Further Competition under ESPO Framework Agreement No. 220

for the supply of

De-Icing Salt & Associated Products/Services

Lot: 2 – 6mm White Salt (BS3247:2011)

Supply & Delivery

To

Highways England (Area 3)

PLEASE INSERT YOUR COMPANY DETAILS HERE:

COMPANY NAME NGS GRITTING SERVICES LTD

ADDRESS: RUSHINGTON BUSINESS PARK, CHAPEL LANE, SOUTHAMPTON

POSTCODE: SO40 9AH

CONTACT NAME/POSITION: [redacted]

Tel (office/mobile): [redacted]

EMAIL: [redacted]

WEBSITE:NGS.CO.UK

Closing Date for Tenders: 02/07/2021 @ 12:00hrs

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For details relating to the requirements, please refer to the following documents

- Area 3 - Goods Information (White Marine Salt) and associated Annexes

1. INTRODUCTION

Basis of the Contract

The purpose of this document is to invite you to submit a tender in a further competition exercise to meet the requirements of Highways England – Area 3. This invitation to tender is issued under ESPO framework agreement ref. 220 De-Icing Salt & Associated Products / Services. Your company is included in this framework agreement for the product being sought within this tender.

The ESPO framework agreement commenced on 1st July 2020 and runs until 30th April 2024.

Unless agreed otherwise, any contract awarded and subsequent order placed as a result of the further competition exercise shall be subject to the Call-Off Terms as agreed to in the framework agreement.

Henceforth in this document, reference to "The Customer" means Highways England (Area 3).

The Requirement

Further competition is invited under the terms and conditions of ESPO framework agreement ref 220 for the supply and delivery of 6mm White Salt (BS3247:2011) to Highways England (Area 3) at a number of named depot locations, over an initial period of 18 months.

The requirement is for a primary contractor from Lot 2.

Please note that further competition is invited, and a subsequent award will be made, in accordance with the terms and conditions of ESPO's overarching framework agreement 220 - except as may be varied herein.

Delivery Address

All items are to be delivered to the below address unless an alternative address is specified by The Customer when placing their order.

Please refer to Section 5 of the accompanying *Goods Information* document.

Delivery Timescales

Please refer to Section 3 of the accompanying *Goods Information* document.

Contract Period

The Customer anticipates that the call off will be in force for a fixed period of 18 months; commencing 01 November 2021 and elapsing 30 April 2023 with option to extend for a further 12 months until 30 April 2024.

The Customer will reserve the right to cancel the call off or remove the nominated supplier(s) from the call off contract in the event that there is a material concern which seriously jeopardises the position of the Customer.

Firm Price Period

Prices will remain firm for a minimum period of 12 months – commencing from the start date of the call off.

Expiry of Firm Price Period

Any uplift in tendered rates requested by the appointed supplier will be assessed in accordance to the following;

The index is RPI All Items Index Jan1987=100.

The base date value for the index is May 2021.

On each anniversary of the commencement date

- the Supplier calculates a price adjustment factor equal to L/B, where L is the last published firm value for the index and B is the base date value for the index and
- submits his calculation and the consequently adjusted rates and prices in the Price Schedule to the Purchaser for acceptance.

The amount due for goods, work, services and actions provided after the first anniversary is assessed using the rates and prices in the Price Schedule multiplied by the accepted price adjustment factor calculated for the last anniversary before the date of provision.

Estimated Call Off Spend

Please refer to Annex A of the accompanying *Goods Information* document for projected white marine salt usage within Area 3.

In Annex A, the figures provided in column 'Forecast for 2021/22' will be the basis to calculate the total costs, for all depots. The combined figure will then be used for evaluation of bids received.

Bidders' attention is drawn to the fact that figures provided are for estimation only and could fluctuate up or down, dependant on circumstances and requirements (i.e. budgetary restraints, weather, etc).

Highways England expects that the majority of salt orders will take place during the summer season (1st May – 30th September) in the ratio of 80% during the Summer period and 20% during the Winter period.

Therefore, the total volume anticipated per annum will be weighted as follows;

Summer Volume:80% x the total of Summer Prices

Winter Volume:20% x the total of Winter Prices

= Volume:100% x (Summer + Winter Prices)

The total of the prices acquired will be combined and then assessed in accordance to 'Table A – Price Evaluation Model' in Section 2.

2. PROCUREMENT PROCESS AND EVALUATION OF TENDERS

This invitation to tender is issued as part of a further competition exercise which is being conducted under ESPO framework agreement ref. 220 De-Icing Salt & Associated Products / Services. The tender process is thus limited to just those suppliers who are included in that framework for the specified lot.

2.1 PROCUREMENT TIMESCALE

The further competition process is being conducted in accordance with the following indicative timescale:

- Further competition document issued 04/06/2021
- Closing date for receipt of further competition document 02/07/2021 @ 12:00hrs
- Supplier identified and appointed September 2021
- Order(s) placed From 01/11/2021

2.2 CLARIFICATIONS

All requests for clarification and questions regarding this ITT should be submitted as soon as possible directly in writing to the Procurement Officer conducting this further competition exercise via the e-sourcing portal BRAVO (as a message).

All questions will be recorded and forwarded to the appropriate person for a response.

A copy of all questions and answers will be maintained and distributed periodically to all recipients of this ITT through the portal via a query log.

If the tenderer expresses that the question is confidential and the Customer believes it is then the response to questions of a sensitive or confidential nature will be sent only to the Tenderer raising the question.

The Customer will endeavour to circulate a complete list of answers to all questions submitted by (up to and including) 25/06/2021 (**the tender query deadline is 25/06/2021 @ 12:00hrs**)

Queries received after this date may not be answered.

2.3 EVALUATION OF TENDERS

All responses will be assessed against the Evaluation Criteria set out below:

EVALUATION CRITERIA	WEIGHTING	
Price	**70**	**Points /%**
Non-Price	**30**	**Points /%**

A bid may not be accepted that significantly fails to satisfy any specific criterion, even if it scores relatively well against all other criteria.

In the event that evaluating officers, acting reasonably, consider that a tender is fundamentally unacceptable on any issue, then regardless of the tender's other merits or its overall score, and regardless of the weighting scheme, that bid may be rejected.

In the event that two Tenderers are tied on the same score then the Tenderer with the highest Price Score will take precedence.

Price (70%)

Tenderers' price scores will be calculated based upon the lowest price submitted by tenderers.

The tenderer with the lowest total price will be awarded the full score of 70%, with the remaining tenderers gaining pro-rated scores in relation to how much higher their prices are when compared to the lowest total price.

