occur, which would entitle any Insurer to refuse to pay or reduce any Claim under an insurance policy.
- 20.10 The Service Provider shall notify The Collaborators and any relevant Contracting Body within two (2) Working Days of:
- (a) the cancellation of any of the insurances; and/or
  - (b) the variation or reduction in the limits of coverage of such insurances.
- 20.11 The Service Provider shall ensure that all its subcontractors:
- (a) have sufficient and enforceable insurance to satisfy their obligations arising out of or in relation to this Agreement and/or any Order; and
  - (b) provide, at The Collaborator's request, evidence satisfactory to The Collaborators of the insurance specified in this Clause 20.
- 20.12 The Service Provider agrees that its compliance with the insurance obligations under this Clause 20 shall not in anyway reduce its other obligations under this Agreement or any Order.

20.13 The insurance premiums for the Insurances and the amount of any loss that would otherwise be recoverable under any of the Insurances but for the applicable uninsured deductible and limit of indemnity in respect of such insurance shall at all times be the responsibility of the Service Provider.

## **21. Employment and Pensions**

21.1 The Service Provider agrees that the entering into and performance of this Agreement by the Service Provider shall not result in any liabilities of the Service Provider or any of its subcontractor being transferred or otherwise vested in The Collaborators and/or any Contracting Body by virtue of the Employment Regulations.

21.2 To the extent that any liabilities of the type referred to in Clause 21.1 do or are alleged to so transfer or vest in The Collaborators and/or any Contracting Body, the Service Provider shall keep The Collaborators and the relevant Contracting Body fully and effectively indemnified in respect of all liabilities, claims, losses and expenses which it may suffer or incur as a result (including the liabilities, claims, losses and expenses which it may suffer or incur as a result of the termination of employment of any such employee following The Collaborators or (as the case may be) relevant Contracting Body becoming aware of such transfer or vesting).

21.3 Key Personnel shall not to be substituted by the Service Provider without the express prior written consent of the Contracting Body, not to be unreasonably withheld. The Service Provider shall (if requested) provide the Contracting Body with all relevant information about the professional qualifications and experience of any proposed substitute Key Personnel. The Service Provider shall not enter into any new Orders until such time as replacement Key Personnel is approved by the Contracting Body.

## **22. Termination Rights**

22.1 This Clause 22.1 sets out the rights of The Collaborators to terminate this Agreement and for a Contracting Body to terminate its Order for cause.

(a) a Contracting Body may terminate its Order and The Collaborators may terminate this Agreement (whether or not an Order has been terminated by a Contracting Body) by notice to the Service Provider if one or more of the circumstances set out in Clause 22.1(b) exist.

(b) The circumstances giving rise to the right to terminate are:

- (i) the Service Provider is in material Default of the relevant Order which it has failed to remedy in accordance with Clause 23 (Remedial Plan Process);
- (ii) the Service Provider commits a material Default of the relevant Order which is not capable of remedy;
- (iii) the Service Provider commits repeated Defaults of the relevant Order (whether of the same or different obligations and regardless of whether those Defaults are remedied), which The Collaborators (in the case of this Agreement) or the relevant Contracting Body (in the case of the relevant Order) considers, in its reasonable opinion, collectively constitute a material Default of the relevant Order;
- (iv) the Service Provider has failed to achieve a Milestone due to a Default by the Service Provider;
- (v) an Insolvency Event affecting the Service Provider occurs; or
- (vi) a Notifiable Event (as defined in Clause 27.6 (Assignment, Novation and Notifiable Events)) occurring; or
- (vii) the events set out in Clause 30.3 (Prevention of Corruption);or
- (viii) Specified Subcontractors are substituted by the Service Provider without The Collaborator's prior written consent as set out in Clause 10.4.

22.2 This Clause 22.2 sets out each Contracting Body's right to terminate any Order for convenience.

- (a) The Contracting Body may terminate the relevant Order for convenience at any time by giving no less than thirty (30) days' prior written notice to the Service Provider.
- (b) Without limiting Clause 22.2(a) and unless otherwise stipulated by the relevant Contracting Body in its termination notice, any Contracted Services and the development of any Contracted Services that has not commenced at the date the Contracting Body issues its termination notice shall be cancelled automatically and the Contracting Body shall, as from the date of termination, not be liable for any Charges or other payments for those cancelled Contracted Services and Contracted Services other than those outstanding and properly

due in accordance with the terms of the relevant Order at the date of termination.

