**ESPO Form of Contract and Call-Off Terms**

**3S\_18 Strategic HR Services**

**Lot 7a – Recruitment**

**For use with**

**The Provision of Surge Capacity Recruitment Services for CSHR**

**Reference Number: CCHR19A61**

**FORM OF CONTRACT AND CALL-OFF TERMS**

**FORM OF CONTRACT**

This contract is made on the 1st day of July 2020

BETWEEN

1. Civil Service HR acting on behalf of the Minister for the Cabinet Office (the **“Customer”**)

REDACTED; and

1. Capita Business Services Ltd (the **“Service Provider”**)

REDACTED

WHEREAS the Customer wishes to have provided the following goods and/or services namely Strategic HR Services pursuant to the ESPO Framework Agreement (reference 3S\_18)

NOW IT IS AGREED THAT

1. The Service Provider will provide the goods and/or services in accordance with the terms of the call-off contract (reference number CCHR19A61) and Contract Documents.
2. The Customerwill pay the Service Providerthe amount due in accordance with the terms of the call off agreement and the Contract Documents.
3. The following documents comprise the Contract Documents and shall be deemed to form and be read and construed as part of this agreement:
4. This Form of Contract
5. The Master Contract Schedule
6. The documents as listed below
	1. Schedules to Call-Off Terms
		1. Schedules 1 & 2 – **NOT USED**
		2. Schedule 3 – Price Schedule
		3. Schedule 4 – Statement of Requirements
		4. Schedule 5 – Supplier Response

**IN WITNESS OF** the hands of the Parties or their duly authorised representatives:

**Signed by Capita Business Services Ltd:**

**Service Provider Signature: REDACTED**

**Print Name: REDACTED**

**Job Title: REDACTED**

**Date: REDACTED**

**Signed for and on behalf of Civil Service HR: REDACTED**

**Authorised Officer Signature: REDACTED**

**Print Name: REDACTED**

**Job Title: REDACTED**

**Date: REDACTED**

**This document relates to and forms part of the Call-Off Terms**

**(Document Reference CCHR19A61)**

**MASTER CONTRACT SCHEDULE**

**(ESPO Framework Reference 3S\_18 Strategic HR Services)**

|  |
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| * + - 1. **TERM**
 |
| **Commencement Date**Wednesday 1st July 2020**Expiry Date** Monday June 30th 2022**Extension Period**Two (2) further years in one (1) year increments (2+1+1)First Extension Period Expiry Date: Tuesday 30th June 2023Second Extension Expiry Date: Thursday 30th June 2024These extension options will only be taken at the discretion of Civil Service HR. |
| * + - 1. **GOODS AND/OR SERVICES REQUIREMENTS**
 |
| **Services and Deliverables required**The Customer has a requirement for a Service Provider to provide external recruitment service support in the form of individual campaign assistance, elements of the recruitment process activities and/or the facilitation of a full recruitment campaign in its entirety including pre-employment checks to support recruitment exercises.Please refer to Schedule 4 – Statement of Requirements for further details of the requirement. |

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| --- |
| **Performance/Delivery Location/Premises**The Service Provider shall carry out the services at their own premises, or alternatively the Customer and the Service Provider shall come to a mutual agreement over alternative premises. |
| **Standards****Quality and Technical Standards**Please refer to Schedule 4 – Statement of Requirements for information requiring standards for this requirement. |
| **Disaster Recovery and Business Continuity**Please refer to Clause 6 - Disaster and Business Continuity of the Call Off Terms  |
| * + - 1. **SERVICE PROVIDER SOLUTION**
 |
| **Service Provider Solution**Please refer to Schedule 5 – Supplier’s Response |
| **Key Personnel of the Service Provider to be involved in the provision of the Goods, Services and Deliverables**Please refer to Schedule 5 – Supplier’s Response |
| * + - 1. **PERFORMANCE OF THE GOODS AND/OR SERVICES AND DELIVERABLES**
 |
| **Implementation Plan and Milestones or e.g. delivery schedule (including dates for completion and/or delivery)**

|  |  |  |
| --- | --- | --- |
| **Milestone / Deliverable** | **Description** | **Timeframe or Delivery Date** |
| **1** | **Hold a meeting with the Customer to discuss the implementation plan and activities required to transition from the current Supplier to the new.** | **Within 1 week of contract award.** |
| **2** | **Work with the Customer to produce draft versions of the MI reports as specified in section 8.1.** | **Within 2 weeks of contract award.** |
| **5** | **Produce a continuous improvement plan.** | **Within 6 months of contract commencement date and annually thereafter.** |
| **6** | **Produce an Exit Plan.** | **Within 3 months of the contract commencement date, reviewed as appropriate.** |
| **7** | **Work with the Customer to ensure all appropriate and required Data Security & Assurance documentation is completed.** | **Within 2 weeks of contract award.** |

 |
| **Critical Service Failure*** 1. In relation to the external recruitment service support, a Critical Service Failure shall mean a loss of two (2) or more during core hours (08:00 – 18:00 Mon – Fri excluding bank holidays) for more than 24 hours accumulated in three (3) Month period, or 48 hours in any rolling twelve (12) month period.
 |
| **Monitoring**Please refer to Section 15 of Schedule 4 – Statement of Requirements for information on monitoring for this requirement.**Management Information**Management Information to be provided in accordance with Section 8 of Schedule 4 –Statement of Requirements. Please refer to this schedule for information on monitoring for this requirement.  |
| * + - 1. **CUSTOMER RESPONSIBILITIES**
 |
| **Customer's Responsibilities (where appropriate)**Not Applicable to this Contract |
| **Customer's equipment (where appropriate)**Not Applicable to this Contract |
| * + - 1. **CHARGES AND PAYMENT**
 |
| **6.1 Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS))**The total estimated contract value including all extensions (ex VAT) shall be up to £15,941,080.00 maximum. **REDACTED**Volumes are not guaranteed, and therefore the Customer reserves the right not to spend all of the budget and shall not guarantee a minimum spend.Please refer to Schedule 4 – Statement of Requirements and Schedule 5 – Suppliers Response for payment profiles and method of payment.**6.2 Details of any Customer Rebate (if any) agreed in accordance with clause 11.5.**Not Applicable to this Contract. |
| * + - 1. **CONFIDENTIAL INFORMATION**
 |
| The following information shall be deemed Commercially Sensitive Information:**REDACTED** |
| * + - 1. **PROCESSING, PERSONAL DATA AND DATA SUBJECTS**
 |
| PART A - PROCESSING, PERSONAL DATA AND DATA SUBJECTS1. Introduction
	1. The contact details of the Controller’s Data Protection Officer are: **REDACTED**
	2. The contact details of the Processor’s Data Protection Officer are: **REDACTED**
	3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
	4. Any such further instructions shall be incorporated into this Section 8 of the Master Contract Schedule.

Any such further instructions shall be incorporated into the table below:

|  |  |
| --- | --- |
| Description | Details |
| Identity of the Controller and Processor | The Cabinet Office (Government Recruitment Service) are the Data Controller, and the provider are the Data Processor. |
| Subject matter of the processing | Delivery of recruitment and pre-employment checking services for Civil Service HR (Government Recruitment Service). |
| Duration of the processing | Data for each candidate will be retained for a period of 2 years from the date it is archived, then deleted. A vacancy becomes archived when there are no active applications and either:* the vacancy is manually archived by a recruiter; or
* the vacancy is automatically archived 1 year after the advertised closing date.
 |
| Nature and purposes of the processing | The appointed Supplier shall be required to:* Undertake recruitment and pre-employment checking activities in line with:
* [Civil Service Commissioners Recruitment Principles](https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/02a_RECRUITMENT-PRINCIPLES-April-2018-FINAL-.pdf)
* [Baseline Personnel Security Standards](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf);
* Be able to plan and deliver entire recruitment campaigns (or individual elements thereof) for all Civil Service grades, roles and specialisms.
* Liaise with departments and Candidates to obtain missing information.
* Manage On-boarding activities.
* Provide Management Information.
* Operate within agreed service levels and standardised CSHR processes.
* Maintain a high level of quality and adhere to Customer instruction.
* Create and maintain a “Candidate Pack” for each Candidate they deal with. This will include a copy of each document/piece of evidence which is supplied or created as part of a campaign.

The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.The purpose will include; employment processing, statutory obligation, recruitment assessment, etc. |
| Type of Personal Data | NameEmail addressContact numberResidential addressEmployment HistoryDetails of any reasonable adjustmentsCandidate applications |
| Categories of Data Subject | Job Applicants, Existing Staff |
| Plan for return and destruction of the data once the processing is complete unless requirement under union or member state law to preserve that type of data. | Data for each candidate will be retained for a period of 2 years from the date it is archived, then deleted. A vacancy becomes archived when there are no active applications and either:* the vacancy is manually archived by a recruiter; or
* the vacancy is automatically archived 1 year after the advertised closing date.

Once data has been erased, the supplier will provide confirmation that the deletion has been completed and that the data is unrecoverable from this point forward. |

PART B – JOINT CONTROLLER AGREEMENT – NOT USED**Security Annexes**The following security Annexes are applicable to this Contract:**REDACTED** |
| * + - 1. **AGREED AMENDMENTS TO THE CALL-OFF TERMS**
 |
| The following amendments shall be deemed to be made to the Call-Off Terms:1. For the purposes of this Call-Off Agreement SCHEDULE 1 - SERVICE LEVELS AND SERVICE CREDITS of the Call-Off Terms shall not apply. The Suppliers performance of this Call-Off Agreement shall be measured as detailed in Schedule 4 – Statement of Requirements.2. For the purposes of this Call-Off Agreement SCHEDULE 2 - IMPLEMENTATION PLAN AND MILESTONES of the Call-Off Terms shall not apply.3. The following additional clauses shall apply to this Call Off Agreement:**(a) Termination without cause**The Customer shall have the right to terminate this Call Off Contract at any time by issuing a Termination Notice to the Supplier giving at least thirty (30) Working Days written notice (unless stated differently in the Framework Agreement).**(b) Non Exclusivity clause**Nothing herein is intended nor shall be construed as creating any exclusive arrangement with the Service Provider. This Call Off Contract shall not restrict Contracting Authorities from acquiring similar, equal or like goods and/or services from other entities or sources.**(c) No Guarantee of volumes or spend**No guarantee is given by the Customer in respect of either volumes, the levels or aggregate value of the Services, which the Customer shall require the Service Provider to provide during the Call Off Contract. Any levels or aggregate values of Services referred to in the contract or Schedules are indicative only and shall not be binding on the Customer.    |

**THE CUSTOMER**

**- and –**

**THE SERVICE PROVIDER**

**CALL-OFF TERMS**

**relating to**

**STRATEGIC HR SERVICES**

**CONTRACT REF**

**3S\_18**

**CCHR19A61 – THE PROVISION OF SURGE CAPACITY RECRUITMENT SERVICES FOR CSHR**

**CALL-OFF TERMS**

**BETWEEN**

(1) The customer identified in the Form of Contract (the “Customer”); and

(2) The company identified in the Form of Contract (the “Service Provider”).

**WHEREAS**

1. “ESPO” selected framework providers, including the Service Provider, to provide Goods and/or Services;
2. the Service Provider undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 3S\_18 dated 03 July 2018 (the “Framework Agreement”);
3. ESPO and the Service Provider have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Service Provider for the Service Provider to supply Goods and/or Services;
4. The Customer enters into this Contract on the terms hereinafter appearing.

