

DATED

**(1) THE AUDIT COMMISSION FOR LOCAL AUTHORITIES AND THE NATIONAL HEALTH
SERVICE IN ENGLAND**

-and-

(2)

AGREEMENT

relating to

**AUDIT AND RELATED SERVICES
FOR PRINCIPAL BODIES**

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THIS CONTRACT is made on

2012

PARTIES

THE AUDIT COMMISSION FOR LOCAL AUTHORITIES AND THE NATIONAL HEALTH SERVICE IN ENGLAND of 1st floor, Millbank Tower, Millbank, London SW1P 4HQ (the "**Commission**"); and

(the "**Supplier**")

BACKGROUND

- (A) The Commission has a duty under the Audit Commission Act 1998 (the "1998 Act") and the Charities Act 1993 (the "1993 Act") to appoint auditors to audit the accounts of those bodies whose accounts are required to be audited in accordance with those Acts.
- (B) This Contract makes provision to enable the Commission to appoint the Supplier (or individuals within the Supplier) as auditors under the 1998 Act, the 1993 Act or any other relevant Act or arrangement.
- (C) Section 3 of the 1998 Act permits the Commission to appoint its officers, individuals who are not officers of the Commission, and firms of individuals who are not officers of the Commission as auditors. Auditors may be appointed to act jointly, to act separately in relation to different parts of the accounts, to discharge different functions in relation to the audit, or to assist another auditor.
- (D) The Commission proposes to appoint firms (or individuals within such firms) to provide audit and related services in relation to a group of local government and NHS bodies located within the area(s) listed in Schedule 1 to this Contract.
- (E) Through a process of competitive tender the Supplier has indicated its willingness to provide such services and has been selected by the Commission to provide such services.
- (F) This Contract provides for the terms and periods of auditor appointments made to the bodies referred to in D above, for the purposes of Section 3(8) of the 1998 Act.
- (G) This Contract also provides for the Supplier to discharge certain functions of the Commission under the 1998 Act with regard to the collection of audit fees and the certification of grant claims and returns as agent of the Commission.

PART 1

GENERAL PROVISIONS

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Contract the following expressions shall have the following meanings:

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| "1993 Act" | means the Charities Act 1993. |
| "1998 Act" | means the Audit Commission Act 1998. |
| "Additional Employee" | means any employee who is a Transferring Employee who is not an Anticipated Employee. |
| "Adjacent Contract Area" | means an area specified by the Commission for the purposes of the award of contracts under OJEU Contract Notice 2011S 171-281791 that shares a border with a Contract Area. |
| "Anticipated Employee" | means those employees whose details were provided to the Supplier with the ITT whom it was anticipated by the Commission at 25 November 2011, would transfer to the Supplier pursuant to the TUPE Regulations on the Service Transfer Date. |
| "Appointed Auditor" | means the Supplier (or Designated Individual as the case may be) appointed by the Commission under the 1998 Act, the 1993 Act or any other Act or arrangement and notified in accordance with Clause 17.5 to provide Audit Services in respect of an Audited Body. |
| "Approval" and "Approved" | means the written consent of the Contract Manager or authorised representative of the Commission as notified to the Supplier. |
| "Assigned Employees" | has the meaning as set out in paragraph 3.5.1 of Schedule 6. |
| "Associated Person" | has the meaning given in Clause 4.9.1. |
| "Audit Certificate" | means the certificate issued by the Appointed Auditor on completion of an audit as required by section 9(1)(a) of the 1998 Act or the equivalent notification of completion of an audit under other legislation. |
| "Audit Performance Period" | means the period for performance of an audit under the relevant Act and Code of Audit Practice commencing on 1 April in any year and ending with the issue of the Audit Certificate in respect of that period (provided that the commencement date of Audit Performance Periods may from time to time be varied by the Commission in the Standing Guidance or in the Auditor Appointment Notice). |
| "Audit Services" | means auditing services required by the 1998 Act, the 1993 Act, any other Act or arrangement and Code of Audit Practice and set out in the Specification. |
| "Audit Services Fee" | means the fee payable by an Audited Body to the Commission in respect of Audit Services for an Audit Year as calculated in |

accordance with Clauses 21 and 22.

"Audit Services Remuneration"

means the fee payable by the Commission to the Supplier in consideration of the performance of the Audit Services for an Audit Year as calculated in accordance with the Pricing Schedule.

"Audit Year"

means the period commencing 1 April in any year and ending on 31 March of the following year.

"Audited Body/Bodies"

means a body/bodies in respect of which audit functions are to be performed by an auditor appointed under the 1998 Act, the 1993 Act or any other Act or arrangement under which the Commission may appoint an auditor, but excluding any body that is a Small Body.

"Audited Body Notional Value"

means the notional value of Services Fees attributed to an Audited Body in respect of an Audit Year consisting of the sum of:

- the fee for Audit Services under the relevant fee scale for that Audited Body in the Work Programme and Scales of Fees applicable for that Audit Year; and
- the Commission's estimate of Grant Certification Services Fees and Auditor Appointment Specified Work Fees for the Audited Body in respect of that Audit Year.

"Audited Body Supplier"

means any supplier appointed directly by an Audited Body to perform services equivalent to the Services or any part thereof.

"Auditor Appointment"

means an appointment made by the Commission of an auditor to audit the accounts of an Audited Body under the 1998 Act, the 1993 Act or any other Act or arrangement and in accordance with this Contract.

"Auditor Appointment Notice"

means notification given to an Audited Body (and copied to the Supplier) in accordance with Clause 17 whereby the Appointed Auditor is notified that it is appointed to audit some or all of the accounts of that Audited Body.

"Auditor Appointment Period"

means, in respect of an Auditor Appointment, the period commencing on the commencement date specified in the Auditor Appointment Notice and ending on the earlier of:

- the expiry date specified in the Auditor Appointment Notice; or
- the date of revocation where the Auditor Appointment is revoked in accordance with this Contract.

"Bribery Legislation"

means the Bribery Act 2010 (and in respect of the period to 1 July 2011, the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916), the Anti-Terrorism, Crime and Security Act 2001, the Criminal Law Act 1977, the Proceeds of Crime Act 2002, and any and all similar or other anti-bribery and/or

anti-corruption legislation and/or codes of practice of any jurisdiction applicable from time to time to the Supplier, the Commission, this Contract and/or its subject matter.

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| "Certification Instructions" | means the "Instructions to Auditors on the Certification of Grants and Returns" issued by the Commission to the Supplier from time to time. |
| "Change of Control" | has the meaning given to it in Clause 45.2. |
| "Code" | has the meaning given to it in Clause 38.5. |
| "Code of Audit Practice" | means the Code or Codes prepared by the Commission and approved under Section 4 of the 1998 Act and includes any amendments made in accordance with that section. |
| "Commencement Date" | means 1 April 2012. |
| "Commercially Sensitive Information" | means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information: <ul style="list-style-type: none">• which is provided by the Supplier to the Commission in confidence for the period set out in that schedule; and/or• which constitutes a trade secret. |
| "Commercially Sensitive Information Schedule" | means the information set out in Schedule 8. |
| "Commission's Director" | means the Commission's Managing Director, Audit Policy or the person for the time being performing equivalent functions. |
| "Confidential Information" | means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one Party (the " Disclosing Party ") to another Party (the " Receiving Party ") whether before or after the date of this Contract including, without limitation, any Personal Data and any information relating to the Disclosing Party's business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers. |
| "Contact Partner" | means the individual of partner or equivalent status nominated from time to time by the Supplier as the individual authorised to act on behalf of the Supplier for the purposes of the Contract. |
| "Contract" | means this agreement between the Commission and the Supplier consisting of these terms and conditions and the attached Schedules. |
| "Contract Area(s)" | means the area or areas listed in Schedule 1. |
| "Contract Manager" | means the person for the time being appointed by the Commission as being authorised to administer the Contract on behalf of the Commission or such person as may be |

nominated by the Contract Manager to act on its behalf.

"Contract Period"

means the period from the Commencement Date to:

(a) the date of expiry set out in Clause 2.2 (Initial Contract Period), but

(b) in the case of an extension pursuant to Clause 2.3 (Extension of Contract Period), the date of expiry of the extension period.

"Contract Remuneration"

means the sum of the:

- Audit Services Remuneration; and
- Grant Certification Services Remuneration; and
- Specified Auditor Appointment Works Remuneration

payable to the Supplier by the Commission under the Contract in consideration of the Services, as calculated in accordance with Clause 24.

"Contract Reporting Requirements"

means the reporting requirements determined by the Commission for the purposes of this Contract and notified to the Supplier from time to time.

"Contract Term"

means the period from the Commencement Date until the earlier of:

- the end of the last ending Audit Performance Period in respect of any Audit Year for which an Auditor Appointment has been made by the Commission under this Contract; or
- the revocation date of such final Auditor Appointment referred to above.

"Contracting Authority"

means a contracting authority defined by Regulation 3 of the Public Contracts Regulations 2006.

"Default"

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

"Default Interest Rate"

means 2% above LIBOR.

"Deliverable"

means any materials, documents, software or other items created by the Supplier for and on the express instructions of the Commission in the performance of the Services.

"Designated Individual"

means any employee or partner of the Supplier designated in accordance with Clause 17 to perform any part of the Services.

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| "DPA" | means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| "Employee Liability Information" | has the meaning as set out in paragraph 3.5 of Schedule 6. |
| "Employee List" | has the meaning as set out in paragraph 2.6 of Schedule 6. |
| "Engagement Leads" | means the persons referred to in Schedule 5. |
| "Environmental Information Regulations" | means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| "Final Employee List" | has the meaning as set out in paragraph 2.7 of Schedule 6. |
| "First Audit Year" | means the Audit Year commencing on the Commencement Date. |
| "FOIA" | means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation. |
| "Force Majeure Event" | <p>means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <p>(a) any industrial action occurring within the Supplier's or any sub-contractor's organisation; or</p> <p>(b) the failure by any sub-contractor to perform its obligations under any sub-contract.</p> |
| "Fraud" | means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown. |
| "Future Supplier" | means any alternative supplier appointed by the Commission to perform the Services or any part thereof. |
| "General Change in Law" | means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which would affect or relate to a comparable supply of services of the same or a similar nature to the supply of the Services. |
| "Good Industry Practice" | means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and |

ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

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| "Grant Certification Services" | means work conducted by the Supplier (as agent of the Commission) in relation to claims and returns in respect of grants or subsidies made or paid by any government department or public body to an Audited Body pursuant to arrangements made by the Commission under Section 28 of the 1998 Act in accordance with the Specification. |
| "Grant Certification Services Fee" | means the fee payable by an Audited Body to the Commission in respect of Grant Certification Services for an Audit Year as calculated in accordance with Clauses 21 and 22. |
| "Grant Certification Services Remuneration" | means the fee payable by the Commission to the Supplier in consideration of the performance of the Grant Certification Services in relation to an Audit Year as calculated in accordance with the Pricing Schedule. |
| "Headcount Difference" | means the number of Transferring Employees less the number of Anticipated Employees |
| "Information" | has the meaning given under section 84 of the Freedom of Information Act 2000. |
| "Initial Contract Period" | means the period from the Commencement Date until the date set out in Clause 2.2 but excluding any extension pursuant to Clause 2.3. |
| "Intellectual Property Rights" | means copyright, patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off. |
| "ITT" | means the invitation to tender and associated documentation issued by the Commission in relation to the competitive tender process under which the Commission procured this Contract. |
| "Law" | means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body with which the Commission and/or the Supplier (as applicable) is bound to comply. |
| "LIBOR" | means the rate per annum determined by Barclays Bank plc (from time to time) to be the offered rate for six (6) Months sterling deposits in the London interbank market which appears on Telerate Page 3750 (or such other page as may replace that page on the Dow Jones Telerate). |

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| "Month" | means calendar month. |
| "Notional Value Maximum" | means the combined Audited Body Notional Values attributed to Auditor Appointments in the Contract Area(s) that the Commission aims to achieve in respect of the Supplier (or Designated Individual as applicable) for each Audit Year during the Contract Period, as determined and adjusted from time to time in accordance with the provisions of Clause 16. |
| "Notional Value Minimum" | means the minimum combined Audited Body Notional Values attributed to Auditor Appointments in the Contract Area(s) that may be made in respect of the Supplier (or Designated Individual as applicable) for each Audit Year during the Contract Period, as determined and adjusted from time to time in accordance with the provisions of Clause 16. |
| "Party" | means a party to this Contract and "Parties" shall be construed accordingly. |
| "PCT/SHA Services" | means any Services in respect of which the Audited Body is an NHS Primary Care Trust or Strategic Health Authority. |
| "Persistent Failure" | means three or more Supplier Failures in any eighteen (18) Month period. |
| "PQQ" | means the pre-qualification questionnaire document and associated documentation issued by the Commission in relation to the competitive tender process under which the Commission procured this Contract. |
| "Pre-Existing Rights" | has the meaning given to it in Clause 41.3. |
| "Premises" | means the location(s) of the Commission's offices to which the Supplier may require or be given access during the Contract Term. |
| "Pricing Schedule" | means Schedule 4. |
| Redundancy Cap | means the Headcount Difference multiplied by the average Redundancy Costs which would be payable to all Additional Employees in the event that they were dismissed by reason of redundancy as at the date of this Contract. |
| "Redundancy Costs" | means in relation to an employee, a payment in lieu of contractual notice, a statutory redundancy payment and any additional contractual redundancy pay which is required to be paid to the employee by virtue of their contract of employment as at the Service Transfer Date. |
| "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 Commission and "Regulatory Body" shall be construed accordingly. |
| "Relevant Conviction" | means a conviction that is relevant to the nature of the Services. |