22.3 Clause 22.3 sets out the rights of the Service Provider to terminate an Order:

- (a) The Service Provider may terminate an Order if the Contracting Body is in breach of its obligation to pay the Service Provider undisputed Charges by giving the Contracting Body thirty (30) days' written notice specifying the breach and requiring its remedy.

22.4 This Clause 22.4 sets out the Service Provider's and a Contracting Body's right to terminate an Order for a continuing Force Majeure Event.

The relevant Contracting Body and the Service Provider may terminate the relevant Order which is affected by a Force Majeure Event by notice to the other Party if the Force Majeure Event occurs in relation to the other Party for a continuous period of more than ninety (90) days or to such an extent that will result in the Service Provider being unable to provide the relevant Contracted Services in connection with the relevant election for which they are to be procured.

22.5 This Clause 22.5 sets out The Collaborator's right to terminate this Agreement for convenience.

- (a) The Collaborator's may terminate this Agreement for convenience at any time by giving 3 months written notice to the Service Provider.

## **23. Remedial Plan Process**

23.1 Where an Contracting Body (acting reasonably) considers that the Service Provider is in Default under the relevant Order, the Contracting Body may issue a notice to the Service Provider which shall set out details of the Default and the action which the Contracting Body requires the Service Provider to take so as to remedy the circumstances giving rise to the service of the relevant notice.

23.2 Without prejudice to any rights or remedies which either party may have under the relevant Order, the parties each agree to undertake any action which they are required to take as part of any plan which is agreed or determined pursuant to Clause 23.2.

## **24. Deductions from Charges**

Where the Service Provider has failed to provide the Contracted Services in accordance with the relevant Order, the relevant Contracting Body shall be entitled to

deduct a sum from the Charges payable in respect of the relevant Order which is reasonable and commensurate with the level of the failure to provide the Contracted Services, the significance to the relevant Contracting Body of the relevant failure and the extent to which the circumstances giving rise to the failure were within the control of the Service Provider. This shall not prevent the Contracting Body from exercising any other remedies as a result of the relevant failure but, in so doing the amount of any such deduction shall be taken into account.

## **25. Consequences of Termination**

25.1 The termination of this Agreement in accordance with Clause 22 (Termination Rights) or its expiry shall not affect the accrued rights, duties and liabilities of either Party under this Agreement and shall not affect any Order.

25.2 The termination of any Order in accordance with Clause 22 shall not affect the accrued rights, duties and liabilities of either Party under the relevant Order and shall not affect this Agreement or any other Order.

25.3 The Clauses and Schedules of this Agreement which expressly or impliedly have effect after expiry or termination of this Agreement will continue to be enforceable notwithstanding the expiry or termination of this Agreement.

## **26. Payments made on Termination**

26.1 The Contracting Body shall not make any payment to the Service Provider:

- (a) in respect of the expiry of the Term; or
- (b) if the Agreement is terminated by The Collaborators pursuant to Clause 22.1 (Termination Rights).

26.2 If any Order is terminated by any Contracting Body pursuant to Clause 22.2 or by the Service Provider pursuant to Clause 22.3, then the Contracting Body shall pay the Service Provider an amount equal to:

- (a) all unpaid Charges which may have accrued due to the Service Provider up until the date of such termination;
- (b) to the extent that any element of the Charges only accrue on the occurrence of any event or events (which have not then occurred), a fair and reasonable proportion of such Charges which corresponds to the proportion which the

work undertaken bears to the work which the Service Provider is required to undertake for the relevant Charges to arise; and

- (c) any necessary and unavoidable costs which the Service Provider incurs in terminating its activities in respect of the relevant Order.

This shall be the Service Providers sole remedy in respect of any termination of an Order under Clauses 22.2 or 22.3.

- 26.3 Each Party shall bear its own costs of termination of this Agreement and/or any Order pursuant to Clause 22.4 (Termination for Force Majeure).

