

**TERMS AND CONDITIONS THAT WILL APPLY TO CONTRACTS AWARDED TO
SUPPLIERS ON COI CULTURAL DIVERSITY FRAMEWORK – JUNE 2008**

SECTION 1 – APPLICABILITY AND USAGE

Definitions

- 1.1 (a) "COI" means the Central Office of Information whose head office is situated at Hercules Road, London, SE1 7DU.
- (b) "the Contractor" means that company or person with whom these terms and conditions have been agreed.

Applicability

- 1.2 (a) COI and the Contractor agree that these Terms and Conditions, including COI Standard Conditions of Contract for the Supply of Services (Section 2), will apply to all contracts for Cultural Diversity work.
- (b) The actual Services to be provided for a particular job, the timescales within which they will be delivered and the price will be agreed when the Contract for carrying out that job is awarded.

Award of Contracts

- 1.3 (a) All contracts for Services will be awarded by means either of a COI Purchase Order or a Contract Letter issued by COI.
- (b) The Purchase Order/Contract Letter is issued to these terms and conditions and constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Purchase Order/Contract Letter supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.
- (c) Any amendments to the Services and/or value of the Contract as agreed at the time the Purchase Order/Contract Letter is issued must be Mutually Agreed in writing.
- (d) COI shall have no liability beyond the value of the Contract agreed at the time the Purchase Order/Contract Letter is issued unless a change is mutually agreed in writing.

Contractual Responsibility

- 1.4 The Contractor will have a contractual responsibility solely to COI for the provision of services. Any requests from third parties (including the Client Department) for additional work or alterations to existing systems/working practices must be cleared by the Contractor with COI in advance of work starting. Failure to do so may result in any costs incurred by the Contractor when carrying out third party requests not being paid for. The Contractor will alert COI to any direct contact of this nature that has not been pre-authorised.

Account Management

- 1.5 (a) The Designated Officer nominated by COI will be the Contractor's first point of contact within COI on all contract/project related issues. The Contractor shall work

in close association with, and will comply with, the reasonable requirements of the Designated Officer.

- (b) The Contractor shall ensure that the Designated Officer is advised of all meetings between The Contractor and the Client Department.

Charges - Staff Rates

- 1.6 (a) The Staff Rates that shall apply are those provided by the Contractor in his application to be considered for the Cultural Diversity Framework unless and until changes in those Staff Rates are Mutually Agreed.
- (b) The Staff Rates provided shall apply for a minimum of twelve months, as shall any subsequently agreed amendments.
- (c) Increases in Staff Rates shall be limited to the increase in the Retail Price Index since they were provided or last amended.
- (d) The Contractor shall ensure that COI is given one months notice of any increase in staff rates. Any changes in staff rates need to be mutually agreed between the COI and Contractor before they apply.
- (e) Fees for work outside the scope of the Staff Rates shall be Mutually Agreed.

Charges – Ceilings, Presentation, Records, Etc

- 1.7 (a) Postage, telephone, fax and similar administrative costs will be charged at cost; not as a percentage of fees and with no added on handling charge.
- (b) Valid travel, subsistence and accommodation claims will be paid in accordance with 1.7 (e). Valid claims for air and rail travel will be paid at economy class rates. COI accepts no liability for claims above these levels unless a variation has been agreed in advance.
- (c) COI accepts no liability for the costs of courier services above the agreed ceilings and/or amounts specifically agreed for the Contract. Where no such ceilings or amounts have been agreed, COI accepts no liability at all for these costs.
- (d) All charges presented by the Contractor (whether as part of a tender, proposal, estimate, invoice, or for any other purpose) will be broken down as follows:
 - (i) Time charges – broken down into Staff, rates and time.
 - (ii) Administrative charges – with a statement as to the basis on which they are to be charged.
 - (iii) Bought in services – broken down into actual cost to the Contractor.
 - (iv) Other charges – with descriptions.
- (e) Valid receipts and supporting evidence shall be presented to the COI by the Contractor for any claim under 1.7 (a) – (d).

Invoicing

- 1.8 (a) All invoices submitted by the Contractor will be supported by whatever evidence COI reasonably decides is necessary.
- (b) A full cost breakdown should be provided including a full breakdown of costs associated to bought-in or outsourced services and for any claims made under 1.7.

Limit Of COI Liability

1.9 COI's liability will be limited to work, deliverables, costs and bought in services that it has authorised in advance in writing.

Bought In Services

1.10 (a) COI may, if it so chooses, nominate the sub-contractors to be used for bought in services or contract them directly. COI will consult fully with the Contractor before exercising this right.

(b) COI may, if it chooses, use COI in-house resources, business units and other COI frameworks to deliver specific services. COI will consult fully with the Contractor before exercising this right.

(c) Examples, but not a definitive list, of the services that may be subject to 1.10 (a) and (b) are as follows but not limited to:

Design, artwork and print	Direct & Relationship Marketing
Market Research	Evaluation
Consultancy	Digital
TV & Radio Production	Translations
Media Planning & Buying	Broadcast

(d) The Contractor will appoint no Sub-contractor for the provision of the services without the approval of COI.

Usage Rights

1.11(a) The compilation of all data recorded by the Contractor in putting together a database for a project; the lists of names, email addresses, postal addresses and telephone numbers and similar details are vested in COI.

(b) The compilation may not be stored or used by the Contractor except on behalf of COI in fulfilling this Contract.

(c) "Images" means all versions and forms of images taken for the provision of services including but not limited to those held digitally or on film and to any copies or prints of those images on whatever media held.

(d) On delivery of Images to COI, ownership of and all Intellectual Property Rights in the Images will be assigned to the Crown, the permanency of the transfer being dependent upon COI's payment of the appropriate fees and charges due to the Contractor.

(e) The Contractor shall not reproduce, publish or supply the Images to any party other than COI without the prior approval of COI in writing.

(f) All artwork and photography should be referred to the COI Photographic Production Manager.