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| "Relevant Transfer" | means a relevant transfer of staff for the purposes of the TUPE Regulations. |
| "Remuneration Rate" | means the percentage rate referred to in the Pricing Schedule. |
| "Requests for Information" | shall have the meaning set out in the FOIA or any apparent request for information under the FOIA or the Environmental Information Regulations. |
| "Return Date" | has the meaning as set out in paragraph 3.3 of Schedule 6. |
| "Returning Employee List" | has the meaning as set out in paragraph 3.4 of Schedule 6. |
| "Returning Employees" | has the meaning as set out in paragraph 3.3 of Schedule 6. |
| "Service Transfer Date" | means midnight on 31 October 2012. |
| "Services" | means: <ul style="list-style-type: none"> • the Audit Services; and • the Grant Certification Services; and • the Specified Auditor Appointment Works, as set out in the Specification. |
| "Services Fee" | means the sum of the: <ul style="list-style-type: none"> • Audit Services Fee; and • Grant Certification Services Fee; and • Specified Auditor Appointment Works Fee. |
| "Small Body" | means any body to which the Commission appoints an auditor that is covered by Schedule 1 to the Code of Audit Practice unless that body elects to prepare a statement of accounts that is required of a larger relevant body (as defined by the Accounts and Audit (England) Regulations 2011) pursuant to regulation 12(1) of those Regulations. |
| "Specific Change in Law" | means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Supplier, and which would not affect a comparable supply of services of the same or a similar nature to the supply of the Services. |
| "Specification" | means the description of the Services to be supplied under the Contract as set out in the Specification at Schedule 2. |
| "Specified Auditor Appointment Works" | means those Specified Auditor Appointment Works outlined in the Specification. |
| "Specified Auditor Appointment Works Fee" | means the fee payable by an Audited Body to the Commission in respect of Specified Auditor Appointment Works for an Audit Year as calculated in accordance with Clauses 21 and 22 . |
| "Specified Auditor" | means the fee payable by the Commission to the Supplier in |

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| Appointment Works Remuneration" | consideration of the performance of the Specified Auditor Appointment Works in relation to an Audit Year as calculated in accordance with the Pricing Schedule. |
| "Staff" | means all persons employed by the Supplier to perform its obligations under the Contract together with the Supplier's subsidiaries, servants, agents and sub-contractors, and their personnel, used in the performance of its obligations under the Contract and their personnel. |
| "Staff Vetting Procedure" | means the Commission's procedures for the vetting of personnel and as advised to the Supplier by the Commission or otherwise as detailed in Clause 9 and as further advised to the Supplier by the Commission in Standing Guidance or Supplementary Guidance. |
| "Standing Guidance" | means the guidance headed 'Standing Guidance' (including appendices and schedules) provided by the Commission to the Supplier in accordance with Clause 6.1. |
| "Sub-contractor Terms" | has the meaning given in Clause 4.9.4. |
| "Supplementary Guidance" | means any other guidance (including appendices and schedules) sent by the Commission to the Supplier in accordance with Clause 6.1. |
| "Supplier Failure" | means any Default in respect of which the Supplier is liable to the Commission and which: <ul style="list-style-type: none"> • is not capable of remedy; or • is capable of remedy and which has not been remedied by the Supplier within thirty (30) days of notification of such breach by the Commission. |
| "Transitional Work" | means Services carried out by the Supplier in respect of an Auditor Appointment or otherwise for an Audit Year commencing prior to the Commencement Date in accordance with Clause 17.4 and Schedule 7 and includes such work as is required to enable the Supplier to complete the audit having regard to applicable accounting standards and the Standing Guidance or Supplementary Guidance. |
| "Transferring Employee" | means an employee of the Commission whose contract of employment becomes, by virtue of the application of the TUPE Regulations in relation to what is done for the purposes of carrying out this Contract between the Commission and the Supplier, a contract of employment with the Supplier. |
| "TUPE Regulations" | means the Transfer of Undertakings (Protection of Employment) Regulations 2006. |
| "VAT" | means value added tax in accordance with the provisions of the Value Added Tax Act 1994. |
| "Work Programme and Scales of Fees" | means the document or documents (as may be amended or supplemented from time to time) setting out the scales of fees for Audit Services prescribed under Section 7 of the 1998 Act including the maximum allowable rates for Grant Certification |

Services and Specified Auditor Appointment Works, and notified to the Supplier for each Audit Year under Clause 21.3.

"Working Day"

means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

- 1.2 The interpretation and construction of this Contract shall all be subject to the following provisions:
- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
 - 1.2.2 words importing the masculine include the feminine and the neuter;
 - 1.2.3 reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - 1.2.4 reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
 - 1.2.5 reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.6 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and
 - 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

2. CONTRACT DURATION

Contract Term

- 2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of the Contract Term, unless it is otherwise terminated in accordance with this Contract, or it is otherwise lawfully terminated.

Initial Contract Period

- 2.2 The Initial Contract Period shall terminate on 31 March 2017 unless the Contract is otherwise terminated in accordance with the conditions of the Contract, or otherwise lawfully terminated, or extended under Clause 2.3.

Extension of Contract Period

- 2.3 Subject to satisfactory performance by the Supplier during the Initial Contract Period, the Commission may, at the Commission's sole discretion, extend the Contract Period for a further period of up to three (3) years. The Commission will give reasonable notice to the Supplier if it wishes to do so before the end of the Initial Contract Period. The conditions in this Contract will apply throughout any such extended period.

3. **THE SERVICES**

Audit Services

3.1 The Supplier shall provide (or procure the Designated Individual to provide) in respect of each Auditor Appointment where the Supplier (or the Designated Individual) is the Appointed Auditor:

3.1.1 the Audit Services; and

3.1.2 the Specified Auditor Appointment Works

for each Audit Year during each respective Auditor Appointment Period, as specified in the Specification and Code of Audit Practice.

3.2 For the avoidance of doubt where the Supplier (or the Designated Individual) provides the services referred to in Clause 3.1 above as Appointed Auditor, the Parties agree that this shall not be construed as creating a relationship of principal and agent.

Grant Certification Services

3.3 The Supplier shall provide in respect of each Auditor Appointment where the Supplier (or the Designated Individual) is the Appointed Auditor the Grant Certification Services for each Audit Year as specified in the Specification. The Supplier shall also provide Grant Certification Services in respect of an Audit Year where required to do so pursuant to Clause 17.4 and Schedule 7 (Transitional Work Schedule), whether or not it is the Appointed Auditor for the body concerned.

3.4 The Supplier shall provide Grant Certification Services referred to in Clause 3.3 above as agent for the Commission.

Contract Remuneration

3.5 In consideration of the Supplier providing the Services (or procuring the Designated Individual to provide relevant parts of the Services as applicable) the Commission shall pay the Contract Remuneration to the Supplier in accordance with the provisions of this Contract.

Non Exclusivity

3.6 The Supplier agrees that its relationship with the Commission is not exclusive and that the Commission may itself perform any services similar to any part of the Services or contract with any third party to perform any services similar to any part of the Services.

PART 2

PROVISION OF THE SERVICES

4. GENERAL SUPPLIER OBLIGATIONS

Supplier Capacity

- 4.1 The Supplier warrants and represents that it has the full capacity and authority and all necessary consents to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier.
- 4.2 The Supplier warrants and represents at the Commencement Date and during the operation of this Contract that it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract.
- 4.3 The Supplier warrants and represents that at the Commencement Date all information, representations and other matters of fact communicated in writing to the Commission or its agents or employees in connection with the Supplier's response to the PQQ, ITT or in the course of discussions in respect of this Contract are true, complete and accurate in all material respects or were at the time they were made with any omissions or inaccuracies being notified to the Commission by the Supplier prior to the Commencement Date by way of updating information.

Conflicts of Interest

- 4.4 Where the Supplier becomes aware of any actual, possible or potential conflict of interest between the Commission and/or its performance of the Services and the interests of a third party which the Supplier is performing services for, has performed services for, or may perform services for, then:
- 4.4.1 the Supplier shall immediately inform the Commission, in writing, of this conflict; and
- 4.4.2 the Supplier shall continue to perform the Services and shall not attempt to discontinue the Services out of a preference to provide services for the third party, failing which the Commission may terminate this Contract immediately on written notice and in such case the Supplier acknowledges and accepts that the Commission may be entitled to damages.
- 4.5 If the Commission so elects and at its sole discretion, the Supplier may be required by the Commission to cease providing any part of the Services affected by the conflict of interest and the Supplier acknowledges and accepts that in such case it will have no claim for damages.
- 4.6 The Supplier shall ensure that if any principal, partner, consultant, agent or employee of the Supplier has obtained or, subsequent to the commencement of the Contract, obtains
- 4.6.1 a direct or indirect pecuniary interest in any Commission contract which has been proposed, tendered or concluded; or
- 4.6.2 any personal interest in any matter within the Supplier's remit under this Contract
- then full particulars shall be disclosed in writing to the Commission without delay.

- 4.7 For the avoidance of doubt, the obligations in Clauses 4.4 to 4.6 apply to the Supplier in addition to and not in substitution of the requirements in the Standing Guidance and Supplementary Guidance regarding integrity, objectivity and independence.

Safeguard against Fraud

- 4.8 The Supplier shall safeguard the Commission's funding of the Contract against Fraud generally and, in particular, Fraud on the part of the Supplier or its Staff. The Supplier shall notify the Commission immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

Prevention of Corruption and Bribery

- 4.9 The Supplier represents, warrants and undertakes to the Commission that:
- 4.9.1 in relation to this Contract and/or its subject matter, neither the Supplier nor any of its employees, sub-contractors, agents, suppliers or others performing services (in any capacity) for or on behalf of the Supplier in relation to the subject matter of this Contract (each an "**Associated Person**") has done (or agreed to do) or will do (or agree to do) anything which constitutes a breach by the Supplier or the Commission of any Bribery Legislation;
 - 4.9.2 the Supplier has in place, and will at all times during the term of this Contract continue to have in place policies and procedures to ensure compliance with the Bribery Legislation, including without limitation adequate procedures (adequacy being determined in accordance with Section 7(2) and Section 9 Bribery Act 2010) designed to prevent any Associated Person from committing an offence under any Bribery Legislation, and as a minimum such procedures comply, and will at all times during the term of this Contract comply, with the most recent guidance issued from time to time by the Secretary of State pursuant to the Bribery Act 2010;
 - 4.9.3 the Supplier will throughout the term of this Contract comply with, monitor and enforce the procedures referred to in Clause 4.9.2;
 - 4.9.4 the Supplier will ensure that each Associated Person performs services in relation to the subject matter of this Contract only on the basis of a written contract which imposes on such Associated Person terms equivalent to those imposed on the Supplier by this Clause 4.9 (save that Associated Persons who are individuals shall not be required to have in place their own policies and procedures pursuant to Clause 4.9.2 if they instead comply with those of the Supplier) (the "**Sub-contractor Terms**"). The Supplier will be responsible for the compliance with the Sub-contractor Terms by all Associated Persons and will be directly liable to the Commission for any breach of any of the Sub-contractor Terms by any Associated Person; the Supplier will promptly notify the Commission if it becomes aware of any breach of the Sub-contractor Terms by any Associated Person, giving details of the breach and any action taken by the Supplier as a result; and
 - 4.9.5 the Supplier will promptly co-operate (and will procure that each of its Associated Persons will co-operate) with the Commission and/or any regulator and/or prosecutor in any investigation relating to any breach, or alleged breach, of any Bribery Legislation by the Supplier or any of its Associated Persons.
- 4.10 The record keeping related obligations set out in Clause 42 will apply without prejudice to the Supplier's compliance with Clause 4.9 and, without limitation, will extend to all payments made by the Supplier in connection with this Contract.
- 4.11 Without prejudice to the Commission's other rights and remedies including without limitation Clause 42, if the Commission reasonably suspects that the Supplier (or any of its Associated Persons) is in breach of any of the undertakings in Clause 4.9, then at the

Commission's request the Supplier will permit the Commission (and/or any independent third party appointed by the Commission) to immediately access and take copies of the Supplier's books, records and other information relating to this Contract (or any other business transaction with the Commission), and to meet with the Supplier's personnel, for the purpose of establishing whether the Supplier is complying with Clause 4.9 (and its Associated Persons are complying with the Sub-contractor Terms), and the Supplier will provide all information, answer all questions and provide all other assistance in the conduct of such audit, in each case as reasonably requested by the Commission. Any independent third party appointed by the Commission for the purposes of an audit pursuant to this Clause 4.11 will undertake to the Supplier to keep all books, records and other information obtained in the course of such audit confidential and not to use or disclose any such information to any person other than the Commission.

The Commission's Operation

- 4.12 The Supplier shall take reasonable care to ensure that in the execution of the Contract it does not disrupt the operations or activities of the Commission, or its employees or any other contractor employed by the Commission.