## **27. Assignment, Novation and Notifiable Events**

- 27.1 The Service Provider shall not assign, novate or otherwise transfer or create any trust in relation to any or all of its rights and obligations under this Agreement, without the prior written consent of The Collaborators.

- 27.2 The Service Provider shall not assign, novate or otherwise transfer or create any trust in relation to any or all of its rights and obligations under an Order, without the prior written consent of both The Collaborators and the relevant Contracting Body

- 27.3 The Collaborators may assign, novate or otherwise dispose of any or all of its rights and obligations under this Agreement and any associated licences to:

- (a) to any successor to The Collaborators following a reorganisation within government or to any body (including any private sector body) which substantially performs any of the functions that previously had been performed by The Collaborators; or

- (b) any other person with the prior written consent (not to be unreasonably withheld or delayed) of the Service Provider.

- 27.4 Any change in the legal status of The Collaborators under this Agreement shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to The Collaborators.

- 27.5 Any change in the legal status of a Contracting Body shall not affect the validity of this Agreement or any Order between the Contracting Body and the relevant Service Provider and both this Agreement and the Order shall be binding on any successor body to the Contracting Body.

27.6 The Service Provider under this Agreement or any Order shall without delay notify The Collaborators or the relevant Contracting Body of:

(a) any Change of Control of:

(i) the Service Provider;

(ii) any Holding Company of the Service Provider;

(together, the '**Relevant Entities**'); and

(b) any new company name or trading name adopted or to be adopted by any of the Relevant Entities

(together, the '**Notifiable Events**').

27.7 If any Notifiable Event should occur, the Service Provider shall as soon as reasonably practicable thereafter and in any event within ten (10) Working Days, notify The Collaborators and any Contracting Body to which it is contracted of such Notifiable Event and shall promptly on demand provide all reasonable information that The Collaborators may require relating to that Notifiable Event.

## **28. Data Protection**

27.1 The Service Provider shall register with the Information Commissioner's Office in accordance with the requirements of the Data Protection Act 1998 ("the Act") within three months of the date of this Agreement and shall update and maintain such registration throughout the duration of this Agreement.

27.2 The Service Provider shall and shall ensure that all of its officers, employees, agents and subcontractors comply in all respects with all current data protection legislation, including the Data Protection Act 1998 ("the Act").

28.3 If in the reasonable opinion of the Contracting Body result of entering into the Order, the Service Provider becomes a Data Processor and the Contracting Body a Data Controller as defined in the Act, then the Service Provider shall:

(A) process personal data (as defined in the Act) in accordance with the eight Data Protection Principles and, in particular, in order to comply with the Seventh Data Protection Principle, shall, and shall procure that its subcontractors and any other person within the control of the Service Provider, shall:

- a) process personal data only in accordance with instructions from the Contracting Body;
- b) take reasonable steps to ensure the reliability of any employees who have access to personal data;
- c) take such technical and organisational security measures against unauthorised and unlawful processing of, accidental loss of, destruction of or damage to personal data as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, destruction or damage and the nature of the data to be protected;
- d) grant to the Contracting Body such access as is reasonably necessary to enable the Contracting Body to verify that the Service Provider is performing its obligations under this Condition 27; and

(B) where applicable, comply with the provisions of the Telecommunications (Data Protection and Privacy) Regulations 1999 regarding unsolicited direct marketing.

28.4 If the Contracted Services contain personal data governed by the Act then the Service Provider warrants that such data was obtained by the Service Provider and is supplied to the Contracting Body in compliance with the Acts and the Telecommunications (Data Protection and Privacy) Regulations 1999.

## **29. Waiver, Consents and Cumulative Remedies**

29.1 The rights and remedies provided by this Agreement and/or any Order may be waived only by notice to the other Party by the Contract Manager/Order Manager to the other Party in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.

29.2 Unless a right or remedy of The Collaborators or Contracting Body is expressed to be an exclusive right or remedy, the exercise of it by The Collaborators or Contracting

Body is without prejudice to The Collaborators or Contracting Body's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either Party shall not constitute a waiver of that right or remedy or of any other rights or remedies.

