



Education & Skills
Funding Agency

FORM OF CONTRACT

This contract is made on the First day of October 2018

BETWEEN

(1) Education and Skills Funding Agency of Cheylsmore House, Quinton Road, Coventry, CV1 2WT (the "**Customer**"); and

(2) Baxter Storey Ltd. TVP2, 300 Thames Valley Park Drive, Reading, Berkshire RG6 1PT company number is 01962583 (the "**Contractor**")

WHEREAS the Customer wishes to have provided the following services namely Catering Services pursuant to the ESPO Framework Agreement 704.

NOW IT IS AGREED THAT

1. The Contractor will provide the goods and/or services in accordance with the terms of the call-off contract number ITT 30361 and Contract Documents.
2. The Customer will pay the Contractor the amount due in accordance with the terms and the Contract Documents.
3. The following documents comprise the Contract Documents and shall be deemed to construed as part of this agreement:
 - This Form of Contract
 - The Master Contract Schedule
 - The documents as listed
 - Read Me First instructions documents.
 - The full submission from the Contractor.
 - Final requirements document.
 - The submitted Contractor's Financial workbook.
 - The Technical envelope declarations.

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

Signed for and on behalf of

EDUCATION AND SKILLS

FUNDING AGENCY

by [REDACTED], an

authorised officer

Signed by

Baxter Storey LTD

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

ITT 30361 ESPO 704 Lot 3

MASTER CONTRACT SCHEDULE

(ESPO Framework Reference 704)

1. TERM

Commencement Date

01/10/2018

Expiry Date

This Contract shall expire on 30/09/2022(If extension period is exercised), unless terminated earlier pursuant to this Contract.

Subject to earlier termination of the Contract in accordance with clause 19, the Contract shall expire on the Expiry Date provided.

2. SERVICE REQUIREMENTS

Services and Deliverables required

The Services and Deliverables required under this contract will be as laid out within Part A of the ITT document – Introduction and Key Contract Requirements and Specification of Service.

Optional Services required

Any Optional Services required under this contract will be as laid out within Part A of the ITT document – Introduction and Key Contract Requirements and Specification of Service.

Premises where Services are to be Delivered

Cheylsmore House

Quinton Road

Coventry

CV1 2WT

Standards

Quality Standards

As described within the requirements documents.

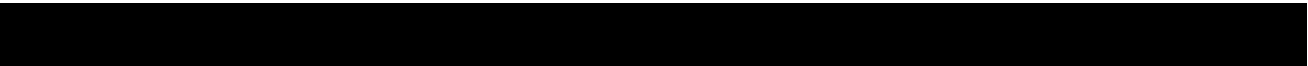
Technical Standards


As described within the requirements documents

3. CONTRACTOR SOLUTION

Contractor Solution

See enclosed below.



- 1.1
- 1.2 BaxterStorey Response 
- 1.3 ITT_30361
- 1.4 Catering Services
 - 1.4.1

Schedule 5: Charges

Please note that The Education & Skills Funding Agency catering operation is a Nil subsidy.

Items which are not included in the financial spreadsheets, and which would be extra costs to the Ed Agency should be clearly identified in the financial tables.

Please complete the enclosed financial spreadsheet for the site. Your financial response should confirm w with the site's specification and if any additional services can be provided.

We confirm that our bid confirms with the site specification.

The financial response should be based on net-into-unit purchasing, with all discounts being returned to th reflected in your food costs and not shown as a separate figure.

We confirm that our financial response is based on net into unit purchasing with discounts returned, this i costs.

An allowance for staff meals and wastage should be included within the costings and shown separately.

Staff Meals and Wastage have been included within our costings.



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Please ensure that a detailed breakdown for the mobilisation costs which you would expect to pass on to setting up of the contract are provided. It should be noted that the successful caterer will be asked to g maximum firm figure.

Re-Launch	Cost	
Refresh		
Marketing and Identity	£ [REDACTED]	New marketing and counter refresh.
Light Equipment Refresh	£ [REDACTED]	New counter enhancement.
Training and Support	£ [REDACTED]	Support office.
	£ 2,250.00	

The caterer is expected to design the tariff to attract maximum usage. It is important that the caterer of that is competitive with external catering outlets. Tariff and budget proposals for the site are required eac be agreed with the successful contractor. Please provide proposed tariffs with your financial spreadsheet

Proposed tariffs are detailed within our financial spreadsheet, we have not included any increase on the c

Hospitality accounts operate as a separate account. Hospitality will be operated on a card payment ba responsible for providing detailed billing information either directly to end customers or to the site represe be validated accordingly. No subsidy will be provided for the provision of Hospitality - the tariff should i and disposables. The hospitality brochure should be updated every quarter (based on the site's require are to be submitted for approval three weeks before implementation.

We confirm that our Hospitality costs within our brochure are inclusive of all food, labour and disposab updated on a quarterly basis in line with the seasons. Hospitality will be operated on a card basis and or

via the app.

For sites with potential for vending, please include details of possible alternative machines including lease

We have included within our costs for the lease and maintenance of one vending machine.

As Key Performance Indicators will form part of the monitoring of this contract, please indicate as part of the percentage of your management fee that will be placed at risk against performance.

As detailed within our submission, we are happy to put [REDACTED] of our management fee at risk linked to agree

Cash shortages and bad debts will be the sole responsibility of the caterer. Education & Skills Funding Public Bodies will accept no claims in this respect.

Understood.

TUPE information is included for the site. Please base your resource proposals on this information. If no hourly rates is proposed, please clearly indicate this and a rationale for this change.

Our response is based on the TUPE information provided.

Please indicate whether you would be prepared to invest in any of the site's facilities. If so, please provide

We would be delighted to forward invest [REDACTED] which would be amortised over the 3-year contract.

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Investment		
Capital Projects		
Pop Up Counter - Atrium		Permanent Coffee Pop Stall in Atrium (Inclusive of Look and Feel).
Multi Deck - Atrium		1200mm Chilled Multi Deck.
Till - Atrium		EPOS till with Chip and Pin.
Self Service Scan - Restaurant		Self Service Till and Kiosk
TOTAL CAPEX		

The completed financial workbooks are included in the Master Charges copy.

Schedule 6: Company Details

INFORMATION REQUIRED	RESPONSE
Registered Company Name	BaxterStorey Ltd.
Registered Company Address	TVP2, 300 Thames Valley Park Drive, Reading
Registered Number	01962583
Contact Name for Enquiries related to your bid	[REDACTED]
Contacts company position	Sales Manager
Contacts email address	[REDACTED]
Contacts landline telephone number	[REDACTED]
Contacts mobile telephone number	[REDACTED]

Schedule 7: References

Approval will be obtained from the Bidders prior to The Chief Executive of Education & Skills Funding contacting any of the references provided in Schedule 7.

1) **Company:** [REDACTED]

Client Name: [REDACTED]

Position in company: Head of Infrastructure

Company Address: Bradbourne Drive, Milton Keynes, MK7 8B

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Telephone: [REDACTED]

E-mail: [REDACTED]

2) Company: [REDACTED]

Client Name: [REDACTED]

Position in company: Facilities Manager

Company Address: Severn Trent Centre, 2 St Johns St, Coventry,
Warwickshire CV1 2LZ

Telephone: Mob [REDACTED]

E-mail: [REDACTED]

Key Personnel of the Contractor to be involved in the provision of the Goods, Services and Deliverables

Contact Name for Enquiries related to your bid	██████████
Contacts company position	Sales Manager
Contacts email address	██████████
Contacts landline telephone number	██████████
Contacts mobile telephone number	██████████

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4. PERFORMANCE OF THE GOODS AND/OR SERVICES AND DELIVERABLES

Implementation Plan and Milestones (including dates for completion and/or delivery)

Service already in place, New supplier Solution to be rolled out in agreed stages as per the Contractors solution proposal.