Quality

- 4.13 The Supplier shall provide the Services during the Contract Term in accordance with the Commission's requirements as set out in the Specification and the terms of this Contract.
- 4.14 To the extent that the standard of work has not been specified the Supplier shall use the applicable techniques and standards, and execute the Services with all reasonable care, skill and diligence, in accordance with Good Industry Practice.
- 4.15 The Supplier shall discharge the obligations in this Contract and perform the Services (and ensure that all Staff supplying the Services shall do so) with all due skill, care and diligence in accordance with applicable professional practice.
- 4.16 The Supplier shall ensure that all obligations of the Supplier pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff.
- 4.17 The Supplier shall in relation to its discharge of the obligations in this Contract and performance of the Services have in place such business continuity and disaster recovery procedures as are required in order to comply with Good Industry Practice.
- 4.18 The Supplier shall ensure that all documentation and information supplied to the Commission in connection with the provision of the Services is accurate and shall rectify without cost to the Commission any discrepancies, errors or omissions therein reasonably required by the Commission.
- 4.19 Any legislative requirement to account for the Services in euro (or to prepare for such accounting), instead of or in addition to sterling, shall be implemented by the Supplier at no additional cost to the Commission.
- 4.20 In providing the Services, the Supplier shall comply with and take into account all applicable laws, enactments, orders, regulations and other similar instruments, the requirements of any court with relevant jurisdiction and any local, national or supranational agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union.

National Fraud Initiative

- 4.21 The Supplier agrees to participate at its own cost, at the request of the Commission, in data matching exercises as part of the Commission's National Fraud Initiative. The Supplier acknowledges this will involve submission of personal data regarding Staff to the Commission (or its agent) for data matching and that use of such data shall be limited to

data matching purposes in connection with the National Fraud Initiative and shall be subject to applicable data privacy laws.

5. PERFORMANCE OF THE SERVICES

5.1 The Supplier shall provide the Services in respect of each Audited Body in accordance with:

5.1.1 the 1998 Act, the 1993 Act and any other relevant Act or arrangement;

5.1.2 the Code of Audit Practice;

5.1.3 this Contract; and

5.1.4 any requirements contained in Standing Guidance or Supplementary Guidance.

5.2 The Supplier shall (or shall procure that the Designated Individual shall (as applicable)) in respect of each Auditor Appointment provide the Audit Certificate (in respect of the relevant Audited Body) as soon as reasonably practicable following the end of each Audit Year within any Auditor Appointment Period and in accordance with any performance targets set by the Commission from time to time.

5.3 The Supplier shall comply with and satisfy the requirements in any Certification Instructions in performing Grant Certification Services in accordance with this Contract.

5.4 The provision of the Services shall be subject to the Commission's Contract Reporting Requirements and for that purpose the Supplier shall provide such information, afford such access on reasonable notice and explanation and use all reasonable endeavours to arrange attendance at such meetings in relation to the Services as the Commission shall from time to time require.

5.5 If the Supplier fails to provide the Services or otherwise comply with its obligations in accordance with this Contract the Commission may, in addition to its other rights require the Supplier to re-perform the relevant Services or obligations.

6. PROVISION OF GUIDANCE, ADVICE AND SUPPORT BY THE COMMISSION

6.1 The Commission shall provide to the Supplier Standing Guidance and Supplementary Guidance issued by the Commission from time to time.

6.2 The Commission shall provide the Supplier with such advice and support (including technical guidance, training and information services) as the Commission reasonably sees fit for the purposes of maintaining the overall quality of audit services under the 1998 Act and the 1993 Act.

6.3 The Commission shall be entitled to make (and the Supplier shall pay) reasonable charges for advice and support provided in accordance with Clause 6.2 by serving reasonable notice on the Supplier prior to the provision of such advice.

6.4 Without prejudice to the Commission's discretion to charge pursuant to Clause 6.3, the advice and support supplied by the Commission under Clause 6.2 shall be free from the Commencement Date until such notification is served in accordance with Clause 6.3.

7. SUPPORT OF AUDIT REGIME BY SUPPLIER

7.1 The Supplier shall participate in arrangements made by the Commission from time to time in order to support the audit regime maintained by the Commission.

7.2 The arrangements referred to in Clause 7.1 may include:

- 7.2.1 nominating individuals with responsibility for overall liaison and for maintaining efficient communication between the Supplier and the Commission;
 - 7.2.2 attendance at regular conferences, meetings and events designed to enable the Commission to discuss with Suppliers current and forthcoming issues relevant to the Services; and
 - 7.2.3 co-operating in the development of the Services through commenting on draft documents and participation in the piloting of such development and of guidance and other Commission products.
- 7.3 Where any pilot work described in Clause 7.2.3 involves additional work or services to those required to perform the Services, the Commission and the Supplier shall agree an appropriate fee.

PART 3

STAFF

8. ENGAGEMENT LEADS FOR SERVICES

- 8.1 The individuals referred to in Schedule 5 shall be the Engagement Leads in respect of Auditor Appointments specified by the Commission.
- 8.2 The Supplier shall ensure that the Engagement Leads have operational responsibility and control (within the Supplier organisation) of the conduct of the provision of the Services in relation to specified Auditor Appointments except by reason of an Engagement Lead's long-term sickness, termination of employment, other extenuating circumstances or by agreement with the Commission.
- 8.3 Any replacements or additions to the Engagement Leads shall be subject to the agreement of the Commission. Such replacements or additions shall be of at least equal status or of equivalent experience and skills to the Engagement Leads being replaced and be suitable for the responsibilities of that person in relation to the Services.
- 8.4 The Commission shall not unreasonably withhold its agreement under Clause 8.3. Such agreement shall be conditional on appropriate arrangements being made by the Supplier to minimise any adverse impact on this Contract that could be caused by a change in Engagement Leads.
- 8.5 The Commission may request that an Engagement Lead be replaced by serving notice in writing on the Supplier (or the Designated Individual as the case may be) to take effect on such date specified in such notice:
- 8.5.1 in the event of serious and material failure on the part of the Engagement Lead to comply with any provision of the 1993 Act, the 1998 Act, any other relevant Act or arrangement, the Code of Audit Practice, any provision of this Contract or any requirement contained in Standing Guidance or Supplementary Guidance, which failure is either irremediable or, if remediable, is not remedied within thirty (30) days of receipt of notification of the failure by the Commission to the Supplier;
 - 8.5.2 in the event of Persistent Failure on the part of the Engagement Lead to carry out the Services to a standard that is required by the Code of Audit Practice, any provision of this Contract or any requirement contained or referred to in the Standing Guidance or Supplementary Guidance;
 - 8.5.3 in the event of conduct of or circumstances relating to the Engagement Lead in conflict with the duties and powers of the auditor's office.

9. STAFF VETTING

- 9.1 The Supplier shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Supplier confirms that all persons employed or engaged by the Supplier in providing the Services were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 9.2 The Commission may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Criminal Records Bureau check. The Supplier shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged in the provision of any part of the Services from the date the Relevant Conviction is known or ought reasonably to have been known by the Supplier.

9.3 If the Supplier fails to comply with Clause 9.2 within two (2) Months of the date of the request and in the reasonable opinion of the Commission such failure may be prejudicial to the interests of the Commission (or the Crown), then the Commission 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 Parties.

9.4 The decision of the Commission as to whether the Supplier has failed to comply with Clause 9.2 shall be final and conclusive.

10. **SECONDMENT**

10.1 In the event that Staff are seconded to the Commission, or if any employees are seconded by the Commission to the Supplier for any purposes then, unless the Commission agrees otherwise, the Commission's standard secondment policy (in force from time to time) shall apply between the Commission and Supplier and the Supplier shall procure that its seconded Staff enter the Commission's standard secondment agreement (in force from time to time).

11. **NON DISCRIMINATION**

11.1 The Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and any statutory codes of practice in relation to the above legislation and all other relevant legislation and any statutory modification or re-enactment of such legislation.

11.2 The Supplier shall use all reasonable endeavours to follow all applicable guidance issued by the Equality and Human Rights Commission and any successor body.

11.3 The Supplier shall take all reasonable steps to secure the observance of these anti-discrimination clauses by all servants, employees or agents of the Supplier and all suppliers and sub-contractors deployed in the performance of the Contract.

11.4 The Supplier acknowledges and accepts that the Commission has a legal duty to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. In its performance of the Contract, the Supplier shall be clear about the importance of equality and diversity to the Commission and shall endeavour to assist the Commission in meeting its aims.

11.5 The Supplier shall notify the Commission immediately in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier or any other investigation or proceedings arising from an allegation against the Supplier or any of its sub-contractors connected to equality and diversity issues which may arise in connection with the performance of the Contract.

11.6 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Supplier's performance of this Contract being in contravention of the equalities legislation, then the Supplier shall, free of charge:

11.6.1 provide any information reasonably requested by the Commission in the timescale allotted;

11.6.2 attend any meetings as may reasonably be required by the Commission and ensure insofar as is reasonably practicable that any relevant Supplier Staff or sub-contractors also attend;

11.6.3 promptly allow the Commission access to and investigation of any documents or data reasonably deemed to be relevant;

11.6.4 allow, as may be reasonably required by the Commission, itself and any relevant Staff and sub-contractors to appear as witness in any ensuing proceedings; and

- 11.6.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 11.7 Where any investigation is conducted or proceedings are brought under the equalities legislation which relate to this Contract and arise directly or indirectly out of any act or omission of the Supplier, its agents or sub-contractors, or the Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the Commission with respect to all costs, charges and expenses (including but not limited to legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Commission may have been ordered or required to pay to a third party in connection with such proceedings or investigation save to the extent that any payment that the Commission is ordered to pay is attributed to any act or omission or default by the Commission.
- 11.8 In the event that the Supplier enters into any sub-contract in connection with this Contract, it shall impose equalities and diversities obligations on its sub-contractors in terms substantially similar to those contained in this Contract.
12. **CO-OPERATION WITH THE COMMISSION ON ENVIRONMENTAL ISSUES**
- Throughout the Contract the Supplier shall co-operate with the Commission in seeking reasonable and practical ways to improve the sustainability of the delivery of the Services.
13. **EMPLOYEE TRANSFER ARRANGEMENTS**
- 13.1 The Parties shall comply with their respective obligations in Schedule 6 (Employee List and Employee Transfer Arrangements).

PART 4

PREMISES

14. ADMISSION OF SUPPLIER'S STAFF TO COMMISSION PREMISES

14.1 The Commission reserves the right under this Contract to refuse to admit to, or to withdraw permission to remain on, any Premises occupied by or on behalf of the Commission:

14.1.1 any member of the Staff; or

14.1.2 any person employed or engaged by a sub-contractor, agent or servant of the Supplier

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

14.2 The Supplier shall ensure that its Staff 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 the Commission's Premises.

14.3 The decision of the Commission as to whether any person is to be refused access to any Premises occupied by or on behalf of the Commission and as to whether the Supplier has failed to comply with Clause 14.2 above shall be final and conclusive.

15. HEALTH AND SAFETY

15.1 The Supplier shall promptly notify the Commission of any health and safety hazards which may arise in connection with the performance of the Contract.

15.2 While on the Commission's Premises, the Supplier shall comply with any health and safety measures implemented by the Commission in respect of Staff and other persons working on those Premises.

15.3 The Supplier shall take all necessary measures to 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 in the performance of the Contract.

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

PART 5

AUDITOR APPOINTMENTS AND REVOCATION

16. NOTIONAL VALUE

16.1 The Commission shall notify to the Supplier before the commencement of each Audit Year during the Contract Period or as soon as practicable thereafter:

16.1.1 the applicable Notional Value Maximum and Notional Value Minimum for each Contract Area; and

16.1.2 the Audited Body Notional Value for each Audited Body in the Contract Area (or, as applicable, Contract Areas) in respect of which the Supplier (or Designated Individual as appropriate) is the Appointed Auditor.

16.2 The Notional Value Maximum and Notional Value Minimum applicable for each Contract Area shall be that set out in Schedule 1 for the Audit Year commencing on the Commencement Date but adjusted for each Audit Year during the Contract Period in accordance with the provisions in Schedule 3.

16.3 Subject to Clause 16.7, for each Audit Year during the Contract Period, the Commission shall use reasonable endeavours to ensure that, taking one year with another, sufficient Auditor Appointments are made to the Supplier and Designated Individuals in each Contract Area by the commencement of each Audit Year such that the total of the Audited Body Notional Values combined in respect of such Auditor Appointments shall be close to the Notional Value Maximum for that Contract Area.

16.4 Subject to Clause 16.7, for each Audit Year during the Contract Period, the Commission shall ensure that, taking one year with another, sufficient Auditor Appointments are made to the Supplier and Designated Individuals in each Contract Area by the commencement of each Audit Year such that the total of the Audited Body Notional Values combined in respect of such Auditor Appointments shall be no less than the Notional Value Minimum for that Contract Area.

16.5 An Auditor Appointment in a Contract Area which is unreasonably refused by the Supplier (or Designated Individual as appropriate) or cannot be accepted by the Supplier (or Designated Individual as appropriate) owing to a threat to independence shall count towards the sufficiency of Auditor Appointments for the purposes of Clauses 16.3 and 16.4.

16.6 If, on consultation with an Audited Body in a Contract Area, the Commission in its absolute discretion determines that the Supplier (or Designated Individual) should not be appointed as auditor to that body, that determination shall be treated as an Auditor Appointment for the purposes of Clauses 16.3 and 16.4. In such a case the Commission shall endeavour to ensure that one or more Auditor Appointments of equivalent Audited Body Notional Value are or have been offered to the Supplier (or Designated Individual) either within a Contract Area or out of area pursuant to Clause 17.8.

16.7 If the Commission does not fulfil its obligations in Clauses 16.3 and 16.4 in respect of any Audit Year during the Contract Period, the obligations shall be deemed as discharged if the deficit of Audited Body Notional Value due in an Audit Year is met before or by the end of the final Audit Year during the Contract Period.

17. AUDITOR APPOINTMENTS

Designated Individuals

17.1 The Supplier shall provide to the Commission upon request a list of Designated Individuals who are suitable, qualified and able to be appointed as Appointed Auditors to perform the Services.