# GENERAL PROVISIONS

## **Definitions**

In the Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

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| **"Affiliates"** | means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| **“Affected Party”** | means the party seeking to claim relief in respect of a Force Majeure; |
| **"Approval"** | means the prior written consent of the Customer and “Approve” and “Approved” shall be construed accordingly; |
| **“Assignment”** | means the fixed period of time that a Temporary Worker is placed with the Customer; |
| **"Auditor"** | means the National Audit Office or an auditor appointed by the Audit Commission as the context requires; |
| **"BCDR Plan"** | means any plan relating to business continuity and disaster recovery as referred to in the Master Contract Schedule and/or any other Contract Document; |
| **"Call-off Terms"** | means these terms and conditions in respect of the provision of the Goods and/or Services, together with the schedules hereto; |
| **"Change in Law"** | means any change in Law or policy which impacts on the supply of the Goods and/or Services and performance of the Call-off Terms which comes into force after the Commencement Date; |
| **"Commencement Date”** | means the date set out in the Master Contract Schedule and/or the Form of Contract Document; |
| **"Commercially Sensitive Information"** | means the confidential information listed in set out at Schedule 9 of the Framework Agreement (if any) the Master Contract Schedule and/or a Contract Document comprising of commercially sensitive information relating to the Service Provider, its IPR or its business or which the Service Provider has indicated to the Customer that, if disclosed by the Customer, would cause the Service Provider significant commercial disadvantage or material financial loss; |
| **"Confidential Information"** | means the Customer's Confidential Information and/or the Service Provider's Confidential Information; |
| **“Continuous Improvement Plan”** | means a plan for improving the provision of the Services and/or reducing the charges produced by the Service Provider pursuant to schedule 6 of the Framework Agreement; |
| **"Contract”** | means the contract entered into by the Customer and the Service Provider pursuant to Framework Schedule 4 (Ordering Procedure) of the Framework Agreement comprising of the Form of Contract Document, these Call-Off Terms, the schedules hereto, the Master Contract Schedule and any other Contract Document; |
| **“Contract Document”** | means all documents listed in the Form of Contract Document and/or within a schedule referred to in the Form of Contract Document; |
| **"Contract Period"** | means the period from the Commencement Date to:1. the Expiry Date; or
2. such earlier date of termination or partial termination of the Contract in accordance with Law or the provisions of the Contract;
 |
| **"Contract Charges"** | means the prices (exclusive of any applicable VAT), payable to the Service Provider by the Customer under the Contract, as set out in the Master Contract Schedule and/or any other Contract Document, for the full and proper performance by the Service Provider of its obligations under the Contract less any Service Credits; |
| **"Contracting Authority"** | means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer; |
| **"Control"** | means control as defined in section 1124 Corporation Tax Act 2010 and "**Controls**" and "**Controlled**" shall be interpreted accordingly; |
| **“Controller”** | shall take the meaning given in the GDPR; |
| **"Conviction"** | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.); |
| **"Critical Service Failure"** | shall have the meaning given in the Master Contract Schedule and/or any other Contract Document; |
| "**Customer 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:(i) are supplied to the Service Provider by or on behalf of the Customer; or (ii) the Service Provider is required to generate, process, store or transmit pursuant to the Contract; or (b) any Personal Data for which the Customer is the Data Controller;  |
| **"Customer Pre-Existing IPR"** | shall mean any Intellectual Property Rights vested in or licensed to the Customer prior to or independently of the performance by the Service Provider of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs; |
| **“Customer’s Premises”** | the premises identified in the Master Contract Schedule and/or any other Contract Document and which are to be made available for use by the Service Provider for the provision of the Goods and/or Services on the terms set out in the Contract; |
| **“Customer Rebate”** | means the rebate sum (if any) agreed by the Customer and the Service Provider in accordance with clause 11.5; |
| **"Customer Responsibilities"** | means the responsibilities of the Customer set out in the Master Contract Schedule and/or any other Contract Document; |
| **"Customer Representative"**  | means the representative appointed by the Customer from time to time in relation to the Contract; |
| **"Customer's Confidential Information"** | means all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Service Providers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential; |
| **“Data Loss Event”** | means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach; |
| **"Data Protection Legislation"** | means the GDPR, the LED and any national implementing Law, as amended or updated from time to time in the UK including the Data Protection Act 2018 and all applicable Law about the processing of personal data and privacy;  |
| **“Data Protection Impact Assessment”** | Means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| **“Data Protection Officer”** | shall take the meaning given in the GDPR; |
| **"Data Subject"** | shall take the meaning given in the GDPR |
| **“Data Subject Access Request”** | means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data; |
| **"Default"** | means any breach of the obligations of the Service Provider (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Service Provider or Service Provider’s Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Service Provider is liable to the Customer; |
| **“Delay Payments”** | means the amounts set out or amounts calculated in accordance with the formula set out in the Master Contract Schedule and/or any other Contract Document; |
| **"Deliverables"** | means those deliverables listed in the Master Contract Schedule and/or any other Contract Document (if any); |
| **"Delivery"** | means the time at which the Goods and/or Services have been installed by the Service Provider and the Customer has issued the Service Provider with confirmation in respect thereof and **"Deliver"** and **"Delivered"** shall be construed accordingly; |
| **"Dispute Resolution Procedure"** | means the dispute resolution procedure set out in clause 42.2; |
| **“DPA 2018”** | means Data Protection Act 2018; |
| **“Employment Checks”** | means the pre-appointment checks that are required by law and applicable guidance, including without limitation, verification of identity checks, right to work checks, registration and qualification checks, employment history and reference checks, criminal record checks and occupational health checks;  |
| **"Environmental Information Regulations"** | means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations; |
| “**Equality Legislation**” | means the Equality Act 2010, the Human Rights Act 1998 and such other acts and legislation to ensure, among others; equality of access to goods and services; promotion of good relations between groups in society; the provision of reasonable adjustments for people with disabilities; and equality in employment; equality legislation shall help organisations and providers to meet their obligations under anti-discrimination laws; |
| **"Equipment"** | means the Service Provider's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Service Provider (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Contract which, for the avoidance of doubt does not include the Goods; |
| **“ESPO”** | means Leicestershire County Council, acting in its capacity as servicing authority to a joint committee known as ESPO, established under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000, whose place of business is at of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES. |
| **"Expiry Date"** | means the date set out in the Master Contract Schedule and/or any other Contract Document; |
| **“Form of Contract”** | means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Service Provider and which lists all of the Contract Documents; |
| **"FOIA"** | means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation; |
| **"Force Majeure"** | means any event, occurrence or cause affecting the performance by either the Customer or the Service Provider of its obligations arising from:1. acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
2. riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;
3. acts of government, local government or Regulatory Bodies;
4. fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;
5. an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:
6. any industrial dispute relating to the Service Provider, the Service Provider’s Staff or any other failure in the Service Provider or the Sub-Contractor’s supply chain; and
7. any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;
 |
| **“GDPR”** | means the General Data Protection Regulation (Regulation (EU) 2016/679; |
| **"Good Industry Practice"** | means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector; |
| **"Goods and/or Services"** | means the goods and/or services to be supplied as specified in the Form of Contract, Master Contract Schedule and/or any other Contract Document; |
| **"Holding Company"** | shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006; |
| **"Implementation Plan"** | means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated in accordance with Schedule 2; |
| **"Information"** | has the meaning given under section 84 of the FOIA; |
| **“Initial Term”** | the period commencing on the Commencement Date and ending on the Expiry Date; |
| **"Intellectual Property Rights" or "IPRs"** | means:1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registrable or otherwise), Know-How, trade secrets and, moral rights and other similar rights or obligations;
2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
3. all other rights whether registrable or not having equivalent or similar effect in any country or jurisdiction (including but not limited to the United Kingdom) and the right to sue for passing off**;**
 |
| **ITT Response** | means the response submitted by the Service Provider to the Invitation to Tender issued by the Customer on [insert date]; |
| **“Joint Controllers”** | means an arrangement where two or more Controllers jointly determine the purposes and means of processing; |
| **"Key Personnel"** | means the individuals (if any) identified in the Master Contract Schedule and/or any other Contract Document; |
| **"Know-How"** | means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Service Provider's or the Customer's possession before the Commencement Date; |
| **"Law"** | means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply; |
| **“LED”** | means Law Enforcement Directive (Directive (EU) 2016/680); |
| **“Management Information”** | means the management information specified in Framework Schedule 7 (Management Information Requirements); |
| **“Master Contract Schedule”** | means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement; |
| **"Milestone"** | means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan; |
| **"Milestone Date"** | means the date set against the relevant Milestone in the Implementation Plan; |
| **“Mirror Framework”** | means any framework agreement entered into by the Service Provider and a company owned by ESPO; |
| **"Month"** | means calendar month and "monthly" shall be interpreted accordingly; |
| **"Parent Company"** | means any company which is the ultimate Holding Company of the Service Provider and which is either responsible directly or indirectly for the business activities of the Service Provider or which is engaged by the same or similar business to the Service Provider; |
| **"Party"** | means the Service Provider or the Customer and **"Parties"** shall mean both of them; |
| **"Personal Data"** | shall take the meaning given in the GDPR;; |
| **“Personal Data Breach”** | shall take the meaning given in the GDPR; |
| **"Premises"** | means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document; |
|  |  |
| **“Processor”** | shall take the meaning given in the GDPR; |
| **“Processor Personnel”** | means all directors, officers, employees, agents, consultants, contractors, sub-processors and third party processors of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract; |
| **“Prohibited Act”** | Means:a)to directly or indirectly offer, promise or give any person working for or engaged by the Customer and/or ESPO a financial or other advantage to:i) induce that person to perform improperly a relevant function or activity; or ii) reward that person for improper performance of a relevant function or activity; or b) committing any offence:i) under the Bribery Act 2010; orii) under legislation creating offences concerning fraudulent acts; or iii) at common law concerning fraudulent acts relating to the Contract or any other contract with ESPO and/or Customer and/or any other Contracting Body; or c) defrauding, attempting to defraud or conspiring to defraud ESPO and/or the Customer or any other Contracting Body |
| **"Project Specific IPRs"** | means:(a) IPRs in the Services, Deliverables and/or Goods provided by the Service Provider (or by a third party on behalf of the Service Provider) specifically for the purposes of the Contract and all updates and amendments of these items created during the Contract Period; and/or(b) IPRs arising as a result of the provision of the Services, Deliverables and/or Goods by the Service Provider (or by a third party on behalf of the Service Provider) under the Contract, |
| **"Property"** | means the property, other than real property and IPR, issued or made available to the Service Provider by the Customer in connection with the Contract; |
| **“Protective Measures”** | means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Part B of Section 8 of the Master Contract Schedule (Joint Controller Agreement); |
| **“Public Contracts Directive”** | means Directive 2014/24/EU of the European Parliament and of the Council; |
| **"Quality Standards”** | means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Service Provider would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance; |
| **“Regulated Activity”** | means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006; |
| **"Regulatory Bodies"** | means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer; |
| **"Related Service Provider"** | means any person who provides services to the Customer which are related to the Services from time to time; |
| **"Replacement Service Provider"** | any third party Service Provider of Replacement Services appointed by the Customer from time to time; |
| **"Replacement Service"** | any services which are substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the expiry or termination of the Contract, whether those services are provided by the Customer internally and/or by any third party; |
| **"Request for Information"** | means a request for information or an apparent request relating to the Contract or the provision of the Services or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations; |
| **"Service Credits"** | means the sums referred to or sums calculated in accordance with Schedule 2 being payable by the Service Provider in respect of any failure by the Service Provider to meet one or more Service Levels; |
| **"Service Levels"** | means any service levels applicable to the provision of the Services as referred to Schedule 2; |
| **"Service Provider"** | means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract; |
| **“Service Provider Personnel”** | means all directors, officers, employees, agents, consultants and contractors of the Service Provider and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract; |
| **"Service Provider Pre-Existing IPR"** | shall mean any Intellectual Property Rights vested in or licensed to the Service Provider prior to or independently of the performance by the Customer of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs; |
| **“Service Provider’s Representative”** | means the representative appointed by the Service Provider from time to time in relation to the Contract; |
| **"Service Provider Solution"** | means the Service Provider's solution for the provision of the Goods and/or Services as referred to in the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract; |
| **"Service Provider's Confidential Information"** | means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Service Providers of the Service Provider, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential; |
| **"Services"** | means the services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents. For the avoidance of doubt, the performance of the Assignment by the Temporary Worker does not form part of the Services; |
| **"Sites"** | means any premises from which the Services are provided or from which the Service Provider manages, organises or otherwise directs the provision or the use of the Services; |
| **"Staff"** | means all persons employed by the Service Provider and/or any Sub-Contractor to perform its obligations under the Contract together with the Service Provider's and/or any Sub-Contractor's servants, consultants, agents, Service Providers and Sub-Contractors used in the performance of its obligations under the Contract. For the avoidance of doubt, Temporary Workers shall not be deemed to be Staff; |
| **"Sub-Contract"** | means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Goods and/or Services or any part thereof or facilities, goods or services necessary for the provision of the Goods and/or Services or any part thereof or necessary for the management, direction or control of the Goods and/or Services or any part thereof; |
| **"Sub-Contractor"** | means the third party with whom the Service Provider enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents; |
| **“Sub-processor”** | means any third party appointed to process Personal Data on behalf of the Processor related to this Contract; |
| **"Technical Standards"** | means the technical standards set out in the Framework Agreement and if applicable the Master Contract Schedule and/or another Contract Document referred to in the Form of Contract; |
| **“Temporary Worker”** | means a person engaged by the Service Provider under a contract for services or via a limited company and provided on Assignment to the Customer; |
| **"Tender"** | means the tender submitted by the Service Provider to the Customer in response to the Customer's invitation to Service Providers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement; |
| **“Term”** | the period of the Initial Term as may be varied by: (a) any extensions to this Contract which are agreed pursuant to [clause 3](http://uk.practicallaw.com/2-501-1525?q=&qp=&qo=&qe=#a427119); or(b) the earlier termination of this Contract in accordance with its terms; |
| **“TFEU”** | means the Treaty on the Functioning of the European Union (OJ No. C 115); |
| **"Transferring Goods"** | means Goods, title to which transfers between the Parties in accordance with clause 4.6.1; |
| **“Treaties”** | means the Treaty of the European Union (OJ No. C 115) and TFEU; |
| **"Undelivered Goods"** | shall have the meaning given in clause 4.5.8; |
| **"Variation"** | has the meaning given to it in clause 33; |
| **"Variation Procedure"** | means the procedure set out in clause 33; |
| **"VAT"** | means value added tax in accordance with the provisions of the Value Added Tax Act 1994; |
| **"Working Day"** | means any day other than a Saturday or Sunday or public holiday in England and Wales. |

## **Interpretation**

The interpretation and construction of the Contract shall be subject to the following provisions:

### words importing the singular meaning include where the context so admits the plural meaning and vice versa;

### words importing the masculine include the feminine and the neuter;

### the words "include", "includes" and "including" “for example” and “in particular” and words of similar effect are to be construed as if they were immediately followed by the words "without limitation" and shall not limit the general effect of the words which precede them;

### references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

### the schedules form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to the Contract includes the schedules;

### references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

### headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;

### references to “clauses” and “schedules” are, unless otherwise provided, references to the clauses of and schedules to this Contract. References to “paragraphs” are, unless otherwise provided, references to paragraphs of the schedule in which the references are made;

### terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in clause 1 shall be interpreted in accordance with the Framework Agreement save for such words as do not have an interpretation in the Framework Agreement in which case they shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning;

### reference to a clause is a reference to the whole of that clause unless stated otherwise; and

### in the event of and only to the extent of any conflict between the Master Contract Schedule, these Call-Off Terms, any other Contract Document any document referred to in the clauses of the Contract and the Framework Agreement, the conflict shall be resolved in accordance with the following order of precedence:

#### the Framework Agreement;

#### these Call-Off Terms;

#### the Master Contract Schedule; and

#### any other Contract Document or document referred to in these Call-Off Terms.

# DUE DILIGENCE

## The Service Provider acknowledges that it:

### has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the Customer;

### has raised all relevant due diligence questions with the Customer before the Commencement Date; and

### has entered into this Contract in reliance on its own due diligence alone.

### 2.2 The Customer hereby confirms that it has all requisite authority to enter into the Contract.

# CONTRACT PERIOD

3.1 This Contract shall take effect on the Commencement Date and shall continue for the Term.

3.2 The Customer may extend this Contract beyond the Initial Term by a further period or periods as stated in the Master Contract Schedule (Extension Period). If the Customer wishes to extend this Contract, it shall give the Service Provider three (3) months’ written notice of such intention before the expiry of the Initial Term or Extension Period.

3.3 If the Customer gives such notice then the Term shall be extended by the period set out in the notice.

3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of [clause](http://uk.practicallaw.com/2-501-1525?q=&qp=&qo=&qe=#a787683) 20 shall apply.

# SUPPLY OF GOODS AND/OR SERVICES

## **Supply of the Goods and/or Services**

### The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan.

### The Service Provider shall supply the Goods and/or Services during the Contract Period in accordance with the Customer's requirements as set out in this Contract in consideration for the payment of the Contact Charges. The Customer may inspect and examine the manner in which the Service Provider supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.

### If the Customer informs the Service Provider in writing that the Customer reasonably believes that any part of the Goods and/or Services does not meet the requirements of the Contract or differs in any way from those requirements, the Service Provider shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

### The Service Provider accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:

#### the same is notified in writing to the Service Provider within three (3) Working Days of receipt of the Ordered Goods by the Customer; and

#### the Ordered Goods have been handled by the Customer in accordance with the Service Provider’s instructions.

### Where the Service Provider accepts responsibility under clause 4.1.4 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the Service Provider’s reasonable satisfaction, to have been lost or damaged in transit.

### The Service Provider agrees that the Customer relies on the skill and judgment of the Service Provider in the supply of the Goods and/or Services and the performance of its obligations under the Contract.

## **Provision and Removal of Equipment**

### Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Service Provider shall provide all the Equipment necessary for the supply of the Goods and/or the Services.

### The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.

### All Equipment brought onto the Premises shall be at the Service Provider's own risk and the Customer shall have no liability for any loss of or damage to any Equipment unless and to the extent that the Service Provider is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Service Provider shall be wholly responsible for the haulage or carriage of the Equipment to the Premises and the removal thereof when it is no longer required by the Customer and in each case at the Service Provider's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Service Provider.

### The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

### The Service Provider shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

#### remove from the Premises any Equipment which in the reasonable opinion of the Customer is either hazardous, noxious or not in accordance with the Contract; and

#### replace such item with a suitable substitute item of Equipment.

### Upon termination or expiry of the Contract, the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or Service Provider’s Staff.

## **Quality**

### The Service Provider shall at all times comply with the Technical Standards and the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards' authorisation body. To the extent that the standard to which the Goods and/or Services must be provided has not been specified in the Contract, the Service Provider shall agree the relevant standard for the provision of the Goods and/or Services with the Customer prior to the supply of the Goods and/or Services commencing and in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

### The Service Provider shall ensure that the Staff shall at all times during the Contract Period:

#### faithfully and diligently perform those duties and exercise such powers as necessary in connection with the provision of the Goods and/or Services;

#### obey all lawful instructions and reasonable directions of the Customer and provide the Goods and/or Services to the reasonable satisfaction of the Customer; and

#### apply all due skill, care, diligence and are appropriately experienced, qualified and trained.

### The Service Provider shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.

### The Service Provider shall supply the Goods and/or Services and, where relevant, install the Goods in accordance with the specification in the Framework Agreement (if any) (as a minimum), the Master Contract Schedule and/or any other Contract Document and in accordance with all applicable Laws, including but not limited to, any obligation implied by sections 12, 13 and 14 of the Sale of Goods Act 1979 and section 2 of the Supply of Goods and Services Act 1982.

### The Service Provider shall at all times during the Contract Period ensure that:

#### the Goods and/or Services conform in all respects with the specifications set out in the Master Contract Schedule and/or any other Contract Document and/or where applicable the Framework Agreement;

#### the Goods and/or Services operate in accordance with the relevant technical specifications and correspond with all requirements set out in the Master Contract Schedule and/or any other Contract Document;

#### the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;

#### the Goods are free from defects in design and workmanship and are fit for the purpose that such Goods are ordinarily used for and for any particular purpose made known to the Service Provider by the Customer; and

#### the Goods and/or Services are supplied in accordance with the Service Provider Solution.

## **NOT USED**

## **Delivery**

* + 1. The Service Provider shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.
		2. The issue by the Customer of a receipt note for delivered Equipment shall not constitute any acknowledgement of the condition, quantity or nature of that Equipment.
		3. Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Service Provider fails to deliver the Goods and/or Services within the time specified in accordance with clause 4.1.1 and/or the Master Contract Schedule and/or any other Contract Document and without prior written Approval, the Customer may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Customer.
		4. Except where otherwise provided in the Contract, the Goods shall be installed and the Services provided by the Staff or the Sub-Contractors at such place or places as set out in the Master Contract Schedule and/or any other Contract Document.
		5. Where the Goods are delivered by the Service Provider, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer’s vehicle.
		6. Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Service Provider’s Service Providers or carriers at such place as the Customer or duly authorised person shall reasonably direct.
		7. In the event that not all of the Goods and/or Services are Delivered by the relevant Milestone Dates specified in the Implementation Plan (**"Undelivered Goods and/or Services"**) then the Customer shall be entitled to withhold payment of the Contract Charges for any Goods and/or Services that were not Delivered in accordance with the corresponding Milestone Date until such time as the Undelivered Goods and/or Services are Delivered.
		8. The Customer shall be under no obligation to accept or pay for any Goods Delivered in excess of the quantity specified in the Master Contract Schedule and/or any other Contract Document. If the Customer elects not to accept such over-Delivered Goods it shall give notice in writing to the Service Provider to remove them within five (5) Working Days and to refund to the Customer any expenses incurred by the Customer as a result of such over-Delivery (including but not limited to the costs of moving and storing the Goods), failing which the Customer may dispose of such Goods and charge the Service Provider for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Service Provider.
	1. **Ownership and Risk**
		1. Ownership and passing of title in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer on the earlier of payment by the Customer of the Contract Charges or allocation of the relevant Goods by the Customer to the order.
		2. Risk in the Goods shall, without prejudice to any other rights or remedies of the Customer pass to the Customer at the point when the Goods have been delivered satisfactorily.
	2. **Guarantee**
		1. The Service Provider hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Service Provider of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Service Provider shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.
1.

# ASSISTANCE ON EXPIRY OR TERMINATION

# In the event that the Contract expires or is terminated the Service Provider shall, where so requested by the Customer, provide assistance to the Customer to migrate the provision of the Services to a Replacement Service Provider.

# DISASTER RECOVERY AND BUSINESS CONTINUITY

## At least within thirty (30) Working Days from the contract start date the Service Provider shall prepare and deliver to the Customer for the Customer’s written approval a plan (a “BCDR Plan”), which shall detail the processes and arrangements that the Supplier shall follow to:

## ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and

## the recovery of the Deliverables in the event of a Disaster

## The BCDR Plan shall be divided into three sections:

* + 1. Section 1 which shall set out general principles applicable to the BCDR Plan;

## Section 2 which shall relate to business continuity (the “Business Continuity Plan”); and

## Section 3 which shall relate to disaster recovery (the “Disaster Recovery Plan”).

## Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

## The Service Provider will maintain in place throughout the Contract Period business continuity arrangements and will review those arrangements at appropriate intervals and if necessary update them, so as to ensure as far as reasonably practical that in the event of unexpected circumstances, either within or external to the Service Provider’s organisation, delivery of the Goods and/or Services to the Customer is subject to a minimum of disruption.

# MONITORING OF CONTRACT PERFORMANCE

## The Service Provider shall comply with the monitoring arrangements referred to in the Master Contract Schedule and/or any other Contract Document including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.

## Where requested by the Customer, the Service Provider shall supply the Management Information to the Customer in the form and periodically as specified in the Master Contract Schedule.

# DISRUPTION

## The Service Provider shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Customer, its employees or any other contractor employed by the Customer.

## The Service Provider shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Service Provider's own employees or others, which affects or might affect the Service Provider's ability at any time to perform its obligations under the Contract.

