



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 Goods required)*

REQUIREMENTS

<u>Item</u>	<u>Specification</u>	<u>Description</u>	<u>Price</u>
	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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1. DEFINITIONS

In these conditions:

In these conditions:

1.1 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.

1.2 "Client Data" means

(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (i) supplied to the Consultant by or on behalf of the Client; or
- (ii) which the Consultant is required to generate, process, store or transmit pursuant to this Agreement; or

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

1.3 "Commercially Sensitive Information" means (i) the subset of Confidential Information listed in schedule [] or (ii) the information notified to the Client in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

(a) which is provided by the Contractor to the Client in confidence for the period set out in that schedule; and/or

(b) that constitutes a trade secret;

1.4 "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;

1.5 "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 "Data Controller", "Data Processor" and "Personal Data" shall have the same meaning as set out in the Data Protection Act 1998.

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

1.8 "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.

1.9 "Good Industry Practice" means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

1.10 "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.

1.11 "Information" has the meaning given under section 84 of the Freedom of Information Act 2000;

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

1.13 "Loss" includes destruction.

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

1.15 "Month" means calendar month unless otherwise defined.

1.16 "Personal Injury" includes sickness and death.

1.17 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.

1.18 "Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA, the Environmental Information Regulations.

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

1.20 "Security Policy" means the Authority's security policy annexed to Schedule 2 (Security Plan) as updated from time to time.

1.21 "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.

1.22 "Staff Vetting Procedures" means the Client's procedures and departmental policies for the vetting of personnel, whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.

1.23 "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.

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

1.25 "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.

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

1.27 "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.

1.28 "The Goods" means all Goods which the Contractor is required under the Contract to supply or in connection with which he is required under the Contract to carry out any service.

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

1.30 The masculine includes the feminine.

1.31 The singular includes the plural and vice versa.

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

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. SPECIFICATIONS, ETC

3.1 The Goods shall be of the qualities and sorts described and equal in all respects to the samples, patterns, specifications, plans, drawings or any other documents, individually or collectively which form part of the Contract. Except insofar as may otherwise be indicated by a sample, pattern, specification, plan, drawing or other document the Goods shall be strictly in accordance with the latest relevant British Standard Specification where such exists, published before the date of the Contract, or otherwise shall be to the satisfaction of the Client.

4. ALTERATIONS OF SPECIFICATIONS, ETC

4.1 The Client reserves the right to alter from time to time the said samples, patterns, specifications, plans drawings or other documents and as from a date and to the extent specified by the Client after consultation, where appropriate with the Contractor on the effect of such proposed alterations. The Goods shall be in accordance with the samples, patterns, specifications, plans, drawings or other documents as so altered.

5. DELIVERY

5.1 The Goods shall be delivered to the address detailed on the Schedule of Requirement. Any access to premises and any labour and equipment that may be provided by the Client in connection with delivery shall be provided without acceptance by the Client of any liability whatsoever and the Contractor shall indemnify the Client and the Crown in respect of any actions, suits, claims, demands, losses, charges, costs and expenses which the Client or the Crown may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Contractor or any of his sub-contractors.

5.2 Where any access to the Client's premises is necessary in connection with delivery or installation the Contractor and his sub-contractors shall at all times comply with the reasonable requirements of the Client's security arrangements.

5.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Client (at his option) to release himself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Contract, without prejudice to other rights and remedies.

5.4 When after delivery the Goods (or part of the Goods) are rejected under Condition 6.2, the Goods shall for the purposes of the Contract be considered as not having been delivered under the Contract and the Property in the Goods shall return to the Contractor from the Client provided that this Condition shall have effect only when the Contractor has received notice of rejection.

6. INSPECTION, REJECTION AND GUARANTEE

6.1 The Contractor shall permit the Client or his authorised representatives to make any inspections or tests he may reasonably require and the Contractor shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by the Client of any rights or remedies in respect of the Goods.

6.2 The Client may, by written notice to the Contractor, reject any of the Goods which fail to meet the requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Client of the Goods concerned. If the Client shall reject any of the Goods pursuant to this Condition the Client shall be entitled without prejudice to his other rights and remedies either:

- a) to have the Goods concerned as quickly as possible either repaired by the Contractor or (as the Client shall elect) replaced by the Contractor with Goods which comply in all respects with the requirements specified herein; or
- b) to obtain a refund from the Contractor in respect of the Goods concerned.