- 29.3 A waiver or release of any right or remedy of either Party shall be terminable at any time by notice (unless it is expressed not to be terminable).
- 29.4 Any consent, approval or agreement given by either Party under this Agreement and/or any Order shall not relieve the other Party from responsibility for complying with the requirements and obligations of this Agreement and/or any Order nor shall it be construed as a waiver of any rights or obligations under this Agreement and/or any Order except as (and to the extent) expressly provided in such consent, approval or agreement.
- 29.5 The rights and remedies provided by this Agreement or in any Order under it, are cumulative, and are not exclusive of any rights or remedies provided at law or in equity or otherwise either under this Agreement or under any Order

### **30. Relationship of the Parties**

- 30.1 In providing the Services and the Contracted Services, the Service Provider shall act as an independent Service Provider. Nothing in this Agreement or any Order under it, is intended to create a partnership, or legal relationship of any kind that would impose liability upon one Party for the act or failure to act of the other Party, or to authorise either Party to act as agent for the other Party. Except as expressly specified in this Agreement or in any Order, neither Party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other Party.

### **31. Prevention of Corruption**

- 31.1 For the purposes of this Clause 31, the expression 'Prohibited Act' shall mean any offer or agreement to give any person working for or engaged by The Collaborators, or Contracting Body any commission, gift or other consideration of any kind whatsoever, which could act as an inducement or a reward for any act or failure to act connected to this Agreement, any Order under it, or any other agreement between the Service Provider and The Collaborators.
- 31.2 The Service Provider warrants and represents that it has not entered into this Agreement or and will not enter into any Order under it, knowing (or in circumstances in which it ought reasonably to have known) that a Prohibited Act has been committed in connection with this Agreement, or any such Order.

31.3 Any commission of any of the Prohibited Acts by the Service Provider or any person acting on its behalf or other breach of this Clause 30 shall entitle The Collaborators either to terminate this Agreement in accordance with Clause 22 (Termination Rights).

## **32. Conflicts of Interest**

32.1 The Service Provider undertakes to The Collaborators and each Contracting Body at all times during the Term to avoid creating a conflict of interest between the obligations of the Service Provider to The Collaborators or (as the case may be) an Contracting Body and the Service Provider's obligations to any third party.

32.2 If the Service Provider becomes aware of any such conflict of interest (whether such existed before the Effective Date or afterwards) it shall immediately notify The Collaborators and any relevant Contracting Body of such conflict of interest and provide full details of the conflict of interest together with any additional information which The Collaborators or (as the case may be) the relevant Contracting Body may require in connection with such matter.

32.3 If The Collaborators reasonably considers that the Conflict of Interest notified to it under Clause 32.2 is capable of being avoided or removed, The Collaborators may require the Service Provider to take such steps as are reasonably necessary to avoid or, as the case may be, remove such Conflict of Interest.

32.4 If:

- (a) the Service Provider fails to remedy such Conflict of Interest as required in Clause 32.3; or
- (b) such Conflict of Interest cannot be remedied; or
- (c) The Collaborators considers that a Conflict of Interest existed at the Effective Date,

such matter shall be deemed to constitute a material Default under Clause 22.1 (Termination Rights).

## **33. Publicity and Branding**

33.1 The Service Provider shall not (and the Service Provider shall procure that no subcontractor of the Service Provider shall) make:

- (a) (without The Collaborator's prior written consent which shall not be unreasonably withheld or delayed) any advertisement, public statement or press announcement in relation to this Agreement or the provision of the Services; nor
- (b) (without the relevant Contracting Body's prior written consent which shall not be unreasonably withheld or delayed) any advertisement, public statement or press announcement in relation to any Order or the provision of the relevant Contracted Services.

33.2 The Collaborators reserves the right to:

- (a) make public statements and press announcements in relation to this Agreement for parliamentary, governmental, statutory or judicial purposes;
- (b) publish information about the Services as it may deem appropriate from time to time unless such information is Service Provider Confidential Information in which event it shall only be published with the prior written consent of the Service Provider, such approval not to be unreasonably withheld or delayed;
- (c) provide copies and details of this Agreement to any government department or other body having the purpose of compiling precedents.

33.3 Each Contracting Body shall have the same rights as The Collaborators under Clause 33.2 but in relation to the relevant Order and Contracted Services.