## In the event of industrial action by the Staff, the Service Provider shall seek Approval to its proposals for the continuance of the supply of the Goods and/or Services in accordance with its obligations under the Contract.

## If the Service Provider's proposals referred to in clause 8.3 are considered insufficient or unacceptable by the Customer acting reasonably then the Contract may be terminated with immediate effect by the Customer by notice in writing.

## If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business caused by the Customer, an appropriate allowance by way of extension of time will be approved by the Customer. In addition, the Customer will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.

# SERVICE LEVELS AND REMEDIES IN THE EVENT OF INADEQUATE PERFORMANCE OF THE SERVICES OR PROVISION OF THE GOODS

1.

## The Service Provider shall provide the Services to meet or exceed the Service Levels and any failure to meet the Service Levels shall entitle the Customer to Service Credits calculated in accordance with the provisions of schedule 1 or in the event of a Critical Service Failure shall give rise to a right for the Customer to terminate the Contract with immediate effect upon giving written notice to the Service Provider.

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

## Without prejudice to any other right or remedy which the Customer may have, if any Goods and/or Services are not supplied in accordance with, or the Service Provider fails to comply with any of the terms of the Contract then the Customer may (whether or not any part of the Goods and/or Services have been Delivered) do any of the following:

## at the Customer’s option, give the Service Provider the opportunity at the Service Provider's expense to either remedy any defect in the Goods and/or failure in the performance of the Services together with any damage resulting from such defect or failure (and where such defect or failure is capable of remedy) or to supply replacement Goods and/or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled, in accordance with the Customer's instructions;

### reject the Goods (in whole or in part) and require the Service Provider to remove the Goods (in whole or in part) at the risk and cost of the Service Provider on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Service Provider;

### refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;

### if the Master Contract Schedule and/or any other Contract Documents provide for the payment of Delay Payments, then the Service Provider shall pay such amounts (calculated in accordance with the Master Contract Schedule and/or any other Contract Document) on demand. The Delay Payments will accrue on a daily basis from the relevant Milestone Date and will continue to accrue until the date when the Milestone is met;

### carry out at the Service Provider's expense any work necessary to make the Goods and/or Services comply with the Contract;

### without terminating the Contract, itself supply or procure the supply of all or part of the Goods and/or Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Customer that the Service Provider will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;

### without terminating the whole of the Contract, terminate the Contract in respect of part of the Goods and/or Services only (whereupon a corresponding reduction in the Contract Charges shall be made) and thereafter itself supply or procure a third party to supply such part of the Goods and/or Services; and/or

### charge the Service Provider for and the Service Provider shall on demand pay any costs reasonably incurred by the Customer (including any reasonable administration costs) in respect of the supply of any part of the Goods and/or Services by the Customer or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Service Provider for such part of the Goods and/or Services and provided that the Customer uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods and/or Services.

## **In the event that the Service Provider**:

### fails to comply with clause 9.3 above and the failure is materially adverse to the interests of the Customer or prevents the Customer from discharging a statutory duty; or

### persistently fails to comply with clause 9.3 above,

the Customer may terminate the Contract with immediate effect by giving the Service Provider notice in writing.

# NOT USED

# PAYMENT AND CONTRACT CHARGE

# Contract Charges

### In consideration of the Service Provider's performance of its obligations under the Contract, the Customer shall pay the Contract Charges in accordance with clause 11.2 (Payment and VAT).

### The Customer shall, in addition to the Contract Charges and following delivery by the Service Provider of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Goods and/or Services supplied in accordance with the Contract.

### If at any time during the Contract Period the Service Provider reduces its rates of Charges for any Goods and/or Services which is provided under the Framework Agreement (whether or not such Goods and/or Services are offered in a catalogue which is provided under the Framework Agreement) in accordance with the terms of the Framework Agreement, the Service Provider shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.

### The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement whichis specifically commissioned from the Service Provider by another Contracting Body at any time prior to or during the Contract Period to reduce costs or to improve the quality or efficiency of the Goods and/or Services or to facilitate their delivery shall be offered by the Service Provider to the Customer at no charge.

### The Parties acknowledge that the Service Provider is required to pay to ESPO, and where relevant, the Trading Company, a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

## **Payment and VAT**

### Where the Service Provider submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.

### The Service Provider shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice.

### The Customer shall pay the Service Provider any sums due under such an invoice no later than a period of 30 days from the date on which the Customer has determined that the invoice is valid and undisputed.

### Where the Customer fails to comply with clause 11.2.1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 11.2.2 after a reasonable time has passed.

### Where the Service Provider enters into a Sub-Contract, the Service Provider shall include in that Sub-Contract:

### (a) provisions having the same effect as clauses 11.2.1 – 11.2.3 of this Framework Agreement; and

### (b) a provision requiring the counterparty to that Sub-Contract to include any Sub-Contract which it awards provisions have the same effect as clauses 11.1.1 – 11.1.4 of this Framework Agreement.

### For the purposes of this sub clause 11.2.4 “Sub-Contract” means a contract between two or more Service Providers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or part of this Framework Agreement.

### The Service Provider shall indemnify the Customer on demand and on a continuing basis against any liability, including without limitation any interest, penalties or costs, which are suffered or incurred by or levied, demanded or assessed on the Customer at any time in respect of the Service Provider's failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause shall be paid by the Service Provider to the Customer not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Customer.

### The Service Provider shall not suspend the supply of the Services and/or Goods (as applicable) unless the Service Provider is entitled to terminate the Contract under clause 26 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Customer on the late payment of any undisputed sums of money properly invoiced at 3% above the Bank of England base rate.

## **Recovery of Sums Due**

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

### Any overpayment by either Party, whether of the Contract Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

### The Service Provider shall make any payments due to the Customer without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Customer to the Service Provider.

### All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

## **Euro**

### Any requirement of Law to account for the Goods and/or Services in Euro, (or to prepare for such accounting) instead of and/or in addition to Sterling, shall be implemented by the Service Provider free of charge to the Customer.

## The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Service Provider.

## **Customer Rebate**

## The Customer and the Service Provider may (but shall not be obliged) in advance of agreeing to take a supply of goods or services seek to agree a Customer Rebate. Where such rebate is agreed the amount of the Customer Rebate shall be documented in the Order form and reported to ESPO by the Customer and the Service Provider.

## Where a Customer Rebate has been agreed, the Customer shall submit invoices to the Service Provider in respect of the Customer Rebate due monthly based on the invoices paid by that Customer in the previous month. All Such amounts shall also be notified in writing by the Service Provider to ESPO with the next set of Management Information.

## The Service Provider shall pay the amount stated in any invoice submitted under clause 11.5.2 within thirty (30) Working Days of the date of issue of the invoice.

## All Customer Rebates shall be paid by the Service Provider to the Customer without any set off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## The Customer Rebate shall apply to the full value of the Goods and/or Services as specified in each and every Contract and shall not be varied as a result of any reduction in the Charges due to the application of any service credits however the calculation of the Customer Rebate may be calculated on the value of Charges less any rebate payable to ESPO or any Trading Company under the Framework Agreement (thus reducing, for calculation purposes only, the overall value of the contract upon which the Customer Rebate is calculated).

## The Customer Rebate shall be exclusive of VAT. The Service Provider shall pay the VAT on the Customer Rebate at the rate and in the manner prescribed by Law from time to time.

## Interest shall be payable on any late payments of the Customer Rebate under this Framework Agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 and any amendment thereof.

## The Customer Rebate shall remain payable throughout the duration of any Contract irrespective of the termination for any reason of the Framework Agreement including the effluxion of time and for the avoidance of doubt whether or not the Service Provider succeeds in being awarded any subsequent Service Provider status on renewal of the Framework Agreement.

# NOT USED

# SERVICE PROVIDER'S STAFF

* 1. The Customer may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Customer’s Premises:

### any member of the Staff; or

### any person employed or engaged by any member of the Staff,

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

## At the Customer's written request, the Service Provider shall provide a list of the names and addresses of all persons who may require admission to the Customer’s Premises in connection with the Contract, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Customer may reasonably request.

## Staff engaged within the boundaries of the Customer’s Premises shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or within the boundaries of those Customer’s Premises.

## If the Service Provider fails to comply with clause 13.2 within three (3) weeks of the date of the request, the Customer may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Customer.

## The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Service Provider and Staff have failed to comply with clause 13.2 shall be final and conclusive.

**Children and Vulnerable Adults**

13.6 Where the provision of the Goods and/or Services requires any of the Service Provider’s employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Service Provider will make checks in respect of such employees and volunteers with the Disclosure & Barring Service (DBS) for the purpose of checking at an enhanced level of disclosure for the existence of any criminal convictions subject to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended) or other relevant information and that the appropriate check of the Children’s Barred List relating to the protection of children.

13.7 The Service Provider will comply with the requirements of the Safeguarding of Vulnerable Groups Act 2006 (as amended by the Protection of Freedoms Act 2012 and any other subsequent relevant legislation) in respect of such employees and volunteers that work in a Regulated Activity.

13.8 The Service Provider will ensure that all enhanced checks for a Regulated Activity including the appropriate barred list check or checks are renewed every three years.

13.9 The Service Provider will not employ any person or continue to employ any person to provide the Regulated Activities who is prevented from carrying out such activities under the Safeguarding of Vulnerable Groups and will notify ESPO immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Customer.

13.10 Where the provision of the Goods and/or Services does not require any of the Service Provider’s employees or volunteers to work in a Regulated Activity but where the Service Provider’s employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Service Provider will in respect of such employees and volunteers:

* + 1. carry out Employment Checks; and
		2. carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Contract Period.

13.11 Where the principle obligation of the Service Provider is to effect delivery of goods to a site and does not require any element of on-site working including installation and commissioning of Goods in a private dwelling, neither the Service Provider nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Service Provider shall ensure that those engaged in undertaking the duties under this contract, including employees, servants, agents and others are of suitable standing and good character and provide them with copies of the Specification and secure their written acknowledgement of receipt and understanding.

# TUPE

## The Parties hereby acknowledge that, pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”), there shall be a relevant transfer on the Commencement Date and the contracts of employment of those employees who are wholly or mainly assigned in the Services immediately before the Commencement Date (“the Transferring Employees”) shall take effect as if originally made between the Service Provider and the employees (save for those who object pursuant to Regulation 4(7) of TUPE.

## The Service Provider shall be responsible for all emoluments and outgoings in respect of the Transferring Employees (including without limitation, all wages, bonuses, commission, premiums, subscriptions, PAYE and national insurance contributions and pension contributions) which are attributable in whole or in part to the period after the Commencement Date (including any bonuses, commission, premiums, subscriptions and any other prepayments which are payable before the Commencement date but which are attributable in whole or in part to the period after the Commencement Date.

## Not later than twelve months prior to the end of the Contract Period, the Service Provider shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Service Provider’s Staff including the following:

(a) the total number of the Service Provider’s Staff whose employment/engagement shall terminate at the end of the Contract Period, save for any operation of Law; and

(b) the age, gender, salary or other remuneration, future pay settlements and redundancy and pension entitlements of the Service Provider’s Staff referred to in clause 14.3(a); and

(c) the terms and conditions of the employment/engagement of the Service Provider’s Staff referred to in clause 14.3(a), their job titles and qualifications; and

(d) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; and

(e) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union.

## At intervals to be stipulated by the Customer (which shall not be more frequent than every thirty days) immediately prior to the end of the Contract Period the Service Provider shall deliver to the Customer a complete update of all such information which shall be disclosable pursuant to clause 14.3

## At the time of providing the disclosed information pursuant to clauses 14.3 and 14.4, the Service Provider shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Service Provider.

## The Customer may use the information it receives from the Service Provider pursuant to clauses 14.3 and 14.4 for the purposes of TUPE and/or any retendering process in order to ensure an effective handover of all work in progress at the end of the Contract Period. The Service Provider shall provide the Replacement Service Provider with such assistance as it shall reasonably request.

## The Service Provider shall indemnify and keep indemnified and hold the Customer (both for themselves and any Replacement Service Provider) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or any Replacement Service Provider may suffer or incur as a result of or in connection with:

(a) the provision of information pursuant to clause 14; and

(b) any claim or demand by any Returning Employee (whether in contract, tort, under statute, pursuant to European Law or otherwise) in each and every case arising directly or indirectly from any act, fault or omission of the Service Provider or any Sub-Contractor in respect of any Returning Employee on or before the end of the Contract Period; and

(c) any failure by the Service Provider or any Sub-Contractor to comply with its obligations under Regulation 13 or 14 of TUPE or any award of compensation under Regulation 15 of TUPE save where such failure arises from the failure of the Customer or a Replacement Service Provider to comply with its duties under Regulation 13 of the Regulations; and

(d) any claim (including any individual employee entitlement under or consequent on such a claim) by any trade union or other body or person representing any Returning Employees arising from or connected with any failure by the Service Provider or any Sub-Contractor to comply with any legal obligation to such trade union, body or person; and

(e) any claim by any person who is transferred by the Service Provider to the Customer and/or a Replacement Service Provider whose name is not included in the list of Returning Employees.

## If the Service Provider becomes aware that the information it provided pursuant to clause 14.3 has become untrue, inaccurate or misleading, it shall notify the Customer and provide the Customer with up to date information.

## This clause 14 applies during the Contract Period and indefinitely thereafter.

## The Service Provider undertakes to the Customer that, during the twelve months prior to the end of the Contract Period the Service Provider shall not (and shall procure that any Sub-Contractor shall not) without the prior consent of the Customer (such consent not to be unreasonably withheld or delayed):

##### amend or vary (or purport or promise to amend or vary) the terms and conditions of the employment or engagement including for the avoidance of doubt pay of any of the Staff (other than where such amendment or variation has previously been agreed between the Service Provider and the Staff in the normal course of business, and where any such amendment or variation is not in any way related to the transfer of the Services);

##### terminate or give notice to terminate the employment or engagement of any of the Staff (other than in circumstances in which the termination is for reasons of misconduct or lack of capacity);

##### transfer away, remove, reduce or vary the involvement of any of the Staff from or in the provision of the Services (other than where such transfer or removal: (i) was planned as part of the individual’s career development; (ii) takes place in the normal course of business; and (iii) shall not have any adverse impact upon the delivery of the Services by the Service Provider, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;

##### recruit or bring in any new or additional individuals to provide the Services who were not already involved in providing the Services prior to the relevant period.

# STAFFING SECURITY

## The Service Provider shall comply with the Customer’s staff vetting procedures (where provided to the Service Provider) in respect of all Service Provider Staff employed or engaged in the provision of the Goods and/or Services. The Service Provider confirms that all Staff employed or engaged by the Service Provider at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Customer’s staff vetting procedures.

## The Service Provider shall provide training on a continuing basis for all Staff employed or engaged in the provision of the Goods and/or Services to ensure compliance with the Customer’s staff vetting procedures.

# INTELLECTUAL PROPERTY RIGHTS

## Save as granted under this Contract, neither the Customer nor the Service Provider shall acquire any right, title or interest in the other’s Pre-Existing Intellectual Property Rights.

## The Service Provider shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Service Provider’s responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.

## With respect to the Service Providers obligations under the Contract, the Service Provider warrants and represents that:

### it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary to perform its obligations under this Contract;

### it has and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or Trojans, spyware or other malware) into systems, data, software or the Customer’s Confidential Information (held in electronic form) owned by or under the control of, or used by the Customer;

## The Service Provider shall during and after the Contract Period of the Contract indemnify and keep indemnified the Customer on demand in full from and against all claims, proceedings, suits, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages and any other liabilities whatsoever arising from, out of, in respect of or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:

### availability, provision or use of the Goods and/or Services (or any parts thereof); and

###  performance of the Service Provider’s responsibilities and obligations hereunder.

## The Service Provider shall promptly notify the Customer if any claim or demand is made or action brought against the Service Provider for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Goods and/or Services (or any parts thereof) and/or the performance of the Service Provider’s responsibilities and obligations hereunder.

## If a claim or demand is made or action brought to which clause 16.3 and/or 16.4 may apply, or in the reasonable opinion of the Service Provider is likely to be made or brought, the Service Provider may at its own expense and within a reasonable time either:

### modify any or all of the affected Goods and/or Services without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Goods and/or Services, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services; or

### procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and

### in relation to the performance of the Service Provider’s responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

## **Customer Data**

### The Service Provider shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

### The Service Provider shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Service Provider of its obligations under the Contract or as otherwise expressly Approved by the Customer.

### To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall supply that Customer Data to the Customer as requested by the Customer and in the format specified in this Contract (if any) and in any event as specified by the Customer from time to time in writing.

### To the extent that Customer Data is held and/or processed by the Service Provider, the Service Provider shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

### The Service Provider shall ensure that any system on which the Service Provider holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.

### If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Service Provider's Default so as to be unusable, the Customer may:

#### require the Service Provider (at the Service Provider's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Service Provider shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or

#### itself restore or procure the restoration of Customer Data, and shall be repaid by the Service Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.

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

## **Protection of Personal Data**

### The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Service Provider is the Processor. The only processing that the Service Provider is authorised to do is listed in Schedule 8 of the Master Contract Schedule by the Customer and may not be determined by the Service Provider.

### The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

### The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

#### a systematic description of the envisaged processing operations and the purpose of the processing;

#### an assessment of the necessity and proportionality of the processing operations in relation to the Services;

#### an assessment of the risks to the rights and freedoms of Data Subjects; and

#### the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

* + 1. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

#### process that Personal Data only in accordance with Section 8 of the Master Contract Schedule, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;

#### ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:

#### nature of the data to be protected;

#### harm that might result from a Data Loss Event;

#### state of technological development; and

#### cost of implementing any measures;

#### ensure that:

* + - * 1. the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Section 8 of the Master Contract Schedule);
				2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor’s duties under this clause;

are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and

have undergone adequate training in the use, care, protection and handling of Personal Data; and

#### not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

* + - * 1. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
				2. the Data Subject has enforceable rights and effective legal remedies;
				3. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
				4. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;

#### at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Contract unless the Processor is required by Law to retain the Personal Data.