Partnering

1.12 (a) COI reserves the right to select more than one Contractor from the framework or approved supplier list at any one time to work on and deliver a campaign or project.

(b) Contractors may be expected to work with any other Contractor from the framework or approved supplier list to deliver the services required.

Evaluation

- 1.13 (a) When evaluation is required, COI reserves the right to decide whether this will be carried out:
- (i) by an independent company selected and contracted by COI; or
 - (ii) by an independent company approved by COI but sub-contracted by the Contractor; or
 - (iii) by the Contractor himself.
- (b) COI will consult with the Contractor before deciding which option to adopt and, when appropriate, before selecting a company to carry out the evaluation.

Service Level Standards

- 1.14 (a) COI expect the Contractor to meet the following standards, as a minimum, for the provision of service :
- (i) To provide a list of all team members and their respective responsibilities;
 - (ii) Provision of regular status reports of all work as it progresses in a consistent format. The frequency of these needs to be agreed with the Client;
 - (iii) Provision of contact reports within 48 hours of each Client meeting in consistent format;
 - (iv) Deadlines for approval must at all time be reasonable and realistic, enabling COI and the Client sufficient time to thoroughly check the work and attain appropriate approvals from Policy staff, Press Office and/ or the Minister;
 - (v) An experienced named Account Manager to work on the campaign, to act as the key contact between the Contractor and the COI and to attend all status meetings. COI to be informed if this person is not available and who is their replacement;
 - (vi) Prompt acknowledgement of all communications from COI, and immediate notification of anticipated problems in meeting deadlines;
 - (vii) Prompt responses to request for information or clarification from COI;
 - (viii) Regular and frequent confirmation that work is proceeding to schedule.
- (b) COI reserves the right to add to these standards, as required, for individual contracts.

Review Of Performance And Requirements

- 1.15 (a) Regular reviews of performance to date and future requirements will take place.
- (b) The timing and scope of these reviews will be as agreed when the Contract is placed.
- (c) Where work has not been carried out to the reasonable satisfaction of COI, then COI will ask for the work to be redone at no extra cost. Failure by the Contractor to deliver the corrected work within thirty days will constitute a fundamental breach of the Contract and Condition 2.34 in Section 2 will apply accordingly.
- (d) Should COI decide as a result of the regular review to discontinue the Contract:
- (i) the Contractor will be so notified in writing;

- (ii) the Contractor on receipt of that written notification will immediately cease to provide the Services; and
- (iii) COI's liability will be limited to the hours and costs already committed by the Contractor up to the time the notification was received by him.

Cultural Diversity Framework Selection Process

- 1.16 (a) Annex A to these terms and conditions outlines the Lots under which Contractors will be invited to compete for work. Contractors will not be asked to compete for work under Lots that they are not listed against.
- (b) Under Lot 1 Contractors will be invited to compete for work under the Labels associated to this Lot (see Annex A). Contractors will not be asked to compete for work under Labels that they are not listed on.
- (c) Contractors cannot be added to Lots or Labels throughout the period of this framework.

Official Secrets Acts

1.17 The Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 through to 1989 and any statutory modification or re-enactment thereof. The Contractor shall take steps and 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 to apply after the completion or earlier termination of the contract.

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Annex A – Cultural Diversity Framework.

Lot 1 – Ethnic Minorities

Ethnic Minorities

16-24

25-35

36-44

45-54

55-64

65+

Middle Eastern

Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Meida Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls
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Far East

Media Reach Here and Now Ethnic Comms Media Moguls	Media Reach Here and Now Ethnic Comms Meida Moguls	Media Reach Here and Now Ethnic Comms Media Moguls	Media Reach Here and Now Ethnic Comms Media Moguls	Media Reach Here and Now Ethnic Comms Media Moguls	Media Reach Here and Now Ethnic Comms Media Moguls	Media Reach Here and Now Ethnic Comms Media Moguls
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South American

Media Reach Here and Now Ethnic Comms	Media Reach Here and Now Ethnic Comms	Media Reach Here and Now Ethnic Comms	Media Reach Here and Now Ethnic Comms	Media Reach Here and Now Ethnic Comms	Media Reach Here and Now Ethnic Comms	Media Reach Here and Now Ethnic Comms
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Turkish

Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls
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Eastern Europeans

Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Meida Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls
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Chinese	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls	Media Reach Here and Now Ethnic Comms Change Institute Media Moguls
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Black African and Caribbean	16-24	25-35	36-44	45-54	55-64	65+
South Asians						

Lot 2 – Faith Groups - All

Supplier
Media Reach
Here & Now
Ethnic Comms
Change Institute
Media Moguls

Lot 3 – Gypsies & Travellers

Supplier
Ethnic Comms
Linstock Comms

Lot 4 – Refugees & Asylum Seekers

Supplier
Media Reach
Here & Now
Ethnic Comms
Change Institute
Media Moguls

Lot 5 – Recent Arrivals

Supplier
Media Reach
Here & Now
Ethnic Comms
Change Institute
Media Moguls



CENTRAL OFFICE OF INFORMATION

**SECTION 2 – STANDARD CONDITIONS OF
CONTRACT FOR THE SUPPLY OF SERVICES**

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DEFINITIONS

2.1 In this Agreement:

“Authority”	means the Central Office of Information, also referred to as “COI”. Where the context permits, reference to COI in these Terms and Conditions shall include reference to an employee of the Authority.
"Client Department"	means the COI client (if any) on whose behalf COI is placing the Contract.
“COI”	means the Central Office of Information, also referred to as the “Authority”. Where the context permits, reference to COI in these Terms and Conditions shall include reference to an employee of COI.
“Contract”	Means these Terms and Conditions together with the relevant Order and any other document, plan or specification referred to in the Order
“Contractor”	means the person, firm or company whose name appears in this agreement.
"Designated Officer"	means the individual appointed by COI as the responsible official for the purposes of the Contract or his/her nominated deputy.
“Environmental Information Regulations”	means the Environmental Information Regulations 2004
“FOIA”	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000.
“in writing”	means the sending and receipt of a written communication in permanent form including but not limited to items delivered by post, by courier, by hand, by email or by facsimile transmission.
“Intellectual Property Rights”	means all and every right including but not limited to copyright, intellectual property rights, moral rights, patents, trade marks, service marks, design rights, typographical rights and other similar rights or obligations whether registerable or not in any country including but not limited to the United Kingdom.
"Issued Property"	means all government property issued in connection with the Contract including documents and information provided in paper or electronic form.
“Key Personnel”	means any person named on the Order as key personnel or any person who COI notifies the contractor is to be regarded as key personnel during the course of the Services.