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Critical Service Failure

- (i) In relation to the required Catering Services a Critical Service Failure shall include a delay in servicing the demand for full restaurant services and Hospitality services ordered by the Customer in excess of 24 hours more than once in any three (3) Month period or more than three times in any rolling twelve (12) month period.

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Monitoring

Monthly MI analysis, Three monthly face to face reviews of performance and issues raised, Customer surveys performed and analysed twice yearly.

Management Information

Management Information to be provided in accordance with clause 7 of the Call-Off Terms on Monthly reports required, Three monthly supplier face to face reviews.

Management Information (Invoice figures/Food for Life compliance sheets) Recycling figures, waste, KPI's and targets achieved, customer complaints log and actions Staff availability figures..

5. CUSTOMER RESPONSIBILITIES

Customer's Responsibilities (where appropriate)

As per requirements documents.

The granting of access to the relevant site, provision of a telephone line/internet access, opening of premises to allow deliveries , Provision of advertising spaces, Supply of equipment and crockery as required and agreed, Deep Clean and maintenance of owned equipment and premises.

Customer's equipment (where appropriate)

As detailed within the requirements documents and the supplied list of equipment within the supplier attachments section of ITT 30361

As per Section 6 – Inventory of Equipment, contained within the ITT Part A.

6. CHARGES AND PAYMENT

Contract Charges payable by the Customer (including any applicable discount but excluding VAT), payment profile and method of payment (e.g. BACS)) Shown within Contractors solution and Financial annex supplied.

7. CONFIDENTIAL INFORMATION

The following information shall be deemed Commercially Sensitive Information:

Include details of any Commercially Sensitive Information identified by the Contractor and the duration it should be confidential for. This will assist the Customer in respect of compliance with Freedom of Information Act (FOIA) and the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, November 2004).

8. AGREED AMENDMENTS TO THE CALL-OFF TERMS

The following amendments shall be deemed to be made to the Call-Off Terms:

N/A

9. PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. INTRODUCTION

1.1. The Contractor shall comply with any further written instructions with respect to processing by the Customer.

1.2. Any such further instructions shall be incorporated into this section 9 of the Master Contract Schedule.

[If the customer wishes the Contractor to perform any processing of personal data on the Customer's behalf, the Customer should complete the details of that processing in the second column of this table to assure itself of compliance with data protection legislation]

Description	Details
Subject matter of the processing	This should be a high level, short description of what the processing is about i.e. its subject matter.
Duration of the processing	Clearly set out the duration of the processing, including dates.

Nature and purposes of the processing	<p>Be as specific as possible, but make sure that you cover all intended purposes.</p> <p>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.</p> <p>The purpose might include; employment processing, statutory obligation, recruitment assessment etc.</p>	
Type of Personal Data	Examples here include; name, address, date of birth, NI number, telephone	
	number, pay, images, biometric data etc.	
Categories of Data Subject	Examples here include; Staff (including volunteers, agents and temporary workers), customers/clients, Contractors, patients, students/pupils, members of the public, users of a particular website etc.	
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.	Describe how long the data will be retained for, how it will be returned or destroyed.	

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THE CUSTOMER

- and -

THE CONTRACTOR

CALL-OFF TERMS

relating to

CATERING SERVICES

CONTRACT REF

704

[Guidance Note: The Parties' attention is drawn to the various guidance notes in this document and separate model Goods and/or Services guidance notes. Before any Order is placed or Contract signed, the Parties should ensure that they have read the guidance notes, taken any actions necessary and then delete the guidance notes from this document. The guidance is not exhaustive and has been included to assist the Parties in completing the Order/Contract with sufficient detail. However, it is each Party's responsibility to ensure that the Order/Contract contains all required information and obtain any necessary professional advice prior to conclusion of the Order/Contract]

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 "Contractor").

WHEREAS

- (A) The Eastern Shires Purchasing Organisation ("ESPO") selected Framework Providers, including the Contractor, to provide Goods and/or Services;
- (B) the Contractor undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 704 dated 06/01/2015 (the "Framework Agreement");
- (C) ESPO and the Contractor have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Contractor for the Contractor to supply Goods and/or Services;
- (D) The Customer enters into this Contract on the terms hereinafter appearing.

1. GENERAL PROVISIONS

1.1 Definitions

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

"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;
"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 Contractor, its IPR or its business or which the Contractor has indicated to the Customer that, if disclosed by the Customer, would cause the Contractor significant commercial disadvantage or material financial loss;
"Confidential Information"	means the Customer's Confidential Information and/or the Contractor's Confidential Information;
"Continuous Improvement Plan"	means a plan for improving the provision of Available Services and/or reducing the charges produced by the Contractor pursuant to schedule 6 (Value for Money) of the Framework Agreement;

"Contract"	means the contract entered into by the Customer and the Contractor 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: a) the Expiry Date; or b) 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 Contractor 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 Contractor of its obligations under the Contract less any Service Credits;
"Contracting Authority"	means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Customer;
"Contractor"	means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;
"Contractor Personnel"	means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;
"Contractor Pre-Existing IPR"	shall mean any Intellectual Property Rights vested in or licensed to the Contractor 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;
"Contractor's Representative"	means the representative appointed by the Contractor from time to time in relation to the Contract;
"Contractor Solution"	means the Contractor'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;

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"Contractor's Confidential Information"

means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Contractors of the Contractor, 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;

"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 Contractor by or on behalf of the Customer; or

(ii) the Contractor 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 Contractor 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;

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"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 Contractor for the provision of the Goods and/or Services on the terms set out in the Contract;
"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 Contractors 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 Controller"	shall have the same meaning as set out in the Data Protection Act 1998;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor 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 Processor"	shall have the same meaning as set out in the Data Protection Act 1998;
"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 Legislation"	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 (subject to Royal Assent) to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
"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 Contractor (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 Contractor or Contractor's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Contractor 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 Contractor and the Customer has issued the Contractor 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 Contractor's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Contractor (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 the Eastern Shires Purchasing Organisation 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 Contractor 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"	<p>means any event, occurrence or cause affecting the performance by either the Customer or the Contractor of its obligations arising from:</p> <ul style="list-style-type: none">a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;b) riots, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;c) acts of government, local government or Regulatory Bodies;d) fire, flood or any disaster acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party;e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<ul style="list-style-type: none">i) any industrial dispute relating to the Contractor, the Contractor's Staff or any other failure in the Contractor or the Sub-Contractor's supply chain; andii) 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;

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"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 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;
"Intellectual Property Rights" or "IPRs"	<p>means:</p> <ul style="list-style-type: none">a) 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;b) 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; andc) 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 Contractor to the Invitation to Tender issued by the Customer on 22/06/2018;
"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 knowhow relating to the Goods and/or Services but excluding know-how already in the Contractor'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 Contractor 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) and the Master Contract Schedule;
"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;
"Month"	means calendar month and "monthly" shall be interpreted accordingly;
"Parent Company"	means any company which is the ultimate Holding Company of the Contractor and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged by the same or similar business to the Contractor. The term "Holding or Parent Company" shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto;
"Party"	means the Contractor or the Customer and "Parties" shall mean both of them;
"Personal Data"	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;

"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; or ii) 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 Contractor (or by a third party on behalf of the Contractor) 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 Contractor (or by a third party on behalf of the Contractor) under the Contract,

"Property"

means the property, other than real property and IPR, issued or made available to the Contractor 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;

"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 Contractor 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 within the meaning of Schedule 4 Part 1 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 Contractor"	means any person who provides services to the Customer which are related to the Services from time to time;
"Replacement Contractor"	any third party Contractor 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 Contractor in respect of any failure by the Contractor to meet one or more Service Levels;
"Service Levels"	means any service levels applicable to the provision of the Services as referred to in Schedule 1;
"Services"	means the services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents;

Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.