#### **34. Severance**

34.1 If a provision of this Agreement or any Order under it, is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

34.2 Subject to Clause 34.1, if any provision of this Agreement or any Order under it, is prohibited by Law or held invalid, illegal or unenforceable for any reason by any court or authority of competent jurisdiction, such provision shall be severed without affecting the remaining provisions. If a provision of this Agreement or any Order under it, is held to any extent to be invalid, The Collaborators, the Contracting Body (as applicable) and the Service Provider shall as soon as reasonably practicable commence good faith negotiations to remedy that invalidity .

### **35. Further Assurances**

35.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party, to do all acts and execute all additional documents which may be reasonably necessary to give effect to this Agreement, or any Order under it.

### **36. Entire Agreement**

36.1 This Agreement, together with the documents referred to in it and/or attached to it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

36.2 Each of the Parties acknowledges and agrees that in entering into this Agreement or any Order under it and the documents referred to in it and/or attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement, or more particularly defined in the relevant Order.

36.3 Nothing in this Clause 36 shall operate to exclude any liability for fraud.

### **37. Third Party Rights**

37.1 An Contracting Body shall be entitled to enforce the provisions of this Agreement in so far as it relates to the relevant Order but save for this a person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

37.2 A Contracting Body shall be entitled to enforce the provision of any Order in so far as it purports expressly or impliedly to confer any benefit on that Contracting Body, but save for this a person who is not Party to an Order has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of any Order. This does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

37.3 Any term of this Agreement may be altered or extinguished by the Parties without the consent of any other person.

### **38. Notices**

38.1 Any notices given under or in relation to this Agreement or any Order shall be in writing, signed by or on behalf of the Party giving it and shall be served by:

- (a) delivering it personally; or
- (b) sending it pre-paid first class post, recorded delivery, registered post or email

to the address and for the attention of the relevant Party as set out in Clause 38.3 (or in the case of an Order set out in the relevant Order) or such other address as that Party may have stipulated in accordance with this Clause 38.1.

38.2 A notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery if sent before 4.00 pm of any Working Day and otherwise at 9.00 am on the next Working Day;
- (b) in the case of pre-paid first class post or recorded delivery or registered post, three Working Days from the date of posting

38.3 The addresses of the Parties to this Agreement for the purposes of Clause 38.1 are set out below:

- (1) THE ENGLISH SPORTS COUNCIL (t/a Sport England): First Floor, 21 Bloomsbury Street, London WC1B 3HF to the attention of the Chief Executive;
- (2) THE SPORTS COUNCIL FOR WALES (t/a Sport Wales): Sophia Gardens, Cardiff, CF11 9SW to the attention of the Chief Executive;
- (3) SPORT NORTHERN IRELAND: [INSERT];
- (4) SPORT AND RECREATION ALLIANCE: 4th Floor, Burwood House, 14-16 Caxton Street, London SW1H 0QT to the attention of the Chief Executive; and
- (5) UK SPORT: Ground Floor, 21 Bloomsbury Street, London WC1B 3HF to the attention of the Chief Executive.

The Service Provider: [INSERT]

In proving service, it shall be sufficient to prove that the envelope containing the notice was:

- (a) addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party); and
- (b) delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, or registered post.

**39. Governing Law and Jurisdiction**

39.1 This Agreement and each Order shall be governed by and construed in accordance with the laws of England and subject to the Dispute Resolution Procedure, each Party agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.

IN WITNESS of which the parties have signed this Agreement on the date and year first written above.

**THE ENGLISH SPORTS COUNCIL**

Signed by: .....

Date: .....

Printed: .....

**THE SPORTS COUNCIL OF WALES**

Signed by: .....

Date: .....

Printed: .....

**SPORT NORTHERN IRELAND**

Signed by: .....

Date: .....

Printed: .....

**SPORT AND RECREATION ALLIANCE**

Signed by: .....

Date: .....

Printed: .....

**UK SPORT**

Signed by: .....

Date: .....

Printed: .....

for and on behalf of **THE COLLABORATORS**

Signed by: .....

Date: .....