Table A – Price evaluation model

Tenderer	Price	(price - lowest price) / lowest price = % above lowest price	100% - % above lowest price	Maximum points x (100% - % above lowest price)	Final Score
1	**£100**	(£100 - £100) / £100 = **0.00%**	100% - 0.00% = **100.00%**	70 x (100% - 0.00%) = **70.00**	**70.00**
2	**£125**	(£125 - £100) / £100 = **25.00%**	100% - 25.00% = **75.00%**	70 x (100% - 25.00%) **= 52.50**	**52.50**
3	**£150**	(£150 - £100) / £100 = **50.00%**	100% - 50.00% = **50.00%**	70 x (100% - 50.00%) = **35.00**	**35.00**
4	**£175**	(£175 - £100) / £100 = **75.00%**	100% - 75.00% = **25.00%**	70 x (100% - 75.00%) = **17.50**	**17.50**
5	**£200**	(£200 - £100) / £100 = **100.00%**	100% - 100.00% = **0.00%**	70 x (100% - 100.00%) = **0.00**	**0.00**

For the purpose of evaluation Highways England expects that the majority of salt orders will take place during the summer season (1st May – 30th September) in the ratio of 80:20. Therefore, the total prices provided in Section 6 Price Schedule, shall be combined and weighted as follows;

Summer Volume: 80% x Summer Total Prices

Winter Volume: 20% x Winter Total Prices

The final figures acquired will be combined and assessed in accordance to Table A above.

Non-Price (30%)

Tenderers are asked to respond to a number of method statements (Section 7), which are intended to explain how they will meet specific requirements. There are 3 method statements in total.

Each method statement will be scored on a scale of 0 to 3 points, in accordance with the following scheme:

In the context of the specific question concerned;	
0	the response raises major concerns about understanding or approach which are potentially highly detrimental to satisfactory service delivery or contract performance.
1	the response suggests significant shortcomings of understanding or approach which may impact on service delivery or contract performance.
2	the response suggests minor shortcomings of understanding or approach which may impact to a short extent on service delivery or contract performance.
3	the response raises no concerns about understanding or approach to service delivery or contract performance.

If a tender scores '0' against any one or more method statements, this will give grounds for excluding that tender from any further consideration. For any tenders so excluded, the relevant price will also be excluded from the evaluation.

Example

Method Statements Scoring

Question	Score (max of 3 points per question)	Total Non-Price Score
1	3	
2	3	
3	3	
TOTAL (Max total score is 9)	**9**	9 ÷ 9 x 30 = **30**

2.4 AWARD OF CONTRACT

It is envisaged that one supplier will be appointed to call off from in Lot 2.

Such inclusion on the call off pursuant to this further competition will be on the basis of the most economically advantageous bid, based on the evaluation criteria listed.

The Customer does not bind itself to accept the lowest or any bid, and unless a bidder expressly states that a partial award will not be acceptable, then the right is reserved to accept a bid in part.

Upon conclusion of the evaluation of responses, those bid(s) with whom it is agreed should be awarded the call off will be advised accordingly in writing with the issue of an 'Acceptance' letter.

Bidders that are unsuccessful will be advised of this in writing via a ‘Non-acceptance of Submission’ letter.

Upon conclusion of all of the above stages, a call off will be created between the Customer and the appointed supplier(s).

3. CONDITIONS OF TENDER

In submitting a proposal in response to this Invitation to Tender, tenderers do so on the conditions specified or referred to herein and on the following express conditions which shall be paramount, and in the event of any breach thereof the Customer shall be entitled to determine any arrangement made pursuant to such tender and to claim damages accordingly.

Tenderers should consider only the information contained within this Invitation to Tender, or otherwise communicated in writing to tenderers, when making their offer.

Information supplied by the Customer (whether in this document or otherwise) is supplied for general guidance in the preparation of tenders. Tenderers must satisfy themselves by their own investigations with regard to the accuracy of such information. The Customer cannot accept responsibility for any inaccurate information obtained by Tenderers.

Tenderers shall not, before the date and time specified for return of the tender, communicate to any person the amount or approximate amount of the tender or proposed tender, except where the disclosure in confidence of the approximate amount of tender is necessary to obtain insurance cover required for the purpose of the tender.

The tender shall be a bona-fide tender and shall not be fixed or adjusted by or under or in accordance with any agreement or arrangement with any other person.

Tenderers shall not enter into any agreement or arrangement with any other person with the intent that the other person shall refrain from tendering or between you agree as to the amount of any other tender to be submitted.

The Customer shall not be liable for, or pay any direct or indirect costs howsoever incurred by any Tenderer in the preparation of their tender, or for the costs of any post-tender clarification meetings, presentations, demonstrations or by any Tenderer who fails to respond by the deadline set.

TERMS AND CONDITIONS

Any order placed pursuant to this further competition exercise will be subject to the Call-Off Terms as agreed as part of the contract entered into with ESPO and supplied in the framework ITT.

4. INSTRUCTIONS TO TENDERERS

4.1 FORMAT OF PROPOSALS

This Invitation to Tender documentation should only have been downloaded from the https://highways.bravosolution.co.uk (as per **ITT_6257**).

The layout of responses should be in accordance with the following format (Tenders submitted in any other format will not be accepted)

Tenderers must complete the following sections:

1. Form of Tender (Section 5)
2. Price Schedule (Section 6)
3. Response to Method Statements (Section 7)
4. Annexes E, F & G (as provided separately)
5. Key People Schedule (as provided separately)

4.2 COMPLETION AND SUBMISSION OF TENDERS

a) Tenderers should read all information and documents provided as part of the tender pack.

b) Tenderers should complete their tender submission following the format and instructions detailed above. Tenders submitted in any other format will not be accepted.

c) In order to submit a tender for this procurement, you are required to upload your tender electronically through the **BRAVO portal** and ensure you click to 'submit response', prior to the tender closing date and time

4.3 RETURN DATE

Completed tender submissions must be uploaded by **02/07/2021 @ 12:00hrs**. Any amendments to the submission deadline will be communicated through the portal. Tenders submitted after the designated time and date will be rejected. Tenders and/or any documentation supporting a tender submission must NOT be submitted by fax or email.

Unless specifically withdrawn in writing, tenders shall remain open for acceptance for a period of 90 days from the return date.

4.4 NO BID

If you do not wish to submit an offer, please confirm you will not be tendering by writing to the Procurement Officer (using the BRAVO message function)

On no account must this Invitation to Tender be passed to any third party.

5. FORM OF TENDER

Further Competition under ESPO Framework Agreement: 220 De-Icing Salt & Associated Products / Services

(***to be completed by the tenderer***)

In response to this further competition Invitation to Tender dated 04/06/2021.