"Sites"	means any premises from which the Services are provided or from which the Contractor manages, organises or otherwise directs the provision or the use of the Services;
"Staff"	means all persons employed by the Contractor and/or any SubContractor to perform its obligations under the Contract together with the Contractor's and/or any Sub-Contractor's servants, consultants, agents, Contractors and Sub-Contractors used in the performance of its obligations under the Contract;
"Sub-Contract"	means any contract or agreement or proposed contract or agreement between the Contractor and any third party whereby that third party agrees to provide to the Contractor 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 Contractor enters into a SubContract 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 Contractor 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;
"Tender"	means the tender submitted by the Contractor to the Customer in response to the Customer's invitation to Contractors for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;
"Transferring Goods"	means Goods, title to which transfers between the Parties in accordance with clause 4.6.1;
"Undelivered Goods"	shall have the meaning given in clause 4.5.8;
"Undisputed Sums"	has the meaning given in clause 11.2.1; Time Period"
"Valid Invoice"	means an invoice issued by the Contractor to the Customer that complies with clause 11.2.2;
"Variation"	as detailed in clause 33;
"Variation"	means the procedure set out in clause 33; "Procedure"
"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.

1.2 Interpretation

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

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 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;
- 1.2.4 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;
- 1.2.5 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;
- 1.2.6 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;
- 1.2.7 headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract;
- 1.2.8 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;
- 1.2.9 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;

- 1.2.10 reference to a clause is a reference to the whole of that clause unless stated otherwise; and
- 1.2.11 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:
 - 1.2.11.1 the Framework Agreement;
 - 1.2.11.2 these Call-Off Terms;
 - 1.2.11.3 the Master Contract Schedule; and
 - 1.2.11.4 any other Contract Document or document referred to in these Call-Off Terms.

2. DUE DILIGENCE

- 2.1 The Contractor acknowledges that it:
 - 2.1.1 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;
 - 2.1.2 has raised all relevant due diligence questions with the Customer before the Commencement Date; and
 - 2.1.3 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.

3. CONTRACT PERIOD

- 3.1 This Contract shall take effect on the Effective Date and shall either expire on the date specified in the Master Contract Schedule and/or any other Contract Document unless terminated earlier pursuant to clause 19.
- 3.2 For the purposes of this Contract, the initial period and any extensions thereof shall be referred to as the "Term".

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

- 4.1.1 The Contractor shall supply the Goods and/or Services in accordance with the Implementation Plan.

- 4.1.2 The Contractor 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 Contractor supplies the Goods and/or Services at the Premises during normal business hours on reasonable notice.
- 4.1.3 If the Customer informs the Contractor 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 Contractor shall at its own expense reschedule 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.
- 4.1.4 The Contractor accepts responsibility for all damage to, shortage or loss of the Ordered Goods if:
- 4.1.4.1 the same is notified in writing to the Contractor within three (3) Working Days of receipt of the Ordered Goods by the Customer; and
- 4.1.4.2 the Ordered Goods have been handled by the Customer in accordance with the Contractor's instructions.
- 4.1.5 Where the Contractor 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 Contractor's reasonable satisfaction, to have been lost or damaged in transit.
- 4.1.6 The Contractor agrees that the Customer relies on the skill and judgment of the Contractor in the supply of the Goods and/or Services and the performance of its obligations under the Contract.

4.2 **Provision and Removal of Equipment**

- 4.2.1 Unless otherwise stated in the Master Contract Document and/or any other Contract Document, the Contractor shall provide all the Equipment necessary for the supply of the Goods and/or the Services.
- 4.2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining Approval.
- 4.2.3 All Equipment brought onto the Premises shall be at the Contractor'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 Contractor is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Contractor 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 Contractor's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Contractor.

4.2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.

4.2.5 The Contractor shall, at the Customer's written request, at its own expense and as soon as reasonably practicable:

4.2.5.1 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

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

4.2.6 Unless otherwise stated in the Master Contract Schedule upon termination or expiry of the Contract, the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor 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 Contractor or Contractor's Staff.

4.3 **Quality**

4.3.1 The Contractor 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 Contractor 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 Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

4.3.2 The Contractor shall ensure that the Staff shall at all times during the Contract Period:

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

4.3.2.2 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

- 4.3.2.3 apply all due skill, care, diligence and are appropriately experienced, qualified and trained.
- 4.3.3 The Contractor shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.
- 4.3.4 The Contractor 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.
- 4.3.5 The Contractor shall at all times during the Contract Period ensure that:
 - 4.3.5.1 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;
 - 4.3.5.2 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;
 - 4.3.5.3 the Goods and/or Services conform in all respects with all applicable Laws, Quality Standards and Technical Standards;
 - 4.3.5.4 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 Contractor by the Customer; and
 - 4.3.5.5 the Goods and/or Services are supplied in accordance with the Contractor Solution.
- 4.4 **Not used**
- 4.5 **Delivery**
 - 4.5.2 The Contractor shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.
 - 4.5.3 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.

- 4.5.4 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Contractor 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.
- 4.5.5 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.
- 4.5.6 Where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises.
- 4.5.7 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Contractor's Contractors or carriers at such place as the Customer or duly authorised person shall reasonably direct.
- 4.5.8 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.
- 4.5.9 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 Contractor 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 Contractor for the costs of such disposal. The risk in any overDelivered Goods shall remain with the Contractor.

4.6 Ownership and Risk

- 4.6.1 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.

- 4.6.2 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.

5. ASSISTANCE ON EXPIRY OR TERMINATION

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

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

If a Customer has a BCDR Plan then this may need to be included and/or referring to at this point.

The Contractor 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 Contractor's organisation, delivery of the Goods and/or Services to the Customer is subject to a minimum of disruption.

7. MONITORING OF CONTRACT PERFORMANCE

- 7.1 The Contractor 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 Contractor may be required to produce under the Contract.
- 7.2 Where requested by the Customer, the Contractor shall supply the Management Information to the Customer in the form and periodically as specified in the Master Contract Schedule.

8. DISRUPTION

- 8.1 The Contractor 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.
- 8.2 The Contractor shall immediately inform the Customer of any actual or potential industrial action, whether such action be by the Contractor's own employees or others, which affects or might affect the Contractor's ability at any time to perform its obligations under the Contract.
- 8.3 In the event of industrial action by the Staff, the Contractor 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.

- 8.4 If the Contractor'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.
- 8.5 If the Contractor 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 Contractor as a direct result of such disruption.

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

Critical Service Failure as defined in the Master Contract Schedule is a breach of contract giving the Customer the option to terminate.

NB. Contractual service levels need to be captured in Schedule 1. The difference between a failure to meet service levels which given rise to service credits is that the contractor's failure in that case is not a fundamental failure giving rise to possible termination.

The service credits are intended to be the sole 'operational' remedy for a minor failure in performance.

- 9.1 The Contractor 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 Contractor.
- 9.2 The Contractor shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Contractor's performance of the Services against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 9.3 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 Contractor 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:
- 9.3.1 at the Customer's option, give the Contractor the opportunity at the Contractor'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;

- 9.3.2 reject the Goods (in whole or in part) and require the Contractor to remove the Goods (in whole or in part) at the risk and cost of the Contractor on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Contractor;
- 9.3.3 refuse to accept any further Goods and/or Services to be Delivered but without any liability to the Customer;
- 9.3.4 if the Master Contract Schedule and/or any other Contract Documents provide for the payment of Delay Payments, then the Contractor 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;
- 9.3.5 carry out at the Contractor's expense any work necessary to make the Goods and/or Services comply with the Contract;
- 9.3.6 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 Contractor shall have demonstrated to the reasonable satisfaction of the Customer that the Contractor will once more be able to supply all or such part of the Goods and/or Services in accordance with the Contract;
- 9.3.7 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
- 9.3.8 charge the Contractor for and the Contractor 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 Contractor 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.

