



# CabinetOffice

**PURCHASE ORDER NO/CONTRACT NO:**

Name and Address of Contractor: [To be inserted]

Date of Contract: [To be inserted]

## SCHEDULE

**GOVERNING THE PROVISION OF (*Insert Details of Services Required*)**

## REQUIREMENTS

<b><u>Item</u></b>	<b><u>Specification</u></b>	<b><u>Description</u></b>	<b><u>Firm Price</u></b>
	Cabinet Office specification attached to Cabinet Office invitation to tender dated ..... as amended by ..... 's tender dated .....	Provision of [ ] in accordance with the Specification	

## CONDITIONS OF CONTRACT

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## CONDITIONS OF CONTRACT

### 1. DEFINITIONS

In these conditions:

1.1 "The Client" means the Cabinet Office, (address)

1.2 "The Contract" means the agreement concluded between the Client and the Contractor including all these conditions, specifications, plans, drawings and other documents which are relevant to the Contract. In the case of any discrepancy among these documents these conditions shall prevail.

1.3 "Confidential Information" means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, [Goods/Services], developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either Party, [all personal data and sensitive personal data within the meaning of the Data Protection Act 1998] and the Commercially Sensitive Information;

1.4 "The Contractor" means ..... who by the contract undertakes to render such Services for the Client as is provided by the Contract.

1.5 "Contracting Authority" means any contracting authority as defined in Regulation 5(2) of the Public Contracts Regulations SI 2006 other than the client.

1.6 "The Contract Price" as described in the Schedule of Requirement means the price exclusive of Value Added Tax, payable to the Contractor by the Client under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract.

1.7 "Environmental Information Regulations" means the Environmental Information Regulations 2004

1.8 "Issued Property" means all government property issued in connection with the Contract.

1.9 "Loss" includes destruction.

1.10 "Loss of Property" includes damage to property, loss of profits and loss of use.

1.11 "Month" means calendar month unless otherwise defined.

1.12 "Personal Injury" includes sickness and death.

1.13 "Servant of the Crown" includes persons (and the personal representative of any person) who are Servants of the Crown when any relevant Personal Injury or Loss of Property occurred, even if he has ceased to be such before any payment in respect of the Personal Injury or Loss of Property is made, and, where they have ceased to be such by reason of their deaths, include their personal representative.

1.14 "The Services" means all Services which the Contractor is required to carry out under the Contract.

1.15 "The Specification" means the description and specification as detailed in the Schedule of Requirements.

1.16 "Sub-Contractor" means any person, firm or company under the Contract to the Contractor to perform work or provide professional services and/or supply goods and includes any other person or persons taken as a partner or director by such person, firm or company during the currency of the Contract and the surviving member or members of any such firm or company.

1.17 "Government Provision" means any Statutory Provision, warrant, order, scheme, regulations or conditions of service applicable to a Servant of the Client providing for continuance of pay or the payment

of sick pay, or any allowance to or for the benefit of Servants of the Client, or their families or dependants, during or in respect of sickness, injury or disablement suffered by such Servants.

1.18 The headings of these Conditions shall not affect the interpretation thereof.

1.19 Any notice or other communication whatsoever which the Client is required or authorised by the Contract to give or make to the Contractor shall, without prejudice to any other method of giving or making it, be sufficiently given or made if it is sent by post in a prepaid letter addressed to the Contractor by name at the last known place of abode or business of the Contractor and if the letter is not returned through the post undelivered that notice or communication shall be deemed for the purposes of the Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered.

1.20 The masculine includes the feminine.

1.21 The singular includes the plural and vice versa.

1.22 Reference to any enactment, order, regulation or other similar instrument, shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.

1.23 "Security Plan" means the plan provided by the Contractor at Schedule 2.

## **2. LAW**

2.1 The Contract shall be considered as a contract made in England and Wales and subject to the law of England and Wales.

## **3. SERVICE**

3.1 Subject to the provisions of the Contract the Contractor agrees to provide the Services set out in the schedule of requirement in consideration of the price paid.

## **4. DURATION OF CONTRACT**

4.1 The services shall be provided during the period ..... to ..... subject to the Client's rights of earlier termination under the Conditions of this Contract.