Printed: .....

for and on behalf of **[SERVICE PROVIDER]**

## Schedule 1

### Definitions

<b>“Affected Party”</b>	means the Party seeking to claim relief in respect of a Force Majeure Event;
<b>“Agreement”</b>	means this agreement together with the Schedules to it and any documents referred to in it;
<b>“Approved Form”</b>	a document expressed to be in the approved form means a document approved by and initialled for the purposes of identification by or on behalf of the relevant parties;
<b>“Charges”</b>	in respect of each Order, the charges set out in or derived from the relevant Order for the provision of the relevant Contracted Services;
<b>“Claim”</b>	any claim, demand, proceeding or complaint of any nature or kind;
<b>“Contracting Body/Bodies”</b>	the list of organisations, as defined in the PQQ and ITT as ‘Participating Bodies’, who are eligible to receive Services as set out in this Agreement;
<b>“Contracted Services”</b>	in respect of any Order, the Services to be provided to the Contracting Body under that Order;
<b>“Default”</b>	in respect of each Order any breach of the obligations of the Contracting Body or the Service Provider or any other default, act, omission, negligence or statement of the relevant Party, its employees, servants, agents or subcontractors connection with or in relation to the subject-matter of the relevant Order and in respect of which such Party is liable to the other;

<b>“Effective Date”</b>	the date of this Agreement;
<b>“Employment Regulations”</b>	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
<b>“Final Tender”</b>	means the final tender submitted to The Collaborators by the Service Provider and dated [insert date] 2016;
<b>“Force Majeure Event”</b>	means any cause affecting the performance by a Party of its obligations under this Agreement or (as the case may be) any Order arising from war or armed conflict, acts of terrorism, fire, explosion, or earthquake, nuclear, chemical or biological contamination, catastrophic accident in the air or on land or articles falling from the air;
<b>“Framework Charges”</b>	the basis of charging (including the amount of any charges) set out in Schedule 5 (Framework Charges) which the Service Provider agrees will be the maximum amount that it will charge for the provision of particular elements of the Services under any Order;
<b>“Framework Competition Procedures”</b>	the procedures set out in Schedule 6 (Framework Competition Procedures) under which it is proposed that Ordering Bodies will conduct competitions amongst Framework Providers for the provision of Services to the relevant Eligible Authorities;
<b>“Framework Providers”</b>	Service Providers who have entered into agreements similar to this Agreement for the provision of services similar to all or some of the Services;
<b>“Good Industry Practice”</b>	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

## **“Insolvency Event”**

the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) or the taking of any corporate action, legal proceedings or other procedure or step being taken in relation to the following events in relation the relevant entity:

- (a) passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of a liquidator, an administrator of or, the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity’s undertaking, assets, rights or revenue;
- (c) entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) being unable or admitting its inability to pay its debts as they fall due or being capable of being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (but with the phrase “it is proved to the satisfaction of the court that” removed from subsection 123(2) of the Insolvency Act 1986);
- (e) suspending payments or commencing negotiations with one or more of its

creditors with a view to entering into any arrangement, compromise or compromise or composition in satisfaction of its debts with its creditors;

(f) enforcement of any security over any assets of the entity; or

(g) any expropriation, attachment, sequestration, distress or execution affecting any asset or assets of the entity which is not discharged within fourteen (14) days,

however, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide solvent reconstruction or amalgamation shall not amount to an Insolvency Event;

**“Intellectual Property Rights” or “IPR”**

shall have the meaning attributed to those terms in clauses 2 and 3 of the Terms of Trade;

**“Key Personnel”**

means the persons identified in Schedule 7 as Key Personnel

**“Losses”**

means all losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties;

**“Milestone”**

in respect of each Order, any event or task described as a “Milestone” (or a similar expression) in the relevant Order;

**“Order”**

an agreement between an Contracting Body and the Service Provider under which the Contracting Body agrees to procure certain Services from the Service Provider;

**“Order Managers”**

in respect of each Order, the relevant Contracting Body Manager and the relevant Service Provider

Order Manager;

**“Contracting Body”**

in respect of any Order, the organisation that has entered into that Order with the Service Provider and as defined within the ITT being the National Governing Bodies of sport and recreation supported and/or funded by the Collaborators (a list of National Governing Bodies as attached to the ITT);