9.4 **In the event that the Contractor:**

- 9.4.1 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
- 9.4.2 persistently fails to comply with clause 9.3 above,

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

10. PREMISES

10.1 Inspection of Premises

- 10.1.1 The Contractor acknowledges that it has inspected the Customer's Premises and has advised the Customer of any aspect of the Customer's Premises that is not suitable for the provision of the Goods and/or Services and that the specified actions to remedy the unsuitable aspects of the Customer's Premises, together with a timetable for and the costs of those actions, have been specified in the Master Contract Schedule and/or any other Contract Document.
- 10.1.2 If the Contractor has either failed to inspect the Customer's Premises or failed to notify the Customer of any required remedial actions in accordance with clause 10.1.1 then the Contractor shall not be entitled to recover any additional costs or charges from the Customer relating to any unsuitable aspects of the Customer's Premises except in respect of any latent structural defect in the Customer's Premises. The onus shall be on the Contractor to prove to the Customer that any work to the Customer's Premises is required in respect of a latent structural defect and that the additional costs or charges are reasonable and necessary. The Contractor shall not incur such additional costs or charges without obtaining Approval.
- 10.1.3 Any disputes relating to due diligence as set out in clause 2 or this clause 10 shall be resolved in accordance with the Dispute Resolution Procedure.

10.2 Licence to Occupy Premises

- 10.2.1 Any Customer's Premises made available from time to time to the Contractor by the Customer in connection with the Contract shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such Customer's Premises as licensee and shall vacate the same immediately upon completion, termination, expiry or abandonment of the Contract.
- 10.2.2 The Contractor shall limit access to the Customer's Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such Customer's Premises as the Customer may reasonably request.
- 10.2.3 Save in relation to such actions identified by the Contractor in accordance with clause 10.2.1 and the Master Contract Schedule

and/or any other Contract Document (if any), should the Contractor require modifications to the Customer's Premises, such modifications shall be subject to Approval and shall be carried out by the Customer at the Contractor's expense. The Customer shall undertake any modification work which it approves pursuant to this clause 10.2.3 without undue delay. Ownership of such modifications shall rest with the Customer.

10.2.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Customer's Premises and conduct of personnel at the Customer's Premises as determined by the Customer, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes without limitation damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

10.2.5 The Parties agree that there is no intention on the part of the Customer to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Customer retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

10.3 Property

10.3.1 Where the Customer issues Property free of charge to the Contractor such Property shall be and remain the property of the Customer and the Contractor irrevocably licences the Customer and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and at all times the Contractor shall possess the Property as fiduciary agent and bailee of the Customer. The Contractor shall take all reasonable steps to ensure that the title of the Customer to the Property and the exclusion of any such lien or other interest are brought to the notice of all Sub-Contractors and other appropriate persons and shall, at the Customer's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Customer.

10.3.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Customer otherwise within five (5) Working Days of receipt.

10.3.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear) and shall use the Property solely in connection with the Contract and for no other purpose without Approval.

10.3.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Customer's reasonable security requirements as required from time to time.

10.3.5 The Contractor shall be liable for all loss of, or damage to, the Property, (excluding fair wear and tear), unless such loss or damage was caused by the Customer's Default. The Contractor shall inform the Customer within two (2) Working Days of becoming aware of any defects appearing in or losses or damage occurring to the Property.

11. PAYMENT AND CONTRACT CHARGES

11.1 Contract Charges

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

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

11.1.3 If at any time during the Contract Period the Contractor 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 Contractor shall immediately reduce the Contract Price for such Goods and/or Services under the Contract by the same amount.

11.1.4 The benefit of any work being done pursuant to the provisions of Schedule 6 (Value for Money) of the Framework Agreement which is specifically commissioned from the Contractor 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 Contractor to the Customer at no charge.

11.1.5 The Parties acknowledge that the Contractor is required to pay to ESPO a retrospective rebate based on the value of each call-off contract at a percentage agreed in the Framework Agreement.

11.2 Payment and VAT

11.2.1 The Customer shall pay all sums properly due and payable to the Contractor in cleared funds within thirty (30) days of receipt of a Valid Invoice.

- 11.2.2 The Contractor 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.
- 11.2.3 Where the Contractor enters into a Sub-Contract it shall ensure that a provision is included in such Sub-Contract which requires payment to be made of all sums due by the Contractor to the Sub-Contractor within a specified period not exceeding thirty (30) Working Days from the receipt of a validly issued invoice, in accordance with the terms of the Sub-Contract.
- 11.2.4 The Contractor shall add VAT to the Contract Charges at the prevailing rate as applicable.
- 11.2.5 The Contractor 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 Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause 11.2.5 shall be paid by the Contractor 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.
- 11.2.6 The Contractor shall not suspend the supply of the Services and/or Goods (as applicable) unless the Contractor is entitled to terminate the Contract under clause 19.3 (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.

11.3 Recovery of Sums Due

- 11.3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor 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 Contractor under the Contract or under any other agreement or contract with the Customer.
- 11.3.2 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.

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

11.3.4 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.

11.4 Euro

11.4.1 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 Contractor free of charge to the Customer.

11.4.2 The Customer shall provide all reasonable assistance to facilitate compliance with clause 11.4.1 by the Contractor.

12. KEY PERSONNEL

12.1 The Parties have agreed to the appointment of the Key Personnel. The Contractor shall and shall procure that any Sub-Contractor shall obtain Approval before removing or replacing any Key Personnel during the Contract Period.

12.2 The Contractor shall provide the Customer with at least one (1) Month's written notice of its intention to replace any member of Key Personnel.

12.3 The Customer shall not unreasonably delay or withhold its Approval to the removal or appointment of a replacement for any relevant Key Personnel by the Contractor or Sub-Contractor.

12.4 The Contractor acknowledges that the persons designated as Key Personnel from time to time are essential to the proper provision of the Goods and/or Services to the Customer. The Contractor shall ensure that the role of any Key Personnel is not vacant for any longer than ten (10) Working Days and that any replacement shall be as qualified and experienced or more qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

12.5 The Customer may also require the Contractor to remove any Key Personnel that the Customer considers in any respect unsatisfactory. The Customer shall not be liable for the cost of replacing any Key Personnel].

13. CONTRACTOR'S STAFF

13.1 The Customer may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Customer's Premises:

13.1.1 any member of the Staff; or

13.1.2 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.

13.2 At the Customer's written request, the Contractor 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.

13.3 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.

13.4 If the Contractor 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.

13.5 The decision of the Customer as to whether any person is to be refused access to the Premises and as to whether the Contractor has 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 Contractor's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 the ESPO immediately

of any decision to employ such a person in any role connected with this Framework Agreement or any other agreement or arrangement with ESPO.

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

- a) carry out Employment Checks; and
- b) carry out such other checks as may be required by the Disclosure & Barring Service from time to time through the Term.

13.11 Where the principle obligation of the Contractor 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 Contractor nor any sub-contractors are to have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises. The Contractor 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.

14. TUPE

14.1 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 Contractor and the employees (save for those who object pursuant to Regulation 4(7) of TUPE.

14.2 The Contractor 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.

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

- (a) the total number of the Contractor'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 Contractor's Staff referred to in Clause 14.3(a); and
 - (c) the terms and conditions of the employment/engagement of the Contractor'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.
- 14.4 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 Contractor shall deliver to the Customer a complete update of all such information which shall be disclosable pursuant to Clause 14.3
- 14.5 At the time of providing the disclosed information pursuant to Clauses 14.3 and 14.4, the Contractor shall warrant the completeness and accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Contractor.
- 14.6 The Customer may use the information it receives from the Contractor 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 Contractor shall provide the Replacement Contractor with such assistance as it shall reasonably request.
- 14.7 The Contractor shall indemnify and keep indemnified and hold the Customer (both for themselves and any Replacement Contractor) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or any Replacement Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor to the Customer and/or a Replacement Contractor whose name is not included in the list of Returning Employees.
- 14.8 If the Contractor 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.
- 14.9 This Clause 14 applies during the Contract Period and indefinitely thereafter.
- 14.10 The Contractor undertakes to the Customer that, during the twelve months prior to the end of the Contract Period the Contractor 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):
- (a) 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 Contractor 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);
 - (b) 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);
 - (c) 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 Contractor, PROVIDED THAT any such transfer, removal, reduction or variation is not in any way related to the transfer of the Services;
 - (d) 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.