Masculine	where the context allows, the masculine includes the feminine and the neuter.
"Materials"	means all items and data produced by the Contractor in the execution of the contract in paper, electronic or any other form.
"Month"	means calendar month
"Mutually Agreed"	means mutually agreed between COI and the Contractor in writing.
"Order"	means a purchase order or contract letter for the purchase of services served by the Authority on the Supplier which includes a description of the services, the price, timescale and any additional terms.
"Parties"	means COI and the Contractor
"Personal Data"	refers to personal data that forms part of the Materials or Issued Property or is collected and compiled by the Contractor during the delivery of the Services.
"Premises"	means land or buildings where the Services are to be performed.
"Price"	means the price for the services as detailed in the Order.
"Requests for Information"	shall have the meaning set out in the FOIA or any apparent request for information under the FOIA and the Environment Information Regulations.
"Services"	means the services described in the Order.
Singular	where the context allows, the singular includes the plural and vice versa
"Site"	means the area within the Premises in which the Services are performed.
"Special Term"	means any conditions additional to these Conditions which are agreed between COI and the Contractor and which are specified in the Contract award letter.
"Staff"	means all persons employed by the Contractor under contracts of service, contracts for services, contracts for the supply of employees' services, or otherwise.
"Sub-Contractor"	means any person, firm or company under contract to the Contractor to perform work and/or provide professional services and/or supply goods.
"Supplier"	See "Contractor"
"Terms and Conditions"	means these terms and conditions for the supply of services.
	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.

GENERAL

- 2.2 (a) These Terms and Conditions together with the relevant Order and any other document, plan or specification referred to in the Order constitute the contract between the Parties for the Services ("the Contract").
- (b) The Contractor expressly agrees that the terms and conditions of this Contract for the Supply of Services shall take precedence and shall prevail over all other terms and conditions including but not limited to those of the Contractor. For the avoidance of doubt no other terms and conditions including but not limited to those of the Contractor shall be incorporated into this Contract
- (c) In the event of a conflict between a clause in these Terms and Conditions and a term in the Order, the term of the Order shall prevail.
- (d) Nothing in this Contract shall have the effect of making the Contractor an agent, servant or employee of COI.

THE SERVICES/PERIOD OF THE CONTRACT

- 2.3 (a) The Services to be provided by the Contractor and the period of the Contract are as Mutually Agreed at the time a Contract is awarded by issue of an Order.
- (b) Where the context so admits, the Services shall include any Materials or articles to be supplied by the Contractor.
- (c) The Contractor shall perform the Services with all due care, skill and diligence, and in accordance with good industry practice and using the best available techniques and standards. Timely provision of the Services is of the essence of the Contract.
- (d) The Contractor shall perform the Services to the reasonable satisfaction of COI's Designated Officer.
- (e) The Contractor will monitor his performance, the performance of his staff and the performance of his Sub-Contractors and will notify the Designated Officer immediately if there is any risk that the agreed content and/or quality and/or timeliness of the Services may not be met.
- (e) The Contractor shall be deemed to have satisfied himself as regards the nature and extent of the Services, the supply of and conditions affecting labour and the equipment necessary for the performance of the Service, subject to all such matters being discoverable by the Contractor.

TIME OF PERFORMANCE

- 2.4 (a) The Contractor shall carry out the Services for the period and/or accordance with the timescales set out in the Order. In the event that the order does not specify any timescales, the Contractor shall comply with any reasonable timescales notified by COI.
- (b) COI may by written notice require the Contractor to execute the Services in such order as COI may reasonable decide. In the absence of such notice, the Contractor shall submit such detailed programmes of work and progress reports as COI may from time to time require.
- (c) The Contractor shall notify COI immediately if it becomes aware of any event that it believes is likely to delay or impede the performance of the Services.
- (d) In the event that the Contractor fails to meet a date or dates set out in the Order it shall, on the request of COI, and without prejudice to COI's other rights and remedies, arrange to provide all such additional resources as are necessary to fulfil its obligations at no extra cost to COI.

LOSSES AND MISTAKES

- 2.5 The Contractor will be responsible for paying for losses or rectifying mistakes resulting from:
- (a) unauthorised departures from the Project Brief; or

- (b) physical loss or damage to material before transfer to either COI or the Client Department.

PRICE

- 2.6.1 The Price Mutually Agreed at the award of the Contract or by a variation Mutually Agreed under Condition 2.11, shall be the maximum total price for the Services including the cost of all labour, Materials, equipment, holiday relief or substitute as and when necessary, overheads and all other costs incurred by the Contractor in connection with the proper execution of the Contract.

COI DIRECTION & CONTRACTUAL RESPONSIBILITY

- 2.7 (a) The Contractor will deliver the Contract under the direction of the Designated Officer nominated by COI. The Contractor will comply with all the Designated Officer's reasonable requests.
- (b) Contractors have a contractual responsibility solely to COI. In particular, COI shall have no liability for any additional work carried out at the request of a third party (including the Client Department where one exists) unless the change to the requirement has been Mutually Agreed in advance of the work starting.