- 17.2 The Supplier shall be liable for the acts and omissions of Designated Individuals under or in relation to this Contract as if they were its own.

Informing Supplier

- 17.3 The Commission will inform the Supplier of its intention to consult any Audited Body before consulting such body in relation to proposals to appoint the Supplier (or Designated Individual) as Appointed Auditor to that body.

Audit Years in respect of which Auditor Appointments may be made

- 17.4 The Commission may appoint the Supplier (or Designated Individual) as Appointed Auditor to an Audited Body in respect of any Audit Year commencing before the end of the Contract Period. Where the Supplier is required to undertake Transitional Work (whether by way of an Auditor Appointment or otherwise) in respect of an Audit Year commencing prior to the Commencement Date in order to complete any Services outstanding for that Audit Year the provisions of Schedule 7 (Transitional Work Schedule) shall apply.

Auditor Appointment Notice

- 17.5 Where the Commission appoints the Supplier (or Designated Individual) as Appointed Auditor of an Audited Body it shall send a written Auditor Appointment Notice to the Audited Body and a copy of such notice to the Supplier.

Content of Auditor Appointment Notice

- 17.6 The Commission shall state the following in each Auditor Appointment Notice issued to the Audited Body and copied to the Supplier:
- 17.6.1 the notice is given under the 1998 Act, the 1993 Act or any other Act or arrangement and this Contract;
 - 17.6.2 the identity of the Appointed Auditor;
 - 17.6.3 the identity of the Audited Body;
 - 17.6.4 the identity of the Engagement Lead (if different from the Appointed Auditor);
 - 17.6.5 the date on which the appointment is to commence;
 - 17.6.6 the date on which the appointment will expire; and
 - 17.6.7 the functions which the Appointed Auditor is to undertake.

Effect of Auditor Appointment Notice

- 17.7 Upon receipt of a copy of an Auditor Appointment Notice issued by the Commission under Clause 17.5 or Clause 17.8, the Supplier (or the Designated Individual as applicable) shall be the Appointed Auditor to the Audited Body for the Auditor Appointment Period. The Supplier shall have the right to decline an Auditor Appointment Notice in respect of any Audited Body which the Supplier is unable to audit for independence reasons provided that the Supplier shall have notified the Commission of such reasons prior to or as at the date of this Contract.

Out of Contract Area Auditor Appointments

- 17.8 The Commission may at its absolute discretion serve a copy of an Auditor Appointment Notice on the Supplier in respect of an Audited Body located in an Adjacent Contract Area, or, if the appointment is made after the end of the Contract Period, located in any area.

Continuity of Staff for Provision of PCT/SHA Services

- 17.9 The Supplier shall ensure that any Transferring Employees who are, prior to the Service Transfer Date, either Engagement Leads or audit managers in respect of any PCT/SHA Services continue to work on such PCT/SHA Services following the Service Transfer Date until the completion of the PCT/SHA Services for the 2012/2013 Audit Year, save where such person is prevented from doing so by reason of maternity leave, ill health, injury, ceases to be an employee of the Supplier, or as otherwise agreed by the Commission.

Reliance on Work of a Previous Auditor in First Audit Year

- 17.10 The Standing Guidance may provide that the Supplier may rely, in carrying out Services in respect of the First Audit Year, on the work of an auditor previously appointed by the Commission to the Audited Body for that Audit Year. To the extent the Supplier (or Designated Individual) so relies the Commission shall indemnify and keep indemnified the Supplier (or Designated Individual) fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with such work.

18. REVOCATION OF AUDITOR APPOINTMENT BY COMMISSION'S NOTICE

- 18.1 Any Auditor Appointment may be revoked by the Commission by serving notice in writing on the Supplier (or the Designated Individual as the case may be) to take effect on such date specified in such notice:

18.1.1 in the event of serious and material failure on the part of the Appointed Auditor to comply with any provision of the 1993 Act, the 1998 Act, the Code of Audit Practice, any provision of this Contract or any requirement contained in Standing Guidance or Supplementary Guidance, which failure is either irremediable or, if remediable, is not remedied within thirty (30) days of receipt of notification of the failure by the Commission to the Supplier;

18.1.2 in the event of Persistent Failure on the part of the Appointed Auditor to carry out the Services to a standard that is required by the Code of Audit Practice, any provision of this Contract or any requirement contained or referred to in the Standing Guidance or Supplementary Guidance;

18.1.3 in the event of conduct of or circumstances relating to the Appointed Auditor or Supplier in conflict with the duties and powers of the auditor's office; or

18.1.4 for any other reason that the Commission may from time to time properly determine as a result of significant legislative or other change to the functions of the Commission or of Appointed Auditors or to the circumstances of the Audited Body.

19. AUTOMATIC REVOCATION OF AUDITOR APPOINTMENT

- 19.1 Any Auditor Appointment shall automatically be revoked with immediate effect in the event that the Audited Body ceases to exist.

- 19.2 All Auditor Appointments shall automatically be revoked with immediate effect upon the termination of this Contract unless otherwise determined by the Commission in order to allow completion of the Services.

20. EFFECTS OF AUDITOR APPOINTMENT REVOCATION

- 20.1 From the date of the revocation of any Auditor Appointment as referred to in Clauses 18 and 19:

- 20.1.1 the Supplier (or the Designated Individual (as applicable)) shall cease to be the Appointed Auditor for that Audited Body;
- 20.1.2 the Auditor Appointment Period in respect of that Auditor Appointment shall end with immediate effect;
- 20.1.3 the Supplier shall (or shall procure that the Designated Individual shall (as applicable)) immediately cease to provide the Services in respect of the Audited Body;
- 20.1.4 the Supplier shall (or shall procure that the Designated Individual shall (as applicable)) co-operate free of charge with the Commission and any Future Supplier appointed by the Commission to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress;
- 20.1.5 where an Auditor Appointment is revoked before the Supplier has commenced the Services to a specific Audited Body, no Contract Remuneration shall be payable in respect of that Auditor Appointment;
- 20.1.6 where an Auditor Appointment is revoked after the commencement of the Services through no fault on the part of the Supplier or Designated Individual the Commission and the Supplier shall agree a rate of Contract Remuneration for the Services provided in relation to that Auditor Appointment before the revocation; and
- 20.1.7 where an Auditor Appointment is revoked after the commencement of the Services in accordance with Clause 18.1.1 or 18.1.2, the Commission shall have sole discretion, not to be exercised unreasonably, as to whether any Contract Remuneration is due in respect of that Auditor Appointment.

PART 6

CONTRACT REMUNERATION

21. GENERAL FEE CHARGEABLE TO AUDITED BODIES

- 21.1 The Commission shall consult the Supplier before prescribing a scale or scales of fees pursuant to Section 7(1) of the 1998 Act.
- 21.2 The annual Work Programme and Scales of Fees shall specify the Audit Services Fee and the maximum allowable rates for Grant Certification Services and Specified Auditor Appointment Works on the basis of which the Supplier shall invoice each Audited Body for the relevant Audit Year.
- 21.3 The Commission shall send the Work Programme and Scales of Fees to the Supplier as updated and published by the Commission on an annual basis, and any subsequent amendment thereto.
- 21.4 Notwithstanding anything else in this Contract the Commission shall set any scale or scales of fees in its sole discretion.

22. FEES CHARGED TO AUDITED BODIES

- 22.1 The Supplier shall apply the Work Programme and Scales of Fees and shall calculate the Services Fee for the relevant Audit Year in relation to each Auditor Appointment.
- 22.2 The Supplier may seek the agreement of the Commission to a variation of the Audit Services Fee or the Specified Auditor Appointment Works Fee pursuant to Section 7(4) of the 1998 Act. Where it does so the Supplier shall provide to the Commission an explanation of the factors leading to this and confirm whether the relevant Audited Body has agreed to the proposed variation.
- 22.3 Where the Commission agrees to a variation pursuant to Clause 22.2 the revised fee, as determined by the Commission, shall be the Audit Services Fee or the Specified Auditor Appointment Works Fee (as applicable) for the purpose of this Contract.
- 22.4 The Supplier shall seek to agree Grant Certification Fees with Audited Bodies but, in the event of a dispute, the Supplier shall provide to the Commission an explanation of the factors leading to this and the Commission shall determine the fee. The revised fee, as determined by the Commission, shall be the Grant Certification Services Fee for the purpose of this Contract.

23. COLLECTION OF FEES FROM AUDITED BODIES

- 23.1 The Supplier (as agent of the Commission) shall invoice the Services Fee to each relevant Audited Body for work under an Auditor Appointment in respect of Services.
- 23.2 The Supplier shall (as an agent of the Commission) use all reasonable endeavours to collect the Services Fee payable by Audited Bodies to the Commission.
- 23.3 The Supplier shall not seek to recover any fees due from Audited Bodies by commencing legal action or threatening to commence legal action.
- 23.4 The Commission shall not withhold payment of Contract Remuneration to the Supplier on account of non-payment of any Services Fees by the Audited Body provided that, subject to Clause 23.3, the Supplier has used all reasonable endeavours to recover the Services Fees from the Audited Body.

24. **SUPPLIER'S PAYMENT FOR SERVICES**

24.1 In relation to each Audit Year for each Auditor Appointment:

- (a) the Supplier shall provide the Commission by no later than 31 May following the commencement of that Audit Year a reasonable estimate of the Services Fees that the Supplier expects to invoice Audited Bodies for that Audit Year;
- (b) the Commission shall estimate the Contract Remuneration based on the Supplier's estimate of the Services Fee and notify the Supplier of its estimate by no later than 31 July of that year;
- (c) the Supplier shall pay the difference between its estimate of the Services Fee and the estimated Contract Remuneration notified to it under Clause 24.1(b) to the Commission in twelve (12) equal Monthly instalments which shall commence no later than 14 August of that year, subject to collection of the Services Fees from the Audited Body in accordance with Clause 23; and
- (d) the Commission shall calculate the Contract Remuneration based on the Services Fee charged to Audited Bodies on completion of the Services for the relevant Audit Year and notify the Supplier of the Contract Remuneration if it differs from its estimate under Clause 24.1(b).

24.2 In respect of each Audit Year, if:

- (a) the amount in Clause 24.1(b) above exceeds the amount in Clause 24.1(d) above, the Supplier shall pay the difference within thirty (30) days of receipt of an undisputed invoice from the Commission;
- (b) the amount in Clause 24.1(d) above exceeds the amount in Clause 24.1(b) above the Commission shall pay the difference within thirty (30) days of receipt of an undisputed invoice from the Supplier.

24.3 In the event that the Commission alters the scale or scales of fees for Audit Services in the Work Programme and Scales of Fees after the Commencement Date, the Remuneration Rate in the Pricing Schedule shall be amended so as to ensure that the alteration to the scale or scales of fees does not affect the Contract Remuneration unless and to the extent that the alteration reflects a change in the amount of work required to undertake the Services.

24.4 The dates in Clause 24.1 above shall be varied by Standing Guidance in relation to the First Audit Year and may be varied in relation to any other year during the Contract Period.

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

25. **VAT**

All payments and amounts referred to in this Contract are exclusive of VAT.

26. **SET-OFF AND OVERPAYMENT**

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

26.2 Any overpayment by the Commission to the Supplier, whether of the Contract Remuneration or of tax, shall be a sum of money recoverable by the Commission from the Supplier.

26.3 The Supplier shall make any payments due to the Commission without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Supplier has either a valid court order or an arbitration award (or similar judgment or award) requiring an amount equal to such deduction to be paid by the Commission to the Supplier.

27. **LATE PAYMENTS**

Each Party shall be entitled, without prejudice to any other right or remedy, to receive interest on any payment not duly made pursuant to the terms of this Contract on the due date calculated from day to day at a rate per annum equal to the Default Interest Rate from the day after the date on which payment was due up to and including the date of payment and the Parties agree that such interest shall be regarded as a substantial remedy for the purpose of the Late Payment of Commercial Debts (Interest) Act 1998.

28. **CHANGE OF LAW AND CONTRACT REMUNERATION**

28.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the Contract Remuneration as the result of:

28.1.1 a General Change in Law; or

28.1.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is known, or ought reasonably to have been known, by the Supplier at the Commencement Date.

28.2 If a Specific Change in Law occurs or will occur during the Contract Term (other than those referred to in Clause 28.1), the Supplier shall notify the Commission of the likely effects of that change, including:

28.2.1 whether any Change is required to the Services, the Contract Remuneration or this Contract; and

28.2.2 whether any relief from compliance with the Supplier's obligations is required, including any obligation to achieve any milestones or to meet any service level requirements at any time.

28.3 As soon as practicable after any notification in accordance with Clause 28.2 the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Supplier can mitigate the effect of the Specific Change of Law, including:

28.3.1 providing evidence that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its sub-contractors;

28.3.2 demonstrating that a foreseeable Specific Change in Law had been taken into account by the Supplier before it occurred;

28.3.3 giving evidence as to how the Specific Change in Law has affected the cost of providing the Services; and

28.3.4 demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Remuneration.

28.4 Any increase in the Contract Remuneration or relief from the Supplier's obligations agreed by the Parties pursuant to this Clause 28 shall be at the absolute discretion of the Commission.