## **5. DUTY OF CARE**

5.1 The Contractor shall be responsible for ensuring that reasonable skill, care and diligence are exercised in carrying out the Services properly and efficiently in accordance with the Contract.

## **6. VARIATION OF CONTRACT**

6.1 Any variation of any provision of this Contract must be effected in writing issued by the Client, and no purported variation by any other means shall bind the Client.

## **7. VARIATION OF REQUIREMENT**

7.1 The Client reserves the right to vary the requirements of the Contract, as detailed in the Specification, should this at any time become necessary. In the event of any variation of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between the Client and the Contractor.

## **8. CONTRACTOR'S ORGANISATION**

8.1 All personnel deployed on the work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to the Client. Where so required, full particulars of all personnel to be so employed shall be forwarded in advance to the Client for confirmation of acceptability.

8.2 The key personnel offered by the Contractor and accepted by the Client to work on the Contract are as follows:

8.3 The Contractor shall take all reasonable steps to avoid changes of personnel assigned to and accepted for the work under the Contract except whenever changes are unavoidable or of a temporary nature caused by sickness etc. The Contractor shall give at least one month's notice to the Client of proposals to change key personnel and Condition 8.1 and 8.2 shall apply to the replacement personnel.

8.4 The Contractor shall take the steps reasonably required by the Client to prevent unauthorised persons being admitted to the Client's premises. If the Client gives the Contractor notice that any person is not to be admitted to or is to be removed from its premises or is not to become involved in (or removed from) the Services, the Contractor shall take all reasonable steps to comply with such notice.

8.5 The decision of the Client as to whether any person is to be admitted to or is to be removed from involvement in the Services or as to the designation or approval of key personnel and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

8.6 The Contractor shall bear the cost of any notice, instruction or decision of the Client under this Condition.

## **9. PRICE**

9.1 The Contract Price described in the Schedule of Requirements is firm, ie not subject to escalation.

## **10. PAYMENT**

10.1 Unless otherwise stated in this Contract payments shall be claimed on completion of the work **OR** once a month in arrears. Itemised claims, accompanied by all necessary documentation, shall be submitted to the Client for scrutiny and approval. Payment shall be made within 30 days of receipt and agreement of invoices for work completed to the satisfaction of the Client. Payments may be withheld or reduced by the Client in the event of unsatisfactory performance without prejudice to the other rights of the Client under the Contract.

10.2 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

10.3 Invoices for payment should be sent to:

Shared Services P2P  
3<sup>rd</sup> Floor Companies House  
Crown Way Maindy  
CARDIFF  
CF14 3UW

## **11. VALUE ADDED TAX**

11.1 The Client shall pay to the Contractor, in addition to the Contract Price, a sum equal to the Value Added Tax chargeable on the value of the supply of goods and services provided in accordance with the Contract.

11.2 Any invoice or other request for payment of moneys due to the Contractor under the Contract shall, if he is a taxable person, be in the same form and contain the same information as if the same were a tax invoice for the purposes of Regulations made under the Finance Act 1972.

11.3 The Contractor shall, if so requested by the Client, furnish such information as may reasonably be required by the Client as to the amount of Value Added Tax chargeable on the value of goods and services supplied in accordance with the Contract and payable by the Client to the Contractor in addition to the Contract Price. Any overpayment by the Client to the Contractor shall be a sum of money recoverable from the Contractor for the purposes of (Condition 12 - Recovery of Sums Due).

## **12. RECOVERY OF SUMS DUE**

12.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Contractor under the Contract or under any other Contract with the Client or with any Department or office of Her Majesty's Government.

### **13. PAYMENT OF SUB-CONTRACTORS**

13.1 Where the Contractor enters a sub-contract with a supplier or Contractor for the purpose of performing the contract, he shall cause a term to be included in such Sub-contract which requires payment to be made to the supplier or Contractor within 30 days from receipt of the valid invoice as defined by the sub-contract requirements.