CONTRACTOR'S PERSONNEL

- 2.8 (a) The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the Services.
- (b) All Staff deployed on work relating to the Contract must have appropriate qualifications and competence and in all respects be acceptable to COI. Where so required, full particulars of Staff to be so employed shall be provided in advance to the Designated Officer for confirmation of acceptability.
- (c) All Staff deployed on work relating to the Contract, including any Sub-Contractor and his Staff, must have a legal right to be employed on such work in the UK including, where a person's nationality requires it, the holding of a valid and current work permit. COI reserves the right to treat any breach of this Clause as a fundamental breach of the Contract and to invoke Condition 2.34.
- (d) The Contractor shall provide, at all times, the number of Staff required to fulfil his obligations under the Contract.
- (e) "Key Staff" means those Staff specifically named by the Contractor as providing the Services. The Contractor shall take all reasonable steps to avoid changes of Key Staff except whenever changes are unavoidable or of a temporary nature caused by sickness, etc. Whenever possible, the Contractor will give at least one month's notice of proposals to change Key Staff (for a permanent or temporary period) and replacements will not be appointed without the approval of COI. That approval will not be unreasonably withheld.
- (f) If COI gives the Contractor notice that any member of his Staff is not to be admitted to or is to be removed from the premises of COI, the Client Department or any other Crown body, the Contractor shall take immediate steps to comply with such notice. If required by COI the Contractor shall replace any person removed under this Condition with another suitably qualified person. The decision of COI as to whether any person is to be admitted to the said premises shall be final and conclusive. COI reserves the right not to give reasons for refusing admission.

SECURITY AND USE OF PREMISES

- 2.9 (a) The Contractor shall comply and shall ensure that its staff, sub-contractors or agents comply with any rules or regulations applied by COI, the Client Department or any other Crown Body in relation to security at its premises.
- (b) The Contractor shall keep the Premises reasonably clean and tidy while the Services are being performed and shall leave them clean and tidy upon completion.
- (c) The Contractor shall make good or pay the costs of making good any damage to the Premises (and any fixtures and fittings of the Premises) done by its employees, agents or sub-contractors other than fair wear and tear.

- (d) The Contractor shall occupy the Premises as a licensee.
- (e) The Contractor shall co-operate with any other person, firm or company which is providing services to COI or the Client Department at the same time as the Contractor.

EQUIPMENT

- 2.10 (a) Unless otherwise agreed, the Contractor shall provide any and all Equipment necessary for the provision of the Services.
- (b) The Contractor shall maintain all items of Equipment in good and serviceable condition.
 - (c) All Equipment shall be at the risk of the Contractor and the COI shall have no liability for any loss or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the COI.

VARIATION OF REQUIREMENT AND/OR CONTRACT

- 2.11 (a) COI shall have the right to vary the Services at any time, subject to the variation being related in nature to the Services being provided. No such variation shall vitiate the Contract.
- (b) All variations will be notified in writing in accordance with Clause 2.23 except where a need for urgency precludes so doing in which event COI shall have the right to vary the Contract by oral instruction which shall be confirmed in writing within three working days.
 - (c) Where the variation warrants it, a fair and reasonable adjustment to the Contract Price will be Mutually Agreed but any delay in reaching agreement will not be cause for delaying implementation of the variation. In this event a provisional adjustment to the Contract Price shall be made by COI pending Mutual Agreement.
 - (d) Where the contract is for a fixed period, COI shall have the right to extend that period on giving fair and reasonable notice to the Contractor. Such an extension will be treated as a variation to the Services and the rights and obligations conferred in Clauses 2.11(a), 2.11(b) and 2.11(c) will apply.
 - (e) The Contractor may propose a variation where he considers that a change may be beneficial or necessary. In this case:
 - (i) the proposed variation shall be supported by a detailed quotation and justification;
 - (ii) COI may approve or reject the proposed variation at its own discretion; and
 - (iii) no variation will become effective until it is Mutually Agreed and no purported variation by any other means shall bind COI.

PROGRESS REPORTS

- 2.12 (a) Where progress reports are required under the Contract, the Contractor shall render those reports at such time and in such form as may be specified or as otherwise Mutually Agreed.
- (b) The submission and receipt of progress reports shall not prejudice the rights of either Party under the Contract.
 - (c) The Contractor undertakes to maintain and make available adequate on request records to verify that work has been carried out in accordance with this Contract.

PAYMENT

- 2.13 (a) In consideration of the carrying out the Services by the Contractor, COI shall pay the Contractor the Price.
- (b) The Contractor shall submit invoices to COI at the times and/or intervals Mutually Agreed.
 - (c) Each invoice will contain the appropriate COI reference(s) and a break down of the charges as required by COI. Invoices will be supported by whatever evidence COI reasonably decides is necessary.
 - (d) Unless otherwise Mutually Agreed, payment of valid invoices submitted in arrears for work completed to the satisfaction of COI will be made within 30 days of receipt.
 - (e) In addition to the Contract Price, COI shall pay the Contractor a sum equivalent to any Value Added Tax (VAT) chargeable in respect of the Services. Where VAT is to be charged by the Contractor it shall be shown separately on all invoices as a strictly net extra charge.

- (f) COI may reduce payment in respect of any Services that the Contractor has either failed to provide or has provided inadequately, without prejudice to any other rights or remedies of COI

RECOVERY OF SUMS DUE

2.14 If any sum is recoverable from or payable by the Contractor under the Contract, that sum may be deducted from any sum then due or which at a later date becomes due to the Contractor under the Contract or under any other agreement with COI.

AUDIT

2.15 The Contractor shall keep and maintain until two years after the Contract has been completed, or such other period as may be Mutually Agreed, records to the satisfaction of COI of all expenditures that are reimbursable by COI and all payments made by COI. These records shall include records of the hours worked and costs incurred by the Contractor or any employees of the Contractor in connection with the Services. The Contractor shall on request afford COI, or its authorised agents, such access to those records as may be required by COI in connection with the Contract.