15. STAFFING SECURITY

15.1 The Contractor shall comply with the Staff Vetting Procedures in respect of all Contractor Staff employed or engaged in the provision of the Goods and/or Services. The Contractor confirms that all Staff employed or engaged by the Contractor at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

15.2 The Contractor 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 Staff Vetting Procedures.

16. INTELLECTUAL PROPERTY RIGHTS

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

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

16.3 With respect to the Contractor's obligations under the Contract, the Contractor warrants and represents that:

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

16.3.2 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;

16.4 The Contractor 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:

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

16.4.2 performance of the Contractor's responsibilities and obligations hereunder.

16.5 The Contractor shall promptly notify the Customer if any claim or demand is made or action brought against the Contractor 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 Contractor's responsibilities and obligations hereunder.

16.6 If a claim or demand is made or action brought to which Clause 19.3 and/or 19.4 may apply, or in the reasonable opinion of the Contractor is likely to be made or brought, the Contractor may at its own expense and within a reasonable time either:

- 16.6.1 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
- 16.6.2 procure a licence to use the Goods and/or Services on terms that are reasonably acceptable to the Customer; and
- 16.6.3 in relation to the performance of the Contractor's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

16.7 Customer Data

- 16.7.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Customer Data.
- 16.7.2 The Contractor shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Contractor of its obligations under the Contract or as otherwise expressly Approved by the Customer.
- 16.7.3 To the extent that Customer Data is held and/or processed by the Contractor, the Contractor 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.
- 16.7.4 To the extent that Customer Data is held and/or processed by the Contractor, the Contractor shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

- 16.7.5 The Contractor shall ensure that any system on which the Contractor holds any Customer Data, including back-up data, is a secure system that complies with the security policy reasonably requested by the Customer.
- 16.7.6 If the Customer Data is corrupted, lost or sufficiently degraded as a result of the Contractor's Default so as to be unusable, the Customer may:
- 16.7.6.1 require the Contractor (at the Contractor's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Contractor shall do so as soon as practicable but in accordance with the time period notified by the Customer; and/or
 - 16.7.6.2 itself restore or procure the restoration of Customer Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any BCDR Plan.
- 16.7.7 If at any time the Contractor 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 Contractor shall notify the Customer immediately and inform the Customer of the remedial action the Contractor proposes to take.

16.8 Protection of Personal Data

- 16.8.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, where the Customer has completed the second column of the table in section 9 of the Master Contract Schedule to specify the processing of Personal Data it requires the Contractor to perform, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be determined by the Contractor.
- 16.8.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 16.8.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- a) a systematic description of the envisaged processing operations and the purpose of the processing;

- b) an assessment of the necessity and proportionality of the processing operations in relation to the Goods and/or Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

16.8.4 The Contractor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- a) process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Contractor is required to do otherwise by Law.

If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - i. nature of the data to be protected; ii. harm that might result from a Data Loss Event; iii. state of technological development; and iv. cost of implementing any measures;
- c) ensure that:
 - i. the Contractor Personnel do not process Personal Data except in accordance with this Contract (and in particular section 9 of the Master Contract Schedule);
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - a) are aware of and comply with the Contractor's duties under this clause;
 - b) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - c) 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 Customer or as otherwise permitted by this Contract;
and

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

- d) not transfer Personal Data outside of the EU unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- i. the Customer or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Contractor 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 Customer in meeting its obligations); and
 - iv. the Contractor complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- e) at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of this Contract unless the Contractor is required by Law to retain the Personal Data.

16.8.5 Subject to clause 16.8.6, the Contractor shall notify the Customer immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

- e) 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
 - f) becomes aware of a Data Loss Event.
- 16.8.6 The Contractor's obligation to notify under clause 16.8.5 shall include the provision of further information to the Customer in phases, as details become available.
- 16.8.7 Taking into account the nature of all processing, the Contractor shall provide the Customer 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 Customer) including by promptly providing:
 - a) the Customer with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by the Customer following any Data Loss Event;
 - e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 16.8.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Contractor employs fewer than 250 staff, unless:
 - a) the Customer determines that the processing is not occasional;
 - b) the Customer 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
 - c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

- 16.8.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 16.8.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.
- 16.8.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Contractor must:
- a) notify the Customer in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of the Customer;
 - c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 16 such that they apply to the Sub-processor; and
 - d) provide the Customer with such information regarding the Subprocessor as the Customer may reasonably require.
- 16.8.12 The Contractor shall remain fully liable for all acts or omissions of any Sub- processor.
- 16.8.13 The Customer 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).
- 16.8.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office

16.9 Security of Premises

- 16.9.1 The Customer shall be responsible for maintaining the security of the Customer's Premises in accordance with its standard security requirements. The Contractor 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.
- 16.9.2 The Customer shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request an opportunity to inspect its physical security arrangements.

16.10 Confidentiality

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

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

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

16.10.2 Clause 16.10.1 shall not apply to the extent that:

16.10.2.1 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 16.11 (Freedom of Information);

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

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

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

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

16.10.3 The Contractor 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.

16.10.4 The Contractor 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.

16.10.5 At the written request of the Customer, the Contractor 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.

16.10.6 In the event that any default, act or omission of any Staff causes or

contributes (or could cause or contribute) to the Contractor breaching

its obligations as to confidentiality under or in connection with this Contract, the Contractor 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 Contractor 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 Contractor 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.

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

16.10.7.1 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;

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

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

16.10.7.4 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.

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

16.10.9 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.

16.10.10 In the event that the Contractor fails to comply with clause 16.6.1 to clause 16.6.3, the Customer reserves the right to terminate the Contract with immediate effect by notice in writing.

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

16.11 Freedom of Information

16.11.1 The Contractor 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.

16.11.2 The Contractor shall and shall procure that its Sub-Contractors shall:

16.11.2.1 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;

16.11.2.2 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

16.11.2.3 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.

16.11.3 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.

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

16.11.5 The Contractor 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 Contractor or the Goods and Services:

16.11.5.1 in certain circumstances without consulting the Contractor;
or

16.11.5.2 following consultation with the Contractor 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 Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

16.11.6 The Contractor 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.

16.11.7 The Contractor 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.

16.12 Transparency

16.12.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of 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.

16.12.2 Notwithstanding any other term of the Contract, the Contractor 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.

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

16.12.4 The Contractor shall assist and cooperate with the Customer to enable the Customer to publish this Contract.

17. WARRANTIES AND REPRESENTATIONS

17.1 The Contractor warrants, represents and undertakes to the Customer that:

- 17.1.1 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;
- 17.1.2 the Contract is executed by a duly authorised representative of the Contractor;
- 17.1.3 in entering the Contract it has not committed any Fraud;
- 17.1.4 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916, or the Bribery Act 2010;
- 17.1.5 this Contract shall be performed in compliance with all Laws (as amended from time to time) and all applicable Standards;
- 17.1.6 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;
- 17.1.7 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;
- 17.1.8 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;
- 17.1.9 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 Contractor 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 Contractor's assets or revenue;
- 17.1.10 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;

17.2 The Contractor warrants represents and undertakes to the Customer that:

- 17.2.1 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;
- 17.2.2 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;
- 17.2.3 the Goods and/or Services are and will continue to be during the Contract Period:
 - 17.2.3.1 of satisfactory quality; and
 - 17.2.3.2 in conformance with the relevant specifications set out in this Contract, the relevant order and (if applicable) the manufacturer's specifications and documentation;
- 17.2.4 in the three (3) Years prior to the Commencement Date:
 - 17.2.4.1 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
 - 17.2.4.2 it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established;
 - 17.2.4.3 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
 - 17.2.4.4 for the Contract Period that all Staff will be vetted in accordance with Good Industry Practice, the Security Policy and the Quality Standards.
- 17.3 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 Contractor.
- 17.4 The Contractor acknowledges and agrees that:
 - 17.4.1 the warranties, representations and undertakings contained in this Contract are material and are designed to induce the Customer into entering into this contract; and