* + 1. Subject to clause 16.8.6, the Processor shall notify the Controller immediately if it:

#### receives a Data Subject Access Request (or purported Data Subject Access Request);

#### receives a request to rectify, block or erase any Personal Data;

#### receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

#### receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

#### receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

#### becomes aware of a Data Loss Event.

* + 1. The Processor’s obligation to notify under clause 16.8.5 shall include the provision of further information to the Controller in phases, as details become available.
		2. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 16.8.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

#### the Controller with full details and copies of the complaint, communication or request;

#### such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

#### the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

#### assistance as requested by the Controller following any Data Loss Event;

#### assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner's Office.

* + 1. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

#### the Controller determines that the processing is not occasional;

#### the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

#### the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

* + 1. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.
		2. Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

#### Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

#### notify the Controller in writing of the intended Sub-processor and processing;

#### obtain the written consent of the Controller;

#### enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16.8 such that they apply to the Sub-processor; and

#### provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

* + 1. The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
		2. The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
		3. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Service Provider amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner’s Office.

## **Security of Premise**

### The Customer shall be responsible for maintaining the security of the Customer’s Premises in accordance with its standard security requirements. The Service Provider shall comply with all reasonable security requirements of the Customer while on the Customer’s Premises and shall ensure that all Staff comply with such requirements.

### The Customer shall provide the Service Provider upon request copies of its written security procedures and shall afford the Service Provider upon request an opportunity to inspect its physical security arrangements.

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## **Confidentiality**

## Except to the extent set out in this clause 16.10 or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

1.

#### treat the other Party's Confidential Information as confidential and safeguard it accordingly; and

#### not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

### Clause 16.10.1shall not apply to the extent that:

#### 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 clause 19.11 (Freedom of Information);

#### such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

#### such information was obtained from a third party without obligation of confidentiality;

#### such information was already in the public domain at the time of disclosure otherwise than by a breach of the Contract; or

#### it is independently developed without access to the other Party's Confidential Information.

### The Service Provider may only disclose the Customer's Confidential Information to the Staff who are directly involved in the provision of the Goods and/or Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

### The Service Provider shall not, and shall procure that the Staff do not, use any of the Customer's Confidential Information received otherwise than for the purposes of this Contract.

### At the written request of the Customer, the Service Provider shall procure that those members of Staff identified in the Customer's notice sign a confidentiality undertaking prior to commencing any work in accordance with this Contract.

### In the event that any default, act or omission of any Staff causes or contributes (or could cause or contribute) to the Service Provider breaching its obligations as to confidentiality under or in connection with this Contract, the Service Provider shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Staff, the Service Provider shall provide such evidence to the Customer as the Customer may reasonably require (though not so as to risk compromising or prejudicing any disciplinary or other proceedings to demonstrate that the Service Provider is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from Staff, and any minutes of meeting and any other records which provide an audit trail of any discussions or exchanges with Staff in connection with obligations as to confidentiality.

### Nothing in this Contract shall prevent the Customer from disclosing the Service Provider's Confidential Information (including the Management Information obtained under clause 7.2):

#### to any Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to 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 Contracting Authority;

#### to any consultant, contractor or other person engaged by the Customer or any person conducting an Office of Government Commerce gateway review;

#### for the purpose of the examination and certification of the Customer's accounts; or

#### for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources.

### The Customer shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Sub-Contractor to whom the Service Provider's Confidential Information is disclosed pursuant to clause 16.10.7 is made aware of the Customer's obligations of confidentiality.

### Nothing in this clause 16.10 shall prevent either Party from using any techniques, ideas or Know-How gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of IPR.

### In the event that the Service Provider fails to comply with clause 16.6.1 to clause 16.6.6, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.

### In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in performance of the Contract, the Service Provider undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

## **Freedom of Information**

### The Service Provider acknowledges that the Customer is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Customer to enable the Customer to comply with its Information disclosure obligations.

### The Service Provider shall and shall procure that its Sub-Contractors shall:

#### transfer to the Customer all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;

#### provide the Customer with a copy of all Information in its possession, or control in the form that the Customer requires within five (5) Working Days (or such other period as the Customer may specify) of the Customer's request; and

#### provide all necessary assistance as reasonably requested by the Customer to enable the Customer 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.

### The Customer shall be responsible for determining in its absolute discretion and notwithstanding any other provision in the Contract or any other Contract whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

### In no event shall the Service Provider respond directly to a Request for Information unless authorised in writing to do so by the Customer.

### The Service Provider acknowledges that (notwithstanding the provisions of clause 16.10) the Customer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 (**"the Code"**), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Service Provider or the Goods and Services:

#### in certain circumstances without consulting the Service Provider; or

#### following consultation with the Service Provider and having taken their views into account,

provided always that where clause 16.11.5 applies the Customer shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider's attention after any such disclosure.

### The Service Provider shall ensure that all Information is retained for disclosure in accordance with the provisions of the Contract and in any event in accordance with the requirements of Good Industry Practice and shall permit the Customer to inspect such records as requested from time to time.

### The Service Provider acknowledges that the Commercially Sensitive Information is of indicative value only and that the Customer may be obliged to disclose it in accordance with clause 16.11.5.

## **Transparency**

### The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Contract is not Confidential Information. The Customer 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 the Contract, the Service Provider hereby gives his consent for the Customer 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 Agreement, to the general public.

### The Customer may consult with the Service Provider to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

### The Service Provider shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

# WARRANTIES AND REPRESENTATION

# The Service Provider warrants, represents and undertakes to the Customer that:

### it has full capacity and authority and all necessary consents licences, permissions (statutory, regulatory, contractual or otherwise) (including where its procedures so require, the consent of its Parent Company) to enter into and perform its obligations under the Contract;

### the Contract is executed by a duly authorised representative of the Service Provider;

### in entering the Contract it has not committed any Fraud;

### it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;

### this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;

### as at the Commencement Date, all information, statements and representations contained in the Tender for the Goods and/or Services are true, accurate and not misleading save as may have been specifically disclosed in writing to the Customer prior to execution of the Contract and it will advise the Customer of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading and all warranties and representations contained in the Tender shall be deemed repeated in this Contract;

### no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or its assets which will or might affect its ability to perform its obligations under the Contract;

### it is not subject to any contractual obligation, compliance with which is likely to have an adverse effect on its ability to perform its obligations under the Contract;

### no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Service Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Service Provider's assets or revenue;

### it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract and shall maintain the same in full force and effect;

# The Service Provider warrants represents and undertakes to the Customer that

### the Goods and/or Services shall be provided and carried out by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

### it shall discharge its obligations hereunder (including the provision of the Goods and/or Services) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;

### the Goods and/or Services are and will continue to be during the Contract Period:

#### of satisfactory quality; and

#### in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer’s specifications and documentation;

### in the three (3) Years prior to the Commencement Date:

#### it has conducted all financial accounting and reporting activities in all material respects in compliance with the generally accepted accounting principles that apply to it in any country where it files accounts; and

#### it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;

#### it has not done or omitted to do anything which could have an adverse effect on its assets, financial condition or position as an on-going business concern or its ability to fulfil its obligations under the Contract; and

#### for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.

## For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination the Customer may have in respect of breach of that provision by the Service Provider.

## The Service Provider acknowledges and agrees that:

### the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

### the Customer has been induced into entering into this Contract and in doing so has relied upon the warranties, representations and undertakings contained herein.

# LIABILITIES

# Liability

### Nothing in the Contract shall be construed to limit or exclude either Party's liability for:

#### death or personal injury caused by its negligence or that of its Staff;

#### Fraud or fraudulent misrepresentation by it or that of its Staff;

#### any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;

#### any claim under clause 17.1;

#### any claim under the indemnity in clauses 11.2.5, 14, 16.4, in respect of a breach of clause 16.10; or

#### any other matter which, by Law, may not be excluded or limited.

### Subject to clause 18.1.4 and clause 18.1.5 the Service Provider shall on demand indemnify and keep indemnified the Customer in full from and against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or late or purported late supply or non-supply, of the Goods and/or Services or the performance or non-performance by the Service Provider of its obligations under the Contract or the presence of the Service Provider or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Service Provider, or any other loss which is caused directly by any act or omission of the Service Provider.

### The Service Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Customer or by breach by the Customer of its obligations under the Contract.

### Subject always to clause 18.1.1 and clause 18.1.5, the aggregate liability of either Party for each Year of this Contract under or in relation to this Contract:

#### all defaults resulting in direct loss to the property of the other Party shall in no event exceed ten million pounds (£10,000,000); and

#### in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed [ten million pounds sterling (£10,000,000).

### Subject to clause 18.1.1, in no event shall either Party be liable to the other for any:

#### loss of profits;

#### loss of business;

#### loss of revenue;

#### loss of or damage to goodwill;

#### loss of savings (whether anticipated or otherwise); and/or

#### any indirect, special or consequential loss or damage.

### The provisions of 18.1.1 shall not be taken as limiting the right of the Customer to recover as a direct loss:

#### any additional operational and/or administrative expenses arising from the Service Provider’s Default;

#### any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Service Provider’s Default;

#### the additional cost of procuring replacement services for the remainder of the Contract Period following termination of the Contract as a result of a Default by the Service Provider; and

#### any losses, costs, damages, expenses or other liabilities suffered or incurred by the Customer which arise out of or in connection with the loss of, corruption or damage to or failure to deliver Customer Data by the Service Provider.

### Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Service Provider to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Service Provider that may arise by virtue of either a breach of the Contract or by negligence on the part of the Customer, or the Customer's employees, servants or agents.

## **Insurance**

### The Service Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Service Provider, arising out of the Service Provider's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Service Provider. Such insurance shall be maintained for the Contract Period.

### The Service Provider shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.

### The Service Provider shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for each individual claim.

### The Service Provider shall effect and maintain a professional indemnity insurance policy to cover all risks in the performance of this Contract with the minimum limit of indemnity of two million pounds sterling (£2,000,000) for each individual claim, or such higher limit as required by law from time to time and shall ensure that all agents, professional consultants and Sub-Contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period.

### The Service Provider shall give the Customer, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

### If, for whatever reason, the Service Provider fails to give effect to and maintain the insurances required by the provisions of the Contract the Customer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Service Provider.

### The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause 18.

### The Service Provider shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The Service Provider shall use all reasonable endeavours to notify the Customer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

## **Taxation, National Insurance and Employment Liability**

### The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Service Provider shall at all times indemnify the Customer and keep the Customer indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the Customer is alleged or determined to have been assumed or imposed with the liability or responsibility for the Staff (or any of them) as an employer of the Staff and/or any liability or responsibility to HM Revenue or Customs as an employer of the Staff whether during the Contract Period or arising from termination or expiry of the Contract.

# TERMINATION

# Termination on insolvency

### The Customer may terminate the Contract with immediate effect by giving notice in writing to the Service Provider where the Service Provider is a company and in respect of the Service Provider:

#### a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or

#### a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or

#### a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to Section 98 of the Insolvency Act 1986; or

#### a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or

#### an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or

#### it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or

#### being a "small company" within the meaning of section 82(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or

#### any event similar to those listed in clause 19.1.1.1 to 19.1.1.7 occurs under the law of any other jurisdiction.

### The Customer may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:

#### an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Service Provider's creditors; or

#### a petition is presented and not dismissed within 14 days or order made for the Service Provider's bankruptcy; or

#### a receiver, or similar officer is appointed over the whole or any part of the Service Provider's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

#### the Service Provider is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of Section 268 of the Insolvency Act 1986; or

#### a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Service Provider's assets and such attachment or process is not discharged within 14 days; or

#### he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

#### the Service Provider suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

## **Termination on Change of Control**

### The Service Provider shall notify the Customer immediately if the Service Provider undergoes a change of control within the meaning of Section 450 of the Corporation Tax Act 2010 ("**Change of Control**") and provided this does not contravene any Law shall notify the Customer immediately in writing of any circumstances suggesting that a Change of Control is planned or in contemplation. The Customer may terminate the Contract by notice in writing with immediate effect within six months of:

#### being notified that a Change of Control has occurred or is planned or in contemplation; or

#### where no notification has been made, the date that the Customer becomes aware of the Change of Control,

but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

### For the purposes of clause 19.2.1 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

## **Termination on Default**

### The Customer may terminate the Contract with immediate effect by giving written notice to the Service Provider if the Service Provider commits a Default and if:

#### the Service Provider has not remedied the Default to the satisfaction of the Customer within thirty (30) Working Days or such other longer period as may be specified by the Customer, after issue of a written notice specifying the Default and requesting it to be remedied; or

#### the Default is not, in the opinion of the Customer, capable of remedy; or

#### the Default is a material breach of the Contract.

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

### If the Customer fails to pay the Service Provider undisputed sums of money when due, the Service Provider shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the period specified in clause 11.2, the Service Provider may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Customer exercising its rights under clause 11.3 (Recovery of Sums Due).

## **Termination of Framework Agreement**

## The Customer may terminate the Contract by giving written notice to the Service Provider with immediate effect if the Framework Agreement is fully or partly terminated for any reason whatsoever.

## **Termination on Financial Standing**

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice where (in the reasonable opinion of the Customer), there is a material detrimental change in the financial standing and/or the credit rating of the Service Provider (as measured from the Commencement Date) which:

### adversely impacts on the Service Provider's ability to supply the Goods and/or Services under this Contract; or

### could reasonably be expected to have an adverse impact on the Service Providers ability to supply the Goods and/or Services under this Contract.

## **Termination on Audit**

The Customer may terminate this Contract by serving notice in writing with effect from the date specified in such notice if the Service Provider commits a Default of clauses 26.1 to 26.5 or clause 26.7 (Records and Audit Access).

## **Termination in relation to Benchmarking**

The Customer may terminate this Contract by serving notice on the Service Provider in writing with effect from the date specified in such notice if the Service Provider refuses or fails to comply with its obligations as set out in Schedule 7 of the Framework Agreement (Continuous Improvement and Benchmarking).

## **Partial Termination**

If the Customer is entitled to terminate this Contract pursuant to this clause 19, it may (at is sole discretion) terminate all or part of this Contract.

## **Termination in compliance with Public Contracts Regulations 2015**

 The Customer may terminate Contracts where:

19.9.1 the Contract has been subject to a substantial modification which would require a new procurement procedure in accordance with regulation 72 (9) of the PCR 2015;

19.9.2 the Service Provider has, at the time of the contract award, been in one of the situations referred to in regulation 57 (1) of the PCR 2015, including as a result of the application of regulation 57 (2), and should therefore have been excluded from the procurement procedure; or

19.9.3 the Contract should not have been awarded to the Service Provider in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU.

## **Termination on termination of the Mirror Framework**

# In the event that any Mirror Framework is terminated or otherwise expires, the Customer may elect to terminate this Contract by serving notice in writing with effect from the date specified in such notice.

# CONSEQUENCES OF EXPIRY OR TERMINATION

## Where the Customer terminates the Contract under clauses 19.3 (Termination on Default), 19.6 (Financial Standing), 19.7 (Audit), 19.8 (Benchmarking) and then makes other arrangements for the supply of Goods and/or the Services, the Customer may recover from the Service Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 19.3, 19.6, 19.7 and 19.8., no further payments shall be payable by the Customer to the Service Provider until the Customer has established the final cost of making those other arrangements.

## On the termination of the Contract for any reason, the Service Provider shall:

### immediately return to the Customer all Confidential Information, Personal Data and Customer’s Pre-Existing IPRs and the Project Specific IPRs in its possession or in the possession or under the control of any permitted Service Providers or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;

### cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Service Provider with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and/or the Replacement Service Provider;

### except where the retention of Customer Data is required by Law, on the earlier of the receipt of the Customer's written instructions or 12 months after the date of expiry or termination, destroy all copies of the Customer Data and promptly provide written confirmation to the Customer that the data has been destroyed.

### immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Service Provider under clause 4.2. Such property shall be handed back to the Customer in good working order (allowance shall be made for reasonable wear and tear);

### transfer to the Customer and/or the Replacement Service Provider (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Service Provider and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Service Provider in respect of such Licensed Goods and/or contracts and/or any other items of relevance;

### assist and co-operate with the Customer to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or provide all such assistance and co-operation as the Customer may reasonably require;

### return to the Customer any sums prepaid in respect of the Goods and/or Services not provided by the date of expiry or termination (howsoever arising); and

### promptly provide all information concerning the provision of the Goods and/or Services which may reasonably be requested by the Customer for the purposes of adequately understanding the manner in which the Goods and/or Services have been provided or for the purpose of allowing the Customer or the Replacement Service Provider to conduct due diligence.

## If the Service Provider fails to comply with clause 20.2.1 and 20.2.8, the Customer may recover possession thereof and the Service Provider grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted agents or Sub-Contractors where any such items may be held.

## Where the end of the Contract Period arises due to the Service Provider’s Default, the Service Provider shall provide all assistance under clause 20.2.5 and 20.2.8 free of charge. Otherwise, the Customer shall pay the Service Provider’s reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.

## NOT USED

## Save as otherwise expressly provided in the Contract:

### termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and

### termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Service Provider under clauses 11.2 (Payment and VAT), 11.3 (Recovery of Sums Due), 16 (Intellectual Property Rights), 16.8 (Protection of Personal Data), 16.10 (Confidentiality), 16.11 (Freedom of Information), 18 (Liabilities), 20 (Consequences of Expiry or Termination), 25 (Prevention of Bribery and Corruption), 26 (Records and Audit Access), 27 (Prevention of Fraud), 31 (Cumulative Remedies), 37 (Conflicts of Interest), 39 (The Contracts (Rights of Third parties) Act 1999) and 42.1 (Governing Law and Jurisdiction).

# PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

## The Service Provider shall not make any press announcements or publicise the Contract in any way without Approval and shall take reasonable steps to ensure that its servants, agents, employees, Sub-Contractors, Service Providers, professional advisors and consultants comply with this clause 21. Any such press announcements or publicity proposed under this clause 21.1 shall remain subject to the rights relating to Confidential Information and Commercially Sensitive Information,

## Subject to the rights in relation to Confidential Information and Commercially Sensitive Information, the Customer shall be entitled to publicise the Contract in accordance with any legal obligation upon the Customer, including any examination of the Contract by the Auditor.

## The Service Provider shall not do anything or permit to cause anything to be done, which may damage the reputation of the Customer or bring the Customer into disrepute.

# ANTI-DISCRIMINATION

## The Service Provider shall not unlawfully discriminate within the meaning and scope of Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

## The Service Provider shall take all reasonable steps to secure the observance of clause 23.1by all Staff employed in performance of this Contract.

## The Service Provider shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Service Provider under Equality Legislation or any other law, enactment, order or regulation.

## Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with any matter relating to the Service Provider’s performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Service Provider shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Service Provider’s Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Service Provider and any of the Service Provider’s Staff to appear as witness in any ensuing proceedings; and cooperate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.

## Where any investigation is conducted or proceedings are brought under Equality Legislation or any other law, enactment, order or regulation relating to discrimination which arise directly or indirectly out of any act or omission of the Service Provider, its agents or Sub-Contractors, or the Service Provider’s Staff, and where there is a finding against the Service Provider in such investigation or proceedings, the Service Provider shall indemnify the Customer with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Customer may have been ordered or required to pay to a third party.

## The Service Provider must ensure that all written information produced or used in connection with this Contract is as accessible as possible to people with disabilities and to people whose level of literacy in English is limited.

## The Service Provider acknowledges that the Customer may carry out an impact analysis as defined under the Equality Act 2010 in respect of any aspect of the provision of the Services and the Service Provider shall provide all necessary assistance and information to the Customer as may be required in relation to the performance of an impact analysis by the Customer. The Service Provider shall implement any changes or adjustments that are required as a result of, or in connection with the outcome of the impact analysis undertaken by the Customer.

# HEALTH AND SAFETY

## The Service Provider shall promptly notify the Customer of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Customer shall promptly notify the Service Provider of any health and safety hazards which may exist or arise at the Customer’s Premises and which may affect the Service Provider in the performance of its obligations under the Contract.

## While on the Customer’s Premises, the Service Provider shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

## The Service Provider shall notify the Customer immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

## The Service Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the supply of the Goods and/or Services under the Contract.

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

# ENVIRONMENTAL REQUIREMENTS

## 24.1 The Service Provider shall, when working on the Premises, perform its obligations under the Contract in accordance with the Customer's environmental policy (where provided), 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.

# PREVENTION OF BRIBERY AND CORRUPTION

## The Service Provider shall not:

### offer or give, or agree to give, to any employee, agent, servant or representative of the Customer, or any other public body or person employed by or on behalf of the Customer, any gift or other consideration of any kind which could act as an inducement or a reward for any act or failure to act in relation to this Contract;

### engage in and shall procure that all Service Provider’s Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf shall not commit, in connection with this Contract, a Prohibited Act under the Bribery Act 2010, or any other relevant laws, statutes, regulations or codes in relation to bribery and anti-corruption; and

### commit any offences under the Prevention of Corruption Acts 1889 to 1916.

## The Service Provider warrants, represents and undertakes that it has not:

### paid commission or agreed to pay commission to the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract; and

### entered into this Contract with knowledge, that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the Customer or any other public body or any person employed by or on behalf of the Customer in connection with the Contract, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the Customer and ESPO before execution of this Contract;

## The Service Provider shall:

### in relation to this Contract, act in accordance with the Ministry of Justice Guidance pursuant to Section 9 of the Bribery Act 2010;

### immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 25;

### respond promptly to any of the Customer’s enquiries regarding any breach, potential breach or suspected breach of this clause 25 and the Service Provider shall co-operate with any investigation and allow the Customer to audit Service Provider’s books, records and any other relevant documentation in connection with the breach;

### if so required by the Customer, within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the Customer in writing of the Service Provider and all persons associated with it or other persons who are supplying the Goods and Services in connection with this Contract compliance with this clause 25. The Service Provider shall provide such supporting evidence of compliance as the Customer may reasonably request;

### have and maintain an anti-bribery policy (which shall be disclosed to the Customer on request) to prevent it any of its Staff, consultants, agents or Sub-Contractors, or any person acting on the Service Provider's behalf from committing a Prohibited Act and shall enforce it where appropriate.

## If the Service Provider, its Staff, consultants, agents or Sub-Contractors or any person acting on the Service Provider's behalf, in all cases whether or not acting with the Service Provider's knowledge breaches:

### this clause 25; or

### the Bribery Act 2010 in relation to this Contract or any other contract with the Customer or any other public body or any person employed by or on behalf of the Customer or a public body in connection with the Contract,

the Customer shall be entitled to terminate this Contract by written notice with immediate effect.

## Without prejudice to its other rights and remedies under this clause 25, the Customer shall be entitled to recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from and against:

### the amount of value of any such gift, consideration or commission; and

### any other loss sustained by the Customer in consequence of any breach of this clause 25.

# RECORDS AND AUDIT ACCESS

## The Service Provider shall keep and maintain for six (6) Years after the date of termination or expiry (whichever is the earlier) of the Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of the Contract including the Goods and/or Services provided under it, and the amounts paid by the Customer.

## The Service Provider shall keep the records and accounts referred to in clause 26.1 above in accordance with Good Industry Practice and generally accepted accounting principles.

## The Service Provider shall afford the Customer and the Auditors access to the records and accounts referred to in clause 26.2 at the Service Provider’s premises and/or provide copies of such records and accounts, as may be required by the Customer and/or the Auditors from time to time, in order that the Customer and/or the Auditors may carry out an inspection including for the following purposes:

### to verify the accuracy of the Contract Price (and proposed or actual variations to them in accordance with this Contract), and/or the costs of all Service Provider (including Sub-Contractors) of the Services;

### to review the integrity, confidentiality and security of the Customer Data held or used by the Service Provider;

### to review the Service Provider’s compliance with the DPA in accordance with this Contract and any other Laws;

### to review the Service Provider's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 of the Framework Agreement;

### to review the Service Provider's compliance with its security obligations set out in clause 16;

### to review any books of account kept by the Service Provider in connection with the provision of the Service;

### to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Customer has used its resources;

### to inspect the Customer’s assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the Customer's assets are secure and that any register of assets is up to date; and/or

### to ensure that the Service Provider is complying with its obligations under this Contract.

## The Service Provider shall on request afford the Customer, the Customer's representatives and/or the Auditor access to such records and accounts as may be required by the Customer from time to time.

## The Service Provider shall provide such records and accounts (together with copies of the Service Provider’s published accounts) on request during the Contract Period and for a period of six (6) Years after termination or expiry of the Contract Period or the last Contract (whichever is the later) to the Customer and/or its Auditors.

## The Customer shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Service Provider or delay the provision of the Services or supply of Goods save insofar as the Service Provider accepts and acknowledges that control over the conduct of audits carried out by the Auditor is outside of the control of the Customer.

## Subject to the Service Provider’s rights in respect of Confidential Information, the Service Provider shall on demand provide the Auditors with all reasonable co-operation and assistance in relation to each audit, including:

### all reasonable information requested by the Customer within the scope of the audit;

### reasonable access to sites controlled by the Service Provider and to Equipment used in the provision of the Goods and/or Services; and

### access to the Staff.

## The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 26, unless the audit reveals a material Default by the Service Provider in which case the Service Provider shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

# PREVENTION OF FRAUD

## The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent any Fraud by Staff and the Service Provider (including its shareholders, members and directors) in connection with the receipt of monies from the Customer.

## The Service Provider shall notify the Customer immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur save where complying with this provision would cause the Service Provider or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

## If the Service Provider or its Staff commits any Fraud in relation to this or any other contract with a Contracting Authority or the Customer, the Customer may:

### terminate the Contract with immediate effect by giving the Service Provider notice in writing; and/or

### recover in full from the Service Provider and the Service Provider shall on demand indemnify the Customer in full from any loss sustained by the Customer in consequence of any breach of this clause 27 including the cost reasonably incurred by the Customer of making other arrangements for the supply of the Goods and/or Services and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period.

# TRANSFER AND SUB-CONTRACTING

## The Service Provider shall not assign, novate, Sub-Contract or in any other way dispose of the Contract or any part of it without Approval.

## The Service Provider shall not substitute or remove a Sub-Contractor or appoint an additional Sub-Contractor without the prior written consent of ESPO and the Customer. Notwithstanding any permitted Sub-Contract in accordance with this clause 28, the Service Provider shall remain responsible for all acts and omissions of its Sub-Contractors and the acts and omissions of those employed or engaged by the Sub-Contractors as if they were its own.

# FORCE MAJEURE

## Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing to the other Party.

## Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, Sub-Contractor or Service Provider shall be regarded as due to Force Majeure only if that agent, Sub-Contractor or Service Provider is itself impeded by Force Majeure from complying with an obligation to the Service Provider.

## If either Party becomes aware of a Force Majeure event or occurrence which gives rise to or is likely to give rise to any such failure or delay on its part as described in clause 29.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period during which it is estimated that such failure or delay shall continue.

## If an event of Force Majeure event affects the Services, the Customer may direct the Service Provider to procure those Goods and/or Services from a third party Service Provider in which case the Service Provider will be liable for payment for the provision of those Goods and/or Services for as long as the delay in performance continues.

## The Service Provider will not have the right to any payment from the Customer under this Contract where the Service Provider is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Service Provider to use a replacement Service Provider pursuant to sub-clause 29.4, then the Customer will pay the Service Provider (a) the Contract Price; and (b) the difference between the Contract Price and the new Service Provider’s costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Service Provider’s costs are greater than the Contract Price.

# WAIVER

## The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

## No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause 40 (Notices).

## A waiver by either Party of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

# CUMULATIVE REMEDIES

# Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

# FURTHER ASSURANCES

# Each Party undertakes at the request of the other, and at the cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

# VARIATION

# No variation of this agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

# SEVERABILITY

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

## In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Customer and the Service Provider shall immediately commence good faith negotiations to remedy such invalidity.

# MISTAKES IN INFORMATION

# The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Service Provider in connection with the supply of the Goods and/or Services and shall pay the Customer any extra costs occasioned by any discrepancies, errors or omissions therein, except where such mistakes are the fault of the Customer.

# SERVICE PROVIDER'S STATUS

# At all times during the Contract Period the Service Provider shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and, accordingly, neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

# CONFLICTS OF INTEREST

## The Service Provider shall take appropriate steps to ensure that neither the Service Provider nor any Staff are placed in a position where (in the reasonable opinion of the Customer), there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider or Staff and the duties owed to the Customer under the provisions of the Contract.

## The Service Provider shall promptly notify the Customer (and provide full particulars to the Customer) if any conflict referred to in clause 37.1 above arises or is reasonably foreseeable.

## The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Service Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of the Customer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Service Provider and the duties owed to the Customer under the provisions of the Contract. The actions of the Customer pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the either party.

## This clause shall apply during the Contract Period and for a period of two (2) Years after expiry of the Contract Period.

# ENTIRE AGREEMENT

## This Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.

## Each of the Parties acknowledges and agrees that in entering into the Contract it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in the Contract.

## The Service Provider acknowledges that it has:

### entered into the Contract in reliance on its own due diligence alone; and

### received sufficient information required by it in order to determine whether it is able to provide the Goods and/or Services in accordance with the terms of the Contract.

## Nothing in clauses 38.1 and 38.2 shall operate to exclude Fraud or fraudulent misrepresentation.

## The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

# THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

## A person who is not a Party to the Contract except ESPO, or the Trading Company as appropriate, in relation to its right to claim retrospective rebate from the Service Provider under the payment clause has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## The Parties agree that the Contracts (Rights of Third Parties) Act 1999 (CROTPA) shall apply to clause 14 to the extent necessary that any Former Service Provider and Replacement Service Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Former Service Provider and the Replacement Service Provider by the Service Provider under that clause 14 in its own right pursuant to clause 1(1) of CROTPA.

# No consent of any third party is necessary for any rescission, variation (including any release or compromise in whole or in part of liability) or termination of this Contract or any one or more clauses of it.

# NOTICES

## Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication.

## Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail (confirmed by letter). Such letters shall be addressed to the other Party in the manner referred to in clause 40.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

## For the purposes of clause 40.2, the address, email address of each Party shall be the address and email address set out in the Master Contract Schedule and/or any other Contract Document.

## Either Party may change its address for service by serving a notice in accordance with this clause.

# LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

## 41.1 The Service Provider shall neither be relieved of its obligations under this Contract nor be entitled to an increase in the Contract Price as the result of a general change in law.

41.2 The Parties acknowledge that during the Term of this Contract the local government structure in the Customer’s administrative areas may be subject to change. These administrative changes may give rise to the need for the Customer to terminate this Contract and/or seek its potential variation with any successor or assignee of the Customer. The Customer shall not be liable for any loss of any kind including, but not limited to, lost opportunity that may arise as a consequence of local government reorganisation.

# DISPUTES AND LAW

# Governing Law and Jurisdiction

# The Contract shall be governed by and interpreted in accordance with the laws of England and Wales and the Parties agree to submit to the exclusive jurisdiction of the English courts any dispute that arises in connection with the Contract.

## **Dispute Resolution**

### The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the level of the Customer’s Representative and the Service Provider’s Representative.

### Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

### If the dispute cannot be resolved by the Parties pursuant to clause 42.2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 42.2.5 unless:

#### the Customer considers that the dispute is not suitable for resolution by mediation; or

#### the Service Provider does not agree to mediation.

### The obligations of the Parties under the Contract shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.

### The procedure for mediation is as follows:

#### a neutral adviser or mediator (**"the Mediator"**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR”**) to appoint a Mediator;

#### the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from the mediation provider appointed by CEDR to provide guidance on a suitable procedure;

#### unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings;

#### if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

#### failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties; and

#### if the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the courts.

####  **SCHEDULE 1 (NOT APPLICABLE TO THIS CONTRACT)**

**SERVICE LEVELS AND SERVICE CREDITS (where appropriate)**

1. **SCOPE**

 This schedule 1 sets out the Service Levels which the Service Provider is required to achieve when delivering the Services, the mechanism by which Service Failures will be managed and the method by which the Service Provider's performance of the Services by the Service Provider will be monitored. This schedule comprises:

##  Part A: Service Levels;

##  Appendix to Part A - Service Levels and Service Credits; and

##  Part B: Performance Monitoring.

**PART A**

**SERVICE LEVELS**

1. **PRINCIPAL POINTS**
	1. The objectives of the Service Levels and Service Credits are to:
		1. ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
		2. provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Service Provider's failure to deliver the level of Service for which it has contracted to deliver; and
		3. incentivise the Service Provider to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.
2. **SERVICE LEVELS**
	1. The Appendix to this Part A of this schedule sets out Service Levels the performance of which the Parties have agreed to measure.
	2. The Service Provider shall monitor its performance of each of the Services referred to in Appendix A by reference to the Service Level(s) for that part of the Service and shall send the Customer a report detailing the level of service which was achieved in accordance with the provisions of part B of this schedule 1.
	3. If the level of performance of the Service Provider of any element of the Services during Contract Period:
		1. fails to achieve a Service Level in respect of each element of the Service, then the Customer shall make a deduction from the Contract Charges in accordance with Appendix A to this schedule 1; or
		2. constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 19.3

### **APPENDIX TO PART A (NOT APPLICABLE TO THIS CONTRACT)**

**SERVICE LEVELS AND SEVERITY LEVELS**

|  |  |
| --- | --- |
|  | **Level achieved** |
| Service Level | **60-70%** | **71-90%** | **91-95%** | **96-100%** |
| 1. |  |  |  |  |  |
| 2. |  |  |  |  |  |
| 3. |  |  |  |  |  |
| 4. |  |  |  |  |  |

The Service Credits shall be calculated on the basis of the following formula and worked example:

|  |  |  |
| --- | --- | --- |
| Formula - 100% - % of Service Level achieved  | = | x% of the Contract Charges to be deducted from the next invoice payable by the Customer. |
| Worked example - 100% (e.g. Service Level requirement for data accuracy) - 75% (e.g. accuracy of data)  | = | 25% of the Contract Charges to deducted from the next invoice payable by the Customer  |

**PART B**

**PERFORMANCE MONITORING**

1. **PRINCIPAL POINTS**
	1. This Part B provides the methodology for monitoring the Services:
		1. to ensure that the Service Provider is complying with the Service Levels; and
		2. for identifying any failures to achieve Service Levels in the performance of the Service Provider and/or delivery of the Services ("**Performance Monitoring System**").
	2. Within 20 Working Days of the Commencement Date the Service Provider shall provide the Customer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
2. **REPORTING OF SERVICE FAILURES**

2.1 The Customer shall report all failures to achieve Service Levels and any Critical Service Failure to the Customer in accordance with the processes agreed in paragraph 1.2 above.