INTELLECTUAL PROPERTY RIGHTS

- 2.16 (a) "Original Materials" are Materials generated by the Contractor and/or his Sub-Contractor(s) and delivered to COI or the Client Department in the performance of the Services. The Contractor hereby assigns to the Crown ownership of and all Intellectual Property Rights in Original Materials. The Contractor shall ensure where necessary that he secures the necessary rights to effect such vesting in the Crown. The Contractor shall not reproduce, publish or supply Original Materials to any party other than COI without the prior approval of COI in writing.
- (b) "None-Original Materials" are any materials including standard software used for the provision of the Services that have been designed and produced outside the terms of the Contract by the Contractor or by a third party who has granted a licence for their use. The Contractor shall ensure that the necessary rights are obtained for the planned use of None-Original Materials.
- (c) "COI-Materials" are any Materials which COI has supplied to the Contractor or which COI has specified for use by the Contractor. COI shall ensure that the necessary rights are held or obtained for the planned use of COI-Materials
- (d) The Contractor shall indemnify COI against the full costs and liabilities of any claims of an infringement or alleged infringement of the Intellectual Property Rights of any third party arising from the use of Original Materials and/or None-Original Materials by the Contractor or by the Crown.
- (e) COI shall indemnify the Contractor against the full costs and liabilities of any claims of an infringement or alleged infringement of the Intellectual Property Rights of any third party arising from the use by the Contractor or by the Crown of COI-Materials.
- (g) Where any claim for infringement of rights is made by a third party, the Party which is required to provide an indemnity under Clauses 2.16(d) and 2.16(e) shall have the right to conduct, or take over the conduct of, the defence to the claim and to any proceedings or action brought by the third party.

HEALTH AND SAFETY

- 2.17 (a) The Contractor shall notify COI of any health and safety hazards which may arise in connection with the performance of this Contract.
- (b) Where the Services are being carried out at land or Premises owned by COI or the Client Department, COI or the Client Department shall notify the Contractor of any health and safety hazards which may exist or arise at its Premises and which may affect the Contractor. The Contractor shall draw these hazards to the attention of any of its employees, sub-contractors or agents who may be affected by them and instruct such persons in connection with any necessary safety measures.

CONFIDENTIALITY AND OFFICIAL SECRETS

- 2.18 (a) The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security which may be applicable to the Contractor in the performance of the Services.

In particular the Contractor's attention is drawn to the provisions of the Official Secrets Acts 1911 through to 1989 and any statutory modification or re-enactment thereof.

- (b) The Contractor shall take all measures necessary to comply with the provisions of the International Standard ISO 27001, "The Code of Practise for Information Security Management", in connection with the provision of the Services.
- (c) Should COI so request, the Contractor shall ensure that all Staff employed in the performance of the Contract sign a confidentiality undertaking in a form provided by COI before commencing work in connection with the provision of the Services.
- (d) Should COI so request, the Contractor shall ensure that all Staff employed in the performance of the Contract provide full details of their current security vetting status before commencing work in connection with the provision of the Services.
- (e) The Contractor shall take steps and appropriate means to ensure that all persons employed on any work in connection with the contract have notice that the statutory provisions referred to in Clause 2.18(a) apply to them regardless of whether or not a confidentiality undertaking is signed and will continue to apply after the completion or earlier termination of the contract.

INDEMNITY AND INSURANCE

- 2.19 (a) COI shall have no liability for damages caused by the Contractor or his Staff to third parties in the course of the supply of the Services.
- (b) The Contractor shall indemnify COI against all actions and claims for damages, expenses or costs instigated by third parties (including any servant or agent of the Contractor or of the Crown) in respect of any loss or damage or personal injury (including death) arising out of any action or omission by the Contractor.
 - (c) The Contractor shall effect and maintain insurance to cover the risks faced under Conditions 2.19(a) and 2.19(b) above. The Contractor shall produce to COI, on request, copies of all such insurance policies together with evidence of payment of its latest premium.
 - (e) Similarly, COI shall indemnify the Contractor against all actions and claims for damages, expenses or costs arising out of any act or omission by COI.

ASSIGNMENT OR SUB-CONTRACTING

- 2.20 (a) The Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without the previous consent in writing of COI. Such consent shall not be unreasonably withheld.
- (b) COI reserves the right to approve Sub-Contractors before they are appointed and to view sub-contracts before consenting to their being let.
 - (c) The Contractor shall be responsible for acts and omissions of his Sub-Contractors as though they were his own.
 - (d) Where the Contractor enters into a sub-contract for the provision of any part of the Services he shall ensure that the sub-contract has a term requiring the Contractor to pay the sub-contractor within 30 days of receipt of a valid invoice.

RIGHTS OF THIRD PARTIES

2.21 Contract shall not create any rights that are enforceable by anyone other than the Parties.

DISCRIMINATION

- 2.22 (a) The Contractor shall not unlawfully discriminate on the grounds of race, sex, disability or religion or on any other grounds where it is or it becomes illegal to do so.
- (b) The Contractor shall take all reasonable steps to secure that all servants, employees or agents of the Contractor and all Sub-Contractors employed in the performance of the Contract do not unlawfully discriminate.