1 I/we hereby offer to supply on receipt of an Order from any of the Authorities defined within the above-mentioned further competition Invitation to Tender, services of the type offered in my/our tender and in respect of which my/our tender.

2 I/we undertake that this offer shall remain valid and open for acceptance for a period of 90 days from the date of submission unless specifically withdrawn in writing.

3 I/we, the undersigned do hereby contract and agree on acceptance of this further competition, in whole or in part, to perform the Services, at the prices and terms quoted, and in accordance with the conditions of ESPO framework ref 220.

4 I/we further declare that I/we understand, agree and **will comply with the requirements of the Retrospective Rebate Agreement** of ESPO framework ref 220.

5 Unless and until a Contract is prepared and executed, this tender, together with your written acceptance thereof, shall constitute a binding contract between us.

6 I / we accept the conditions of contract set out in the Invitation to Tender, to which this tender is my/our response, and I /we undertake to perform any contract awarded as a result of this Tender in strict conformity with those conditions of contract.

7 We understand that Highways England (Area 3) is not bound to accept any Tender it receives.

[redacted]

TERMS OF AGREEMENT

ESPO FRAMEWORK 220 – DE-ICING SALT & ASSOCIATED PRODUCTS / SERVICES

A copy of these order terms should be included with any call-off order placed with a supplier on the framework or should form part of your further competition tender documentation.

THE CUSTOMER

- and –

THE SUPPLIER

CALL-OFF TERMS

relating to

DE-ICING SALT & ASSOCIATED PRODUCTS / SERVICES

CONTRACT REF

220_20

[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]

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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 "Supplier").

WHEREAS

(A) ESPO selected framework providers, including the Supplier, to provide Goods and/or Services;

(B) the Supplier undertook to provide the Goods and/or Services on the terms set out in a Framework Agreement number 220_20 dated 01 July 2020 (the "Framework Agreement");

(C) ESPO and the Supplier have agreed that public sector bodies within the UK may enter into Contracts under the Framework Agreement with the Supplier for the Supplier 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 Supplier, its IPR or its business or which the Supplier has indicated to the Customer that, if disclosed by the Customer, would cause the Supplier significant commercial disadvantage or material financial loss;

"Confidential Information" means the Customer's Confidential Information and/or the Supplier's Confidential Information;

"Continuous Improvement Plan" means a plan for improving the provision of the Services and/or reducing the charges produced by the Supplier pursuant to schedule 6 of the Framework Agreement;

"Contract" means the contract entered into by the Customer and the Supplier 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 Supplier 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 Supplier of its obligations under the Contract less any Service Credits;

"Contracting Authority" means any contracting authority as defined in Regulation 2 of the Public Contracts Regulations 2015 other than the Customer;

"Control" means control as defined in section 1124 Corporation Tax Act 2010 and "Controls" and "Controlled" shall be interpreted accordingly;

"Controller" shall take the meaning given in the GDPR;

"Conviction" means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006.);

"Critical Service Failure" shall have the meaning given in the Master Contract Schedule and/or any other Contract Document;

"Customer Data" means:

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

(i) are supplied to the Supplier by or on behalf of the Customer; or

(ii) the Supplier 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 Supplier of its obligations under the Contract and including, for the avoidance of doubt, guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models and designs;

"Customer's Premises" the premises identified in the Master Contract Schedule and/or any other Contract Document and which are to be made available for use by the Supplier 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 Suppliers of the Customer, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;

"Data Loss Event" means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

"Data Protection Legislation" means the General Data Protection Regulation ((EU) 2016/679) (GDPR), the Law Enforcement Directive (Directive (EU) 2016/680) (LED) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK including the Data Protection Act 2018 and all applicable law about the processing of personal data and privacy;

"Data Protection Impact Assessment" means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

"Data Protection Officer" shall take the meaning given in the GDPR;

"Data Subject" shall take the meaning given in the GDPR;

"Data Subject Access Request" means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

"Default" means any breach of the obligations of the Supplier (including but not limited to

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fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the Supplier or Supplier's Staff in connection with or in relation to the subject-matter of the Contract and in respect of which the Supplier 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 Supplier and the Customer has issued the Supplier 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 Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (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 and/or Services;

"ESPO" means Leicestershire County Council, acting in its capacity as servicing authority to a joint committee known as ESPO, established under the Local Government Act 1972 (section 101 (5) and section 102) and section 9EB of the Local Government Act 2000, whose place of business is at of Barnsdale Way, Grove Park, Enderby, Leicester, LE19 1ES;

"Expiry Date" means the date set out in the Master Contract Schedule and/or any other Contract Document;

"Form of Contract" means the document in the form set out at Schedule 3 of the Framework Agreement signed by the Customer and the Supplier and which lists all of the Contract Documents;

"FOIA"

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

"Force Majeure" means any event, occurrence or cause affecting the performance by either the Customer or the Supplier of its obligations arising from:

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:

i) any industrial dispute relating to the Supplier, the Supplier's Staff or any other failure in the Supplier or the Sub-Contractor's supply chain; and

ii) any event or occurrence which is attributable to the wilful act, neglect or failure to take reasonable precautions against the event or occurrence by the Party concerned;

"GDPR" means the General Data Protection Regulation (Regulation (EU) 2016/679;

"Good Industry Practice" means standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Goods and/or Services" means the goods and/or services to be supplied as specified in the Form of Contract, Master Contract Schedule and/or any other Contract Document;

"Guarantee Period" means the period for each item as stated in the Supplier's Tender;

"Holding Company" shall have the meaning given to it in section 1159 and Schedule 6 of the Companies Act 2006;

"Implementation Plan" means the plan referred to in the Master Contract Schedule and/or any other Contract Document produced and updated in accordance with Schedule 2;

"Information" has the meaning given under section 84 of the FOIA;

"Initial Term" the period commencing on the Commencement Date and ending on the Expiry Date;

"Intellectual Property Rights" or "IPRs" means:

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; and

c) 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 Supplier to the Invitation to Tender issued by the Customer on [insert date];

"Key Personnel" means the individuals (if any) identified in the Master Contract Schedule and/or any other Contract Document;

"Know-How" means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Goods and/or Services but excluding know-how already in the Supplier'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 Supplier is bound to comply;

"LED" means Law Enforcement Directive (Directive (EU) 2016/680);

"Management Information" means the management information specified in Framework Schedule 7 (Management Information Requirements);

"Master Contract Schedule" means the schedule attached to the Form of Contract at Schedule 3 of the Framework Agreement;