### **14. INDEMNITIES & INSURANCE**

14.1 The Contractor shall effect and maintain insurance necessary to cover jointly the Client and the Contractor for the risks faced under these Conditions with regard to fire damage, injury to persons and loss of or damage to property, which insurance may be limited in respect of any one claim (but shall not be limited in any other respect), provided that any such limit made under this Condition shall in any event be at least £500,000.

14.2 The Contractor shall indemnify and keep indemnified the Client, the Crown, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Client or the Crown, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or wrongful act of the Contractor, his servants or agents.

14.3 The Contractor (if an individual) represents that he is regarded by HM Revenue & Customs as self-employed and accordingly shall indemnify the Client against any tax, national insurance contributions or similar impost for which the Client may be liable in respect of the Contractor by reason of this Contract.

14.4 The Contractor shall, whenever required by the Client, produce to the Client certificates signed on behalf of the Contractor's insurers stating that insurance complying with the requirements set out in Condition 14.1 is in force and the period for which it has been taken out.

14.5 If, for whatever reason, the Contractor fails to comply with this Condition, or without the approval of the Client obtains a different policy of insurance from that which he notified to the Client at the time when he submitted his tender, the Client may make alternative arrangements necessary to protect his interests and recover loss and damages from the Contractor.

14.6 The terms of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract.

### **15. UNSATISFACTORY PERFORMANCE**

15.1 Should the Services or any portion thereof not be completed to the satisfaction of the Client within the time or times specified in the Contract, or if in the opinion of the Client progress made in the execution of the Service is unsatisfactory and unlikely to lead to such completion, the Client may without prejudice to any other remedies by notice in writing to the Contractor determine the Contract either as respects the Services which have not been carried out in accordance with the Contract at the time of such determination or as respects all the Services to which the Contract relates other than those carried out in accordance with the Contract before that time, hereinafter called a relevant determination, and in such case the Contractor shall not be entitled under the Contract to payment of any amount by way of compensation.

15.2 Where the Client has determined the Contract under Condition 15.1 hereof and without prejudice as aforesaid the Client may obtain all or any of the Services as respects which the Contract is so determined by arranging for those services to be carried out by alternative means and there shall be recoverable from the Contractor the amount by which the aggregate of the cost of obtaining the Services in this way, exceeds the amount which would have been payable to the Contractor in respect of all the Services so replaced if they had been carried out in accordance with the Contract.

15.3 In the event of the Contractor failing to carry out any Services in accordance with these Conditions, the Client shall (without prejudice to any other remedy available) be entitled:

- a) to deduct from any account rendered by the Contractor in respect of unsatisfactory Services such sum as the Client considers appropriate;
- b) to have such Services carried out satisfactorily by other persons and in the meantime to debar the Contractor, his servants and agents from the Premises.

15.4 On the occurrence of a relevant determination the Contractor shall, notwithstanding such determination, cooperate in the transfer of the Services, to which the relevant determination relates to any alternative organisation under Condition 15.2 hereof in accordance with arrangements to be notified to him by the Client.

## **16. TERMINATION**

16.1 The Client shall in addition to his powers under any other of these Conditions have power to terminate the Contract at any time by giving to the Contractor written notice, to expire at the end of (*Insert period of notice*) and upon the expiration of the notice the Contract shall be determined without prejudice to the rights of the parties accrued to the date of determination, but subject to the operation of the following provisions of this Condition.

16.2 In the event of such notice being given the Client shall at any time before the expiration of the notice be entitled to exercise and shall as soon as may be reasonably practicable within that period exercise such of the following powers as he considers expedient:

- a) to direct the Contractor, where work has not been commenced, to refrain from commencing work;
- b) to direct the Contractor to complete in accordance with the Contract all or any of the Services, or any part or component thereof, which shall be paid for at a fair and reasonable price.

## **17. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY**

17.1 The Client may terminate the Contract by written notice having immediate effect if:

- a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, impacting adversely and materially on the performance of the Contract; or
- b) where the Contractor is an individual or a firm, the Contractor or any partner in the firm becomes bankrupt or has a receiving order or administration order made against him; or makes any compromise or arrangement with or for the benefit of his creditors; or appears unable to pay a debt within the meaning of section 268 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom; or
- c) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor be wound up otherwise than for the purpose of solvent reconstruction or amalgamation; or a receiver, manager or administrator is appointed on behalf of a creditor in respect of the Contractor's business or any part of it; or the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or any similar event occurs under the law of any other jurisdiction within the United Kingdom.