NOTICES

- 2.23 (a) Except as otherwise provided within the Contract, no notice or communication given under or pursuant to the Contract shall have any validity unless made in writing.
- (b) Any notice or communication given under or pursuant to the Contract shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

DISCLOSURE OF INFORMATION/USE OF DOCUMENTS

- 2.24 (a) Except with the consent in writing of COI, which will not be unreasonably withheld, the Contractor shall not disclose the Contract to anyone other than Staff or other persons concerned with the carrying out of the Contract. Such disclosure shall be made in confidence and extend only as may be necessary for the purposes of the Contract.
- (b) Except with the consent in writing of COI, which will not be unreasonably withheld, the Contractor shall not make use of the Contract or any information supplied by or on behalf of COI other than for the purpose of the Contract. In particular the Contractor shall not refer to COI, the Client Department or the Contract in any advertisement, public relations material, promotional material, press release or awards entry or in any proposal or any tender without COI's prior consent in writing. Such consent by COI may be conditional in which event the Contractor will accept and abide by those conditions.
- (c) No information regarding the Services shall be given to third parties by the Contractor except with prior permission of COI in writing, which will not be unreasonably withheld. In particular the Contractor shall not communicate with representatives of the press, radio, television or other communications media about the Contract without specific permission in writing from COI, to whom any press or other enquiry must be addressed.
- (d) The Contractor shall not use information obtained during the performance of the Contract for the solicitation of business from COI, any other part of the Crown or any third party without the prior permission of COI in writing, which will not be unreasonably withheld.
- (e) Any Issued Property supplied by or on behalf of COI remains the property of COI and must be returned on completion of the Contract.
- (f) The provisions of Condition 2.24 shall not apply to any information:
- (i) which is or becomes public knowledge (otherwise than by breach of this Condition); or
 - (ii) which is in the possession of the Contractor, without restriction as to its disclosure, before entering into the Contract; or
 - (iii) which is received from a third Party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - (iv) which is required to be disclosed by law.
- (g) Nothing in Condition 2.24 shall prevent the Contractor from using any techniques, ideas or know-how gained during the performance of the Contract in the course of his normal business providing that this does not result in a disclosure of confidential information or any infringement of any Intellectual Property Rights.
- (h) The obligations imposed by Condition 2.24 shall continue to apply after the expiry or termination of the Contract.
- (i) The Contractor shall ensure that all Staff employed in the performance of the Contract are aware of Condition 2.24.

FREEDOM OF INFORMATION 2000

- 2.25 (a) COI, being a government department is subject to the Freedom of Information Act 2000 (FOIA). COI is therefore obliged to respond to valid requests for information within twenty days of a request being received.
- (b) The Contractor recognises that requests may be received for information regarding the Contract including information about how it was awarded, the services to be provided, the cost, etc. Where it is right and appropriate to do so, COI will claim exemption from providing such information insofar as the Act allows. (In particular under Section 41, where the information has been provided in confidence, and section 43, where the release of information is likely to prejudice the Contractor's commercial interests.) Where information is to be released that relates to the Contract or the Contractor, COI will make reasonable efforts to consult with the Contractor.

The Contractor recognises COI's legal obligation to respond within twenty days and the need for speedy conclusion to such consultation if his views are to be taken into account.

- (c) Should COI need to provide information under the Act that is held by the Contractor rather than COI then the Contractor undertakes to provide such information within five working days of COI requesting it or to provide valid reasons why the information is not available or will take longer to produce. (The Contractor is reminded of his obligations under Clause 2.15 to preserve information about the contract.)
- (d) Any request for information under the Act sent directly to the Contractor must be forwarded to COI for reply.
- (f) Clauses 2.25(a) to 2.25(d) will continue to apply after the completion or earlier termination of the contract.
- (g) COI will provide further details of the Freedom of Information Act 2000 (FOIA) should the Contractor so request.

ENVIRONMENTAL MATTERS

- 2.26 (a) The Contractor is aware of the Environmental Information Regulations 2004 and the legal obligations they impose. In addition, the Supplier shall ensure that during the performance of the Contract they will:
- (i) perform the Contract in accordance with COI's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment;
 - (ii) pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Services or the Environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling;
 - (iii) take all reasonable precautions to ensure that any equipment and materials used in the provision of the Services do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case COI shall be notified in advance of their use; and
 - (iv) endeavour to reduce fuel emissions wherever possible.

BUSINESS CONTINUITY

- 2.27 The Contractor will have in place and will invoke in the event of an emergency, appropriate and timely business continuity procedures to ensure the Services are provided throughout the entire duration of the Contract. The Contractor will use all reasonable endeavours to comply with any business continuity procedures that COI may invoke in the event of an emergency.

DATA PROTECTION

- 2.28 (a) The Contractor shall fully comply with the requirements of the Data Protection Act 1998 and any other applicable statutory obligations relating to any Personal Data.
- (b) The Contractor will use any Personal Data solely for the purpose of the Contract and for no other purpose.
 - (c) The Contractor shall have in place appropriate technical and organisational measures to protect against accidental or unlawful destruction, loss or alteration of Personal Data and unauthorised disclosure of and unauthorised access to it.
 - (d) On request, the Contractor shall provide such information as COI may reasonably require to confirm that the Contractor is complying with Clauses 2.28(a), 2.28(b) and 2.28(c).
 - (e) The Contractor shall ensure that each of his employees, agents and Sub-Contractors are made aware of his obligations with regard to the security and protection of Personal Data and shall require that they enter into binding obligations reflecting the provisions of this condition.
 - (f) The Contractor shall fully indemnify COI against the costs of dealing with any claims made in respect of information subject to the Data Protection Act 1998 that would not have arisen but for some act, omission or negligence on the part of the Contractor, his Sub-Contractors, agents or Staff.

- (g) Upon completion or termination of the Contract the Contractor shall provide copies of Personal Data to COI unless authorised in writing that this is not necessary. Once COI confirms receipt and so authorises, all copies of the Personal Data held by the Contractor must then be destroyed.

SECURITY OF MATERIALS

- 2.29 a) The Contractor shall maintain appropriate security procedures to protect Materials and/or Issued Property from destruction, damage, loss and unauthorised access or alteration.
- (b) On request, the Contractor shall allow COI reasonable access to the premises at which Materials and/or Issued Property are stored to check on the procedures and safeguards in place.
- (c) If Materials and/or Issued Property are lost, destroyed, damaged or altered without the consent of COI, the Contractor shall restore those Materials without charge or reimburse COI with the cost of having those Materials and/or Issued Property restored elsewhere.