"Milestone" means an event or task described in the Implementation Plan which must be completed by the corresponding date set out in such plan;

"Milestone Date" means the date set against the relevant Milestone in the Implementation Plan;

"Mirror Framework" means any framework agreement entered into by the Supplier and a company owned by ESPO;

"Month" means calendar month and "monthly" shall be interpreted accordingly;

"Normal Business Hours" means 8.00 am to 6.00 pm local UK time, each Working Day;

"Parent Company" means any company which is the ultimate Holding Company of the

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Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged by the same or similar business to the Supplier;

"Party" means the Supplier or the Customer and "Parties" shall mean both of them;

"Personal Data" shall take the meaning given in the GDPR;

"Personal Data Breach" shall take the meaning given in the GDPR;

"Premises" means the location where the Services are to be provided and/or the Goods are to be supplied, as set out in the Master Contract Schedule and/or any other Contract Document;

"Processor" shall take the meaning given in the GDPR;

"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;

ii) under legislation creating offences concerning fraudulent acts;

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

iv) involving slavery or human trafficking; 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 Supplier (or by a third party on behalf of the Supplier) 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 Supplier (or by a third party on behalf of the Supplier) under the Contract,

"Property" means the property, other than real property and IPR, issued or made available to the Supplier 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 such measures adopted by it;

"Public Contracts Directive" means Directive 2014/24/EU of the European Parliament and of the Council;

"Quality Standards" means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent body (and their successor bodies), that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with (as may be further detailed in the Master Contract Schedule and/or any other Contract Document) and any other applicable quality standards, Government codes of practice and guidance;

"Regulated Activity" means any work which is currently defined as a regulated activity relating to children or vulnerable adults within the meaning of Schedule 4 Part 1 (Children) or Part 2 (Vulnerable Adults) of the Safeguarding Vulnerable Groups Act 2006;

"Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Customer;

"Related Supplier" means any person who provides services to the Customer which are related to the Services from time to time;

"Replacement Supplier"any third party Supplier 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 1 being payable by the Supplier in respect of any failure by the Supplier to meet one or more Service Levels;

"Service Levels" means any service levels applicable to the provision of the Services as referred to Schedule 1;

"Services" means all services comprised in the Goods and/or Services to be supplied as referred to in the Form of Contract, the Master Contract Schedule and the Contract Documents;

"Sites" means any premises from which the Services are provided or from which the Supplier manages, organises or otherwise directs the provision or the use of the Services;

"Specification" means the specification in the Lots at Framework Schedule 1 (Goods and/or Services);

"Staff" means all persons employed by the Supplier and/or any Sub-Contractor to perform its obligations under the Contract together with the Supplier's and/or any Sub-Contractor's servants, consultants, agents, Suppliers 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 Supplier and any third party whereby that third party agrees to provide to the Supplier 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 Supplier enters into a Sub-Contract or its servants or agents and any third party with whom that third party enters into a Sub-Contract or its servants or agents;

"Sub-processor" means any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;

"Supplier" means the person, firm or company with whom the Customer enters into the Contract as identified in the Form of Contract;

"Supplier Personnel" means all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;

"Supplier Pre-Existing IPR" shall mean any Intellectual Property Rights vested in or licensed to the Supplier 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;

"Supplier's Representative" means the representative appointed by the Supplier from time to time in relation to the Contract;

"Supplier Solution" means the Supplier'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;

"Supplier's Confidential Information" means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Suppliers of the Supplier, 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;

"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 Supplier to the Customer in response to the Customer's invitation to Suppliers for formal offers to supply it with the Goods and/or Services pursuant to the Framework Agreement;

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"Term" the period of the Initial Term as may be varied by:

(a) any extensions to this Contract which are agreed pursuant to clause 3; or

(b) the earlier termination of this Contract in accordance with its terms;

"TFEU" means the Treaty on the Functioning of the European Union (OJ No. C 115);

"Transferring Goods" means goods comprised in the Goods and/or Services, title to which transfers between the Parties in accordance with clause 4.6.1;

"Treaties" means the Treaty of the European Union (OJ No. C 115) and TFEU;

"Undelivered Goods and/or Services " shall have the meaning given in clause 4.5.7;

"Valid Invoice" means an invoice issued by the Supplier to the Customer that complies with clause 11.2.2;

"Variation" has the meaning given to it in clause 33;

"Variation Procedure" means the procedure set out in clause 33;

"VAT" means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and

"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 Supplier 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 Commencement Date and shall continue for the Term.

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

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

3.4 If the Customer does not wish to extend this Contract beyond the Initial Term this Contract shall expire on the expiry of the Initial Term and the provisions of clause 20 shall apply.

4. SUPPLY OF GOODS AND/OR SERVICES

4.1 Supply of the Goods and/or Services

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

4.1.2 The Supplier 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 Supplier supplies the Goods and/or Services at the Premises during Normal Business Hours on reasonable notice.

4.1.3 If the Customer informs the Supplier 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 Supplier shall at its own expense re-schedule and carry out the Goods and/or Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Customer.

4.1.4 The Supplier 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 Supplier 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 Supplier's instructions.

4.1.5 Where the Supplier 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 Supplier's reasonable satisfaction, to have been lost or damaged in transit.

4.1.6 The Supplier agrees that the Customer relies on the skill and judgment of the Supplier 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 Supplier shall provide all the Equipment necessary for the supply of the Goods and/or the Services.

4.2.2 The Supplier 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 Supplier'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 Supplier is able to demonstrate that such loss or damage was caused by or contributed to by the Customer's Default. The Supplier 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

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case at the Supplier's sole cost. Unless otherwise stated in the Contract, Equipment brought onto the Premises will remain the property of the Supplier.

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

4.2.5 The Supplier 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 Upon termination or expiry of the Contract, the Supplier shall remove the Equipment together with any other materials used by the Supplier to supply the Goods and/or Services and shall leave the Premises in a clean, safe and tidy condition. The Supplier 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 Supplier or Supplier's Staff.

4.3 Quality

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

4.3.2 The Goods and/or Services shall comply with the requirements of the appropriate British Standard and of the Specification unless otherwise directed by the Customer. In the event of a dispute over the composition of any Goods and/or Services supplied the Customer will take samples jointly with the Contractor for testing in accordance with the appropriate British Standard or Specification agreed with the Customer. The test results of these samples will be used as an assessment of compliance with the Specification. Test methods are to be in accordance with BS3247: 2011 (or the current version at the time of compliance check) and grading to use a test sieve compliant with BS ISO 3310-2:2013.