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

18. LIABILITIES

18.1 Liability

- 18.1.1 Nothing in the Contract shall be construed to limit or exclude either Party's liability for:
- 18.1.1.1 death or personal injury caused by its negligence or that of its Staff;
 - 18.1.1.2 Fraud or fraudulent misrepresentation by it or that of its Staff;
 - 18.1.1.3 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;
 - 18.1.1.4 any claim under clause 17.1;
 - 18.1.1.5 any claim under the indemnity in clauses 11.2.5, 14, 16.4, in respect or a breach of clause 16.10; or
 - 18.1.1.6 any other matter which, by Law, may not be excluded or limited.
- 18.1.2 Subject to clause 18.1.4 and clause 18.1.5 the Contractor 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 Contractor of its obligations under the Contract or the presence of the Contractor 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 Contractor, or any other loss which is caused directly by any act or omission of the Contractor.
- 18.1.3 The Contractor 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.
- 18.1.4 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:

- 18.1.4.1 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
 - 18.1.4.2 in respect of all other Defaults, claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed ten million pounds sterling (£10,000,000.00).
- 18.1.5 Subject to clauses 18.1.1 and 18.1.6, in no event shall either Party be liable to the other for any:
 - 18.1.5.1 loss of profits;
 - 18.1.5.2 loss of business;
 - 18.1.5.3 loss of revenue;
 - 18.1.5.4 loss of or damage to goodwill;
 - 18.1.5.5 loss of savings (whether anticipated or otherwise); and/or
 - 18.1.5.6 any indirect, special or consequential loss or damage.
- 18.1.6 Subject always to the provisions of clauses 18.1, 18.2, 18.1.4 and 18.1.5, the provisions of 18.1.7 shall not be taken as limiting the right of the Customer to recover as a direct loss:
 - 18.1.6.1 any additional operational and/or administrative expenses arising from the Contractor's Default;
 - 18.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Contractor's Default;
 - 18.1.6.3 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 Contractor; and
 - 18.1.6.4 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 Contractor.
- 18.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Contractor 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.

18.2 Insurance

Customers: the levels of insurance may be amended; such amendments should be included in part 8 of the Master Contract Schedule and made clear in the ITT for Further Competitions.

- 18.2.1 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Contractor, arising out of the Contractor'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 Contractor. Such insurance shall be maintained for the Contract Period.
- 18.2.2 The Contractor shall hold employers liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000.00) for each individual claim.
- 18.2.3 The Contractor 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 (£10,000,000.00) for each individual claim.
- 18.2.4 The Contractor shall effect and maintain a product liability insurance policy, which shall, for any one occurrence or series of occurrences arising out of one event, be not less than ten million pounds sterling (£10,000,000.00).
- 18.2.5 The Contractor 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.
- 18.2.6 If, for whatever reason, the Contractor 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 Contractor.
- 18.2.7 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause 19.
- 18.2.8 The Contractor 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 Contractor 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.

18.3 Taxation, National Insurance and Employment Liability

- 18.3.1 The Parties acknowledge and agree that the Contract constitutes a contract for the provision of Services and not a contract of employment. The Contractor 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.

19. TERMINATION

19.1 Termination on insolvency

- 19.1.1 The Customer may terminate the Contract with immediate effect by giving notice in writing to the Contractor where the Contractor is a company and in respect of the Contractor:
- 19.1.1.1 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
 - 19.1.1.2 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
 - 19.1.1.3 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

- 19.1.1.4 a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
 - 19.1.1.5 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
 - 19.1.1.6 it is or becomes insolvent within the meaning of Section 123 of the Insolvency Act 1986 ; or
 - 19.1.1.7 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
 - 19.1.1.8 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.
- 19.1.2 The Customer may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:
- 19.1.2.1 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 Contractor's creditors; or
 - 19.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or
 - 19.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
 - 19.1.2.4 the Contractor 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
 - 19.1.2.5 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 Contractor's assets and such attachment or process is not discharged within 14 days; or
 - 19.1.2.6 he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

19.1.2.7 the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

19.2 Termination on Change of Control

19.2.1 The Contractor shall notify the Customer immediately if the Contractor 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:

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

19.2.1.2 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, the following shall be disregarded 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.

19.3 Termination on Default

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

19.3.1.1 the Contractor 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

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

19.3.1.3 the Default is a material breach of the Contract.

19.3.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost

or sufficiently degraded so as to be unusable, the Contractor 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 Contractor.

- 19.3.3 If the Customer fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the Undisputed Sums Time Period, the Contractor 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).

19.4 Termination of Framework Agreement

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

19.5 Termination on Financial Standing

The Customer may terminate this Contract by serving notice on the Contractor 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 Contractor (as measured from the Commencement Date) which:

- 19.5.1 adversely impacts on the Contractor's ability to supply the Goods and/or Services under this Contract; or
- 19.5.2 could reasonably be expected to have an adverse impact on the Contractor's ability to supply the Goods and/or Services under this Contract.

19.6 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 Contractor commits a Default of clauses 26.1 to 26.5 or clause 26.7 (Records and Audit Access).

19.7 Termination in relation to Benchmarking

The Customer may terminate this Contract by serving notice on the Contractor in writing with effect from the date specified in such notice if the Contractor refuses or fails to comply with its obligations as set out in Schedule 6 of the Framework Agreement (Value for Money).

19.8 Partial Termination

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

20. CONSEQUENCES OF EXPIRY OR TERMINATION

20.1 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 Contractor 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, 19.7, 19.8, no further payments shall be payable by the Customer to the Contractor until the Customer has established the final cost of making those other arrangements.

20.2 NOT USED

20.3 NOT USED

20.4 On the termination of the Contract for any reason, the Contractor shall:

- 20.4.1 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 Contractors or Sub-Contractors, which was obtained or produced in the course of providing the Goods and/or Services;
- 20.4.2 cease to use the Customer Data and, at the direction of the Customer provide the Customer and/or the Replacement Contractor 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 Contractor;
- 20.4.3 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.
- 20.4.4 immediately deliver to the Customer all Property (including materials, documents, information and access keys) provided to the Contractor 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);
- 20.4.5 transfer to the Customer and/or the Replacement Contractor (as notified by the Customer) such of the licensed goods and/or contracts

as are notified to it by the Contractor and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Contractor in respect of such licensed goods and/or contracts and/or any other items of relevance;

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

20.4.7 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

20.4.8 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 Contractor to conduct due diligence.

20.5 If the Contractor fails to comply with clause 20.4.1 and 20.4.8, the Customer may recover possession thereof and the Contractor grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted agents or Sub-Contractors where any such items may be held.

20.6 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause 20.4.5 and 20.4.8 free of charge. Otherwise, the Customer shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

20.7 At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 10.2.1 shall automatically terminate without the need to serve notice.

20.8 Save as otherwise expressly provided in the Contract:

20.8.1 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

20.8.2 termination of the Contract shall not affect the continuing rights, remedies or obligations of the Customer or the Contractor 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).

21. PUBLICITY, MEDIA AND OFFICIAL ENQUIRIES

21.1 The Contractor 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, Contractors, 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,

21.2 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.

21.3 The Contractor 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.

22. ANTI-DISCRIMINATION

22.1 The Contractor 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.

22.2 The Contractor shall take all reasonable steps to secure the observance of Clause 23.1 by all Staff employed in performance of this Contract.

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

22.4 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 Contractor's performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Contractor shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Contractor's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Contractor and any of the Contractor'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.

22.5 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 Contractor, its agents or Sub-Contractors, or the Contractor's Staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor 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.

22.6 The Contractor 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.

22.7 The Contractor 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 Contractor 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 Contractor 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.

23. HEALTH AND SAFETY

23.1 The Contractor 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 Contractor of any health and safety hazards which may exist or arise at the Customer's Premises and which may affect the Contractor in the performance of its obligations under the Contract.