**“Ordering Procedures”**

the procedures set out in Schedule 4 (Ordering Procedures) under which Orders are to be prepared and entered into;

**“Party”**

where used in the context of this Agreement shall mean The Collaborators (or if the context so requires, the Contracting Body) or (as the case may be) the Service Provider and where used in the context of an Order shall mean the relevant Contracting Body or (as the case may be) the Service Provider;

**“Pro-bono Fund”**

the pro-bono offer of an initial amount of £[insert] ([insert] Pounds) worth of work per annum from each Service Provider which will form part of a joint pot known as the ‘Pro-bono Fund’. Contracting Bodies will be able to apply to the Pro-bono Fund for funding subject to the criteria set out in Schedule 8 (*Pro-bono Fund Criteria and Procedure*);

**“Service Provider Personnel”**

means all employees, agents, consultants and Service Providers of the Service Provider, an Associate of the Service Provider and/or any subcontractor of any of them;

**“Service Provider Software**

software which is proprietary to the Service Provider, an Associate of the Service Provider or any of its subcontractors and which is or will be used by the Service Provider or any such subcontractors for the purposes of providing the relevant Contracted Services;

**“Service Provider’s Background IPRs”**

means:

(a) IPRs owned by or licensed to the Service Provider, any of its subcontractors or Service Provider Personnel before the Effective Date, for example those subsisting in the Service Provider’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Service Provider Know How or generic business methodologies; and/or

(b) IPRs created by or licensed to the Service Provider, any of its subcontractor or Service Provider Personnel independently of this Agreement and/or any Order,

but excluding IPRs owned by the Service Provider subsisting in the Service Provider Software;

**“Services”**

the services which the Service Provider agrees that it is prepared to provide to The Collaborators and/or Framework Partners as such services are more particularly described in Schedule 2 (Services Requirements);

**“Software”**

Service Provider Software and Third Party Software;

**“Specified Subcontractors”**

means those subcontractors named in the Service Provider’s Final Tender as being engaged to provide a specified part of the Services

**“Specially Created IPR”**

in respect of any Order, any IPR (including any IPR in any software) which is created by the Service Provider (or any of its subService Providers or any third party on the Service Provider’s behalf) in the course of or specifically in preparation for the provision of the Contracted Services and including any updates and amendments of such IPR, but which shall not

	include the Service Provider Background IPR;
<b>“Specially Created Software”</b>	software created as part of any Specially Created IPR;
<b>“Subcontract”</b>	any agreement or arrangement by which the Service Provider subcontracts any or all of its obligations under this Agreement or (as the case may be) any Order;
<b>“System Software”</b>	the Service Provider Software, the Third Party Software (including for the avoidance of doubt the Specially Created Software)
<b>“Third Party Software”</b>	software which is proprietary to any third party and which is or will be used by the Service Provider for the purposes of providing Contracted Services;
<b>“Working Days”</b>	any day other than a Saturday, Sunday or public holiday in England and Wales

## **Schedule 2**

### **Services Requirements**

AS SET OUT in the ITT.

### **Schedule 3**

#### Terms of Trade

In relation to any Order, the Terms of Trade to be entered into between the Contracting Body and the Service Provider shall be the Services Providers usual Terms of Trade.

## **Schedule 4**

### **Part A - Ordering Procedures**

1. Following the Framework Competition Procedure, an Order shall be entered into by the Contracting Body and the Service Provider in accordance with the Ordering Procedures set out below.
2. The Service Provider shall, within two (2) Working Days of receipt of an Order, either:
  - (a) acknowledge in writing (which, for the purposes of this paragraph, shall include email) receipt of that Order to the Contracting Body and state that it is able to fulfil the Order; or
  - (b) acknowledge in writing (which, for the purposes of this paragraph, shall include email) receipt of that Order to the Contracting Body and state that it is unable to fulfil the Order.
3. In the event that the Service Provider accepts the Order in accordance with paragraph 2 above, the Service Provider shall, as soon as reasonably practicable agree the detailed terms of the Order with the relevant Contracting Body and then sign the relevant Order with the relevant Contracting Body.
4. A binding agreement for the provision of the relevant Contracted Services under the Order shall be formed on both the Contracting Body and the Service Provider signing the relevant Order.
5. An Order shall be in the form of the template set out in Part B of this Schedule or shall comprise:
  - (a) the Contracting Body's requirement;
  - (b) the Service Provider's proposal, including any agreed additional terms;
  - (c) a unique Order reference number;
  - (d) the Contracting Body's invoice address;
  - (e) the Contracting Body's relevant contact names and telephone numbers;