4.3.3 Goods not in compliance can be rejected by the Customer in accordance with Condition 4.3.6. Alternatively the Customer may, at its sole discretion, agree to accept the Goods and/or Services, in which event, payment to the Supplier will be reduced by an amount agreed between the Customer and the Supplier.

4.3.4 In the event that the Customer agrees to accept Goods and/or Services not in accordance with the Specification, the Contract Price of such shall be reduced by an amount agreed between the Customer and the Supplier. In accordance with Paragraph 40 of the Framework Agreement and Paragraph 30.1 of the Customer Agreement, this shall not constitute a waiver. Any material supplied with values below/above the last value given will be replaced at no cost to the Customer with fresh supplies in accordance with the Specification.

4.3.5 The Customer undertakes to carry out an initial inspection of the Goods and/or Services on delivery or within a reasonable period thereafter.

4.3.6 The Customer will accept Goods and/or Services once they have passed their initial inspection and will reject Goods and/or Services found not to be in accordance with the Framework or its Specification, or which are in any way substandard.

4.3.7 Any Goods and/or Services that are rejected under Condition 4.3.6 shall, at the option of the Customer, be removed from the site of the works or from the Customer's depot by the Supplier at its own expense and without delay after receipt of notice of rejection. The Supplier shall refund to the Customer any costs in respect of plant or labour which may have been incurred by the Customer in handling such material prior to its rejection. If not so removed by the Supplier the Customer may cause the same to be removed and recover from the Supplier all expenses occasioned by such removal.

4.3.8 Should the Supplier be unable to replace the Goods and/or Services, the Customer shall be at liberty to obtain elsewhere Goods and/or Services in place of any rejected by him. Any reasonable extra cost incurred thereby shall be deducted from any sum owing to the Supplier or shall be otherwise recoverable from the Supplier.

4.3.9 Representative samples of Goods and/or Services proposed to be supplied are to be forwarded upon request to the Customer, carriage paid.

4.3.10 The Customer reserves the right to select samples of material supplied under the Framework. Sampling and subsequent testing shall be in accordance with the appropriate current British Standard or Specification agreed with the Customer. Analysts' fees will be paid by the Customer in respect of samples which comply with the Specification. If on analysis a sample does not comply then the cost of analysis shall be payable by the Supplier (see 4.3.2 above)

4.3.11 The Customer shall at all reasonable times have access to all places where work is being carried out or Goods and/or Services are being obtained or manufactured for the purposes of the Framework and the Supplier shall afford every facility for and every assistance in obtaining the right to such access.

4.3.12 The Supplier shall ensure that the Staff shall at all times during the Contract Period:

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

4.3.12.2 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

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

4.3.13 The Supplier shall without prejudice to clause 4.1.4 above perform its obligations under the Contract in a timely manner.

4.3.14 The Supplier 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.

4.3.15 The Supplier shall at all times during the Contract Period ensure that:

4.3.15.1 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;

4.3.15.2 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;

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

4.3.15.4 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 Supplier by the Customer; and

4.3.15.5 the Goods and/or Services are supplied in accordance with the Supplier Solution.

4.4 Delivery (Goods only)

4.4.1 Without prejudice to the content of clause 4.5 (Delivery) the Supplier shall make delivery of the Goods specified in the Master Contract Schedule and/or any other Contract Document at the times and in the manner stated therein and as a minimum meet the requirements stated in the Response to the ITT. Delivery shall be at no cost to the Customer and shall be at the sole risk of the Supplier.

4.4.2 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 an order.

4.4.3 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.

4.5 Delivery

4.5.1 The Supplier shall Deliver the Goods and provide the Services in accordance with the Implementation Plan and Milestones.

4.5.2 The Supplier shall forward to the Customer within 2 days of delivery of the Goods, advice notes in respect of each load supplied on that day. These advice notes shall indicate the number of the order, the volume of the load, the source of supply, the description of the Goods supplied and the point to which they were

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delivered. Each load of salt delivered shall be accompanied by a certified weight ticket from an approved weighbridge which, where required, shall be handed at the time of delivery to the Customer who will receipt a duplicate copy for the Supplier to retain in support of his account. In the case of salt collected by the Customer, the Supplier shall hand a certified weight ticket to the driver of the lorry who will receipt a duplicate copy for retention by the Supplier in support of his account. When the Customer is not present at delivery to receive the certified weight ticket it shall accompany the advice note.

4.5.3 Supplies of Goods shall commence at such times and shall continue at such rates as the Customer's orders shall specify but the Supplier will not be required to supply a greater quantity of Goods in any one day than that stated on its Tender. In the event of the Supplier failing to supply or deliver Goods at the daily rate required, the Customer shall be at liberty to obtain Goods elsewhere to make up the daily rate required. If the Supplier shall deposit any Goods otherwise than in accordance with the directions of the Customer they shall be removed as required by the Customer at the Supplier's expense. Any additional expense incurred under the terms of this clause may be deducted from any sums due to the Supplier, unless the Supplier satisfies the Customer that the failure to supply is due to stress of weather, strikes or other causes beyond his control.

4.5.4 The Customer may at any time without extra payment require any of the lorries employed by the Supplier when the said lorries are delivering Goods required by this Agreement to proceed to the nearest approved weighbridge for check weighing. The weight / volume of the load shall be determined by means of a suitable yield test in agreed with the Customer. Any deviation from the route between the point of supply and the point of delivery incurred for the purpose of such weighing will not normally exceed 10km.

4.5.5 Unless otherwise agreed by the Customer, delivery of Goods shall take place within normal working hours.

4.5.6 The Supplier shall take all possible steps to ensure a continuous supply of Goods until the total ordered or arranged for the depot has been reached.

4.5.7 At times of peak demand it is accepted that some rationing of Goods may take place. In these instances material shall be delivered in a priority order determined by each Customer.

4.5.8 The Supplier shall inform the Customer of the proposed time and date of each delivery by telephone or email at least 2 working days before that delivery is to be made.

4.5.9 When the Customer requires deliveries to be made outside normal working hours, the Supplier may seek additional payment to be agreed by the Customer prior the delivery being made.

4.5.10 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.

4.5.11 Time of delivery in relation to commencing and/or supplying the Goods and/or Services shall be of the essence and if the Supplier 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.

4.5.12 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.

4.5.13 Where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Customer, the point of delivery shall be when the Goods are loaded on the Customer's vehicle.

4.5.14 Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods and/or Services by the Staff or the Supplier's suppliers or carriers at such place as the Customer or duly authorised person shall reasonably direct.

4.5.15 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.

4.5.16 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 Supplier 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 Supplier for the costs of such disposal. The risk in any over-Delivered Goods shall remain with the Supplier.