CORRUPT GIFTS AND PAYMENTS OF COMMISSION

- 2.30 a) The Contractor shall not do (and warrants that in entering the Contract he has not done) any of the following (referred to in this Condition 2.30 as "Prohibited Acts"):
- (i) offer, give or agree to give to any servant of the Crown any gift or consideration of any kind as an inducement or reward for doing or not doing (or having done or not having done) any act in relation to the obtaining or performance of this or any other Contract with the Crown, or for showing or not showing favour or disfavour to any Person in relation to this or any other Contract with the Crown;
- (ii) enter into this or any other Contract with the Crown in connection with which commission has been paid or has been 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 the terms and conditions of any such agreement for the payment of it have been disclosed in writing to COI.
- (b) If the Contractor, his employees, agents or any Sub-Contractor, or anyone acting on his or their behalf, does any of the Prohibited Acts or commits any offence under the Prevention of Corruption Acts 1889 to 1916, with or without the knowledge of the Contractor, in relation to this or any other Contract with the Crown, COI shall be entitled:
- (i) to terminate the Contract and recover from the Contractor the amount of any loss resulting from the termination; and/or
- (ii) to recover from the Contractor the amount or value of any such gift, consideration or commission; and/or
- (iii) to recover from the Contractor any other loss sustained in consequence of any breach of this Condition 2.30 whether or not the Contract has been terminated.
- (c) In exercising its rights or remedies under this Condition, COI shall:
- (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of the offence and the identity of the person performing the Prohibited Act; and
- (ii) give all due consideration, where appropriate, to action other than termination of the Contract, including (but without limitation to) requiring the Contractor to terminate a sub-contract where the Prohibited Act is that of a Sub-Contractor or requiring the Contractor to procure the dismissal of an employee (whether his own or that of a Sub-Contractor) where the Prohibited Act is that of such employee.

FORCE MAJEURE

- 2.31 (a) For the purposes of this Condition 2.31 "Force Majeure" means any event or occurrence that is outside the reasonable control of the Party concerned and shall include, but not be limited to, acts of nature, war, civil disturbance, terrorist action, fire, flood, explosion and industrial action (but excluding industrial action by staff of the Contractor, COI or their sub-contractor(s)).
- (b) Neither Party shall be liable to the other Party by reason of any failure or delay in performing its obligations under the Contract that is due to Force Majeure where there is no practical means available to the Party concerned to avoid such failure or delay.
- (c) If either Party becomes aware of any circumstances of Force Majeure which will or may give rise to any such failure or delay that Party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other Party of the period for which it estimates that the failure or delay will continue.

- (d) Any failure or delay by the Contractor or COI in performing their obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or supplier is itself impeded in complying with an obligation to the Contractor by Force Majeure.

SUSPENSION OF THE SERVICES

- 2.32 (a) COI reserves the right to require the Contractor to suspend all activity on the Contract for a period specified by COI:
 - (i) during the period of any local, Parliamentary or European election campaign(s); or
 - (ii) to comply with any emergency orders issued by the Government; or
 - (iii) in the case of any event which in the reasonable opinion of COI would make it temporarily inappropriate to continue the project.
- (b) Such an event will be treated as a variation to the Services under Condition 2.8. COI will pay valid costs incurred by the Contractor up to the time of the suspension of the Service but accepts no liability in respect of any expenditure or commitment incurred during the period of the suspension except as otherwise Mutually Agreed.
- (c) If the Contractor believes that the suspension will cause him extra, unavoidable costs he will notify COI within two working days of receiving notice of the suspension and within five working days will provide an itemised and costed break-down using estimates if actuals are not possible.

BREAK

- 2.33 (a) COI shall have the right to terminate the Contract at any time by giving a minimum thirty days notice to the Contractor in writing.
- (b) COI may extend the period of notice at any time before it expires subject to the level of Services to be provided during the period of extension and the Price to be paid being Mutually Agreed.

TERMINATION

- 2.34 (a) COI may terminate the Contract by written notice having immediate effect if:
 - (i) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988, which in the reasonable opinion of COI will or may impact adversely and materially on the performance of the Contract; or
 - (ii) where the Contractor is an individual or 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
 - (iii) where the Contractor is a company, the Contractor passes a resolution or the Court makes an order that the Contractor would 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.
- (b) The Contractor shall notify COI immediately he becomes aware that any of the events covered by Clause 2.34(a) has occurred or is likely to occur. Failure to do so will be a fundamental breach.
- (c) COI may only exercise its rights under Condition 2.34(a)(i) within six months of the change of control or of the change being notified to COI whichever is the later. COI may not exercise its right under Condition 2.34(a)(i) where it has agreed in advance to the change of control.
- (d) COI may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor is in default of any obligation under the Contract and:
 - (i) the default is a fundamental breach of the Contract; or
 - (ii) the default is not capable of remedy; or
 - (iii) the Contractor has not remedied the default to the satisfaction of COI within 30 days, or such other period as may be reasonably specified by COI, after service of written notice specifying the default and requiring it to be remedied.

- (iv) (where the Contractor is an individual), if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.

CONSEQUENCES OF TERMINATION

- 2.35 (a) If COI terminates the Contract under Clause 2.34(d) and then makes other arrangements for the provision of the Services, COI shall be entitled to recover from the Contractor the cost of making those other arrangements and any additional expenditure incurred by COI throughout the remainder of the Contract Period. Where the Contract is terminated under Condition 2.34(d), no further payments shall be payable by COI until COI has established the final costs of making those other arrangements.
- (c) If COI terminates the Contract, or terminates the provision of any part of the Services, under Condition 2.33, COI shall reimburse the Contractor in respect of any loss, not including loss of profit, actually and reasonably incurred by the Contractor as a result of the termination, provided that the Contractor takes immediate and reasonable steps, consistent with the obligation to provide the services during the period of notice, to terminate all Contracts with sub-contractors on the best available terms, to cancel all capital and recurring cost commitments and to reduce equipment and labour costs as appropriate.
- (d) For the purpose of condition 2.35 (b) the Contractor shall submit to COI, within 20 working days after service of the notice, a fully itemised and costed list, with supporting evidence of all losses incurred by the Contractor as a result of the termination of the Contract, or the termination of any part of the Services, to be updated only in respect of ongoing costs each week until the Contract is terminated.