23.2 While on the Customer's Premises, the Contractor shall comply with any health and safety measures implemented by the Customer in respect of Staff and other persons working there.

23.3 The Contractor 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.

23.4 The Contractor 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.

23.5 The Contractor 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.

24. ENVIRONMENTAL REQUIREMENTS

The Contractor 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.

25. PREVENTION OF BRIBERY AND CORRUPTION

25.1 The Contractor shall not:

- 25.1.1 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;
- 25.1.2 engage in and shall procure that all Contractor's Staff, consultants, agents or Sub-Contractors or any person acting on the Contractor'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
- 25.1.3 commit any offences under the Prevention of Corruption Acts 1889 to 1916.

25.2 The Contractor warrants, represents and undertakes that it has not:

- 25.2.1 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
- 25.2.2 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;

25.3 The Contractor shall:

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

- 25.3.2 immediately notify the Customer and ESPO if it suspects or becomes aware of any breach of this clause 25;
- 25.3.3 respond promptly to any of the Customer's enquiries regarding any breach, potential breach or suspected breach of this clause 25 and the Contractor shall co-operate with any investigation and allow the Customer to audit Contractor's books, records and any other relevant documentation in connection with the breach;
- 25.3.4 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 Contractor 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 Contractor shall provide such supporting evidence of compliance as the Customer may reasonably request;
- 25.3.5 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 Contractor's behalf from committing a Prohibited Act and shall enforce it where appropriate.

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

- 25.4.1 this clause 25; or
- 25.4.2 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.

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

- 25.5.1 the amount of value of any such gift, consideration or commission; and
- 25.5.2 any other loss sustained by the Customer in consequence of any breach of this clause 25.

26. RECORDS AND AUDIT ACCESS

26.1 The Contractor 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.

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

26.3 The Contractor shall afford the Customer and the Auditors access to the records and accounts referred to in clause 26.2 at the Contractor'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:

- 26.3.1 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 Contractor (including Sub-Contractors) of the Services;
- 26.3.2 to review the integrity, confidentiality and security of the Customer Data held or used by the Contractor;
- 26.3.3 to review the Contractor's compliance with the DPA in accordance with this Contract and any other Laws;
- 26.3.4 to review the Contractor's compliance with its continuous improvement and benchmarking obligations set out in schedule 6 (Value for Money) of the Framework Agreement;
- 26.3.5 to review the Contractor's compliance with its security obligations set out in clause 16;
- 26.3.6 to review any books of account kept by the Contractor in connection with the provision of the Service;
- 26.3.7 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;
- 26.3.8 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
- 26.3.9 to ensure that the Contractor is complying with its obligations under this Contract.

26.4 The Contractor 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.

26.5 The Contractor shall provide such records and accounts (together with copies of the Contractor'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.

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

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

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

26.7.2 reasonable access to sites controlled by the Contractor and to Equipment used in the provision of the Goods and/or Services; and

26.7.3 access to the Staff.

26.8 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 Contractor in which case the Contractor shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

27. PREVENTION OF FRAUD

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

27.2 The Contractor 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 Contractor or its Staff to commit an offence under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.

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

27.3.1 terminate the Contract with immediate effect by giving the Contractor notice in writing; and/or

27.3.2 recover in full from the Contractor and the Contractor 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.

28. TRANSFER AND SUB-CONTRACTING

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

28.2 The Contractor 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 Contractor 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.

29. FORCE MAJEURE

29.1 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.

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

29.3 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.

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

29.5 The Contractor will not have the right to any payment from the Customer under this Contract where the Contractor is unable to provide the Goods and/or

Services because of an event of Force Majeure. However if the Customer directs the Contractor to use a replacement Contractor pursuant to sub-clause 29.4, then the Customer will pay the Contractor (a) the Contract Price; and (b) the difference between the Contract Price and the new Contractor's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Contractor's costs are greater than the Contract Price.

30. WAIVER

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

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

30.3 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.

31. 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.

32. 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.

33. VARIATION

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

34. SEVERABILITY

34.1 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.

34.2 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 Contractor shall immediately commence good faith negotiations to remedy such invalidity.

35. MISTAKES IN INFORMATION

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Contractor 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.

36. CONTRACTOR'S STATUS

At all times during the Contract Period the Contractor 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.

37. CONFLICTS OF INTEREST

37.1 The Contractor shall take appropriate steps to ensure that neither the Contractor 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 Contractor or Staff and the duties owed to the Customer under the provisions of the Contract.

37.2 The Contractor 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.

37.3 The Customer reserves the right to terminate the Contract immediately by giving notice in writing to the Contractor 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 Contractor 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.

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

38. ENTIRE AGREEMENT

38.1 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.

38.2 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.

38.3 The Contractor acknowledges that it has:

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

38.3.2 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.

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

38.5 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.

39. THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

39.1 A person who is not a Party to the Contract except ESPO in relation to its right to claim retrospective rebate from the Contractor 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.

39.2 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 Contractor and Replacement Contractor shall have the right to enforce the obligations owed to, and indemnities given to, the Former Contractor and the Replacement Contractor by the Contractor under that clause 14 in its own right pursuant to clause 1(1) of CROTPA.

39.3 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.

40. NOTICES

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

40.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, 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.

40.3 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.

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

41. LEGISLATIVE CHANGE & LOCAL GOVERNMENT REORGANISATION

The Contractor 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.

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.

42. DISPUTES AND LAW

42.1 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.

42.2 Dispute Resolution

42.2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 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 Contractor's Representative.

42.2.2 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.

- 42.2.3 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:
- 42.2.3.1 the Customer considers that the dispute is not suitable for resolution by mediation; or
- 42.2.3.2 the Contractor does not agree to mediation.
- 42.2.4 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 Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 42.2.5 The procedure for mediation is as follows:
- 42.2.5.1 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;
- 42.2.5.2 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;
- 42.2.5.3 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;
- 42.2.5.4 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;
- 42.2.5.5 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

42.2.5.6 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

SERVICE LEVELS AND SERVICE CREDITS (where appropriate)

1. SCOPE

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

Part A: Service Levels;

Appendix to Part A – Draft Service Levels; and

Part B: Performance Monitoring.

PART A

SERVICE LEVELS

2. PRINCIPAL POINTS

2.1 The objectives of the Service Levels and Service Credits are to:

- 2.1.1 ensure that the Services are of a consistently high quality and meet the requirements of the Customer;
- 2.1.2 provide a mechanism whereby the Customer can attain meaningful recognition of inconvenience and/or loss resulting from the Contractor's failure to deliver the level of Service for which it has contracted to deliver; and
- 2.1.3 incentivise the Contractor to meet the Service Levels and to remedy any failure to meet the Service Levels expeditiously.

3. SERVICE LEVELS

3.1 The Appendix to this Part A of this schedule sets out Service Levels the performance of which the Parties have agreed to measure.

- 3.2 The Contractor 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.
- 3.3 If the level of performance of the Contractor of any element of the Services during Contract Period:
 - 3.3.1 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 Part A; or
 - 3.3.2 constitutes a Critical Service Failure, the Customer shall be entitled to terminate this Contract pursuant to clause 19.3

APPENDIX TO PART A

DRAFT SERVICE LEVELS AND SEVERITY LEVELS BETWEEN (the Customer) AND (the Contractor)

1 OVERVIEW

This Service Level Agreement (SLA) is intended to provide a structure for the way in which the Customer and the Contractor will work together. This SLA will be valid for as long as there are Services still in use by the Customer which have been supplied in accordance with the Contract let under the ESPO Framework reference 704.

2 CONTRACT MANAGEMENT

The Customer's Contract Manager is [state name and job title] who can be contacted for further information or any issues or to give feedback on [insert contact details]

The Contract Manager shall be available for queries during Normal Working Hours [to be inserted]

The Contractor has nominated an Account Manager for the Customer. Any contact the Customer makes with the Contractor, should, in the first instance be made through [state name and job title] by contacting [insert contact details]

The Account Manager shall be available for queries during Normal Working Hours [to be inserted]

3 Service Helpdesk (if applicable)

The Contractor shall provide a Service Helpdesk which will be the first point of contact for all Customer enquiries and service delivery related issues.