- (f) the names and contact details of the Contracting Body's designated Order Manager(s);
- (g) the names and contact details of the Contracting Body's designated Senior Representative(s) as first point of contact for dispute resolution purposes;
- (h) the names and contact details of the Contracting Body's designated persons as second point of contact for the escalation of that dispute.

Part B – Template Order

Date of Order .....

Between

[Insert Name of the relevant Eligible Authority] (the “Contracting Body”)	[Insert Name of Contractor] (the “Contractor”)
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**Background**

This Order is made in accordance with the arrangements set out in the agreement (“the Agreement”) dated ..... 2012 and made between The Collaborators (the “Authority”) (1) and the Contractor (2) for the provision of services.

**General Provisions**

Words and expressions defined in the Agreement shall bear the same meaning, mutatis mutandis, when used in this Order.

In so far as they are relevant to this Order the terms of the Agreement shall take effect (together with associated definitions in the Agreement) as if set out in and incorporated in this Order.

**Specific Provisions**

We are an [NBG or Recreation Body]<sup>1</sup> of [...]<sup>2</sup> and would like to commission legal services in relation to [...]<sup>3</sup>.

We require advice on the following specific issue [...]<sup>4</sup>

The advice is required by [...]<sup>5</sup>and we request a cost estimate, indicating whether this a fixed fee, hourly rates, disbursements etc in accordance with the cost proposals provide your Invitation to Tender.

The work will be awarded on the basis of the following best value criteria:

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<sup>1</sup> Delete as appropriate  
<sup>2</sup> Insert activity  
<sup>3</sup> Insert area of law that the advice is to cover  
<sup>4</sup>To complete  
<sup>5</sup> Insert date

Price 40%

Quality 60%

We will also be grateful for confirmation which key staff from the Legal Panel Framework Team will be undertaking the work and confirm their availability to provide the work for UK Sport. If this is a new member to the team please can you provide an outline of their CV and confirmation they are available to undertake the work.

Please can you respond by [...] to this mini-competition.

Yours

**Schedule 5**

Framework Charges

**SCHEDULE OF RATES**

INSERT AS PER ITT RESULTS

## Schedule 6

### Framework Competition Procedures

1. If a Contracting Body wishes to call off any Services under this Agreement, the Framework Competition Procedure set out in this Schedule will be carried out.
2. Service Providers selected by the Contracting Body who are capable of delivering the required services will be invited to quote for the Contracted Services.
3. Under the Framework Competition Procedure:
  - (a) quotes shall include a draft of the Order which the Service Provider would expect to enter into in the event that its tender is successful (or alternatively any amendments proposed to any draft previously prepared by The Collaborators);
  - (b) notwithstanding any Framework Charges, Service Providers shall be able to offer discounts against agreed Framework Charges ;
  - (c) both the:
    - (i) terms and conditions; and
    - (ii) nature of the Services,set out in the Framework Agreements shall be adhered to.
  - (d) Service Providers shall only be entitled to depart from the terms of their Framework Agreement:
    - (i) in ways which do not materially depart from the terms of the Framework Agreements; and
    - (ii) subject to The Collaborators giving its prior written consent.
4. Orders shall be awarded on the basis of (but not limited to) the following criteria :
  - (a) ability of the provider to deliver the services required by the Contracting Body (both in terms of nature and extent);
  - (b) timescales;

- (c) the nature and quality of the proposed advice;
- (d) the capacity to provide the services required in the timescales required;
- (e) the pricing mechanism and amount;
- (f) the business continuity arrangements proposed to be adopted by the Service Provider and the quality of those arrangements; and
- (g) expertise, of the provider generally and key personnel specifically, of particular relevance to the specific Order and subject matter of the Order.

**Schedule 7**

Key Personnel

[INSERT following ]

## **Schedule 8**

Pro-bono Fund Criteria and Procedure