17.2 The Client may only exercise its right under Condition 17.1(a) within 6 Months after a change of control occurs and shall not be permitted to do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Client immediately when any change of control occurs.

## **18. INTELLECTUAL PROPERTY RIGHTS**

18.1 Subject to the rights of third parties and to any rights of the Contractor and the Crown arising otherwise than by virtue of the Contract, all rights in the results of work undertaken by or on behalf of the Contractor for the purposes of the Contract, including any data, reports, servicing schedules, drawings, specifications, designs, inventions or other material produced or acquired in the course of such work and

copyright therein shall vest in and be the property of the Client, who reserves the right to determine whether the result of the work shall be published and, if so, on what conditions; and the Contractor shall ensure where necessary that he secures the right to effect such vesting.

## **19. PATENTS**

19.1 All royalties, licence fees or similar expenses for the supply or use of any invention, process, drawing, model, plan or information in connection with the Contract shall be deemed to have been included in the Contract Price. The Contractor shall indemnify the Client from and against all claims and proceedings, which may be made or brought against the Client, and any damages, cost and expenses incurred by the Client in respect of such supply or use.

## **20. OFFICIAL SECRETS ACTS**

20.1 The Contractor's attention is drawn to the provisions of the Official Secrets Acts, 1911 to 1989. The Contractor shall take all reasonable steps by display of notices or by other appropriate means to ensure that all persons employed on any work in connection with the Contract have notice that these statutory provisions apply to them and will continue so to apply after the completion or earlier determination of the Contract.

20.2 The Contractor shall not remove from the Client's premises any classified or privacy marked material without the Client's express agreement. The Contractor must keep any such material so removed under conditions approved by the Client for the housing of such classified or privacy marked material.

20.3 A basic guide to the Official Secrets Act 1989 is available on request from the Client.

## **21. PROVISION OF EQUIPMENT**

21.1 Any equipment provided by the Client for the purpose of the Contract shall remain the property of the Client and shall only be used for the purpose of carrying out this Contract; to be returned promptly to the Client on expiry or termination of the Contract. The Contractor will reimburse the Client for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the actions of the employee or agent of the Contractor. Equipment supplied by the Client shall be deemed to be in good condition when received by or on behalf of the Contractor, unless the Client is notified otherwise in writing within seven days.

## **22. OCCUPATION OF GOVERNMENT PREMISES**

22.1 Any land or premises (including temporary buildings) made available to the Contractor by the Client in connection with the Contract shall be made available to the Contractor free of charge and shall be used by the Contractor solely for the purposes of performing the Contract. The Contractor shall have the use of such land or premises as licensee and shall vacate the same upon completion or determination of the Contract. Any utilities required by the Contractor shall be subject to the charges set out elsewhere in the Contract.

## **23. TRANSFER, SUB-LETTING AND SUBCONTRACTING**

23.1 The Contractor shall not give, bargain, sell, assign, sub-let, sub-contract or otherwise dispose of the Contract or any part thereof or the benefit or advantage of the Contract or any part thereof without the previous consent in writing of the Client.

## **24. CORRUPT GIFTS AND PAYMENTS OF COMMISSION**

24.1 The Contractor shall not:

- a) offer to give or agree to any person in Her Majesty's Service any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract for Her Majesty's Service or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for Her Majesty's Service;
- b) enter into this or any other contract with Her Majesty or any Government Department in connection with which commission has been paid or agreed to be paid by him or on his behalf,

or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the representative of the Client.

24.2 Any:

- a) breach by the Contractor of the condition contained in Condition 24.1 or
- b) commission of an offence by the Contractor under the Prevention of Corruption Acts 1889 to 1910 in relation to this or any other contract for Her Majesty's Service

shall entitle the Client to determine the Contract and recover from the Contractor the amount of any loss resulting from such determination and/or to recover from the Contractor the amount of value of any such gift, consideration, or commission.