PART 7

LIABILITIES, INDEMNITIES AND INSURANCE

29. SUPPLIER'S DUTY TO INSURE

- 29.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 29.2 The Supplier shall effect and maintain the following insurances for the duration of the Contract in relation to the performance of this Contract:
- 29.2.1 public liability insurance adequate to cover all risks in the performance of this Contract from time to time;
 - 29.2.2 employers' liability insurance with a minimum limit of indemnity as required by law from time to time; and
 - 29.2.3 professional indemnity insurance with a minimum limit of indemnity of ten million pounds sterling (£10,000,000) for each individual claim, or such higher limit as the Commission may reasonably require (and as required by law) from time to time.
- 29.3 Any excess or deductibles under such insurance (referred to in Clause 29.1 and Clause 29.2) shall be the sole and exclusive responsibility of the Supplier.
- 29.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under the Contract.
- 29.5 The Supplier shall produce to the Contract Manager, on request, either copies of all insurance policies referred to in this Clause 29 or a broker's verification of insurance to demonstrate that the appropriate cover is in place.
- 29.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this Contract the Commission may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 29.7 The Supplier shall use all reasonable endeavours to maintain the insurances referred to in Clause 29.1 and Clause 29.2 a minimum of eight (8) years following the expiration or earlier termination of this Contract.

30. SUPPLIER'S INDEMNITY TO COMMISSION

- 30.1 In respect of the Services the Supplier shall indemnify and keep indemnified the Commission fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the provision of the Services including without limitation in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Supplier, costs, losses or expenses incurred by the Commission in relation to the Supplier's failure to perform the Services in accordance with the Contract (including without limitation ex gratia payments paid by the Commission to third parties), or any other loss which is caused directly by any act or omission of the Supplier.
- 30.2 Clause 30.1 shall not apply to the extent that the Supplier is able to demonstrate that such death or personal injury, or loss or damage was not caused or contributed to by its negligence or default, or the negligence or default of its Staff, or by any circumstances within its or their control.

30.3 To the extent permissible by law, all warranties, conditions, representations or terms other than those expressly set out in this Contract are excluded, including but not restricted to all implied and statutory conditions.

31. LIMITATION OF LIABILITY

31.1 Subject to the Commission's obligations under Clauses 17.10 and 32 and paragraphs 2.4, 2.12 and 2.14 of Schedule 6, and without prejudice to the Commission's obligation to pay the Contract Remuneration, the aggregate liability of the Commission in respect of all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with the Contract shall in no event exceed two million pounds sterling (£2,000,000).

31.2 In no event shall either Party be liable to the other for:

31.2.1 loss of profits, business, revenue, goodwill or anticipated savings; and/or

31.2.2 indirect or consequential loss or damage.

31.3 The provisions of Clause 31.2 shall not be taken as limiting the right of the Commission to claim from the Supplier for:

31.3.1 additional operational and administrative costs and expenses; and

31.3.2 expenditure or charges rendered necessary as a result of any Default by the Supplier.

31.4 Nothing in this Contract shall be construed as limiting the Parties' liabilities to each other in relation to death or personal injury caused by its negligence or any other liability that cannot be lawfully limited or excluded.

32. COMMISSION'S INDEMNITY TO SUPPLIER

32.1 Where the Supplier (or Designated Individual) acting as Appointed Auditor takes any such action in the discharge of their duties as is described in Clause 32.2 below, the Commission will indemnify the Supplier (or Designated Individual) against any charges, losses, expenses and liabilities which may be properly incurred or suffered by the Appointed Auditor from third parties in performance of this Contract in so far as the same are not recoverable or recovered from other persons or bodies under the provisions of the 1998 Act or by order of the Court, provided that the Appointed Auditor has acted reasonably.

32.2 The actions to which the indemnity in Clause 32.1 applies are the following actions under the provisions of the 1998 Act:

32.2.1 the institution of any proceedings under subsection (6) of section 6 for failure to comply with the requirements of an auditor under subsections (1) to (5) of section 6;

32.2.2 any application to the court under section 17 for a declaration that an item of account is contrary to law;

32.2.3 any appearance as respondent to any appeal brought under the provisions of subsection (4) of section 17;

32.2.4 the issue or revocation of an advisory notice under section 19A;

32.2.5 any application for judicial review under section 24 or any appearance as respondent to any application for judicial review made in respect of the exercise of the auditors' functions; and

32.2.6 any proceedings, application, claim or appeal consequent upon any of the foregoing, upon action taken by the Appointed Auditor under section 19 or upon any other action properly taken by the Appointed Auditor in the course of their duties.

32.3 Prior to taking such action as described in this Clause 32, or on receipt of information about any action against them, the Supplier (or Designated Individual) shall notify the Commission in writing of such action in accordance with Standing Guidance.

32.4 The limit of liability set out in Clause 31.1 shall not apply to this Clause 32.

33. **NO PARTNERSHIP**

Nothing in the Contract shall be construed as creating a partnership or a contract of employment between the Commission and the Supplier.

34. **NO AGENCY**

Nothing in this Contract shall be construed as constituting any Party the agent of another Party nor authorise any Party to make or enter into any commitments for or on behalf of any other Party except as expressly provided in Clauses 3.4 and 23.

35. **THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not a Party to the Contract (including any employee, officer, agent, representative, or sub-contractor of either the Commission or the Supplier) shall have any right to enforce any term of this Contract.

PART 8

INFORMATION AND RECORDS

36. DATA PROTECTION ACT

- 36.1 For the purposes of this Part 8 and in particular Clauses 36, 38 and 389, the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**", "**Process**" and "**Processing**" shall have the meaning prescribed under the DPA.
- 36.2 The Supplier shall (and shall procure that any of its Staff involved in the provision of this Contract) be registered (insofar as is legally required) under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract. The Supplier is the Data Controller in its role as Appointed Auditor.
- 36.3 Notwithstanding the general obligation in Clause 36.2, where the Supplier is processing Personal Data as a Data Processor for the Commission, the Supplier shall:
- 36.3.1 Process the Personnel Data only in accordance with instructions from the Commission (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Commission to the Supplier;
 - 36.3.2 comply with all applicable Laws;
 - 36.3.3 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Supplier's obligations under this Contract or as is required by Law or any Regulatory Body;
 - 36.3.4 implement appropriate technical and organisational measures to protect the security of 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;
 - 36.3.5 promptly notify the Commission of any breach of the security measures required to be put in place pursuant to Clause 36.3.4;
 - 36.3.6 take reasonable steps to ensure the reliability of its Staff who may have access to the Personal Data;
 - 36.3.7 obtain prior written consent from the Commission in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
 - 36.3.8 not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Commission;
 - 36.3.9 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 36;
 - 36.3.10 ensure that none of the Staff publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Commission or in compliance with applicable Laws;

- 36.3.11 not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Commission or in compliance with a legal obligation imposed upon the Commission;
- 36.3.12 notify the Commission 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 in any way to the Commission's obligations under the DPA;
- 36.3.13 provide the Commission with full cooperation and assistance in relation to any complaint or request made, including by:
- (a) providing the Commission with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Commission's reasonable instructions;
 - (c) providing the Commission with any Personal Data it holds in relation to a Data Subject within the timescales required by the Commission; and
 - (d) providing the Commission with any information requested by the Commission;
- 36.3.14 provide the Commission or its representatives with such information it may reasonably require (subject to reasonable and appropriate confidentiality undertakings), to establish the Supplier's Data Processing activities, facilities, procedures and documentation (and/or those of its Staff) and comply with all reasonable requests or directions from the Commission to enable the Commission to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract. In this respect, the Supplier shall be responsible for maintaining the confidentiality of information relating to its other clients; and
- 36.3.15 provide a written description of the technical and organisational methods employed by the Supplier for Processing Personal Data (within the timescales required by the Commission).
- 36.4 The Supplier shall impose the requirements of this Clause 36 on any sub-contractors providing any part of the Services.
- 36.5 Save as set out in this Clause 36, any unauthorised Processing, or disclosure of Personal Data by the Supplier is strictly prohibited.
- 36.6 The Supplier shall ensure that it does nothing knowingly or negligently which places the Commission in breach of the Commission's obligations under the DPA.
37. **CONFIDENTIALITY**
- 37.1 During the Contract Term and after termination or expiry of this Contract for any reason whatsoever, the Receiving Party (as defined in Clause 1.1 within the definition of "Confidential Information") shall:
- 37.1.1 keep Confidential Information confidential;

- 37.1.2 not disclose Confidential Information to any other person other than with the written consent of the Disclosing Party or in accordance with Clauses 37.2 and 37.3; and
- 37.1.3 not use Confidential Information for any purpose other than the performance of its obligations under this Contract.
- 37.2 During the term of this Contract, the Receiving Party may disclose Confidential Information to its employees, contractors, sub-contractors, agents and advisers under conditions of confidentiality in each case to the extent that it is reasonably necessary for the purposes of this Contract. In each case the permitted recipient of such Confidential Information shall be known as a "**Recipient**".
- 37.3 The Receiving Party shall so far as practicable procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Contract as if the Recipient were a party to this Contract.
- 37.4 The obligations contained in Clauses 37.1 or 37.3 shall not apply to any Confidential Information which:
 - 37.4.1 is at the date of this Contract in, or at any time after the date of this Contract comes into, the public domain other than through a breach of this Contract by the Receiving Party or any Recipient;
 - 37.4.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or
 - 37.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party without any obligation of confidentiality attached to it.
- 37.5 It shall not be a breach of the obligations in Clauses 37.1 or 37.3 to disclose Confidential Information which is required to be disclosed pursuant to a statutory, legal, regulatory or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.
- 37.6 Nothing in this Clause 37 shall prevent the Commission from disclosing Confidential Information received from the Supplier:
 - 37.6.1 for the purposes of examining and certifying the Commission's accounts;
 - 37.6.2 for the purposes of any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Commission has used its resources;
 - 37.6.3 to any government department on the condition that the Commission in so far as reasonably practicable procure that such government department is made aware of and complies with all the Commission's obligations of confidentiality under this Contract as if such government department was a party to this Contract; or
 - 37.6.4 to any person engaged in providing any services to the Commission for any purpose relating to or ancillary to the Contract on condition that the Commission in so far as is reasonably practicable procures that such person is made aware of and complies with the Commission's obligations of confidentiality under this Contract.
- 37.7 Nothing in this Clause 37 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 does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

37.8 The Supplier shall comply and shall ensure that any Staff engaged in the performance of the Services shall comply with the provisions of Section 49 and Section 49A of the 1998 Act in relation to information that the Supplier may have access to during the Contract.

38. **FREEDOM OF INFORMATION**

38.1 The Supplier acknowledges that the Commission is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Commission (at the Supplier's expense) to enable the Commission to comply with its Information disclosure obligations.

38.2 The Supplier shall, and shall procure that any sub-contractors shall:

38.2.1 transfer to the Commission 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;

38.2.2 provide the Commission with a copy of all Information in its possession, or power in the form that the Commission requires within five (5) Working Days (or such other period as the Commission may specify being no less than three (3) Working Days) of the Commission requesting that Information; and

38.2.3 provide all necessary assistance as reasonably requested by the Commission to enable the Commission 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.

38.3 The Commission shall be responsible for determining at its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information:

38.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations; and/or

38.3.2 is to be disclosed in response to a Request for Information, and in no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Commission.

38.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the Commission.

38.5 The Supplier acknowledges that (notwithstanding the provisions of Clause 37) the Commission may, acting in accordance with the Secretary of State's Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("**the Code**"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Supplier or the Services in certain circumstances:

38.5.1 without consulting the Supplier; or

38.5.2 following consultation with the Supplier and having taken their views into account;

provided always that where Clause 38.5.1 applies the Commission shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.

38.6 The Supplier shall ensure that all Information is retained for disclosure and shall permit the Commission to inspect such records as requested from time to time upon reasonable notice.

38.7 The Supplier acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Commission may be obliged to disclose it in accordance with this Clause 38.

38.8 In the event that the Supplier becomes a public authority for the purposes of the FOIA (or the Environmental Information Regulations) the Supplier shall:

38.8.1 notify the Commission in respect of any Information Request made to the Supplier in relation to the Services, this Contract or the Commission and shall consult with, and give full details of the intended disclosure to, the Commission before authorising any such disclosure under the FOIA (or the Environmental Information Regulations); and

38.8.2 perform its duties under the FOIA (or the Environmental Information Regulations) in relation to or arising from this Contract at no cost to the Commission.

38.9 In the event that the Supplier or Designated Individual becomes a public authority for the purposes of the FOIA (or the Environmental Information Regulations), the Commission will assist the Supplier mutatis mutandis as set out in the foregoing provisions of this Clause 38.

39. **SECURITY OF CONFIDENTIAL INFORMATION AND PERSONAL DATA**

39.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Supplier undertakes to maintain adequate security arrangements that meet the requirements of professional standards and good practice.

39.2 The Supplier shall provide to the Commission written assurance on an annual basis of the processes and procedures in place to ensure Confidential Information and Personal Data are adequately secure.

39.3 The Supplier will as soon as it is practicable to do so notify the Commission of any breach of security in relation to Confidential Information, or any other information obtained in the performance of the Contract and will keep a record of such breaches. The Supplier will use its best endeavours to recover such Confidential Information, Personal Data or any other information however it may be recorded. This obligation is in addition to the Supplier's obligations under Clause 37. The Supplier will co-operate with the Commission in any investigation that the Commission considers necessary to undertake as a result of any breach of security in relation to Confidential Information or any other information.

39.4 In the event of the Supplier's failure to comply with Clause 39.1 the Commission may require the Supplier to alter any security systems necessary to comply with Clause 39.1, and limited to cases where the system is relevant to the provision of the Services, at any time during the Contract Term at the Supplier's expense.