6.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter, subject to any alternative guarantee arrangements agreed in writing between the Client and the Contractor. If the Client shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the Contractor shall, without prejudice to any other rights and remedies which the Client may have, as quickly as possible remedy such defects (whether by repair or replacement as the Client shall elect) without cost to the Client.

6.4 Any Goods rejected or returned by the Client as described in Conditions 6.2 or 6.3 shall be returned to the Contractor at the Contractor's risk and expense.

6.5 The Contractor warrants and represents that the provision and use of the Goods will not be adversely affected by any changes to the Date Format caused by the advent of the Year 2000.

7. PROPERTY AND RISK

7.1 Property and risk of the Goods shall without prejudice to any of the rights or remedies of the Client (including the Client's rights and remedies under Condition 6 -Inspection, etc, thereof) pass to the Crown at the time of delivery.

8. DAMAGE IN TRANSIT

8.1 On dispatch of any consignment of the Goods the Contractor shall send to the Client at the address for delivery of the Goods an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. The Contractor shall free of charge and as quickly as possible either repair or replace (as the Client shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Client provided that:

a) in the case of damage to such Goods in transit the Client shall within 30 days of delivery give notice to the Contractor that the Goods have been damaged,

b) in the case of non-delivery the Client shall (provided that the Client has been advised of the dispatch of the Goods) within 10 days of the notified date of delivery give notice to the Contractor that the Goods have not been delivered.

9. ACCEPTANCE MARKS

9.1 The Contractor if so required by the Contract shall at his own expense mark or permit the representative of the Client to mark all approved materials, Goods or parts thereof with the recognised Government marks. In the case of materials, Goods or parts thereof which cannot be marked, the same shall, if required by the said representative, be packed in suitable packages or cases, each of which shall be sealed and shall have the Government place on the seals.

10. PAYMENT

10.1 Unless otherwise stated in the Contract payments shall be claimed in respect of each consignment of Goods delivered under this Contract. Itemised claims 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
3rd 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. DEFAULT

14.1 Should the Goods or any portion thereof not be delivered within the time or times specified in or under the Contract, the Client may without prejudice to any other remedies by notice in writing to the Contractor determine the Contract either as respects the Goods which have not been delivered in accordance with the Contract at the time of such determination or as respects all the Goods to which the Contract relates other than those delivered 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.

14.2 Where the Client has determined the Contract under Condition 14.1 hereof and without prejudice as aforesaid the Client may replace all or any of the Goods as respects which the Contract is so determined by purchasing or manufacturing other Goods of the same or similar description in the possession or control of the Client to the purposes for which the Goods replaced are required and there shall be recoverable from the Contractor the amount by which the aggregate of the cost of obtaining Goods in this way, exceeds the amount which would have been payable to the Contractor in respect of all the Goods so replaced if they had been delivered in accordance with the Contract.

15. TERMINATION ON CHANGE OF CONTROL AND INSOLVENCY

15.1 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.

15.2 The Client may only exercise its right under Condition 15.1(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.

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 Articles, or any part or component thereof in the course of manufacture at the expiration of the notice and to deliver the same at such time or times as may be mutually agreed on, or, in default of agreement, at the time or times provided by the Contract. All Articles delivered by the Contractor in accordance with such directions and accepted shall be paid for at a fair and reasonable price.

17. INSURANCE

17.1 The Contractor shall effect and maintain insurance necessary to cover jointly the Client, the Contractor and all his Sub-contractors or consultants for the risks faced under these Conditions with regard to fire damage, injury to persons and loss of or damage to property.

17.2 The Contractor shall ensure that any person or organisation commissioned as a consultant by him takes out and maintains appropriate professional indemnity insurance in respect of their businesses generally throughout the period from the date of commencement of their services under the Contract or Commission until the expiration of six years from the date of completion of each project, 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.

17.3 The Contractor shall, whenever required by the Client, produce to the Client certificates signed on behalf of the Contractor's and/or his consultants' insurers stating that insurance complying with the requirements set out in Condition 17.1 and Condition 17.2 is in force and the period for which it has been taken out.

17.4 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.

17.5 The terms of any insurance or the amount of cover shall not relieve the Contractor or his Sub-contractors or consultants of any liabilities under the Contract, their Sub-contracts or their terms of commission.