24.3 In Condition 24.2, references to the Contractor include anyone employed by him or acting on his behalf (whether with or without his knowledge).

24.4 Where the Contract has been determined under Condition 24.2 the powers given by Condition 15 - Unsatisfactory Performance shall apply as if there has been a failure in performance.

24.5 In any dispute, difference or question arising in respect of:

- a) the interpretation of this Condition (except so far as the same may relate to the amount recoverable from the Contractor under Condition 24.2 in respect of any loss resulting from such determination of the Contract); or
- b) the right of the Client to determine the Contract; or
- c) the amount of value of any such gift, consideration or commission;

the decision of the Client shall be final and conclusive.

## **25. DISCRIMINATION**

25.1 The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in race, gender, religion or belief, disability, age, sexual orientation, transgender or otherwise) in employment.

25.2 The Contractor shall take all reasonable steps to secure the observance of Condition 25.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

## **26. USE OF MATERIALS**

26.1 The Client is committed to supporting the Government's initiative on the environment. The Contractor must give due regard to environmental considerations throughout the carrying out of the Contract, including the use of materials that are or can be recycled and materials that are proven to be environmentally safe.

## **27. ARBITRATION**

27.1 All disputes differences or questions between the parties to the Contract with respect to any matter or thing arising out of or relating to the Contract, other than a matter or thing as to which the decision of the Client is under the Contract to be final and conclusive and except to the extent to which special provision for arbitration is made elsewhere in the Contract, shall be referred to the arbitration of two persons, one to be appointed by the Client and one by the Contractor, or their umpire, in accordance with the provisions of the Arbitration Acts 1950, 1975 and 1979, or any statutory modification or re-enactment thereof for the time being in force.

## **28. STATUS OF CONTRACTOR**

28.1 Nothing in the Contract shall have the effect of making the Contractor the servant of the Client or the Crown.

## **29. USE OF DOCUMENTS, INFORMATION ETC**

29.1 Except with the consent in writing of the Client, the Contractor shall not disclose the Contract or any provision thereof to any person other than a person employed by the Contractor in the carrying out of the Contract or any other person concerned with the same. Such disclosure shall be made in confidence and extend so far only as may be necessary for the purposes of the Contract.

29.2 Except with the consent in writing of the Client the Contractor shall not make use of the Contract or information issued or furnished by or on behalf of the Client otherwise than for the purpose of the Contract.

29.3 Any specifications, plans, drawings, or any other documents issued by or on behalf of the Client for the purposes of the Contract remain the property of the Client and must be returned on completion of the Contract.

29.4 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Client Data.

29.5 The Contractor shall not store, copy, disclose, or use the Client Data except as necessary for the performance by the Contractor of its obligations under this Agreement or as otherwise expressly authorised in writing by the Client.

29.6 To the extent that Client Data is held and/or processed by the Contractor the Contractor shall supply that Client Data to the Client as requested by the Client in the format specified in schedule 1 (Services Description) [and/or in schedule 3 (Exit Management)].

29.7 The Contractor shall take responsibility for preserving the integrity of Client Data and preventing the corruption or loss of Client Data.

29.8 The Contractor shall perform secure back-ups of all Client Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Business Continuity and Disaster Recovery Plan. The Contractor shall ensure that such back-ups are available to the Client at all times upon request and are delivered to the Client at no less than **[insert period]** monthly intervals.

29.9 The contractor shall ensure that any system on which the Contractor holds any Client Data, including back-up data, is a secure system that complies with the Security Policy.

29.10 If the Client Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Client may:

29.10.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Client Data to the extent and in accordance with the requirements specified in schedule 4 (Business Continuity and Disaster Recovery Provisions) and the Contractor shall do so as soon as practicable but not later than **[insert period ]**; and/or

29.10.2 itself restore or procure the restoration of Client Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in schedule 4 (Business Continuity and Disaster Recovery Provisions).

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

## **30. DISCLOSURE OF INFORMATION**

30.1 The Contractor shall take every precaution to ensure that information about the Contract, or arising from or connected with the Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out the Contract. No information regarding the Services being provided under the Contract or facilities to photograph or film shall be given or permitted by the Contractor except with prior written permission of the Client to whom any press or other enquiry or any such matter should be referred.