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 an 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.

4.7 Guarantee

The Supplier hereby guarantees the Transferring Goods for the Guarantee Period against faulty materials and workmanship. If the Customer shall within such Guarantee Period or within twenty five (25) Working Days thereafter give notice in writing to the Supplier of any defect in any of the Transferring Goods as may have arisen during such Guarantee Period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Customer may have) promptly remedy such defects (whether by repair or replacement as the Customer shall elect) free of charge.

5. ASSISTANCE ON EXPIRY OR TERMINATION

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

6. DISASTER RECOVERY AND BUSINESS CONTINUITY

Customer: If there is a BCDR Plan then this may need to be included and/or referred to at this point

6.1 The Supplier 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 Supplier'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 Supplier 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 Supplier may be required to produce under the Contract.

7.2 Where requested by the Customer, the Supplier 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 Supplier 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 Supplier shall immediately inform the Customer of any actual or potential industrial action, whether such action by the Supplier's own employees or others, which affects or might affect the Supplier's ability at any time to perform its obligations under the Contract.

8.3 In the event of industrial action by the Staff, the Supplier 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 Supplier'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.

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8.5 If the Supplier 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 Supplier 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

9.1 The Supplier 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 Supplier.

9.2 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier'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 Supplier 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 Supplier the opportunity at the Supplier'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 Supplier to remove the Goods (in whole or in part) at the risk and cost of the Supplier on the basis that a full refund for the Goods so rejected shall be paid to the Customer forthwith by the Supplier;

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 Supplier 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 Supplier'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 Supplier shall have demonstrated to the reasonable satisfaction of the Customer that the Supplier 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 Supplier for and the Supplier 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 Supplier 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 supplier:

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 Supplier notice in writing.

10. NOT USED

11. PAYMENT AND CONTRACT CHARGES

11.1 Contract Charges

11.1.1 In consideration of the Supplier'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 Supplier of a valid VAT invoice, pay the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier to the Customer at no charge.

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

11.2 Payment and VAT

11.2.1 Where the Supplier submits an invoice to the Customer, the Customer will consider and verify that invoice in a timely fashion.

11.2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Goods supplied and/or the Services provided and that it is supported by any other documentation reasonably required by the Customer to substantiate the invoice. The Customer shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the following standard on electronic invoicing: the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

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

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

11.2.5 Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:

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

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

For the purposes of this sub clause 11.2.5 "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Customer in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or part of this Contract.

11.2.6 The Supplier 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 Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under the Contract. Any amounts due under this clause 11.2.6 shall be paid by the Supplier 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.

11.2.7 The Supplier shall not suspend the supply of the Services and/or Goods (as applicable) unless the Supplier is entitled to terminate the Contract under clause 26

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

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 Supplier 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 Supplier.

12. NOT USED

13. SUPPLIER'S STAFF

13.1 The Customer may, by written notice to the Supplier, 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 Supplier 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 Supplier 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 Supplier and Staff have failed to comply with clause 13.2 shall be final and conclusive.

Children and Vulnerable Adults

13.6 Where the provision of the Goods and/or Services requires any of the Supplier's employees or volunteers to work in a Regulated Activity with children and/or vulnerable adults, the Supplier 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 Supplier 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 Supplier 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 Supplier 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 Act 2006 and will notify the Customer immediately of any decision to employ such a person in any role connected with this Contract or any other agreement or arrangement with the Customer.

13.10 Where the provision of the Goods and/or Services does not require any of the Supplier's employees or volunteers to work in a Regulated Activity but where the Supplier's employees or volunteers may nonetheless have contact with children and/or vulnerable adults the Supplier 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 Contract Period.

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

Customers – the following clause should be removed if it does not apply to the requirement

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

14.2 The Supplier 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 Supplier shall fully and accurately disclose to the Customer all information that the Customer may reasonably request in relation to the Supplier's Staff including the following:

(a) the total number of the Supplier'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 Supplier's Staff referred to in clause 14.3(a); and

(c) the terms and conditions of the employment/engagement of the Supplier'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 Supplier 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 Supplier shall warrant the completeness and

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accuracy of all such information and the Customer may assign the benefit of this warranty to any Replacement Supplier.

14.6 The Customer may use the information it receives from the Supplier 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 Supplier shall provide the Replacement Supplier with such assistance as it shall reasonably request.

14.7 The Supplier shall indemnify and keep indemnified and hold the Customer (both for themselves and any Replacement Supplier) harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Customer or any Replacement Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier 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 Supplier to the Customer and/or a Replacement Supplier whose name is not included in the list of Returning Employees.

14.8 If the Supplier 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 applies during the Contract Period and indefinitely thereafter.

14.10 The Supplier undertakes to the Customer that, during the twelve months prior to the end of the Contract Period the Supplier 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 Supplier 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 Supplier, 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 Supplier shall comply with the Customer's staff vetting procedures (where provided to the Supplier) in respect of all Supplier Staff employed or engaged in the provision of the Goods and/or Services. The Supplier confirms that all Staff employed or engaged by the Supplier at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Customer's staff vetting procedures.

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

16. INTELLECTUAL PROPERTY RIGHTS

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

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

16.3 With respect to the Suppliers obligations under the Contract, the Supplier 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 Supplier 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 Supplier's responsibilities and obligations hereunder.

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

16.6 If a claim or demand is made or action brought to which clause 16.3 and/or 16.4 may apply, or in the reasonable opinion of the Supplier is likely to be made or brought, the Supplier 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 Supplier's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.

16.7 Customer Data

16.7.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Customer Data.

16.7.2 The Supplier shall not store, copy, disclose, or use the Customer Data except as necessary for the performance by the Supplier 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 Supplier, the Supplier 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 Supplier, the Supplier shall take responsibility for preserving the integrity of Customer Data and preventing the corruption or loss of Customer Data.

16.7.5 The Supplier shall ensure that any system on which the Supplier holds any

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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 Supplier's Default so as to be unusable, the Customer may:

16.7.6.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Customer Data to the extent and in accordance with any BCDR Plan and the Supplier 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 Supplier 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 Supplier 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 Supplier shall notify the Customer immediately and inform the Customer of the remedial action the Supplier 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 Supplier to perform, the Customer is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in section 9 of the Master Contract Schedule by the Customer and may not be determined by the Supplier.