SEVERABILITY

- 2.36 (a) 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.
- (b) 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.

REMOVAL FROM THE FRAMEWORK

- 2.37 (a) COI may at any time by notice in writing terminate this Framework Agreement as from the date of service of such notice, or a later date specified in such notice, if any of the termination events specified in this Clause 2.37 (b) to (d) occur.
- (b) The Contractor or its directors or any other person who has powers of representation, decision or control of the company has been convicted of any of the offences detailed in Part 4 of the Public Contracts Regulations 2006.
- (c) The Contractor is in material Default of any obligation under this Agreement and:
- (i) The material Default is capable of remedy and the Contractor shall have failed to remedy the material Default within thirty (30) days of written notice to the Contractor specifying the material Default and requiring its remedy; or
 - (ii) The material Default is not capable of remedy.
- (d) A change of control as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the Contractor or its Parent Company where the proposed new owner has:
- (i) Been convicted of a criminal offence relating to the conduct of its business or profession; or
 - (ii) Committed an act of grave misconduct in the course of its business or profession; or
 - (iii) Failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
 - (iv) Made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation.

- (e) For the avoidance of doubt, the termination of this Framework Agreement shall not affect the validity of any extant Contract.

RE-TENDERING AND HANDOVER

- 2.38 (a) In the event that a different organisation is required to take on the Services at the expiry or termination of the Contract, the Contractor shall co-operate in arrangements for the transfer so as to reduce to a minimum any interruption in the Services.
- (b) Except as allowed for below, such arrangements shall be regarded as variations to the Services under Condition 2.11.
- (c) In the period leading up to the handover of the Services:
- (i) Within 21 days of being so requested by COI, the Contractor shall provide, and thereafter keep updated, such information and access to Site and Staff as is reasonably required by COI to prepare invitation to tender documents for the future provision of the Services.
 - (ii) This information shall be provided free of charge to COI.
 - (iii) COI shall take all reasonable precautions to ensure that the information so provided is given only to service providers who have qualified to tender for the future provision of the Services. COI shall require that such service providers undertake in writing to treat that information in confidence, to use it only for the preparation of their tenders and to restrict its distribution solely to those staff involved in preparing their tenders.
 - (iv) The Contractor will co-operate in all other ways reasonably requested by COI.
- (d) At the time of the handover of the Services:
- (i) The Contractor shall co-operate fully with COI in order to achieve an effective transfer without disruption to the provision of the Services.
 - (ii) Without charge, the Contractor shall allow COI, or any party nominated by COI, full access to all documents, reports, summaries and any other information necessary for the transfer.
 - (iii) Without charge, the Contractor shall transfer to COI, or any party nominated by COI, all computerised filing, recording, documentation, planning and drawing held on software and utilised in the provision of the Services. The transfer shall be made in a fully indexed and catalogued disk format, to operate on a proprietary software package available to COI.
- (e) The Contractor shall indemnify COI against any claim made at any time by any person arising from any deficiency or inaccuracy in the information that the Contractor provides.
- (f) Until the transfer is completed, the Contractor shall not change the Staff nominated to provide the Services except as allowed under Condition 2.8.

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYEES) REGULATIONS 2006 (“TUPE”)

- 2.39 (a) The Contractor shall notify COI in writing if he believes that the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply in respect of the transfer of the Services. COI shall ensure that prospective suppliers are notified accordingly.
- (b) Similarly, COI will notify the Contractor in writing if any prospective supplier believes the Regulations will or might apply.
- (c) If COI notifies the Contractor in writing that it intends to re-tender some or all of the Services under this agreement and the Contractor subsequently receives a letter from a prospective supplier who intends to tender for the Services asking the Contractor to agree to be bound by the ISBA/IPA TUPE Protocol (as amended by ISBA and the IPA from time to time) (the “Protocol”), the Contractor will agree with the prospective supplier to be bound by the Protocol.

WAIVER

- 2.40 (a) The failure of either Party to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- (b) No waiver shall be effective unless it is communicated to the other Party in writing.
- (c) 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 breach of the Contract.

CONTRACTOR'S STATUS

2.41 Nothing in the Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between COI and the Contractor.

DISPUTES AND MEDIATION

- 2.42 (a) Before resorting to litigation, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract.
- (b) If the parties are unable to resolve the dispute, either party may, at any time, refer the dispute to mediation by a neutral advisor or mediator ("the Mediator").
- (c) If the Parties are unable to agree on a Mediator within 7 days of the request by one party to refer the dispute to mediation, they shall apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator.
- (d) The Parties shall seek to agree directions for how the mediation is conducted and, failing agreement, they shall seek directions from the Mediator.
- (e) If the Parties reach agreement on the resolution of their dispute the agreement shall be reduced to writing and shall be binding.

HEADINGS

2.43 Headings to Conditions shall not affect their interpretation.

WARRANTIES

- 2.44 (a) Each of the parties warrants that it has the power to enter into this Contract and has obtained all necessary approvals to do so.
- (b) The Supplier warrants that it has the skills and staff necessary to carry out the Services in accordance with best professional practice and that it in fact will do so.

SPECIAL TERMS

2.45 COI reserves the right to include Special Terms in any eventual Order.

CONFLICT OF INTEREST

2.46 It shall be the Contractor's responsibility to ensure that no conflict of interest arises in connection with the Services to be carried out under this Contract. COI should be consulted if there is any uncertainty about whether any such conflict may exist or arise and its decision on the matter shall be final.

GOVERNING LAW

2.47 Unless the Order specifies otherwise, this Contract shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

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