Hours of cover - the period for which the helpdesk service is available is between the hours of [to be inserted] excluding all United Kingdom Public Holidays.

The working hours upon which response and resolution times are calculated will be [to be inserted] excluding all United Kingdom Public Holidays.

Calls may be placed by email or telephone. The Customer call logging procedure shall achieve the following functions;

- provide a standard call logging procedure for the services provided.
- minimises the risk of calls being unanswered or missed.
- achieve Customer satisfaction.

Contact	Response Times
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Customer enquiries by telephone	<ul style="list-style-type: none">• 90% of calls answered within 4 rings• 95% of calls answered within 7 rings• 99% of calls answered within 10 rings
Customer enquiries by email	<ul style="list-style-type: none">• 90% of emails answered within 30 minutes• 95% of emails answered within 1 hour• 99% of emails answered within 2 hours

4 MONITORING AND REVIEW

The Customer will require regular contact from their account manager to review the Contract and specifically the Key performance indicators as indicated in the Master Contract Schedule.

5 COMPLAINTS AND RESOLUTION

In the event of any issues, the Customer's Contract Manager shall in the first instance contact the Contractor's Account Manager for resolution.

Any complaints raised will be managed in accordance with the Contractor's complaints procedure. This process ensures that all complaints are dealt with in a professional manner, and to the satisfaction of the Customer.

The Contractor shall notify the Customer immediately (by telephone or e-mail as appropriate) it becomes aware that services cannot be delivered against the implementation timetable(s) and revised implementation timetable(s) agreed with the Customer.

A working day is defined as the period between the time at which a call was received and the same time on the next working day (i.e. weekends and public holidays are not classified as working days).

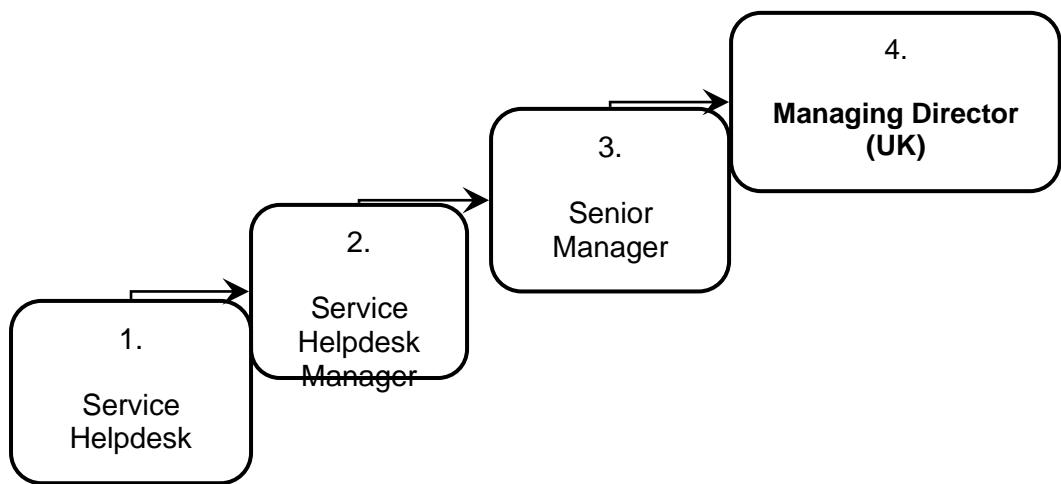
6 Escalation Procedures

This section covers the levels of management through which problems and/or complaints are escalated before the Customer has to resort to potential breach procedures within the main Contract.

Before any problems are escalated, the Customer should ensure that the Service Helpdesk staff are fully aware of the problem and understand the full details of the problem and the full impact it is having on them.

The following diagram outlines the key points of contact between the Customer and the Contractor.

Guidance contained in this document is intended for use by ESPO employees however it is made available to ESPO customers. ESPO customers must seek their own legal advice as to the content and drafting of this document.



Escalation Rationale Table

Escalation Level	Escalation Rationale	Contact
1	A query or issue is logged with the Service Helpdesk - The first point of contact at Level 1.	Service Helpdesk Tel:
2	If the Service Desk does not respond within the agreed time specified, then this will be escalated to Level 2.	Service Helpdesk Manager Tel:
3	If the Service Helpdesk Manager does not respond within the agreed response time specified, then this will be escalated to Level 3.	Senior Manager Tel:
4	If the Senior Manager does not respond within the agreed response time specified, then this will be escalated to Level 4 (UK Managing Director)	Managing Director Tel:

Note: At the earliest time the Contractor becomes aware that he cannot resolve the problem/complaint within the timescales agreed under the complaint procedure then the problem/complaint shall be escalated to the next level (or higher if applicable and as the parties shall agree)

PART B

PERFORMANCE MONITORING

1. PRINCIPAL POINTS

- 1.1 This Part B provides the methodology for monitoring the Services:
 - 1.1.1 to ensure that the Contractor is complying with the Service Levels; and
 - 1.1.2 for identifying any failures to achieve Service Levels in the performance of the Contractor and/or delivery of the Services ("**Performance Monitoring System**").
- 1.2 Within 20 Working Days of the Commencement Date the Contractor 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

The Contractor 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.

3. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

- 3.1 The Contractor 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:
 - 3.1.1 for each Service Level, the actual performance achieved over the Service Level for the relevant period;
 - 3.1.2 a summary of all failures to achieve Service Levels that occurred during that period;
 - 3.1.3 any Critical Service Failures and details in relation thereto;
 - 3.1.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 3.1.5 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

- 3.1.6 such other details as the Customer may reasonably require from time to time.
- 3.2 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 Contractor and the Customer of the Performance Monitoring Reports. The Performance Review Meetings shall (unless otherwise agreed):
 - 3.2.1 take place within one (1) week of the reports being issued by the Contractor;
 - 3.2.2 take place at such location and time (within normal business hours) as the Customer shall reasonably require unless otherwise agreed in advance;
 - 3.2.3 be attended by the Contractor's Representative and the Customer's Representative; and
 - 3.2.4 be fully minuted by the Contractor. The prepared minutes will be circulated by the Contractor 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 Contractor's representative and the Customer's Representative at each meeting.
- 3.3 The Customer shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Service Levels.
- 3.4 The Contractor 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 Contractor and the calculations of the amount of Service Credits for any specified period.

4. SATISFACTION SURVEYS

- 4.1 In order to assess the level of performance of the Contractor, the Customer may undertake satisfaction surveys in respect of the Contractor's provision of the Services.
- 4.2 The Customer shall be entitled to notify the Contractor 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.
- 4.3 All other suggestions for improvements to the Services shall be dealt with as part of the Continuous Improvement Plan.

SCHEDULE 2

IMPLEMENTATION PLAN AND MILESTONES

1. IMPLEMENTATION PLAN

- 1.1 The Contractor 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.
- 1.2 If so required by the Customer, the Contractor 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 Contractor shall ensure that each version of the Implementation Plan is subject to Approval. The Contractor 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.
- 1.3 The Customer shall have the right to require the Contractor to include any reasonable changes or provisions in each version of the Implementation Plan.

2. MILESTONES

- 2.1 The Contractor shall perform its obligations so as to meet each Milestone by the Milestone Date.
- 2.2 Changes to the Milestones shall only be made in accordance with the Variation Procedure and provided that the Contractor 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 Contractor's ability to achieve a Milestone by the relevant Milestone Date).
- 2.3 If a Milestone has not been achieved by the relevant Milestone Date, the Contractor 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 Contractor with confirmation in writing of its satisfaction that the Milestone has been met.
- 2.4 No payment or concession to the Contractor 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.

- 2.5 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.