30.2 The Contractor shall not communicate with representatives of the general or technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the Client.

30.3 The Contractor shall fully indemnify the Client, his Servants or Agents against the costs of dealing with any claims made in respect of any information subject to the Data Protection Act 1998, which claims would not have arisen but for some act, omission or negligence on the part of the Contractor, his Sub-contractors, agents or staff.

### **31. PROTECTION OF PERSONAL DATA**

31.1 With respect to the parties' rights and obligations under this Agreement, the parties agree that the Client is the Data Controller and that the Contractor is the Data Processor.

31.2 The Contractor shall:

31.2.1 process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature as set out in this Agreement or as otherwise notified by the Client to the Contractor during the Term);

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

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

31.2.4 take reasonable steps to ensure the reliability of any Contractor Personnel who have access to the Personal Data;

31.2.5 obtain prior written consent from the Client in order to transfer the Personal Data to any Sub-Consultants or Affiliates for the provision of the Services;

31.2.6 ensure that all Contractor Personnel 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 31;

31.2.7 ensure that none of Contractor Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client;

31.2.8 notify the Client (within [five] Working Days) if it receives:

31.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or

31.2.8.2.1 a complaint or request relating to the Client's obligations under the Data Protection Legislation;

31.2.9 provide the Client with full cooperation and assistance in relation to any complaint or request made, including by:

31.2.9.1 providing the Client with full details of the complaint or request;

31.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the Client's instructions;

31.2.9.3 providing the Client with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Client); and

31.2.9.4 providing the Client with any information requested by the Client;

31.2.10 permit the Client or the Client Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Condition 36 (Audit), the Contractor's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractor's) and comply with all reasonable requests or directions by the Client to enable the Client to verify and/or procure that the Contractor is in full compliance with its obligations under this Agreement;

31.2.11 provide a written description of the technical and organisational methods employed by the Contractor for processing Personal Data (within the timescales required by the Client); and

31.2.12 not Process Personal Data outside the European Economic Area without the prior written consent of the Client and, where the Client consents to a transfer, to comply with:

31.2.12.1 the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and

31.2.12.2 any reasonable instructions notified to it by the Client.

31.3 The Contractor shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Client to breach any of its applicable obligations under the Data Protection Legislation.

## **32. FREEDOM OF INFORMATION**

32.1 The Contractor acknowledges that the Client is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

32.2 The Contractor shall and shall procure that its Sub-contractors shall:

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

32.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations.

32.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

The Contractor acknowledges that (notwithstanding the provisions of Condition 30) the Client may, be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services:

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

32.5 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

32.6 The Contractor acknowledges that any lists or schedules provided outlining Commercially Sensitive Information are of indicative value only and that the Client may be obliged to disclose it in accordance with Condition 32.4.

### **33. CONFIDENTIALITY**

33.1 Except to the extent set out in this Condition or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

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

33.2 Condition 33.1 shall not apply to the extent that:

- a) . such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations pursuant to Condition 32 (Freedom of Information);
- b) such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c) . such information was obtained from a third party without obligation of confidentiality;
- d) . such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
- e) . it is independently developed without access to the other party's Confidential Information.

33.3 The Contractor may only disclose the Client's Confidential Information to the Contractor's Personnel who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Contractors Personnel are aware of and shall comply with these obligations as to confidentiality.

33.4 The Contractor shall not, and shall procure that the Contractor's Personnel do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.

33.5 At the written request of the Client, the Contractor shall procure that those members of the Contractor's Personnel identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

33.6 Nothing in the Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:

- a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
- b) . to any consultant, contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
- c) for the purpose of the examination and certification of the Client's accounts; or
- d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

33.6 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-contractor to whom the Consultant's Confidential

Information is disclosed pursuant to Condition 33 is made aware of the Client's obligations of confidentiality.

33.7 Nothing in this Condition 33 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of IPR.

33.8 In the event of any inconsistency or conflict between this Condition and Condition 20 - Official Secrets Act the provisions of Condition 20 shall prevail.