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

40. **PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES**

40.1 In relation to this Contract, the Supplier shall not make any press announcements or publicise the Contract or any part thereof in any way without the prior written consent of the Commission, save that the Supplier may disclose its appointment as Appointed Auditor to the relevant Audited Bodies.

40.2 The Supplier shall use reasonable endeavours to procure that the provisions of Clause 40.1 are observed by the Staff and the Supplier's professional advisors and consultants.

41. INTELLECTUAL PROPERTY RIGHTS

Commission's Intellectual Property

- 41.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, data, databases, patents, patterns, models, designs or other material furnished to or made available to the Supplier by the Commission shall remain the property of the Commission and the Supplier shall not (and shall procure that the Staff shall not) except when necessary for the implementation of the Contract, use or disclose any such Intellectual Property Rights without prior Approval.
- 41.2 Subject to Clause 41.3 the Commission shall own all Intellectual Property Rights in the Deliverables.
- 41.3 The copyright and other intellectual property rights in any materials or software created by the Supplier prior to this Contract, or outside this engagement and any subsequent modifications to the same ("**Pre-Existing Rights**") will remain vested in the Supplier. To the extent that these form part of any of the Deliverables themselves, the Supplier will ensure that the Commission has a non-exclusive licence to use, reproduce and maintain the Pre-Existing Rights.
- 41.4 Third party software that does not form part of a Deliverable and is needed to enable the Commission to read or use the Deliverable will be obtained by the Commission at the Commission's cost.
- 41.5 Notwithstanding anything else in this Contract, the Supplier's working papers and other internal documentation created by the Supplier or on the Supplier's behalf in connection with the Services will belong to the Supplier provided that the Supplier will provide the Commission and/or any successor auditor with access to and copies of such papers and documentation in accordance with the Standing Guidance and Supplementary Guidance.

Third Party Intellectual Property Rights and Return of Materials

- 41.6 The Supplier shall obtain Approval before using any material, in relation to the performance of this Contract, which is or may be subject to any third party Intellectual Property Rights.
- 41.7 The Supplier shall procure that the owner of the rights grants to the Commission, or if itself the owner or licensee of those rights, shall grant to the Commission an authorised sub-licence, to use, reproduce, and maintain the material.
- 41.8 The licence or sub-licence referred to in Clauses 41.3 and 41.7 above shall be non-exclusive and perpetual, and shall be granted at no cost to the Commission, and, in the case of Clause 41.3, shall include the right for the Commission to sub-license, novate or assign to another public authority or to any other third party providing services to the Commission.
- 41.9 The Supplier shall not infringe any Intellectual Property Rights of any third party in the provision of the Services and the Supplier shall during and after the Contract Term indemnify and keep indemnified the Commission against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Commission may suffer or incur as a result of or in connection with any breach of this Clause 41.
- 41.10 The Supplier indemnity in Clause 41.9 does not cover claims to the extent arising from:
- 41.10.1 the combination of any items or materials provided by the Supplier with products or services not provided by or otherwise agreed to by the Supplier;
 - 41.10.2 the modification of or work performed on such items or materials by any person, other than the Supplier; and/or

- 41.10.3 items or materials based upon designs furnished by the Commission.
- 41.11 The Commission shall notify the Supplier in writing of any claim or demand brought against the Commission for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Supplier. The Supplier shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Supplier, provided always that the Supplier:
- 41.11.1 shall consult the Commission on all substantive issues which arise during the conduct of such litigation and negotiations;
- 41.11.2 shall take due and proper account of the interests of the Commission; and
- 41.11.3 shall not settle or compromise any claim without the Commission's prior written consent (not to be unreasonably withheld or delayed).
- 41.12 The Commission shall at the request of the Supplier afford to the Supplier all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Commission or the Supplier for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contract and the Supplier shall indemnify the Commission for all costs and expenses (including, but not limited to, legal costs and disbursements on a solicitor and client basis) incurred in doing so.
- 41.13 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Supplier is likely to be made, the Supplier may at its own expense and subject to the consent of the Commission (not to be unreasonably withheld or delayed) either:
- 41.13.1 modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply with any necessary changes to such modified Services or to the substitute Services; or
- 41.13.2 procure a licence to use and provide the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Commission.
- 41.14 At the termination or expiry of this Contract the Supplier shall immediately return to the Commission all materials, work or records held, including any back-up media. The Supplier shall be entitled to retain copy documentation that it reasonably requires to support any advice, reports or opinions that the Supplier may provide to the Commission and such copies of documents as reasonably necessary for legal or regulatory purposes.

42. **RETENTION OF RECORDS**

The Supplier shall keep and maintain until eight (8) years after the Contract has been completed, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services provided under it, all expenditure reimbursed by the Commission, and all payments made by the Commission to the Supplier. The Supplier shall on request afford the Commission or the Commission's representatives such access to those records as may reasonably be required by the Commission from time to time.

PART 9

PERFORMANCE MONITORING AND TERMINATION

43. MONITORING OF CONTRACT PERFORMANCE

The Supplier shall comply with the monitoring arrangements set out in the Contract Reporting Requirements in accordance with Clause 5.4 including providing such data and information as the Supplier may be required to produce under this Contract.

44. COMPLAINTS REPORTING

The Supplier shall notify the Contract Manager of any complaints made to the Supplier concerning or arising from the provision of Services including complaints made by the Audited Bodies and staff of the Commission and the Supplier shall keep a full and accurate record of each complaint and steps taken to address the complaint. The Supplier shall cooperate with the Commission in resolving such complaints in accordance with the Commission's complaints procedure as notified from time to time.

45. TERMINATION ON INSOLVENCY OR CHANGE OF CONTROL

45.1 The Commission may terminate the Contract with immediate effect by notice in writing where:

45.1.1 the Supplier is an individual or a firm and:

- (a) a petition is presented for the Supplier's bankruptcy;
- (b) a criminal bankruptcy order is made against the Supplier or any partner in the firm;
- (c) the Supplier or any partner in the firm makes any composition or arrangement with or for the benefit of creditors;
- (d) makes any conveyance or assignment for the benefit of creditors; or
- (e) if an administrator or similar officer is appointed to manage the affairs of the Supplier or of a firm in which the Supplier is a partner;

45.1.2 the Supplier is a body corporate and:

- (a) the body corporate passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction);
- (b) an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it;
- (c) any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed;
- (d) the court makes a winding-up order;
- (e) a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986;
- (f) a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors;

- (g) an administrative receiver, receiver, manager, supervisor or similar officer is appointed by a creditor or by the court; or
 - (h) possession is taken of any of its property under the terms of a fixed or floating charge;
- 45.1.3 the Supplier is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 45.1.4 the Supplier convenes a meeting of its creditors; or
- 45.1.5 a meeting is convened for the purpose of considering a resolution, or other steps are taken for the winding up of the Supplier (otherwise than for the purpose of an amalgamation or reconstruction) or for the making of an administration order or other appointment of an administrator in respect of the Supplier,

or any event analogous to any of the above events in a jurisdiction other than England and Wales.

45.2 The Supplier shall notify the Commission immediately if the Supplier undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 ("**Change of Control**"). The Commission may terminate the Contract by notice in writing with immediate effect within six months of:

- 45.2.1 being notified that a Change of Control has occurred; or
- 45.2.2 where no notification has been made, the date that the Commission becomes aware of the Change of Control

but shall not be permitted to terminate where the Commission's prior written approval was granted prior to the Change of Control.

46. TERMINATION ON MATERIAL BREACH

46.1 The Commission may terminate the Contract by written notice to the Supplier with immediate effect if the Supplier commits a material breach of the Contract and if:

- 46.1.1 the Supplier has not remedied the material breach to the satisfaction of the Commission within thirty (30) days, or such other period as may be specified by the Commission, after issue of a written notice specifying the material breach and requesting it to be remedied; or
- 46.1.2 the material breach is not, in the opinion of the Commission, capable of remedy.

47. TERMINATION ON PERSISTENT FAILURE

The Commission may terminate the Contract by written notice to the Supplier with immediate effect where a Persistent Failure has occurred.

48. TERMINATION ON CORRUPTION, BRIBERY OR DISCRIMINATION

48.1 The Commission may terminate this Contract by written notice to the Supplier with immediate effect if:

- 48.1.1 the Supplier commits any breach of Clause 4.9.1 whatsoever (and both parties acknowledge and agree that any breach of Clause 4.9.1 will be a material irremediable breach of this Contract);

48.1.2 the Supplier commits a material breach of any of Clauses 4.9.2 to 4.9.5 inclusive which is incapable of remedy or if capable of remedy is not remedied within thirty (30) days of receipt of notice of such breach; or

48.1.3 the Supplier commits any material breach of Clause 11.

49. **TERMINATION ON SERIOUS SECURITY RISK**

The Commission may terminate the Contract by written notice to the Supplier with immediate effect if the Supplier fails to comply with the security obligation elements of Clause 39.

50. **TERMINATION ON LEGISLATIVE CHANGES**

The Commission may terminate this Contract by written notice to the Supplier with immediate effect in the event of significant legislative changes to the functions of the Commission or of auditors appointed by the Commission such that the provisions of this Contract are or will be rendered incapable of operation.

51. **NOTICE PERIOD**

The Commission may in its absolute discretion specify any date in the notice as to when termination takes effect for the purposes of notice given under Clauses 45 to 50.

52. **RECOVERY UPON TERMINATION**

52.1 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Supplier and the Commission accrued before such termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry.

52.2 Subject always to the provisions of Clause 41.5, upon termination or expiry of the Contract, the Supplier shall forthwith deliver to the Commission upon request all the Commission's property (including but not limited to materials, documents, information, access keys) relating to the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors save that the Supplier may retain one copy of all such documents and materials for the retention of proper records and for no other purpose whatsoever.

52.3 Upon termination or expiry of the Contract the Supplier shall give reasonable co-operation free of charge to the Commission and any new contractor appointed by the Commission to continue or take over the performance of the Contract in order to ensure an effective handover of all work then in progress.

53. **WAIVER**

53.1 The failure of either Party to insist upon strict performance of any provision of the Contract or the failure of either Party to exercise 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 this Contract.

53.2 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 the provisions of Clause 61.

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

54. **FORCE MAJEURE**

- 54.1 Neither Party shall be liable to the other Party for any delay in or failure to perform its obligations under the Contract (other than a payment of money) if such delay or failure results from a Force Majeure event. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations hereunder for the duration of such Force Majeure event. However, if any such event prevents either Party from performing all of its obligations under the Contract for a period in excess of six (6) Months, either Party may terminate the Contract by notice in writing with immediate effect.
- 54.2 If either of the Parties becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part as described in Clause 54.1 it shall forthwith notify the other by the most expeditious but reasonable method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.

55. **REMEDIES CUMULATIVE**

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this 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.

PART 10

MISCELLANEOUS

56. ASSIGNMENT AND SUB-CONTRACTING

56.1 The Supplier shall not assign, transfer, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval, and, in relation to the giving of any such Approval the Commission may attach such conditions and/or limitations as it deems in its sole discretion appropriate. Sub-contracting any part of the Contract shall not relieve the Supplier of any obligation or duty attributable to the Supplier under the Contract.

56.2 The Supplier shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

56.3 Where the Commission has consented to the placing of sub-contracts, copies of each sub-contract shall be sent by the Supplier to the Commission within two (2) Working Days of issue.

56.4 The Supplier shall not use the services of self-employed individuals without prior Approval provided that the Supplier shall not require Approval in relation to individuals that are bona fide members of the Supplier.

56.5 Subject to Clause 56.7, the Commission may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

56.5.1 any Contracting Authority;

56.5.2 any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Commission; or

56.5.3 any private sector body which substantially performs the functions of the Commission

provided that any such assignment, novation or other disposal shall not increase the burden of the Supplier's obligations under the Contract.

56.6 Any change in the legal status of the Commission such that it ceases to be a Contracting Authority shall not, subject to Clause 56.5, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Commission.

56.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause 56.5 to a body which is not a Contracting Authority or if there is a change in the legal status of the Commission such that it ceases to be a Contracting Authority (in the remainder of this Clause both such bodies being referred to as the "**Transferee**"):

56.7.1 the rights of termination of the Commission in Clauses 45 (Termination on Insolvency or Change of Control) and 46 (Termination on Material Breach) shall be available to the Supplier in the event of respectively, the bankruptcy or insolvency, or material breach of the Transferee; and

56.7.2 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 prior consent in writing of the Supplier.

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

56.9 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.

57. **SEVERABILITY**

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

57.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

58. **CONTINUING EFFECT**

58.1 Expiry or termination of this Contract for any reason will:

58.1.1 be without prejudice to any obligation or right of any Party which has accrued prior to such expiry or termination (or will thereafter accrue in respect of the period before such expiry or termination); and

58.1.2 not affect any provision of this Contract which is expressly or by implication intended to come into effect on, or to continue in effect after, such expiry or termination.

58.2 Without prejudice to the generality of Clause 58.1, the provisions of this Clause 58 and Clauses 4.9, 4.10, 4.11, 13, 20.1.4, 26, 27, 29, 30, 31, 32, 35, 36, 37, 38, 39.1, 39.3, 39.5, 40, 41, 52.3, 53, 55, 59, 60, 61 and 62 shall survive the expiry or termination of this Contract howsoever caused and shall continue thereafter in full force and effect.

59. **GOVERNING LAW**

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

60. **DISPUTE RESOLUTION**

60.1 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 thirty (30) days of either Party notifying the other of the dispute such efforts shall involve the escalation of the dispute to the Commission's Director and the representative nominated by the Supplier.