1. **PERFORMANCE MONITORING AND PERFORMANCE REVIEW**
	1. The Service Provider shall provide the Customer with reports in accordance with the process and timescales agreed pursuant to paragraph 1.2 above which shall contain, as a minimum, the following information in respect of the relevant period just ended:
		1. for each Service Level, the actual performance achieved over the Service Level for the relevant period;
		2. a summary of all failures to achieve Service Levels that occurred during that period;
		3. any Critical Service Failures and details in relation thereto;
		4. for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
		5. the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
		6. such other details as the Customer may reasonably require from time to time.
	2. The Parties shall attend meetings to discuss Service Level reports ("Performance Review Meetings") on a monthly basis (unless otherwise agreed). The Performance Review Meetings will be the forum for the review by the Service Provider and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
		1. take place within one (1) week of the reports being issued by the Service Provider;
		2. take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
		3. be attended by the Service Provider's Representative and the Customer's Representative; and
		4. be fully minuted by the Service Provider. The prepared minutes will be circulated by the Service Provider to all attendees at the relevant meeting and also to the Customer's representative and any other recipients agreed at the relevant meeting. The minutes of the preceding month's Performance Review Meeting will be agreed and signed by both the Service Provider's representative and the Customer's Representative at each meeting.
	3. The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
	4. The Service Provider shall provide to the Customer such supporting documentation as the Customer may reasonably require in order to verify the level of the performance by the Service Provider and the calculations of the amount of Service Credits for any specified period.
2. **SATISFACTION SURVEYS**
	1. In order to assess the level of performance of the Service Provider, the Customer may undertake satisfaction surveys in respect of the Service Provider's provision of the Services.
	2. The Customer shall be entitled to notify the Service Provider of any aspects of their performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with the Contract.
	3. All other suggestions for improvements to the Services shall be dealt with as part of the continuous improvement programme pursuant to clause 8.

**SCHEDULE 2 (NOT APPLICABLE TO THIS CONTRACT)**

**IMPLEMENTATION PLAN AND MILESTONES**

1. **IMPLEMENTATION PLAN**
	1. The Service Provider shall supply the Goods and/or Services in accordance with the Implementation Plan that it submitted to the Customer prior to the Commencement Date which shall be incorporated into the Master Contract Schedule and/or any other Contract Document.
	2. If so required by the Customer, the Service Provider shall produce a further version of the Implementation Plan (based on the plan specified in the Master Contract Schedule or any other Contract Document) in such further detail as the Customer may reasonably require. The Service Provider shall ensure that each version of the Implementation Plan is subject to Approval. The Service Provider shall ensure that the Implementation Plan is maintained and updated on a regular basis as may be necessary to reflect the then current state of the implementation of the Services and/or provision of the Goods.
	3. The Customer shall have the right to require the Service Provider to include any reasonable changes or provisions in each version of the Implementation Plan.
2. **MILESTONES**
	1. The Service Provider shall perform its obligations so as to meet each Milestone by the Milestone Date.
	2. Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Service Provider shall not attempt to postpone any of the Milestones using the Variation Procedure or otherwise (except in the event of a Customer Default which affects the Service Provider's ability to achieve a Milestone by the relevant Milestone Date).
	3. If a Milestone has not been achieved by the relevant Milestone Date, the Service Provider shall pay to the Customer Delay Payments in accordance with the table above for each day of delay from and including the relevant Milestone Date until and including the date on which the relevant Milestone criteria are actually achieved and the Customer provides the Service Provider with confirmation in writing of its satisfaction that the Milestone has been met.
	4. No payment or concession to the Service Provider by the Customer or other act or omission of the Customer shall in any way affect the rights of the Customer to recover the Delay Payments pursuant to the provisions of this Schedule or be deemed to be a waiver of the right of the Customer to recover any such damages unless such waiver has been signed by the Customer, expressly made in writing by the Customer and refers specifically to a waiver of the Customer’s rights to claim Delay Payments.
	5. The Customer’s rights to claim Delay Payments pursuant to this Contract shall be without prejudice to any right of the Customer to claim damages for breach.

**SCHEDULE 3**

**PRICE SCHEDULE - REDACTED**

**SCHEDULE 4**

**STATEMENT OF REQUIREMENTS**

# DEFINITIONS

|  |  |
| --- | --- |
| **Expression or Acronym** | **Definition** |
| **ATS** | **Applicant Tracking System** |
| **BPSS** | **Baseline Personnel Security Standard** |
| **The Contracting Authority** | **Cabinet Office, CSHR** |
| **CRM** | **Customer Relationship Management (system)** |
| **CS Talent** | **Civil Service Talent** |
| **CSHR** | **Civil Service Human Resources** |
| **The Customer** | **GRS** |
| **DSE** | **Display Screen Equipment** |
| **EU** | **European Union** |
| **GRS** | **Government Recruitment Service** |
| **GSS** | **Government Statistical Service** |
| **G-Suite** | **Collaboration & Productivity Apps for Business supplied by Google (Including but not limited to: Google Drive, Gmail, Hangouts Meet, etc.)** |
| **HMG** | **Her Majesty’s Government** |
| **NEN** | **New Entrant Notification** |
| **PEC** | **Pre Employment Check** |
| **PN** | **Posting Notice** |
| **SCS** | **Senior Civil Servant** |
| **TLS** | **Transport Layer Security** |
| **TUPE** | **Transfer of Undertakings (Protection of Employment) Regulations (2006)** |
| **vX** | **The current version of the Customer’s ATS** |

# PURPOSE

## Crown Commercial Service (The Agent) is undertaking this procurement exercise on behalf of the Cabinet Office, Civil Service Human Resources (CSHR) and Government Recruitment Service (GRS) - hereafter referred to as the “Customer”. The Customer incorporates main service users GRS, CSHR and Civil Service Talent, who are all part of the Cabinet Office which is the Contracting Authority.

## The Supplier will be required to deliver a variety of recruitment services on behalf of the Customer. The services delivered by the Supplier will be complementary to the service offered by the Customer, and is being sought to maintain consistent delivery during periods of high work flow or intensive resource demand.

## As such, the deliverables set out in section 6 are intended to be utilised as and when business need defines demand. This means services will be required at varying stages of the process and may include full “end-to-end” process delivery or a selection of individual elements of the process. The usage demand and the volumes cannot be predicted in advance and are therefore not guaranteed as part of this contract.

## The Contract will be for a two-year period with an option to extend up to a further two years in one year increments (2+1+1).

# BACKGROUND TO THE CUSTOMER

## The Customer is CSHR, specifically GRS, a cross-Government Expert Service which brings together HR resourcing, including recruitment of general, specialist and senior roles. They work in partnership with stakeholders to deliver Customer focused recruitment solutions.

## It is important that CSHR’s services are flexible enough to be able to respond to any significant events that result in an unprecedented increase in demand for Recruitment Services including all onboarding activities and Pre-Employment Checking (PEC). **REDACTED.** In these situations, access to an external Supplier means that CSHR would be able to respond quickly without the need to seek further approval or go through the lengthy process of increasing in house team volumes for what may only be a short term need.

# BACKGROUND TO/OVERVIEW OF THE REQUIREMENT

## The Customer has identified a requirement for external recruitment services support in the form of individual campaign assistance, elements of the recruitment process activities and/or the facilitation of a full recruitment campaign in its entirety including pre-employment checks to support recruitment exercises. Forecasts of the specific requirements under this contract are difficult to predict as they are based on Customer Department needs.

## The nature of recruitment means that workflow fluctuates, resulting in the need to outsource all/part elements of the recruitment/pre-employment check process when demand deems it necessary, often without notice. The Customer requires an effective, efficient, agile service to meet the, sometimes immediate, needs of the business.

## The Supplier will help departments to deliver quality candidates, using set sifting, interview and/or assessment techniques (e.g. strength based assessments) as set by the Customer and as per the [Civil Service recruitment framework.](https://www.gov.uk/government/publications/success-profiles) The Supplier will follow strict pre-employment checking processes, including the Baseline Personnel Security Standard (BPSS), to prevent illegal working, identify fraud and most importantly to protect national security.

# SCOPE OF THE REQUIREMENT

## The Supplier will be required to utilise a selection of the Customer’s systems and procedures, including using their Applicant Tracking System (ATS), currently “vX”. Any areas of the process which fall outside of existing systems, specifically those which an external supplier will not be able to access, will require further discussion. Specifically, the Supplier will be expected to have their own method of delivery for the following:

### Trackable two-way communication (with Candidates, vacancy holders, etc.)

### Document storage and retention (Digital By Default)

### The ability to track MI points

### Access to a secure shared workspace. (The Customer currently utilise the **G-Suite Enterprise service**, and require the successful Supplier to be (or become) a user of the same service).

*The above deliverables are required due to functionality limitations in the current ATS (vX) system, although this may change in the future. As a result, the Supplier will be expected to demonstrate their methods of delivering these outside of the ATS platform.*

## The main areas of work likely to arise under this contract are categorised and described below, in Section 6. The Supplier will however additionally be required to handle any other activities which may arise, that do not fall within these defined categories, but are within the overall scope of the specification.

## The Supplier shall, in general, be required to:

* Undertake recruitment and pre-employment checking activities in line with:
* [Civil Service Commissioners Recruitment Principles](https://civilservicecommission.independent.gov.uk/wp-content/uploads/2019/03/02a_RECRUITMENT-PRINCIPLES-April-2018-FINAL-.pdf)
* [Baseline Personnel Security Standards](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf);
* Be able to plan and deliver entire recruitment campaigns (or individual elements thereof) for all Civil Service grades, roles and specialisms.
* Liaise with departments and Candidates to obtain missing information.
* Manage On-boarding activities.
* Provide Management Information.
* Operate within agreed service levels and standardised CSHR processes.
* Maintain a high level of quality and adhere to Customer instruction.
* Create and maintain a “Candidate Pack” for each Candidate they deal with. This will include a copy of each document/piece of evidence which is supplied or created as part of a campaign.

# THE REQUIREMENT

The Customer requires a Supplier with the expertise, specialist knowledge and networks to provide all/part recruitment activities (inc SCS vacancies).

Initial notification of a work commission will be made by the Customer to the Supplier, usually via phone call. Due to the nature of the work commissioned by the Customer, the notice period between this call and the expectation for the Supplier to commence work may be as little as 2 working days.

The Supplier will be given access to any necessary data via a digital platform, the exact nature of which will be confirmed on contract award, but will include the GRS ATS as a minimum.

The Supplier in general, shall be required to provide the following, but not be limited to:

## **Work Commission/Planning Meetings**

The Supplier will:

### Attend an initial planning meeting with the Vacancy Holder and the Customer to agree on the approach.

### This will include, but is not limited to:

* + - * Timelines
			* Budget/Costs
			* Bespoke Campaign Requirements (such as Advertising & Marketing, specific tests/assessments etc.)
			* Assessment Centres/Panel Members

### Provide market mapping and/or market insight to influence and/or support any campaign approach recommendation, if requested. The Customer anticipates that this will be a minimal requirement for this contract.

### Provide written cost proposal confirmation which will be received by the Customer within 2 working days following the planning meeting.

## **Advert**

* + 1. **The Supplier will be expected (but not limited) to:**
			- Review any Job Advert requests received via the GRS ATS platform for completeness, content and accuracy, making contact with the Vacancy Holder to provide expert advice or should additional information or clarification be required.
			- Update and edit vacancies via GRS ATS to ensure accurate information and detail is captured inserting Customer standardised wording as required.
			- Ensure business approval is held prior to activation.
			- Provide advice and support to Vacancy Holders on the various and most suitable option available for advertising - including but not limited to using the following:
* CV
* Test (currently [Verbal & Numerical Reasoning Tests](https://www.gov.uk/guidance/preparing-for-verbal-and-numerical-reasoning-tests) or [Civil Service Judgement Test](https://www.gov.uk/guidance/preparing-for-the-civil-service-judgement-test))
* The [Civil Service Recruitment Framework](https://www.gov.uk/government/publications/success-profiles)
	+ - * Advertise on Civil Service Jobs and other free to use services such as the Find a Job - Gov.UK service, Government Professions pages and other websites as deemed appropriate.
			* Manage advertisement placement with third parties as appropriate.
			* Manage Candidate correspondence, including notification of results to Customer using responses as provided by the Customer.

## **Recruitment Activity (Sift, Interview & Assessment)**

The Supplier will be expected (but not limited) to:

### **Application Sifting:**

* + - * Distribute GRS approved tests during the sifting process using the Customer's manual invitation process.
			* Utilise GRS approved tests, either on-line or off-line (including both bespoke and/or “off the shelf” tests, or existing tests in use by Departments/Professions) as part of a recruitment campaign. Some tests may be administered by additional third party suppliers, the Customer will ensure that the Supplier has access to these should they be required.
			* For roles requiring candidates to hold a GSS (Government Statistical Service) badge, the Supplier will identify if this is already held and update the system with exemption details.
			* In instances where Candidates are required to hold a GSS (Government Statistical Service) badge but do not currently have one, the supplier will need to administer the tests and update the applicant tracking system accordingly. Where a candidate fails to complete the test by the deadline, their application will be rejected by the Supplier.
			* The Supplier will work with the Customer to establish the potential to deliver the Social Research Knowledge Test, which is currently hosted by a third party supplier: Skillsarena.
			* Sift fully completed applications using the set criteria (which will be agreed per campaign), creating a shortlist of successful Candidates, notifying the Vacancy Holder of the outcome.
			* Notify Candidates of sift outcome and arrange for shortlisted Candidates to attend interviews and/or assessment centres.
			* Maintain an accurate status marker for each Candidate, using the GRS ATS, as the process progresses.
			* Supply sifters as required to assess candidate suitability for posts applied for. The Customer reserves the right to set benchmark of training required to ensure consistency across the service. Any additional training deemed necessary will be provided by the Customer (this may include, but is not limited to: Unconscious Bias, Equality & Diversity, Civil Service Success Profiles etc.).
			* Create and maintain full sift records which will be legible, clearly demonstrate the sift decision was fair & correct and provide a clear audit trail for each Candidate. These should be retained and available for access by the Customer, in line with the specified Data Retention rules at section 21.

### **Interview & Assessment:**

* + - * Use location or locations specified by the Customer or source appropriate venue if necessary, to include provision of IT equipment (primarily laptops or desktop computers for the delivery of digital tests) when required as part of the individual assessment delivery. (The Supplier must use venues from any pre-approved venue list which is supplied by the customer, should one be brought into use during the life of the contract.) Where the Supplier is required to source a venue, full costs and details must be approved with the Customer ahead of any booking being confirmed.
			* Supply trained interviewers to facilitate the delivery of interviewing panels. This may involve providing a full panel including a chairperson, providing a sole independent member to an existing panel or providing members of a panel chaired by the Customer, etc.
			* Supply assessors to determine Candidate suitability for posts applied for, using assessment centres which could be delivered as a role playing scenario, a defined task assignment or a group exercise etc. While the Customer does not stipulate any specific level of qualification for these roles, the Customer reserves the right to request persons with relevant or adequate experience in instances where this would be beneficial.
			* Supply support personnel to assist with the delivery of administration tasks such as meet & greet, scheduling, etc.
			* Apply the Customer’s reasonable adjustments in the selection & assessment process, making reasonable adjustments to accommodate Candidates when this is required and maintaining records of adjustments made.
			* Assess Candidate suitability, using the scoring system as provided by the Customer as a baseline marker.

### **Interview & Assessment via VideoLink:**

* + - * Supply trained interviewers to facilitate the scoring of interviews conducted via video link. This can be in the form of pre-recorded video responses or a live interview directly with the Candidate.
			* Provide a scoring service for video interviews which have been conducted, but not scored, by an external third party.
			* Assess Candidate suitability, using the scoring system as provided by the Customer as a baseline marker.
			* Have the capability and resource to deliver a video interviewing service via a secure video link, to include both live interaction interviewing and pre-recorded video responses.
			* Provide a video interviewing service that offers:
* accessibility for those candidates with a disability
* the opportunity to extend administration times for candidates with adjustment requirements
* a service that allows the interview question order to be randomised
* the capability to provide real time data regarding campaign/candidate progress.
	+ - * Allow the Customer, the Vacancy Holder department and any third party supplier acting on our behalf to access and view the video interviews conducted by the Supplier.

## **Offer, Negotiation and Confirmation of Acceptance**

### The Supplier will, when requested:

* + - * Lead the offer, negotiation and acceptance confirmation process between the Candidate and the Customer, including but not limited to:
			* Issuing results to Candidates.
			* Drawing up merit based Reserve Lists (if necessary).
			* Liaising between the Customer and the Candidate until an offer can be agreed and accepted.
			* Manage the process digitally via the Customer platform, unless a paper based clerical process is required.
			* Make formal employment offers to Candidates (following satisfactory completion of Pre-Employment Checking as detailed at 6.5).

## **Pre-Employment Checking**

[HMG BPSS](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf) is one of four levels of personnel security controls currently available. The Supplier will be able to plan and deliver for both volume and small Customer requests, delivering all or part of the Pre-Employment checking process. During the Pre-Employment Checking process, the BPSS guidance must be adhered to at all times. The sub-sections detailed below each make up a section of BPSS and therefore need to be completed in full.

Delivery of this element will require the Supplier to obtain a variety of details from the Candidate. The Customer will provide detailed guidance for this activity, including relevant process maps which are currently utilised (including specific steps such as making 3 attempts to obtain information from a candidate and raising a risk assessment with the Vacancy Holder where this is not possible, etc).

In the event where the applying candidate is an existing member of a Government Department, they would be issued with the Transfer of Staff Data Form (TSDF) in the first instance. Candidates who declare they already hold the required level of security clearance, which can subsequently be verified, will not be subjected to the Pre-Employment Checking process, instead moving straight to the Onboarding process.

The Supplier must follow BPSS and Civil Service guidelines to undertake pre-employment checks, which may include but not be limited to:

### **Identity:**

* + - * Complete a Right to Work (RTW) check for all successful Candidates. To include checking the RTW in the UK and the RTW in the UK Civil Service.

### **Nationality & Immigration Status:**

* + - * Review visas where applicable, which must be verified (The Supplier will be expected to seek advice from the Customer as the expert service). If it is identified that a Candidate is not eligible to work in the country and/or Civil Service both the Candidate and Customer should be advised BPSS has not been met.
			* Apply Civil Service Nationality Rules as per Civil Service guidelines.

### **National Security Vetting (NSV):**

**Elements of this process can only be conducted by the Customer, further details to be provided on contract award.**

* + - * NSV may be required depending on the role advertised and the recruiting department.
			* Chase up candidate responses
			* Using the information provided by the candidates, complete an electronic security form which will be submitted to the appropriate security team (details to be provided on contract award).
			* Notify the Customer upon receipt of the outcome.