#### **34. CONTRACTOR'S PROPERTY**

34.1 All property of the Contractor while at the Premises shall be at the risk of the Contractor and the Client shall accept no liability for any loss or damage howsoever occurring thereto or caused thereby except where any such loss or damage was caused or contributed to by any act, neglect or default of any Servant of the Crown at the Premises acting in the course of his employment. The Client shall accept liability to the extent to which such loss or damage is so caused or contributed to as aforesaid.

#### **35 PERSONAL INJURY AND LOSS OF PROPERTY**

35.1 This Condition applies to any Personal Injury or Loss of Property which arises in any way in connection with the performance or purported performance of the Contractor.

35.2 Subject to the following provisions of this Condition, the Contractor shall:

- a) compensate the Client for any such Loss of Property suffered by the Client;
- b) indemnify the Crown and servants of the Crown against all claims and proceedings made or brought against the Crown or servants of the Crown in respect of Personal Injury or Loss of Property to which this Condition applies and against all costs and expenses reasonably incurred in connection therewith;
- c) indemnify the Crown against any payment made by the Crown to indemnify, in whole or in part, a Servant of the Crown against any such claim, proceedings, costs or expenses; and
- d) indemnify the Crown against any payment by the Crown to a Crown servant in respect of loss of Property to which this Condition applies suffered by that Servant of the Crown and against any payment made under any Government Provision in connection with any Personal Injury to which this Condition applies suffered by any Servant of the Crown.

35.3 If the Contractor shows that any such Personal Injury or Loss of Property:

- a) was not caused nor contributed to by his neglect or default or by that of his servants, agents or Sub-contractors or by any circumstances within his or their control, he shall be under no liability under this Condition;
- b) that the neglect or default of any person (not being his servant, agent or Sub-contractor) was in part responsible, the Contractor's liability under this Condition shall not extend to the share in the responsibility attributed to the neglect or default of that person.

35.4 The Client shall notify the Contractor of any claim or proceedings made or brought in respect of any such Personal Injury or Loss of Property.

35.5 If the Contractor admits that he is liable wholly to indemnify the Crown in respect of any such claim or proceeding he or, if he so wishes, his insurers, shall, subject to Condition 35.2 of this Condition be responsible for dealing with or settling that claim or proceeding.

35.6 The Client shall in any event deal with any such claim which involves a Government Provision or which is made by or against a Servant of the Client, and Condition 35.5 shall not apply to any such claim.

35.7 If, when the Contractor or his insurers are dealing with any such claim or proceeding, any matter or issue arises which involves, or may involve, any privilege or special right of the Crown (including a

matter relating to the discovery or production of documents) the Contractor or his insurers shall consult the Client before taking any further action on the matter and shall act in relation thereto as may be required by the Client; and if either the Contractor or his insurers fail to comply with this Condition, Condition 35.5 shall cease to apply.

35.8 Where any claim or proceeding in respect of any liability referred to in Condition 35.2 above, is settled otherwise than by the Contractor or his insurers, he shall not be required to pay by way of indemnity any sum greater than that which would be reasonably payable in settlement having regard to the circumstances of the case and in particular to the damages which might be recoverable at law.

35.9 For the purpose of this Condition "an expected claim" means a claim or proceeding in respect of a matter failing to be dealt with under a Government Provision, or a claim or proceeding made or brought by or against a Servant of the Crown.

**THIS CONTRACT IS WITNESSED AND AUTHORISED BY:**

**Signed by:** \_\_\_\_\_

**Signed by:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**On Behalf Of the Minister for the  
Cabinet Office**

**On Behalf Of (Insert Contractor's  
details)**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**SCHEDULE 1**

**SERVICES DESCRIPTION**

[To be completed]

**SCHEDULE 2**

**SECURITY PLAN**

[To be completed by Contractor as applicable]

**SCHEDULE 3**

**EXIT MANAGEMENT STRATEGY**

[To be completed as applicable]

**SCHEDULE 4**

**BUSINESS CONTINUITY AND DISASTER RECOVERY PROVISIONS**

[To be completed as applicable]