60.2 Where such a dispute cannot be resolved between the Parties in accordance with Clause 60.1 above then the following provisions shall apply:

60.2.1 the Parties agree that any such unresolved dispute may be referred to an expert to be appointed, in the absence of agreement, on the application of either Party, by the President for the time being of the Law Society;

- 60.2.2 the person so appointed is to act as an expert and not as an arbitrator and shall be entitled to appoint such technical expert or experts as he considers necessary to assist him in determining the dispute referred to him;
- 60.2.3 the expert so appointed must afford the Parties opportunity within such a reasonable time limit as he may stipulate to make representations to him, inform each Party of the representations of the other, and allow each Party to make submissions on the representations of the other to him;
- 60.2.4 the fees and expenses of the expert, including the costs of his nomination and any costs of any technical expert appointed by him, are to be borne as the expert may direct (but in the absence of such a direction, by the Parties in equal shares); the costs of the Parties are to be determined and borne as the expert may direct but in the absence of direction (unless they otherwise agree) the Parties will bear their own costs; and
- 60.2.5 the decision of the expert shall not be final and binding on both Parties except as to costs.
- 60.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 60.4 The performance of the Contract and all payments due thereunder shall not be suspended, cease or be delayed by the reference of a dispute under this Clause 60 and the Parties (or employee, agent, supplier or sub-contractor) shall comply fully with the requirements of the Contract at all times.
- 61. NOTICES**
- 61.1 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 concerned.
- 61.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail. Such notices or other communication shall be addressed to the other Party in the manner referred to in Clause 61.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
- 61.3 All notices under this Contract shall be served at the address specified in Schedule 9. Either Party to this Contract may change its nominated address or facsimile number by prior notice to the other Party.
- 61.4 For the purposes of this Contract, notices given by the Commission to the Designated Individual shall be deemed to be served on such Designated Individual if served on the Supplier.
- 62. ENTIRE AGREEMENT**
- 62.1 The Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes and each Party agrees that it is not entering this Contract as a result of any prior discussions, representations or undertakings, whether written or oral, except that this Clause 62 shall be without prejudice to Clause 4.3 and that it shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

- 62.2 In the event of and only to the extent of any conflict between the terms and conditions of Contract and the Schedules, the terms and conditions shall prevail.
- 62.3 In the event of any conflict or inconsistency between anything contained in this Contract and anything contained in the 1993 Act, the 1998 Act, other legislation or the Code of Audit Practice, the legislation or Code of Audit Practice (as appropriate) shall prevail.

IN WITNESS of which this Contract has been duly executed as a Deed by the Commission and the Supplier and it is delivered on the date first set out above.

THE COMMON SEAL OF)
THE AUDIT COMMISSION)
Was affixed in the presence of:)

.....
Chairman

.....
Chief Executive

EXECUTED as a Deed by)

acting by two members)

.....
Full name:
Member/Partner/Director

.....
Full name:
Member/Partner/Director

SCHEDULE 1

THE CONTRACT AREA(S)

| Contract Area(s) | Notional Value Maximum as at date of Contract | Notional Value Minimum as at date of Contract |
|-------------------------|--|--|
| | | |
| | | |
| | | |

SCHEDULE 2

THE SPECIFICATION

1. GENERAL

- 1.1 The Supplier shall provide the Services in accordance with the requirements set out in this Specification and otherwise in accordance with the terms of this Contract.

2. AUDIT SERVICES SPECIFICATION

Local government and NHS bodies (excluding NHS charities)

- 2.1 The audit of the accounts of, and the exercise of all functions and duties of the Appointed Auditor in respect of, any local government and NHS Audited Body to which the Commission appoints the Supplier (or an individual within the Supplier) in accordance with the 1998 Act, or any other relevant Act or arrangement.

- 2.2 All work is to be carried out in accordance with the relevant Code of Audit Practice.

- 2.3 All work is to be carried out in accordance with, and the standards set out in, the relevant Standing Guidance, and any Supplementary Guidance, issued by the Commission.

Charities (including NHS charities)

- 2.4 The audit, or where relevant the independent examination, of the accounts of, and the exercise of all functions and duties of the Appointed Auditor in respect of, any Audited Body to which the Commission appoints the Supplier (or an individual within the Supplier) in accordance with the 1993 Act and/or Section 29 of the 1998 Act.

- 2.5 All work is to be carried out in accordance with, and the standards set out in, the relevant Standing Guidance, and any Supplementary Guidance, issued by the Commission.

3. GRANT CERTIFICATION SERVICES SPECIFICATION

- 3.1 The certification of claims and returns in relation to grants or subsidies made or paid by central government departments or other public bodies to an Audited Body, whether or not the Supplier holds an Auditor Appointment, where the Commission is required to make arrangements under section 28 of the 1998 Act.

- 3.2 All work to be carried out in accordance with, and the standards set out in, Certification Instructions.

4. SPECIFIED AUDITOR APPOINTMENT WORKS SPECIFICATION

- 4.1 Under the Code of Audit Practice the Commission may from time to time specify elements of work to be carried out by Appointed Auditors in addition to their principal responsibilities. Such work may be specified by the Commission in the annual Work Programme and Scales of Fees or other document, to be carried out at an Audited Body to which the Commission appoints the Supplier (or an individual within the Supplier) in accordance with the 1998 Act or any other relevant Act or arrangement.

- 4.2 All work is to be carried out in accordance with, and the standards set out in, the relevant Standing Guidance, and any Supplementary Guidance, issued by the Commission.

SCHEDULE 3

NOTIONAL VALUE ADJUSTMENT

1. The Notional Value Maximum and Notional Value Minimum specified for the Contract Area(s) in Schedule 1 shall be **adjusted** in respect of each Audit Year after the First Audit Year by an amount determined by the Commission:
 - (a) to reflect any additions or reductions in the Audited Bodies existing in the Contract Area(s) at the start of the previous year compared with those existing at the start of the Audit Year in question (the Notional Value Maximum and Notional Value Minimum to be adjusted by the percentage by which the total Audited Body Notional Value in the Contract Area(s) has changed, irrespective of whether or not the Supplier is in fact the provider of Services in respect of such Audited Body additions or reductions); and then
 - (b) to reflect any changes in the scale or scales of fees for Audit Services in the Contract Area(s) for the Audit Year in question from those for the previous year, contained in the Work Programme and Scales of Fees; and
 - (c) to reflect any changes in the estimated requirements for Grant Certification Services and Specified Auditor Appointment Works (as advised through the Standing Guidance or Supplementary Guidance or contained in the Work Programme and Scales of Fees) for the Audit Year in question;and then **reduced**
 - (d) in respect of any Auditor Appointment in the Contract Area(s) revoked under the provisions of Clause 18, by the amount of the Audited Body Notional Value that would have been applicable for the Audit Year in question had the Auditor Appointment not been revoked.
2. The Commission shall adjust the Notional Value Maximum and the Notional Value Minimum during an Audit Year in the event of:
 - (a) a particular body moving in to or out of the scope of the Commission's regime, for example by becoming an NHS Foundation Trust; or
 - (b) any of the circumstances in paragraph 1(a) to (d) occurring during the course of the Audit Year.

SCHEDULE 4

PRICING SCHEDULE

AUDIT SERVICES REMUNERATION FOR EACH CONTRACT AREA

1. The Audit Services Remuneration for the Audit Services performed for each Audited Body shall be the Remuneration Rate for that Contract Area multiplied by the Audit Services Fee applicable for that Audit Year.

GRANT CERTIFICATION SERVICES REMUNERATION FOR EACH CONTRACT AREA

2. The Grant Certification Services Remuneration for the Grant Certification Services performed for each Audited Body shall be the Remuneration Rate for that Contract Area multiplied by the Grant Certification Services Fee applicable for that Audit Year.

SPECIFIED AUDITOR APPOINTMENT WORKS REMUNERATION FOR EACH CONTRACT AREA

3. The Specified Auditor Appointment Works Remuneration for the Specified Auditor Appointment Works performed for each Audited Body shall be the Remuneration Rate for that Contract Area multiplied by the Specified Auditor Appointment Works Fee applicable for that Audit Year.

REMUNERATION RATE FOR EACH CONTRACT AREA (%)

For Auditor Appointments in each Contract Area (and which shall also apply in all Adjacent Contract Areas):

| Contract Area | Remuneration Rate (%) |
|---------------|-----------------------|
| | |
| | |
| | |

SCHEDULE 5

SERVICES STAFF

ENGAGEMENT LEADS IN RESPECT OF SERVICES

| Engagement Lead | Contract Area(s) |
|------------------------|-------------------------|
| | |
| | |
| | |
| | |
| | |
| | |

SCHEDULE 6

EMPLOYEE TRANSFER ARRANGEMENTS

PART 1: EMPLOYEE LIST

1. Employee List

1.1 The Employee List is set out in Schedule 10.

PART 2: TRANSFER ARRANGEMENTS

2. Transfer Arrangements on Entry

2.1 The Parties hereby acknowledge that pursuant to the TUPE Regulations there will be a Relevant Transfer under this Contract on the Service Transfer Date. The contracts of the Transferring Employees will take effect as if originally made between the Supplier and those employees in accordance with the provisions of the TUPE Regulations.

2.2 The Commission shall comply with its obligations under the TUPE Regulations and the Supplier shall comply with its obligations (including without limitation the obligation under Regulation 13(4) of the TUPE Regulations) in respect of each Relevant Transfer pursuant to this Contract.

2.3 For the avoidance of doubt, the Commission shall not require the Supplier to have regard to annex A of the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (A fair deal for staff pensions).

Emoluments and Outgoings

2.4 The Commission shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period up to the Service Transfer Date and will indemnify and keep indemnified and hold the Supplier harmless from all actions, suits, claims, damages, costs and expenses and other liabilities which the Supplier may incur as a result of same.

2.5 The Supplier shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Transferring Employees and any other person who is or will be employed or engaged by the Supplier in connection with the provision of any of the Services, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, National Insurance contributions, pension contributions and otherwise, which are attributable in whole or in part to the period after and including the Service Transfer Date and will indemnify and keep indemnified and hold the Commission harmless from all actions, suits, claims, damages, costs and expenses and other liabilities which the Commission may incur as a result of same.

Employee Information

2.6 The Commission has supplied to the Supplier the information, as at the date of this Contract, which is contained in Schedule 10 (the "**Employee List**") regarding each of those employees of the Commission who it is expected, if they remain in the employment of the Commission until immediately before the Service Transfer Date, would be Transferring Employees including:

2.6.1 their age, sex, salary or other remuneration, future pay settlements, length of service, job title, grade, and current redundancy entitlement;

- 2.6.2 the terms and conditions of employment; and
- 2.6.3 details of all collective agreements.
- 2.7 The Commission shall supply to the Supplier an update of the Employee List on or around 30 June 2012 and a further updated list (the "**Final Employee List**") at least fourteen (14) days before the Service Transfer date which shall include the information which the Commission is obliged to notify the Supplier pursuant to Regulation 11(2) of the TUPE Regulations. The Commission shall also supply information to the Supplier within five (5) days after the Service Transfer Date, which was correct at the Service Transfer Date, in respect of the Transferring Employees on all matters set out in the Employee List.
- 2.8 The Commission warrants the accuracy of the information provided in relation to each individual identified in the Employee List and the Final Employee List but for the avoidance of doubt no warranty is provided as to whether the lists accurately and completely capture those individuals who will be subject to Relevant Transfer.
- 2.9 The Commission shall, following the date of this Contract be precluded from making any change in the terms and conditions of those employees on the Employee List other than in the ordinary course of business or with the Supplier's written consent which is not to be unreasonably withheld or delayed.

Union Recognition

- 2.10 The Commission has supplied to the Supplier true copies of its union recognition agreement(s) and the Supplier shall to the extent required by the TUPE Regulations recognise the trade unions representing Transferring Employees after the transfer to the same extent as they were recognised by the Commission before the Service Transfer Date.
- 2.11 The Supplier shall procure that, where the Supplier uses an approved sub-contractor, on each occasion on which the identity of a sub-contractor changes pursuant to this Contract, in the event that there is a Relevant Transfer, the new sub-contractor shall to the extent required by the TUPE Regulations recognise the trade unions representing the employees whose contracts of employment transfer to the new sub-contractor to the same extent as they were recognised before the change of identity of the sub-contractor in respect of provision of the Services.

Indemnities

- 2.12 The Commission shall indemnify and keep indemnified and hold the Supplier harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Supplier may suffer or incur as a result of or in connection with:
- 2.12.1 any claim or demand by any Transferring Employee in each case arising directly or indirectly from any act, fault or omission of the Commission in respect of any Transferring Employees on or before the Service Transfer Date.
- 2.12.2 any failure by the Commission to comply with its obligations under Regulations 13 or 14 of the TUPE Regulations or any award of compensation under Regulation 15 of the TUPE Regulations save where such failure arises from the failure of the Supplier to comply with its duties under Regulation 13 of the TUPE Regulations.
- 2.12.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employee arising from or connected with any failure by the Commission to comply with any legal obligation to such a trade union, body or person.