18. TRANSFER, SUB-LETTING AND SUBCONTRACTING

18.1 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.

19. PATENTS AND INFORMATION

19.1 It shall be a condition of this Contract that, except to the extent that the Goods are made up in accordance with designs furnished by the Client, none of the Goods will infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party and the Contractor shall indemnify the Client and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client or the Crown may suffer or incur as a result of, or in connection with, any breach of this Condition.

19.2 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs or other material furnished to or made available to the Contractor by the Client pursuant to this Contract shall remain vested solely in the Crown and the Contractor shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Client use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to this Contract in any advertisement without the Client's prior written agreement.

19.3 The provisions of this Condition 19 shall apply during the continuance of the contract and after its termination howsoever arising.

20. USE OF DOCUMENTS, INFORMATION ETC

20.1 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.

20.2 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.

20.3 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.

20.4 In the event of any inconsistency or conflict between this Condition and Condition 22 - Official Secrets Act) the provisions of Condition 22 shall prevail.

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

20.6 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.

20.7 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)].

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

20.9 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.

20.10 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.

20.11 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:

20.11.1 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

20.11.2 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).

20.12 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.

21 CORRUPT GIFTS AND PAYMENTS OF COMMISSION

21.1 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.

21.2 Any:

a) breach by the Contractor of the condition contained in Condition 21.1 or

b) commission of an offence by the Contractor under the Prevention of Corruption Acts 1889 to 1916 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.

21.3 In Condition 21.2, references to the Contractor include anyone employed by him or acting on his behalf (whether with or without his knowledge).

21.4 Where the Contract has been determined under Condition 21.2 the powers given by Condition 13 - Default shall apply as if there has been a failure in performance.

21.5 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 21.2 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.

22. OFFICIAL SECRETS ACTS

22.1 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.

22.2 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.

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

23. DISCRIMINATION

23.1 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.

23.2 The Contractor shall take all reasonable steps to secure the observance of Condition 23.1 by all servants, employees or agents of the Contractor and all suppliers and sub-contractors employed in the execution of the Contract.

24. HEALTH AND SAFETY

24.1 The Contractor represents and warrants to the Client that the Contractor has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using them, and that he has made available to the Client adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Contractor shall indemnify the Client and the Crown

against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this Condition.

25. ARBITRATION

25.1 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 2 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.

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. LABELLING AND PACKAGING

27.1 The Goods shall be packed and marked in a proper manner and in accordance with the Client's instructions and any statutory requirements and any requirements of the carriers. The Contractor shall indemnify the Client and the Crown against all actions, suits, claims, demands, losses, charges, costs and expenses which the Client or the Crown may suffer or incur as a result of, or in connection with, any breach of this Condition.

27.2 All packaging materials will be considered non-returnable and will be destroyed unless the Contractor's advice note states that such materials will be charged for unless returned. The Client accepts no liability in respect of the non-arrival at the Contractor's premises of empty packages returned by the Client unless the Contractor shall within 10 days of receiving notice from the Client that the packages have been dispatched notify the Client of such non-arrival.

27.3 Maximum use shall be made of recycled materials in the manufacture of crates, pallets, boxes cartons, cushioning and other forms of packaging, where these fulfil other packaging specifications. Packaging specifications shall be reviewed periodically to ensure that no unnecessary limitations on the use of recycled materials exist.

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. DISCLOSURE OF INFORMATION

29.1 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.

29.2 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.

29.3 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.

30. PROTECTION OF PERSONAL DATA

30.1 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.

30.2 The Contractor shall:

30.2.1 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);

30.2.2 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;

30.2.3 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;

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

30.2.5 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;

30.2.6 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 30;

30.2.7 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;

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

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

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

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

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

30.2.9.2 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;

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

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

30.3 permit the Client or the Client Representative (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Condition 38 (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;

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

30.4.1 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:

30.4.1.2 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

30.4.1.3 any reasonable instructions notified to it by the Client.

30.5 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.

31. FREEDOM OF INFORMATION

31.1 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.

31.2 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.

31.3 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.

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

31.5 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;

31.6 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.

31.7 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.

32 CONFIDENTIALITY

32.1 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.

32.2 Condition 32.1 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 31 (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.

32.3 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.