### **Employment History & References**

* + - * Obtain the candidate's employment history from the Customer (GRS have access to an Electronic Employment History Check database), if unable to verify the Supplier will obtain this information via references or other means acceptable to the Customer.

### **Criminal Record Check:**

* + - * Complete Criminal Record Checks as per each department’s policy, for the levels listed:
* Basic
* Standard
* Enhanced
	+ - * Use the appropriate route to complete Criminal Record Checks:
* Disclosure & Barring Service
* Disclosure Scotland
* Access NI
	+ - * The successful Supplier will have access to the Customer’s existing Criminal Record Checking interface (where a digital process is available). Details of this will be disclosed to the successful bidder at the time of contract award.
			* In any rare instance where the Customer’s existing platform cannot deliver the required check (for geographical reasons, etc) the Supplier will be expected to source the check directly from the appropriate provider (following discussion and agreement with the Customer). The Customer will allow the Supplier to re-charge this amount at cost price only.
			* The Customer requires that Criminal Record Checks are managed digitally in all cases where possible.

### **Complete and administer other required documentation, in line with Civil Service or the Department’s own policy, including but not limited to:**

* + - * Candidate Declarations

Review Candidate declarations of the following nature:

* If the Candidate declares as having an undischarged bankruptcy order
* If the Candidate declares any work or involvement in activities that may compromise the role they are being considered for
* Where the Candidate self declares previously holding a Civil Service position, determine whether the Candidate was dismissed and the reason for this.

Where a declaration is made at any stage, this information should be passed directly to the Vacancy Holder so a risk assessment can be completed. The Vacancy Holder will make the final decision on whether a candidate can continue in the process depending on the declaration made. The Supplier should notify the Customer of the actions taken and ensure a detailed record of all instances is held.

* + - * Internal Fraud

If the Candidate is an external applicant or a former Civil Servant, review records to identify whether there is any evidence of internal fraud - due to data restrictions this action will be taken by the Customer, however should GRS overcome current data restrictions this action then may then be performed by the Supplier.

* + - * Overseas check

When a Candidate has declared they have resided abroad, an additional check is required; the supplier shall liaise with the Candidate to obtain the relevant Police Certificate. (The Candidate is responsible for obtaining the document and for costs involved.)

* + - * Qualifications

As per department/vacancy specific requirements, verify academic qualifications.

* + - * Pension Questionnaire

Administer the pension questionnaire form between the Candidate and the pension provider.

Where a candidate has previously been a member of the Civil Service Pension Scheme, complete the New Joiner tool (electronic form) depending on the output from the New Joiner tool, completing Civil Service Pension Scheme forms if required.

* + - * Self-Employed Check

Where a Candidate has declared previous self-employment, obtain information from the Candidate’s accounts company to ensure tax has been paid and that there is no conflict of interest with the post on offer.

* + - * Health Referral

Where a Candidate declares a condition which may require additional advice, the Supplier will engage with either the Customer or the recruiting department’s health provider, as per department/vacancy specific requirements.

### **Raise Risk Assessments with the Vacancy Holder:**

* + - * When a Candidate fails to respond to a request for information
			* When the Criminal Record Check shows unspent convictions (during a basic check) or spent convictions (during a standard or enhanced check)
			* When a Candidate is identified as requiring any reasonable adjustments or has a health condition

The Supplier will report these to the Customer as and when the need for a Risk Assessment arises.

### **Manage all PEC activities within the 17\* day SLA:**

* + - * Issue notification to the Customer upon completion of all Pre-Employment Checking actions, within the 17 day SLA
			* Report failure to meet deadlines directly to the Customer at the earliest opportunity
			* Report potential delays and any anticipated inability to meet prior to the SLA deadline being missed
			* Provide supporting information to the Customer for each occurrence when the 17\* day SLA deadline is not achieved.

(\*) – A review of this SLA is currently taking place. Following discussion with the Customer’s service users and other stakeholders there is potential that this SLA will change. (We anticipate the review will lead to a reduction in the overall SLA time, meaning a significant decrease in days allowed for delivery.) The Supplier will be expected to follow any revised SLAs put in place, following advance notice and discussion with the Customer.

## **Onboarding**

### Complete onboarding actions for successful Candidates, to include but not limited to:

* + - * Issuing take up duty letter
			* Issuing employment contracts
			* Completing a New Entrant Notification form for any non-pre-existing Civil Service employees
			* Completing a Posting Notice form for all internal candidates.

### Provide confirmation to the Vacancy Holder of any acceptance or rejection of offer, recording as required on the ATS.

### On receipt of a completed New Entrant Template/New Entrant Notification (NET/NEN) complete the following checks:

* + - * Cross reference the Candidate's personal information with details contained within the Customer’s ATS, or which has been provided as ID by the Candidate, updating as necessary.
			* Ensure full accuracy of information regarding role, salary, Day One reporting details, pension, Candidate type etc.

Email completed template to the relevant HR department, including Transfer of Staff Data Form for Other Government Department (OGD) Candidates.

The above process may vary per department, however the Customer will provide relevant details on award.

### Maintain contact with Candidates, providing updates as necessary and responding to queries received.

### Return a digital Candidate pack to the Customer (and any relevant departmental HR team, should this be required) which must include but not limited to the following:

* + - * Copy of all valid Candidate identification and Candidate forms used to aid BPSS
			* Copy of references (if required)
			* Where a visa restriction is in place, complete and return the additional template (as agreed with the Customer).

## **Additional Video Interviewing Requirements (Specific to Civil Service Fast Stream & Early Talent)**

### The Customer has built an Applicant Tracking System (separate to vX), within which is an integrated video interviewing platform from an external third party supplier. The video platform includes the following:

* + - * Initial Candidate guidance/welcome videos and other instructions.
			* Bespoke question setting delivered by text and by video recording on the platform - with questions designed by CHSR.
			* Facility to enable administration to disabled groups, including a varying timing of question delivery and other professional adjustments.
			* Facility to provide a detailed scoring framework for assessors.
			* Facility to rotate new questions to keep the question set refreshed.
			* All assessment data stored in a UK hub.
			* A distinctive, branded presentation.
			* Positive Candidate experience for the Candidate group.
			* Facility to upload information/promotional videos for Candidates.

### The recorded video assessment will then be evaluated by assessors provided by the Supplier and will need to meet the following:

* + - * Be expert in objective, diversity-focused assessment.
			* Be able to offer high quality interview assessments based on recorded downloads with an intended turnaround time of 3 days per Candidate, completing 10 assessments per day per assessor.
			* Be available for training from CHSR.
			* Be prepared for, and welcoming of, quality assurance input from CSHR.

### Video Assessment Results:

* + - * For each Candidate, CSHR should be provided with scores entered into the system by the assessor.

### Anticipated Volumes:

* + - * Based on historical usage, the Customer has estimated annual volumes in the region of 12,000 Candidates taking the video assessment.
			* It is anticipated that this element will require a pool of around 50 assessors to deliver the volumes as set out above.
			* As it is difficult to predict volumes, the Customer cannot provide guarantees to the Supplier regarding either minimum or maximum volumes.
			* The volumes and frequency of usage will vary throughout the term of the agreement and the Supplier must retain a flexible capacity.
			* The Supplier will be expected to submit costs based on volume discount and/or a fixed cost basis.

### Assessor Requirements:

* + - * The Supplier must provide interviewers, for the video platform, who are skilled in objective, fair assessment and ensure all such assessment is entirely confidential.
			* The Supplier must ensure the assessor panel are available for training prior to the recruitment launch, focusing specifically on fair, objective and consistent assessment against a common standard.
			* The Supplier must also ensure that any assessors are made fully conversant with the technical requirements of the video interviewing platform.

### Additional Requirements:

* + - * The Supplier must ensure that the Customer is given access to recorded interviews, to enable quality assurance review, and to the interviewer, to receive relevant feedback.
			* The Supplier will undertake regular quality assurance of assessor performance, supplemented by the Customer’s checks.
			* The Supplier shall work with the Customer to provide administrative support including activities such as, but not limited to, regular progress updates, effectiveness evaluations, etc.

### Management Information Provision (to include, but not limited to):

* + - * Number of assessments undertaken.
			* Assessment scores, broken down by Candidates, individual Candidate scores, individual assessor scores in a format that the Customer can integrate with Diversity data of Candidates.
			* Customer complaints log broken down by type, with summary of corrective actions and progress status.

# KEY MILESTONES & DELIVERABLES

## The following contract milestones/deliverables shall apply:

|  |  |  |
| --- | --- | --- |
| **Milestone / Deliverable** | **Description** | **Timeframe or Delivery Date** |
| **1** | **Hold a meeting with the Customer to discuss the implementation plan and activities required to transition from the current Supplier to the new.** | **Within 1 week of contract award.** |
| **2** | **Work with the Customer to produce draft versions of the MI reports as specified in section 8.1.** | **Within 2 weeks of contract award.** |
| **5** | **Produce a continuous improvement plan.** | **Within 6 months of contract commencement date and annually thereafter.** |
| **6** | **Produce an Exit Plan.** | **Within 3 months of the contract commencement date, reviewed as appropriate.** |
| **7** | **Work with the Customer to ensure all appropriate and required Data Security & Assurance documentation is completed.** | **Within 2 weeks of contract award.** |

# MANAGEMENT INFORMATION / REPORTING

## The Customer requires the Supplier to provide the following Management Information:

### Weekly real time tracking and monitoring of volumes at each stage of the process, outlining the rate of progression and average time in each stage, providing recommendations for adjustments where appropriate.

### Monthly and ad-hoc spending totals, broken down by specific department, individual campaign and level of Criminal Record Check completed. Financial report content to be further agreed between the Customer and the Supplier after award, including but not limited to:

* + - * Work completed and invoiced.
			* Work completed but not yet invoiced.
			* Work in progress.
			* Work discussed/forecasted but not yet officially commissioned.
			* Separate breakdown of check type cost and any admin fees.

### Financial reports & Invoices should be provided monthly and clearly detail:

* + - * Volumes
			* Unit Cost
			* Cancellations (including date & time\*)
			* Unique Reference/Identifier Number
			* Vacancy Holder Department Name
			* GRS Contact
			* Purchase Order Number
			* Invoice Number

\* Cancellation time is only required for financial reports.

### Real time access to the status of each individual Candidate at each stage, regardless of their position in the process, when/if requested. This will ideally be via dedicated access for the Customer to an online portal or area of the Supplier platform.

### A monthly report detailing any Customer or Candidate complaints received, broken down by type, with summary of corrective actions and progress status.

### Maintain detailed Diversity & Inclusion (D&I) MI for every campaign, providing an ad-hoc report for this when requested by the Customer (the specific trackable data points for this will be provided at contract award).

### Track and record the following MI data points which cannot be natively captured on the Customer’s ATS:

* + - * Date & timestamp for sift results being received.
			* Date & timestamp for interview results being received.
			* Date & timestamp for New Entrant Notification form (NEN) or Posting Notice (PN) results being received.
			* Date & timestamp for NEN or PN results being sent to the relevant HR Department.
			* Candidate employment start date.

This information must be reported back to the Customer on a weekly basis, preferably in a Microsoft Excel format. Further detailed discussion about these MI points and the required reporting will take place after contract award.

### The Customer will agree the final make-up of MI and reports with the Supplier following contract award.

## The Customer reserves the right to request additional MI data and reports during the course of the contract. The Supplier should be confident they are collecting a sufficient spread of data to meet additional ad-hoc requests for MI.

## MI and Reports will be in a Microsoft Excel format by default, unless otherwise requested. The Customer will engage with the Supplier to agree the format of MI as part of the Implementation phase.

## MI and Reports will be delivered via email using Transport Layer Security (TLS) encryption (or similar) to maintain the highest possible security.

# VOLUMES

## As recruitment is demand driven by our Customers (other government departments and professions), it is not possible to predict the exact volume of work that the Supplier can expect to receive as a result of this contract. It is not uncommon for work flow to follow a trend of peaks and troughs, sometimes with rapid and significant changes in volume. However, the Customer has used the following elements as part of their own financial/volume forecast for the initial 2 year period of the contract:

* + - * Anticipated outsourcing of Full Recruitment Activity (including Pre-Employment Checking): ≅ 25,500 candidates.
			* Anticipated outsourcing of Pre-Employment Checking **only** activity: ≅ 2,750 candidates.
			* Anticipated Video Interviewing & Assessment activity: ≅ 24,000 candidates. (Please see 6.7.4 for further details, which states this will be 12,000 candidates per year).

### We have also forecast for the following “worst case scenario” situations requiring additional outsourcing capacity (assumed as a single instance throughout the duration of the contract period):

* + - * Outsourcing additional Full Recruitment activity (including Pre-Employment Checking) in the event of inability to deliver in-house (system failure, etc): ≅ 25,250 candidates.
			* Outsourcing additional Pre-Employment Checking **only** activity in the event of inability to deliver in-house (system failure, etc): ≅ 5,050 candidates.
			* Full Recruitment activity (including Pre-Employment Checking) for a “significant event” leading to a surge in recruitment: ≅ 30,000 individuals. (Previous instances include EU Exit and the 2008 Recession; both led to large scale, rapid and unforeseen recruitment campaigns).
			* Pre-Employment Checking **only** activity for a “significant event” leading to a surge in recruitment: ≅ 6,000 candidates. (Previous instances include EU Exit and the 2008 Recession; both led to large scale, rapid and unforeseen recruitment campaigns).

## Any spend or volumes which may be quoted within the tender documentation are indicative only based on historical and estimated forecast data. There is no guarantee of volumes of work arising from any Contract awarded.

# CONTINUOUS IMPROVEMENT

## The Supplier shall be expected to continually improve the way in which the required Services are to be delivered throughout the Contract duration, particularly around the key metrics of time, quality and diversity of hire, passing efficiency savings back to the Customer.

## The Supplier shall present new ways of working to the Customer at the earliest opportunity, which will be discussed during scheduled monthly Contract management meetings.

## Changes to the way in which the Services are to be delivered must be brought to the Customer’s attention and agreed prior to any changes being implemented.

# SUSTAINABILITY

## The Supplier will be expected to have in place their own appropriate Sustainability policies & procedures, in line with the Government’s [Sustainable Development Goals](https://www.gov.uk/government/publications/implementing-the-sustainable-development-goals/implementing-the-sustainable-development-goals).

# QUALITY

## The Supplier will:

## Ensure that any action taken within the scope of this contract follows the [Civil Service Commissioners Recruitment Principles](https://civilservicecommission.independent.gov.uk/civil-service-recruitment/), which explains the legal requirements that selection for appointment to the Civil Service must be made on.

## Manage all data, including obtaining, storage and deletion, in accordance with GDPR legislation.

## Work with the Customer to agree and maintain a Quality Assurance checking process, as agreed by the Customer. The process will be discussed and agreed with the successful bidder as part of any initial implementation discussions.

## Cooperate with any Quality Assurance checks performed by the Customer.

## Ensure there is a quality assurance process in place for delivery of all aspects of the contract. To ensure consistency across the board, the Customer will share their current guidance for this process following the contract award, which the Supplier will be expected to adhere to.

## Complete all stages of any Recruitment activity, Pre-Employment Checks and/or Onboarding activity in full, ensuring they are error free, in accordance with section 15 - Service Levels and Performance.

## Ensure all staff and associates working on the contract have a full understanding of the roles, context and full recruitment process, and can manage Candidate expectations in accordance.

## Provide staff who are fully trained to the same standard as internal Customer staff, to ensure sift and interview activity is of a consistent standard. This will include Civil Service Strength Based and Unconscious Bias training and any other training deemed necessary by the Customer.

### Any training deemed to be required will be delivered by the Customer, either face to face or via digital methods. This will not be at a cost to the Supplier. This will be discussed and agreed between the Customer and the Supplier as required.

# PRICE

## Bidders are asked to submit a full Pricing/Costs List at their most competitive rates which will be evaluated. Pricing submitted will remain firm throughout the life of the Contract and also be used to price any Ad-Hoc requirements.

## Prices are to be submitted via the e-Sourcing Suite using Attachment 4 – Price Schedule, excluding VAT and including all other expenses relating to the delivery of the Contract.

## The Customer reserves the right not to spend all of the budget and cannot guarantee any minimum spend or volumes.

# STAFF & CUSTOMER SERVICE

## The Supplier shall provide an appropriate level of resource throughout the duration of the Contract in order to consistently deliver a quality service. The demand on staff resource will fluctuate as referenced at 9.1.

## The Supplier’s staff assigned to the Contract shall have undertaken the relevant training, as detailed in Section 12, to deliver the Contract to the required standard, meeting the previously outlined Quality and KPI/SLAs.

## The Supplier shall ensure that staff understand the Customer’s vision and objectives and will provide excellent Customer service to the Customer throughout the duration of the Contract.

## The Supplier will offer an on-demand helpdesk/enquiry service during the same standard operating hours as the Customer: 08:00-20:00 Monday to Friday (excluding Bank holidays). This will include the following services:

### A dedicated Single Point of Contact for the Customer, by both telephone and email, separate to that used for Candidate enquiries. The telephone contact will be available during the standard operating hours, with a voicemail facility outside of these hours, and the email inbox will be available 24 hours a day, 7 days a week. Queries will be responded to in all cases within 1 working day.

### A dedicated mailbox for Candidate enquiries; which will be responded to in all cases within 2 working days from the time of receipt.

### A dedicated telephone number for Candidate enquiries, manned during the standard operating hours specified above, and answered within 30 seconds.

### Out of Hours service (including weekends) should include a voicemail facility and email inbox as a minimum. These will continue to be accessible during out of hours times and will be responded to in all cases within 2 working days from the time of receipt.