16.8.2 The Supplier shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.

16.8.3 The Supplier 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:

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

16.8.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Goods and/or Services;

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

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

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

16.8.4.1 process that Personal Data only in accordance with section 9 of the Master Contract Schedule, unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;

16.8.4.2 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:

nature of the data to be protected;

harm that might result from a Data Loss Event;

state of technological development; and

cost of implementing any measures;

16.8.4.3 ensure that:

(i) the Supplier 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 Supplier Personnel (including any sub-processors or third-party processors) who have access to the Personal Data and ensure that they:

(A) are aware of and comply with the Supplier's duties under this clause;

(B) are subject to appropriate confidentiality undertakings with the Supplier 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

16.8.4.4 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 Supplier 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 Supplier 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 Supplier complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data; and

16.8.4.5 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 Supplier is required by Law to retain the Personal Data.

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

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

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

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

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

16.8.5.5 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

16.8.5.6 becomes aware of a Data Loss Event.

16.8.6 The Supplier'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 Supplier 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:

16.8.7.1 the Customer with full details and copies of the complaint, communication or request;

16.8.7.2 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;

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

16.8.7.4 assistance as requested by the Customer following any Data Loss Event;

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

16.8.8.1 the Customer determines that the processing is not occasional;

16.8.8.2 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

16.8.8.3 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 Supplier shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

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16.8.10 The Supplier 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 Supplier must:

16.8.11.1 notify the Customer in writing of the intended Sub-processor and processing;

16.8.11.2 obtain the written consent of the Customer;

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

16.8.11.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.

16.8.12 The Supplier 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 Supplier 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 Supplier 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 Supplier upon request copies of its written security procedures and shall afford the Supplier 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 19.11 (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 Supplier 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 Supplier 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 Supplier 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 Supplier breaching its obligations as to confidentiality under or in connection with this Contract, the Supplier 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 Supplier 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 Supplier 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 Supplier'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 Supplier'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 Supplier fails to comply with clause 16.10.1 to clause 16.10.6, 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 Supplier undertakes to maintain adequate security arrangements that meet the requirements of Good Industry Practice.

16.11 Freedom of Information

16.11.1 The Supplier 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 Supplier 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 Supplier respond directly to a Request for Information

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unless authorised in writing to do so by the Customer.

16.11.5 The Supplier 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 Supplier or the Goods and/or Services:

16.11.5.1 in certain circumstances without consulting the Supplier; or

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

16.11.6 The Supplier 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 Supplier 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 Supplier 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 Supplier to inform its decision regarding any redactions but the Customer shall have the final decision in its absolute discretion.

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

17. WARRANTIES AND REPRESENTATIONS

17.1 The Supplier 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 Supplier;

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 Supplier 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 Supplier'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;

17.1.11 at the Commencement Date it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

17.1.12 at the Commencement Date it has not: (1) communicated to any person other than the Customer the amount or approximate amount of the proposed price tendered in any Further Competition Procedure, except where the disclosure, in confidence, of the approximate amount of the Tender was necessary to obtain insurance premium quotations required for the preparation of the Tender; (2) entered into any agreement or arrangement with any person that it shall refrain from tendering or as to the amount of any Tender submitted in any Further Competition Procedure; or (3) offered to pay or give or agree to pay any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to the proposed price tendered in any Further Competition Procedure any act or thing of the sort described in this clause 17.1.12. In the context of this clause 17.1.12 the word 'person' includes any persons and any body or association, corporate or unincorporated; and 'any agreement or arrangement' includes any such transaction, formal or informal, and whether legally binding or not.

17.2 The Supplier 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 Supplier.

17.4 The Supplier 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

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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 11.2.6, [14], 16.4, in respect of 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 Supplier 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 Supplier of its obligations under the Contract or the presence of the Supplier 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 Supplier, or any other loss which is caused directly by any act or omission of the Supplier.

18.1.3 The Supplier 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).

18.1.5 Subject to clause 18.1.1, 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 The provisions of 18.1.1 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 Supplier's Default;

18.1.6.2 any wasted expenditure or charges rendered unnecessary and/or incurred by the Customer arising from the Supplier'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 Supplier; 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 Supplier.

18.1.7 Nothing in the Contract shall impose any liability on the Customer in respect of any liability incurred by the Supplier to any other person, but this shall not be taken to exclude or limit any liability of the Customer to the Supplier 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 if the Contract is to be awarded via a further competition

18.2.1 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing which may be incurred by the Supplier, arising out of the Supplier's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the Contract Period.

18.2.2 The Supplier shall hold employer's liability insurance in respect of Staff with a minimum limit of ten million pounds sterling (£10,000,000) for any one occurrence.

18.2.3 The Supplier shall effect and maintain a public liability insurance policy to cover all risks in the performance of this Contract from time to time with a minimum limit of ten million pounds sterling (£10,000,000) for any one occurrence.

18.2.4 The Supplier shall effect and maintain a product liability insurance policy, which shall, for any one occurrence and in the aggregate, be not less than ten million pounds sterling (£10,000,000).

18.2.5 The Supplier 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 Supplier 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 Supplier.

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

18.2.8 The Supplier 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 Supplier 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 Supplier 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 Supplier where the Supplier is a company and in respect of the Supplier:

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

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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 Supplier 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 Supplier's creditors; or

19.1.2.2 a petition is presented and not dismissed within 14 days or order made for the Supplier's bankruptcy; or

19.1.2.3 a receiver, or similar officer is appointed over the whole or any part of the Supplier'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 Supplier 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 Supplier'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 Supplier 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 Supplier shall notify the Customer immediately if the Supplier 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 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring shall be disregarded.

19.3 Termination on Default

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

19.3.1.1 the Supplier 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; or

19.3.1.4 the Default concerns the Supplier's obligations under this Contract in relation to the Modern Slavery Act 2015.

19.3.2 In the event that through any Default of the Supplier, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded so as to be unusable, the Supplier 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 Supplier.

19.3.3 If the Customer fails to pay the Supplier undisputed sums of money when due, the Supplier shall notify the Customer in writing of such failure to pay. If the Customer fails to pay such undisputed sums within the period specified in clause 11.2, the Supplier 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 Supplier 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 Supplier 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 Supplier (as measured from the Commencement Date) which:

19.5.1 adversely impacts on the Supplier'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 Suppliers 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 Supplier 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 Supplier in writing with effect from the date specified in such notice if the Supplier 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 is sole discretion) terminate all or part of this Contract.

19.9 Termination in compliance with Public Contracts Regulations 2015

The Customer may terminate Contracts where:

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

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

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

19.10 [Termination without Cause

Customer: Only include this clause if required. Its inclusion will result in the Supplier calculating the contract value by reference only to any guaranteed duration eg. the 12 month notice period.

'Termination without cause' means that the Customer (subject to giving the requisite notice) can terminate without any breach having occurred.