32.4 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.

32.5 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.

32.6 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.

32.6 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 32 is made aware of the Client's obligations of confidentiality.

32.7 Nothing in this Condition 32 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.

32.8 In the event of any inconsistency or conflict between this Condition and Condition 22 - Official Secrets Act the provisions of Condition 22 shall prevail.

33. CONTRACTOR'S PROPERTY

33.1 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.

34 PERSONAL INJURY AND LOSS OF PROPERTY

34.1 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.

34.2 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.

34.3 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.

34.4 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.

34.5 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 34.2 of this Condition be responsible for dealing with or settling that claim or proceeding.

34.6 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 34.5 shall not apply to any such claim.

34.7 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 34.5 shall cease to apply.

34.8 Where any claim or proceeding in respect of any liability referred to in Condition 34.2 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.

34.9 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

35. SECURITY REQUIREMENTS

35.1 The Contractor shall comply, and shall procure the compliance of the Contractor Personnel, with the Security Policy and the Security Plan as detailed in Schedule 1 and the

Contractor shall ensure that the Security Plan produced by the Contractor fully complies with the Security Policy.

35.2 The Client shall notify the Contractor of any changes or proposed changes to the Security Policy.

35.3 If the Contractor believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Contractor must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

35.4 Until and/or unless a change to the Charges is agreed by the Client pursuant to clause 35.3 the Contractor shall continue to perform the Services in accordance with its existing obligations.

36. MALICIOUS SOFTWARE

36.1 The Contractor shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions available [from an industry accepted anti-virus software vendor] to check for and delete Malicious Software from the ICT Environment.

36.2 Notwithstanding clause 36, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Client Data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

36.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 36.22 shall be borne by the parties as follows:

- a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software or the Client Data (whilst the Client Data was under the control of the Contractor); and
- b) by the Client if the Malicious Software originates from the Client Software or the Client Data (whilst the Client Data was under the control of the Client).

37. WARRANTIES

37.1 The Contractor warrants, represents and undertakes for the duration of the Contract that all personnel used to provide the Services will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards.

38. AUDIT

38.1 The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

39. TRANSPARENCY

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

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

39.2

- a) The Client may consult with the Contractor to inform its decision regarding any exemptions but the Client shall have the final decision in its absolute discretion.
- b) The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract.

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 name)

Date: _____

Date: _____

SCHEDULE 1 SERVICES DESCRIPTION

SCHEDULE 2 SECURITY PLAN

Cabinet Office Protective Security Policy

The Department's aim is to operate affordable and proportionate security to enable us to meet our business objectives. We will do this by implementing risk-based security controls and by complying with appropriate government policy and legislation.

Our approach is to:

- use a risk management approach to security, ensure that it is widely understood what the risks are and that they reflect the value of the asset to the business;
- recruit reliable people and ensure their commitment and reliability through security vetting, good HR practices and line management support;
- do everything possible to protect staff and assets from terrorism, extremism and other criminal activity;
- do everything possible to protect our information systems and their operation from accidental or malicious attack and unauthorised sight, modification, destruction and disclosure of data;
- only pass information on to those with a 'need to know' and handle this information with all necessary care;
- inform, advise and educate staff on security issues to increase and maintain awareness and understanding;
- work alongside management units to investigate any security breaches with a view to reducing recurrences and learning from security incidents;
- enforce the security policy by taking positive action in response to any violations;
- comply with the recommendations of the Government's Manual of Protective Security and all appropriate government policy and legislation.

This approach aims to optimise the Department's business performance by balancing the need to protect its assets with the need to minimise disruption to its day-to-day operations. In addition, our security procedures will:

- respond to changing threats and vulnerabilities;
- meet the universal baseline controls and objectives for all classified assets;
- be flexible and pragmatic where possible;
- be cost-effective and simple to deliver;
- promote, and educate staff on, the benefits of good security practice as a business enabler to everyone who uses our buildings;
- reflect the culture and principles of the Department and the Civil Service; and
- be written in plain English and be easily accessible to all.

The Cabinet Office Protective Security Manual by sets out the security procedures in detail, to describe how the Department will provide security for its people and assets.

SCHEDULE 3 EXIT MANAGEMENT

SCHEDULE 4 BUSINESS CONTINUITY AND DISASTER RECOVERY PROVISION