- 2.13 The Supplier shall indemnify and keep indemnified and hold the Commission harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Supplier may suffer or incur as a result of or in connection with:
- 2.13.1 any claim or demand by any Transferring Employee in each case arising directly or indirectly from any act, fault or omission of the Supplier or any sub-contractor in respect of any Transferring Employee on or after the Service Transfer Date;
 - 2.13.2 any failure by the Supplier or any sub-contractor to comply with its obligations under Regulation 13 of the TUPE Regulations;
 - 2.13.3 any claim (including any individual entitlement under or consequent on such a claim) by any trade union or other body or person representing any Transferring Employee arising out of or connected with any failure by the Supplier or a sub-contractor to comply with any legal obligation to such a trade union, body or person.
 - 2.13.4 the change of identity of employer by virtue of the TUPE Regulations to the Supplier or the relevant sub-contractor being significant and detrimental to any of the Transferring Employees or to any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4 (9) of the TUPE Regulations) on or before the Service Transfer Date as a result of the change of employer and whether such claim arises before or after the Service Transfer Date; and
 - 2.13.5 any proposed measures in relation to or any proposed or actual change by the Supplier or any sub-contractor of the Supplier to the working conditions or the terms and conditions of employment of any Transferring Employee or any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4 (9) of the TUPE Regulations) on or before the Service Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Service Transfer Date.

Redundancy Costs

- 2.14 In the event that:
- 2.14.1 the number of Transferring Employees exceeds the number of Anticipated Employees; and
 - 2.14.2 the aggregate salaries of the Transferring Employees on the Service Transfer Date exceeds the aggregate salaries of the Anticipated Employees as at the date of this Contract by more than 5%; and
 - 2.14.3 the Supplier dismisses any of the Transferring Employees by reason of redundancy (as defined in s.139 of the Employment Rights Act 1996) within three months of the Service Transfer Date; and
 - 2.14.4 before making any of the Transferring Employees redundant in accordance with paragraph 2.14.3 the Supplier has used its reasonable endeavours to find alternative employment for that employee within the Supplier's organisation,

the Commission shall, in relation to any Transferring Employees dismissed in accordance with this paragraph 2.14, indemnify the Supplier in relation to any Redundancy Costs paid to that Transferring Employee(s) save that the Commission's total liability under this paragraph shall not exceed the Redundancy Cap and shall be limited to the payment of Redundancy Costs referable to a number of Transferring Employees up to and equal to the Headcount Difference.

3. **Transfer Arrangements on Exit**

TUPE and Termination of Contract

- 3.1 The Parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier or a sub-contractor of the Supplier and instead are provided by the Commission or a Future Supplier (the "**Exit Services**") there may be a Relevant Transfer pursuant to the TUPE Regulations. If there is a Relevant Transfer then the contracts of employment of those employees wholly or mainly engaged in the provision of the Exit Services immediately before the Return Date will take effect on the Return Date as if originally made between the Future Supplier and those employees (save for those who object pursuant to Regulation 4(7) of the TUPE Regulations).
- 3.2 Notwithstanding the above, the position with regard to the application of the TUPE Regulations in respect of the provision thereafter of any service equivalent to the Services shall be determined in accordance with the Law as at such date that the Services or part thereof cease to be provided by the Supplier and paragraph 3.1 is without prejudice to such determination.
- 3.3 For the purposes of this paragraph 3, "**Returning Employees**" shall mean those employees wholly or mainly engaged in the provision of the Services immediately prior to the transfer of responsibility for the provision of the Services or part of the Services whose employment transfers to the Commission or a Future Supplier pursuant to the TUPE Regulations (such date being termed the "**Return Date**").

Retendering

- 3.4 Where the Parties reasonably believe that there will be a Relevant Transfer the Parties shall co-operate in agreeing a list of Returning Employees (the "**Returning Employee List**") prior to the Return Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the Commission, the Future Supplier or, where appropriate, an Audited Body Supplier.
- 3.5 The Supplier shall within fifteen (15) Working Days of a request from the Commission (such request to be made only within six months prior to an anticipated retendering or the end of the Contract Period):
- 3.5.1 provide in respect of any person wholly or mainly engaged or employed by the Supplier or sub-contractor of the Supplier in the provision of the Services (the "**Assigned Employees**") full and accurate details (the "**Employee Liability Information**") regarding:
- (a) the total number of Assigned Employees whose employment shall transfer to the Commission, a Future Supplier or, where applicable, an Audited Body Supplier pursuant to the TUPE Regulations upon a retendering or at the end of the Contract Period save for any operation of Law;
 - (b) the age, sex, salary or other remuneration, future pay settlements, length of service, job title, grade and current redundancy entitlement of the Assigned Employees;
 - (c) the terms and conditions of employment;
 - (d) details of all collective agreements.
- 3.6 The Supplier shall provide the information at paragraph 3.5 at no cost to the Commission and shall notify the Commission in writing of any material changes to the information as soon as reasonably practicable after such changes arise.

- 3.7 Following a request for information pursuant to paragraph 3.5 the Supplier shall and shall ensure that any sub-contractor of the Supplier shall:
- 3.7.1 be precluded from making any material increase or decrease in the numbers of Assigned Employees;
 - 3.7.2 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business or with the Commission's prior written consent which is not to be unreasonably withheld or delayed; and
 - 3.7.3 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing the Services to provide the Services save with the Commission's prior written consent which is not to be unreasonably withheld or delayed;

provided that the Commission shall notify the supplier as soon as reasonably practicable if it decides not to proceed with an anticipated retendering at which point the provisions of this paragraph 3.7 shall cease to apply in relation to that retendering.

- 3.8 Without prejudice to anything in this paragraph 3 the Supplier shall provide and shall procure that any sub-contractor shall provide the Employee Liability Information to the Commission at such time or times as are required by the Commission and the TUPE Regulations and in any event at least 14 days before the Return Date prior to the Return Date or the expiry of the Contract Period the Supplier shall deliver to the Commission a complete update of all such information including the information which the Supplier or sub-contractor is obliged to notify the Commission or a Future Supplier pursuant to Regulation 11(2) of the TUPE Regulations.
- 3.9 At the time of providing the information pursuant to paragraphs 3.5 and/or 3.8 the Supplier shall warrant the completeness and accuracy of all such information and the Commission may assign the benefit of this warranty to any Future Supplier.
- 3.10 The Commission may use the information it receives from the Supplier pursuant to paragraph 3.5 and/or 3.8 solely for the purposes of the TUPE Regulations and/or any retendering process and/or to assist any Audited Bodies with the direct tendering for all or part of the Services in order to ensure an effective handover at the end of the Contract Period. The Commission shall use reasonable endeavours to procure that any party to whom such information is passed shall treat it as confidential and shall not use it for any purpose other than such retendering, direct tendering or handover. The Supplier shall provide the Future Supplier or any Audited Body Supplier with such assistance in relation to such information as it shall reasonably request.
- 3.11 If the Supplier becomes aware that the information it provided pursuant to paragraph 3.5 and/or 3.8 has become untrue inaccurate or misleading it shall notify the Commission and provide the Commission with up to date information.
- 3.12 At any time after the Supplier is obliged to provide information pursuant to paragraph 3.5 and/or 3.8, the Supplier shall and shall ensure that any sub-contractor of the Supplier shall enable and assist the Commission and such other persons as the Commission may determine to communicate with and meet the Assigned Employees and their trade union or other employee representatives as may be reasonably required for the purpose of an anticipated Relevant Transfer.

Emoluments and Outgoings

- 3.13 The Supplier shall be responsible for all remuneration, benefits and entitlements and outgoings in respect of the Returning Employees, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, National Insurance contributions,

pension contributions and otherwise which are attributable in whole or in part to the period up to the Return Date and will indemnify and keep indemnified and hold the Commission and any Future Supplier harmless from all actions, suits, claims, damages, costs and expenses and other liabilities which the Commission or any Future Supplier may incur as a result of the same.

- 3.14 The Supplier shall not be responsible for any remuneration, benefits and entitlements and outgoings in respect of the Returning Employees and any other person who is or will be employed or engaged by the Commission or any Future Supplier in connection with the provision of any of the Services who transfer to the Commission or a Future Supplier, including without limitation all wages, holiday pay, bonuses, commissions, payments of PAYE, national insurance, pension contributions and otherwise which are attributable in whole or in part to the period after the Return Date and the Commission will indemnify and keep indemnified and hold the Supplier harmless from all actions, suits, claims, damages, costs and expenses and other liabilities which the Supplier may incur as a result of the same.

Indemnities

- 3.15 The Commission shall indemnify and keep indemnified and hold the Supplier harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Supplier may suffer or incur as a result of or in connection with:
- 3.15.1 any claim or demand by any Returning Employee in each case arising directly or indirectly from any act, fault or omission of the Commission or any Future Supplier on or after the Return Date;
 - 3.15.2 any failure by the Commission or a Future Supplier to comply with its obligations under Regulation 13 of the TUPE Regulations;
 - 3.15.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employee arising from or connected with the failure of the Commission or any Future Supplier to comply with any legal obligations to such a trade union body or person;
 - 3.15.4 the change of identity of employer by virtue of the TUPE Regulations to the Commission or a Future Supplier being significant and detrimental to any of the Referring Employees or to any person who would have been a Returning Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4 (9) of the TUPE Regulations) on or before the Return Date as a result of the change of employer and whether such claim arises before or after the Return Date; and
 - 3.15.5 any proposed measures in relation to or any proposed or actual change by the Commission or a Future Supplier to the working conditions or the terms and conditions of employment of any Returning Employee or any person who would have been a Returning Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4 (9) of the TUPE Regulations) on or before the Return Date as a result of any such proposed changes or measures and whether such claim arises before or after the Return Date.
- 3.16 The Supplier shall indemnify and keep indemnified and hold the Commission (both for itself and any Future Supplier) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Commission or any Future Supplier may suffer or incur as a result of or in connection with:

- 3.16.1 any claim or demand by any Returning Employee in each case arising directly or indirectly from any act, fault or omission of the Supplier or any sub-contractor of the Supplier in respect of any Returning Employee on or before the Return Date;
 - 3.16.2 any failure by the Supplier or any sub-contractor of the Supplier to comply with its obligations under Regulation 13 and 14 of the TUPE Regulations or any award of compensation under Regulation 15 of the TUPE Regulations save where such failure arises from the failure of the Commission or a Future Supplier to comply with its duties under Regulation 13 of the TUPE Regulations;
 - 3.16.3 any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employee arising from or connected with any failure by the Supplier or any sub-contractor of the Supplier to comply with any legal obligation to such a trade union, body or person;
 - 3.16.4 any claim by any person who is transferred by the Supplier or any sub-contractor of the Supplier to the Commission or a Future Supplier whose name and details have not been provided in accordance with paragraphs 3.5 to 3.12 above.
4. For the avoidance of doubt, this Schedule 6 applies during the Contract Term and indefinitely thereafter.

SCHEDULE 7

TRANSITIONAL WORK SCHEDULE

1. The Commission may require the Supplier to undertake Transitional Work in respect of any Audited Body located in the Contract Area(s) or in an Adjacent Contract Area if any Services for an Audit Year commencing prior to the Commencement Date are or are likely to be (in the sole opinion of the Commission) incomplete on the Service Transfer Date. The Commission may require the Supplier to undertake Transitional Work either by appointing the Supplier (or Designated Individual as applicable) as Appointed Auditor to that body or by serving notice on the Supplier setting out the Transitional Work required,
2. Subject to paragraph 3 below, the Supplier (or Designated Individual) shall undertake and invoice for all such Transitional Work, and the Commission shall pay the Contract Remuneration, in accordance with the terms of this Contract, the Specification and any Standing Guidance on carrying out Transitional Work.
3. For the avoidance of doubt Part 6 of this Contract (Contract Remuneration) shall apply to Transitional Work, provided that for the purposes of Clause 22 the Services Fee for Transitional Work shall be that calculated by the auditor appointed to the Audited Body immediately prior to the appointment of the Supplier (or Designated Individual), and the Remuneration Rate shall be that set out in the Pricing Schedule. Any variation to the fee from that so calculated must be justified to the Commission with supporting evidence and approved by the Commission before payment is due.
4. The Standing Guidance on completion of Transitional Work may amend the provisions of Clause 24 and in particular shall specify revised dates for the estimates and payments for Transitional Work.
5. The Supplier shall identify any work that would not form part of the Services Fee charged to the Audited Body but for the fact that the Supplier has been required to undertake the Transitional Work. Such work shall be charged to the Commission, but not to the Audited Body, at the rates applicable to Services Fees for the Audit Year in question in addition to the Contract Remuneration.
6. The Standing Guidance may provide that the Supplier may rely, in carrying out Transitional Work, on the work of an auditor previously appointed by the Commission to the Audited Body for the Audit Year in question. To the extent the Supplier (or Designated Individual) so relies the Commission shall indemnify and keep indemnified the Supplier (or Designated Individual) fully against all claims, proceedings, actions, damages, legal costs, expenses and any other liabilities whatsoever arising out of, in respect of or in connection with such work.
7. The Commission shall make available to the Supplier (or Designated Individual) such information and documents as are specified in Standing Guidance for the purpose of enabling the Supplier (or Designated Individual) to undertake the Transitional Work and invoice the Audited Body. The Supplier shall make available any Transferring Employees without charge to provide information or explanation where to do so is reasonably necessary for any other contractor to undertake work that is equivalent to Transitional Work under any other contract with the Commission.
8. The Standing Guidance may specify that the Supplier should so far as is practicable ensure that any Transferring Employees who were, prior to the Service Transfer Date, Engagement Leads in respect of Transitional Work continue to work on that Transitional Work following the Service Transfer Date.

SCHEDULE 8
COMMERCIALLY SENSITIVE INFORMATION

SCHEDULE 9
NOTIFICATION DETAILS

FOR THE COMMISSION:

Address:

Fax:

Email

FOR THE SUPPLIER:

Address:

Fax:

Email

SCHEDULE 10
EMPLOYEE LIST