Subject to the content of clause 20.2 the Customer shall have the right to terminate the Contract at any time by giving not less than twelve (12) months written notice to the Supplier.]

19.11 Termination on termination of the Mirror Framework

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

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

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Supplier the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Customer throughout the remainder of the Contract Period. The Customer shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clauses 19.3, 19.6, 19.7 and 19.8, no further payments shall be payable by the Customer to the Supplier until the Customer has established the final cost of making those other arrangements.

Customer: Delete the following clause if clause 19.10 is deleted

20.2 [Subject to clause 20 where the Customer terminates the Contract under clause 19.10 (Termination without Cause), the Customer shall indemnify the Supplier against any reasonable and proven commitments, liabilities or expenditure which would otherwise represent an unavoidable direct loss by the Supplier by reason of the termination of the Contract, provided that the Supplier takes all reasonable steps to mitigate such loss. Where the Supplier holds insurance, the Supplier shall reduce its unavoidable costs by any insurance sums available. The Supplier shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Supplier as a result of termination under clause 19.9 (Termination without Cause).

20.3 The Customer shall not be liable under clause 20.2 to pay any sum which:

20.3.1 was claimable under insurance held by the Supplier, and the Supplier has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or

20.3.2 when added to any sums paid or due to the Supplier under the Contract, exceeds the total sum that would have been payable to the Supplier if the Contract had not been terminated prior to the expiry of the Contract Period.]

20.4 On the termination of the Contract for any reason, the Supplier 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 suppliers 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 Supplier 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 Supplier;

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 Supplier under clause. 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 Supplier (as notified by the Customer) such of the Licensed Goods and/or contracts as are notified to it by the Supplier and/or the Customer in return for payment of the costs (if any) notified to the Customer by the Supplier 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 Supplier 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 Supplier to conduct due diligence.

20.5 If the Supplier fails to comply with clause 20.4.1 and 20.4.8, the Customer may recover possession thereof and the Supplier grants a licence to the Customer or its appointed agents to enter (for the purposes of such recovery) any premises of the Supplier 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 Supplier's Default, the Supplier shall provide all assistance under clause 20.4.5 and 20.4.8 free of charge. Otherwise, the Customer shall pay the Supplier's reasonable costs of providing the assistance and the Supplier 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 Supplier 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 Supplier 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, suppliers, professional advisors and consultants comply with this clause. 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 Supplier 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 Supplier 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 Supplier 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 Supplier shall notify the Customer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Supplier 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 Supplier's performance of this Contract being in contravention of Equality Legislation or any other law, enactment, order or regulation relating to discrimination, the Supplier shall, free of charge provide any information requested in the timescale allotted; attend any meetings as required and permit the Supplier's Staff to attend; promptly allow access to and investigation of any documents or data deemed to be relevant; allow the Supplier and any of the Supplier'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 Supplier, its agents or Sub-Contractors, or the Supplier's Staff, and where there is a finding against the Supplier in such investigation or proceedings, the Supplier shall indemnify the

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

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

23.3 The Supplier 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 Supplier 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 Supplier 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

Customer: Remember the need to share the environmental policies (where relevant) with the Supplier.

24.1 The Supplier 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 Supplier 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 Supplier's Staff, consultants, agents or Sub-Contractors or any person acting on the Supplier'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 Supplier 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 Supplier 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 Supplier shall co-operate with any investigation and allow the Customer to audit Supplier'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 Supplier and all persons associated with it or other persons who are supplying the Goods and/or Services in connection with this Contract compliance with this clause 25. The Supplier 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 Supplier's behalf from committing a Prohibited Act and shall enforce it where appropriate.

25.4 If the Supplier, its Staff, consultants, agents or Sub-Contractors or any person acting on the Supplier's behalf, in all cases whether or not acting with the Supplier'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 Supplier and the Supplier 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 Supplier 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, the amounts paid by the Customer and records to trace the supply chain of all Goods and/or Services provided to the Customer in connection with this Contract.

26.2 The Supplier 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 Supplier shall afford the Customer and the Auditors access to the records and accounts referred to in clause 26.2 at the Supplier's premises and/or provide copies of such records and accounts and/or permit Auditors to meet the Supplier's Staff, 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 Supplier (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 Supplier;

26.3.3 to review the Supplier's compliance with the DPA in accordance with this Contract and any other Laws;

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

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26.3.5 to review the Supplier's compliance with its security obligations set out in clause 16;

26.3.6 to review any books of account kept by the Supplier 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 Supplier is complying with its obligations under this Contract, including but not limited to its obligations thereunder relating to the Modern Slavery Act 2015.

26.4 The Supplier 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 Supplier shall provide such records and accounts (together with copies of the Supplier'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 Supplier or delay the provision of the Services or supply of Goods save insofar as the Supplier 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 Supplier's rights in respect of Confidential Information, the Supplier 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 Supplier 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 Supplier in which case the Supplier shall reimburse the Customer for the Customer's reasonable costs incurred in relation to the audit.

27. PREVENTION OF FRAUD

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

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

27.3 If the Supplier 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 Supplier notice in writing; and/or

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

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 Supplier to procure those Goods and/or Services from a third party Supplier in which case the Supplier 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 Supplier will not have the right to any payment from the Customer under this Contract where the Supplier is unable to provide the Goods and/or Services because of an event of Force Majeure. However if the Customer directs the Supplier to use a replacement supplier pursuant to sub-clause 29.4, then the Customer will pay the Supplier (a) the Contract Price; and (b) the difference between the Contract Price and the new supplier's costs if, in respect of the Goods and/or Services that are subject to Force Majeure, the new Supplier'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

31. 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

32.1 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

33.1 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 Supplier shall immediately commence good faith negotiations to remedy such invalidity.

35. MISTAKES IN INFORMATION

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35.1 The Supplier shall be responsible for the accuracy of all drawings, documentation and information supplied to the Customer by the Supplier 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. SUPPLIER'S STATUS

36.1 At all times during the Contract Period the Supplier 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 Supplier shall take appropriate steps to ensure that neither the Supplier 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 Supplier or Staff and the duties owed to the Customer under the provisions of the Contract.

37.2 The Supplier 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 Supplier 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 Supplier 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 Supplier 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 or, as appropriate, the Trading Company in relation to its right to claim retrospective rebate from the Supplier 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.

Customer: Only include the following sub-clause if the TUPE clause (14) has been included.

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 Supplier and Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Former Supplier and the Replacement Supplier by the Supplier 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

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

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

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 Supplier'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 Supplier 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 Supplier 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

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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.

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