## The Supplier will be receptive to complaints received from both Candidates and the Customer, maintaining thorough logs of these. Complaints will be acknowledged within 1 working day and will be raised and discussed further with the Customer within 2 working days. Complaints should reach an agreed resolution as quickly as possible; within any timescale set out by the Customer following discussion with the Supplier (this will vary depending on severity and urgency of the complaint).

# SERVICE LEVELS & PERFORMANCE

## The Customer will measure the quality of the Supplier’s delivery by using the following Key Performance Indicators and Service Level Agreements:

**Key Performance Indicators (KPIs):**

|  |  |  |  |
| --- | --- | --- | --- |
| **KPI** | **Service Area** | **KPI Description** | **Target** |
| **1** | **Customer Service** | **Complaints or issues raised by Candidates or the Customer will be acknowledged within 1 working day. The matter will then be raised with the Customer within 2 working days. The Customer and the Supplier will then discuss and agree a suitable timeline for satisfactory resolution.** | **98%** |
| **2** | **Reporting & MI** | **MI provision and reporting will be provided monthly, unless another timescale has been specified. Any Ad-hoc requests for MI, outside of this will be resolved within 2 working days.** | **90%** |
| **3** | **General** | **Attend monthly Contract Management meetings with the Customer; preparing facts and figures relevant to current campaigns, KPIs and performance in advance of the call – either face-to-face, by phone, or electronic platform.** | **100%****(unless specifically agreed in advance)** |
| **4** | **General** | **Attend quarterly face-to-face Performance and Delivery Review Meetings between the Supplier (senior level) and the Customer.** | **100%****(unless specifically agreed in advance)** |
| **5** | **General** | **Conduct all necessary sifting actions as outlined in section 6.3.1, within pre-agreed timelines as set by the customer and without error.**  | **98%** |
| **6** | **General** | **Conduct all necessary Advert actions as outlined in section 6.2 within 2 working days of request and without error.** | **98%** |
| **7** | **Quality** | **Complete all onboarding actions as outlined in section 6.6 within 2 working days (unless otherwise agreed) without error.** | **98%** |
| **8** | **General** | **Notify candidates of the outcome of the sift process (including invite to interview if appropriate) including uploading feedback if required as part of the campaign, within 2 working days.** | **95%****(unless alternative timescales are offered by the Customer)** |
| **9** | **General** | **Notify candidates of the outcome of their interviews/assessments, including uploading feedback if required as part of the campaign, within 2 working days.** | **95%****(unless alternative timescales are offered by the Customer)** |
| **10** | **General** | **Complete all Pre-Employment Checking activities as outlined in section 6.5, within 17 working days and without error. (Consideration will be given where delays have arisen due to candidates).** | **98%** |
| **11** | **Critical** | **Only inform a Candidate that they have cleared Pre-Employment Checking once they have passed all requirements, as per Section 6, for them to correctly take up employment with the recruiting department. (To prevent unsuitable Candidates from being appointed without adequate clearance.)** | **100%** |
| **12** | **Critical** | **The supplier will only accept work commissions directly from GRS, not from individual Vacancy Holders’ or Departments’ requests.(\*\*)** | **100%** |
| **13** | **Quality** | **All Sifters/Evaluators/Assessors working on the contract will be trained to the standards as set out in Section 12.**  | **100%** |

(\*\*) If the supplier delivers services outside of this KPI then these would fall outside of the scope of this contract and as such the Customer accepts no liability either commercially or financially.

### In the event of poor performance, defined as the failure to deliver KPIs, as stated at 15.1, to time and of appropriate quality, the Customer shall meet with the Supplier to understand the root causes of the issue.

### In the event of failure to deliver the KPIs stated at 15.1 to time and of appropriate quality, once in any three (3) Month or more than 3 times in a row in any rolling twelve (12) month period, the Customer shall meet with the Supplier to formulate a Performance Improvement Plan to rectify these issues and meet the requirements stated.

### This Performance Improvement Plan must be satisfactorily delivered within 30 days. Where the Supplier fails to deliver the plan to the required standard, the Customer reserves the right to terminate the services in line with the Terms & Conditions.

### Where the Customer experiences poor performance, the Supplier will receive informal/formal warnings as follows:

1st - informal verbal warning

2nd - informal written warning

3rd - formal written warning

## Where the Customer experiences poor performance which is deemed critical or severe (at the Customer’s discretion), the Supplier may instead move straight to a formal written warning and/or notice of intention to terminate the contract. This decision will be taken at the discretion of the Customer’s Senior Leadership Team and the appropriate Senior Commercial Business Partner.

# EXIT PLANNING

## The Supplier must provide an exit plan within 3 months of the commencement date which ensures continuity of service. The Supplier will be expected to follow this plan.

## When requested, the Supplier will help the Customer to migrate the Services to a replacement Supplier in line with the exit plan. This will be at the Supplier’s own expense where poor Supplier performance requires early termination of the Contract.

# SECURITY & CONFIDENTIALITY REQUIREMENTS

## The Supplier shall provide solutions that comply with:

* [HMG BPSS](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/714002/HMG_Baseline_Personnel_Security_Standard_-_May_2018.pdf)
* [Cyber Essentials PLUS](https://www.cyberessentials.ncsc.gov.uk/)
* The additional Security Requirements as set out in Section 21 and any applicable Annex. These additional requirements are in place due to the nature of the work being contracted out to the Supplier and the high level of confidentiality which the data involves.

## The Supplier will refrain from using any data from the Customer outside of the work the Supplier has been originally engaged for. Use of any Customer data for the Supplier’s own purposes is strictly prohibited.

# PAYMENT & INVOICING

## Cabinet Office operates a Single Operating Platform (SOP) and has a strict Purchase Order Mandatory Policy.

## The Supplier will be required to provide their financial information in order for them to be added to the payment system.

## Invoicing arrangements will be fully agreed between the Customer and the Supplier between award of contract and commencement of the service but, as a minimum, invoices should contain the relevant purchase order reference number and a full breakdown of invoiced sums, as detailed in section 8.1.3.

## The Supplier shall invoice the Customer for payment of the charges at the end of each calendar month OR at the time the charges are expressed to be payable in accordance with the agreement. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice including the relevant purchase order number and a breakdown of the services supplied in the invoice period.

## Payment will be made by BACS within 30 days of receipt of a valid invoice.

## Payment can only be made following satisfactory delivery of pre-agreed certified products and deliverables.

## Before payment can be considered, each invoice must include a detailed breakdown of work completed and the associated costs, as detailed in section 8.1.3.

## Invoices should be sent electronically to: **REDACTED**

# CONTRACT MANAGEMENT

## **The Customer:**

### Crown Commercial Service are overseeing the tendering exercise and administering the Sourcing Event, but CSHR Government Recruitment Service (GRS) is the sponsor of the Contract. CSHR GRS will appoint a contract manager who will be responsible for the day to day management of the contract and for reviewing the performance of the Supplier.

## **The Supplier will be required to:**

### Nominate an account manager (and a deputy to act in their absence) who will act as a single point of contact and develop a good working relationship with the Customer.

### Attend monthly Contract Management meetings with the Customer; preparing facts and figures relevant to current campaigns, KPIs and performance in advance of the call – either face-to-face, by phone, or electronic platform.

### Attend quarterly face-to-face Performance and Delivery Review Meetings between the Supplier (senior level) and the Customer.

### Attend Contract Management/Performance and Delivery Review meetings at their own expense.

### Minute all meetings and telephone conversations that involve actions or decisions and, by means to be agreed with the Customer, distribute these minutes to Customer-designated individuals as soon as reasonably practicable and (as provided for under the Framework terms) in all cases within two (2) working days of the conclusion of the corresponding meeting or telephone conversation.

### Provide ad-hoc advice on recruitment and related matters to the Customer’s representatives in a timely manner and within agreed timescales

### Demonstrate at all times a commitment to high quality service provision and continuous improvement, consistently adhering to and providing guidance to the Customer on best practice. Additionally, meeting with the Customer once a year in order to keep them abreast of changes in GRS for all Recruitment elements and Pre-Employment Checking growth to help improve the Civil Service reputation as a forward-thinking employer.

### Be proactive in notifying opportunities for improvement to the Customer and in promptly presenting alternative solutions to the Customer where the Customer advises that agreed strategies are not working.

### Have a clearly defined complaints system.

# LOCATION

## The service will be carried out as follows:

### Interviews and Assessments can take place at either the Customer’s premises or a site arranged by the Customer or the Supplier if another suitable site is not available (this can be countrywide, including Northern Ireland).

### All additional elements of delivery will take place at the Supplier’s premises.

### Any Travel or Subsistence expenses incurred by the Supplier relating to the delivery of this contract will not be payable by the Customer, except in exceptional circumstances which have been discussed and agreed in advance.

# ADDITIONAL SECURITY SCHEDULE

## The security clauses in this Security Schedule are in addition to those of the standard contract. They use the same definitions/abbreviations.

## **Personnel Vetting Requirements**

### The Customer and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Service in order to enable the Customer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check (CTC); a Security Check (SC)).

### Security clearance must be obtained for each member of staff employed by the Supplier who will be working on the contract. This must be done prior to any work being commenced.

## **Designing and managing secure solutions**

### The Supplier shall provide evidence to the Customer of its proven ability for implementing solution(s) which mitigate the security risks for an internet facing web service (should one be required and proposed by the Supplier as the method of delivering the requirements in section 5.1).

*(The Customer is not prepared to pay for any such service to be developed. Any Supplier proposal to use such a service requires that the platform is already proven and available for use. Should development be required, costs incurred will be the sole responsibility of the Supplier.)*

### The Supplier shall produce a risk assessment which describes the procedural, technical and physical controls implemented such that any security vulnerabilities have been mitigated.

<https://www.ncsc.gov.uk/collection/risk-management-collection>

### The Supplier must complete the Risk Management Documentation template in Security Annex 3, as outlined in Security Annex 2, **prior to going live.**

### This must be maintained for the full contract term, and updated annually or where there have been significant changes to architecture, third-party Suppliers, data flows, procedures and processes.

### The Supplier shall collect audit records which relate to security events in the system or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness, Supplier’s audit records should (at a minimum) include regular reports and alerts, setting out details of access by users of the system to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Customer Data.

### The Supplier shall provide an assessment of the risks associated with the service delivered being compliant with National Cyber Security Centre (NCSC)’s [Protecting Bulk Personal Data](https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-introduction) and the [Cloud Security Principles](https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles).

## **Certification Requirements**

### The Supplier shall ensure, at all times during the Term, that the Supplier and any Sub-Contractor with access to Customer Data or who will process Customer Data, and their systems are certified as compliant with:

21.3.1.1 **ISO/IEC 27001:201**3 by a UKAS approved certification body or are included within the scope of an existing certification of compliance with **ISO/IEC 27001:2013**; and

21.3.1.2 **Cyber Essentials PLUS**

And shall provide the Customer with a copy of each such certificate of compliance before the Supplier or the relevant Sub Supplier (as applicable) shall be permitted to use the system to receive, store or process any Customer Data. Any exceptions to the flow-down of the certification requirements to third party Suppliers and Sub Suppliers must be agreed with the Customer.

### The Supplier shall ensure, at all times during the Term, that the Supplier and each Sub Supplier who is responsible for the secure destruction of Customer Data:

21.3.2.1 Securely destroys Customer Data only on sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

21.3.2.2 Are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitation Standard or an alternative standard as agreed by the Customer.

21.3.2.3 The Supplier shall provide the Customer with evidence of its own and its Sub-Supplier’s compliance with the requirements set out in this Paragraph before the Supplier or the relevant Sub Supplier (as applicable) shall be permitted to carry out the secure destruction of the Customer Data.

### The Supplier shall notify the Customer as soon as reasonably practicable and, in any event, within 2 Working Days, if the Supplier or Sub Supplier ceases to be compliant with the Certification Requirements. Additionally, on request from the Customer, the Supplier shall themselves, or will ensure that the relevant Sub Supplier shall:

21.3.3.1 Immediately cease using the Customer Data; and

21.3.3.2 Ensure that the relevant Sub Supplier promptly returns, destroys and/or erases the Customer Data in accordance with the Baseline Security Requirements in Security Annex 1.

### Failure to attain certification, provide evidence of certification, or ensure certification is adhered to throughout the supply chain shall, at the discretion of the Customer, constitute a material Default and the Customer may end this Call-Off Contract for Material Breach.

## **Patching and Penetration testing**

### The Supplier shall:

21.4.1.1 Proactively monitor Supplier vulnerability websites;

21.4.1.2 Ensure that all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

### The Supplier shall undertake the following assurance activities at their own cost and expense:

21.4.2.1 Penetration testing to be carried out by a certified CREST or CHECK Supplier annually, or sooner if required due to a change or relevant incident;

21.4.2.2 Penetration testing of the production environment before the first release to that environment and at such times after that as the Customer may require. Where more than one penetration test is required by the Customer in a 12 month period the Customer will pay the Supplier the costs of the additional penetration tests;

21.4.2.3 An IT Health Check annually and where there is a significant change to infrastructure. The process and checks involved will be discussed and agreed with the successful bidder as part of any initial implementation discussions. Where more than one IT Health Check is requested by the Customer (in addition to those above) in a 12 month period, the Customer will pay the Supplier the costs of the additional Health Checks.

21.4.2.4 The full IT Health Check report, once received, must be shared with the Customer and the Supplier must produce a remediation plan to agreed timescales which will be managed through a security working group.

### If the Supplier fails to undertake the above, or if a repeated Security Test carried out in pursuant to Paragraph 20.4 reveals an actual or potential Breach of Security, or weakness exploiting the same root cause failure; such circumstances shall constitute a material Default and the Customer may end this Call-Off Contract for Material Breach.

## **Protective Monitoring**

### The Supplier shall ensure an effective protective monitoring regime is in place, and produce sufficient evidence to the Customer to confirm this. This will (at a minimum) involve:

21.5.1.1 Monthly operational security management reports;

21.5.1.2 Engaging with the Customer in the incident management process;

21.5.1.3 Ensure that protective monitoring is continued across the supply chain.

21.5.1.4 The retention periods for audit records and event logs must be agreed with the Customer and recorded in the Risk Management Documentation.

### If the Supplier fails to undertake the above, then such circumstances shall constitute a material Default and the Customer may end this Call-Off Supplier for Material Breach.

## **Data Processing, Storage, Management and Destruction**

### The Supplier shall ensure that all Customer Data will be kept, as agreed with Cabinet Office Security Assurance Team, prior to contract commencement. Our preference is that all data is hosted in the United Kingdom, and where this is not the case the Supplier would need to detail the assurances they will put in place to allow for continuous access to the data by all authorised parties.

21.6.1.1 The Supplier shall ensure that no SubSupplier stores, processes, or transmits Customer Data outside of the United Kingdom, without prior agreement of the Customer.

21.6.1.2 The Supplier shall agree any alternative location of data storage, processing and administration with the Customer in advance, and such agreements may be subject to conditions.

### Where and to the extent permitted by law the Supplier shall securely erase any and all Customer Data held by the Supplier when requested to do so by the Customer.

### The Supplier shall securely destroy all media that has held Customer Data at the end of the life of that media in accordance with any specific clauses in this document and, in the absence of any such clause, in accordance with Good Industry Practice.

### If the Supplier fails to undertake the above, then such circumstances shall constitute a material Default and the Customer may end this Call-Off Supplier for Material Breach.

## **Breach of Security**

### The Supplier, as soon as reasonably practicable and, in any event, within two Working Days, following the Breach of Security or attempted Breach of Security, provide to the Customer full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Customer.

### If the Supplier fails to undertake the above, then such circumstances shall constitute a material Default and the Customer may end this Call-Off Supplier for Material Breach.

## **Security Working Group**

### The Supplier will nominate a security resource to attend a monthly security working group chaired by the Customer.

### This Supplier resource shall provide security documentation to the Customer on request, and will action all reasonable requests from the Customer.

# ADDITIONAL TUPE SCHEDULE

## The Contract that will be established as a result of this Procurement will replace the existing contract that the Authority currently has with one incumbent supplier for the delivery of these services.

## For this Contract, the Agent considers that TUPE may apply to the Contract awarded as a result of this Procurement on the basis that the activities carried out on behalf of the Authority are to remain fundamentally the same.

## It is the responsibility of Potential Providers to take their own advice and consider whether TUPE is likely to apply in the particular circumstances of the Contract that will be established as a result of this Procurement.

## On the basis that TUPE may apply, the Agent has acquired information relating to the employees of the incumbent supplier that may be subject to TUPE. The Agent and the Authority make no representation that the information is complete or accurate, or that the information provides an indication of the resources that will be required to deliver the Services.

## The prices you submit for this Contract must incorporate all costs associated with TUPE, and should be detailed within the relevant tab of the Pricing Table. No additional costs will be accepted by the Authority other than the prices you submit within Attachment 4 – Pricing Table as part of your Tender response.

## Potential Providers shall not at any time make use for their own purpose, or disclose to any person (except as may be required by law), any of the TUPE information provided to them (whether communicated orally, electronically, or in writing). The TUPE information shall be deemed to be strictly confidential and for use solely in connection with the preparation of Tenders and the administration of any Contract established as a result of this Procurement.

## To receive the TUPE information, you are required to complete the Non-Disclosure Agreement and return via the e-Sourcing Suite messaging facility. On receipt of your completed Non-Disclosure Agreement, the Agent will then send you the TUPE information via the e-Sourcing Suite messaging facility.

## Potential Providers are advised to review Clause 14 (TUPE) of the Call-Off Terms and Conditions to review the indemnities that you shall be required to provide and receive.

## Potential Providers should note that TUPE pricing entered into Attachment 4 – Pricing Table will not form part of the Price Evaluation and is for information only, and will be held firm for the length of the contract and any extensions to it. The Authority reserves the right to clarify TUPE pricing where the Authority deems it excessive, and may exclude a Potential Provider if insufficient clarification and justification of such TUPE costs is provided.

**SCHEDULE 5**

**SUPPLIER RESPONSE - REDACTED**