

Contract No. 1.11.4.3890.

To Be Quoted On All Correspondence



CONTRACT

between

THE HEALTH AND SAFETY EXECUTIVE

and

PSL MANAGEMENT

for

MAILSHOT PRINT OF COVID-19 PRE SPOT LETTERS

CONTENTS

| Clause | Clause No. |
|-----------------------------------|-------------------|
| Statement of Service Requirements | 1 |
| Management of the Contract | 2 |
| Duration | 3 |
| Costs | 4 |
| Limitation of Liability | 5 |
| IR35 – Intermediaries Legislation | 6 |
| Tax Status | 7 |
| Invoicing and Payments | 8 |
| Access to HSE Premises | 9 |
| Confidentiality | 10 |
| Intellectual Property Rights | 11 |
| Publication | 12 |
| GDPR Data Protection | 13 |
| Variation to Contract | 14 |
| Governing Law | 15 |
| Termination | 16 |
| Terms & Conditions of Contract | 17 |
| Signatories | |

Schedules and Annexes

| | |
|------------|-----------------------------------|
| Schedule A | Statement of Service Requirement |
| Schedule B | HSE Standard Terms and Conditions |
| Annex 1 | Contact List |

This Contract is made between:

The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and

PSL MANAGEMENT (hereinafter 'the Contractor' of the other part) of Unit A59, Redscar Business Park, Londridge Way, Preston PR2 5ND, (hereinafter 'the Contractor' of the other part), in accordance with the details, terms and conditions stated herein.

WHEREAS

The Contractor was selected following a mini tender exercise from HSE's Print Management Framework and agrees to adhere to the roles and responsibilities as detailed in Appendix A (where applicable).

1 STATEMENT OF SERVICES REQUIREMENT

1.1 The Services shall be carried out in accordance with the details in Schedule A.

2 MANAGEMENT OF THE CONTRACT

2.1 The Contract Managers responsible for liaison and delivery of the services are identified at Annex 1.

3 DURATION

3.1 The Work shall consist of 120 days and which will commence on 1st April 2021 and shall be completed by 31st March 2022, with an option to extend by a further year (12 months), subject to the written agreement of both parties in line with the Variation to Contract Clause 14.

3.2 Please note that although HSE has entered into this Contract citing the numerical figures of Letters 1A, 1B, 2A & 2B, the Work in this Contract is only for the Print Run of Letters 1A & 1B.

3.3 Although HSE has captured the numbers of each letter to be sent, they cannot guarantee any volumes of business.

4 COSTS

4.1 The maximum amount to be paid by the HSE to the Contractor under this Contract shall not, without the prior written agreement of the HSE, exceed **£86,102.00**, excluding VAT.

4.2 The Contractor agrees to refund any monies paid for work not completed. All figures and values will be agreed between the HSE Contract Manager and the Contractor.

5 LIMITATION OF LIABILITY

- 5.1 Subject to Clause 5.2 the liability of the Contractor for any breach of this Contract or arising in any other way out of the subject-matter of this Contract, will not extend to loss of business or profit, or to any indirect or consequential damages or losses. In any event, the maximum liability of the Contractor under or otherwise in connection with this Agreement or its subject matter shall not exceed the Contract price excluding VAT.
- 5.2 Nothing in this Agreement limits or excludes the liability of the Contractor:
- 5.2.1 for death or personal injury resulting from negligence; or
 - 5.2.2 for any damage or liability incurred by HSE as a result of fraud or fraudulent misrepresentation by the Contractor; or
 - 5.2.3 for any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018.

6 IR35 – INTERMEDIARIES LEGISLATION

- 6.1 HSE has undertaken an IR35 assessment of this engagement, and the HMRC online assessment tool determined that IR35 does not apply to this engagement.

7 TAX STATUS

- 7.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 7.2 Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 7.3 HSE may, at any time request that the Contractor provides information which demonstrates how it, or its staff, complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it.
- 7.4 A request under Clause 7.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.

7.5 HSE may terminate this contract if: -

a) in the case of a request mentioned in Clause 7.3 above -

- (i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or
- (ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses 7.1 and 7.2 above or why those Clauses do not apply to it;

(b) in the case of a request mentioned in Clause 7.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or

(c) it receives information which demonstrates that, at any time when Clauses 7.1 and 7.2 apply the Contractor, or its staff, is not complying with those Clauses.

7.6 HSE may supply any information which it receives under Clause 7.3 to the Commissioners of Her Majesty's Revenue and Customs for the purposes of the collection and management of revenue for which they are responsible.

8 INVOICING AND PAYMENTS

8.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Procurement Unit. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted electronically in PDF format to APinvoices-HAS-U@gov.sscl.com

8.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.

8.3 HSE shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.

8.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

9 ACCESS TO HSE PREMISES

9.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.

- 9.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

10 CONFIDENTIALITY

- 10.1 The Contractor shall not at any time divulge any information or material acquired during the performance of this Contract to any third party without prior permission in writing of the Executive, except where required in the course of any legal proceedings.
- 10.2 The Contractor shall keep documents and other materials produced or acquired in the course of the contract in accordance with The Criminal Procedure and Investigations Act 1996 (CPIA).
- 10.3 HSE may disclose the Confidential Information of the Contractor:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 10.3(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
 - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement, and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):
- (a) furnished to or made available to the Contractor by or on behalf of the HSE shall remain the property of the HSE; and
 - (b) prepared by or for the Contractor on behalf of the HSE for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the HSE; and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- 11.2 The Contractor hereby assigns to the HSE, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E8.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment. The Contractor shall not withhold the rights to any IP materials mentioned above from HSE whilst they await payment.
- 11.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- 11.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the HSE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the HSE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the HSE to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the HSE.
- 11.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the HSE and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the HSE or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the HSE; or

- (b) the use of data supplied by the HSE which is not required to be verified by the Contractor under any provision of the Contract.
- 11.6 The HSE shall notify the Contractor in writing of any claim or demand brought against the HSE for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- 11.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
 - (a) shall consult the HSE on all substantive issues which arise during the conduct of such litigation and negotiations;
 - (b) shall take due and proper account of the interests of the HSE; and
 - (c) shall not settle or compromise any claim without the HSE's prior written consent (not to be unreasonably withheld or delayed).
- 11.8 The HSE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the HSE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the HSE for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the HSE in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E8.5(a) or E8.5(b).
- 11.9 The HSE shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the HSE or the Contractor in connection with the performance of its obligations under the Contract.
- 11.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the HSE and, at its own expense and subject to the consent of the HSE (not to be unreasonably withheld or delayed), use its best endeavours to:
 - (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the HSE, and in the event that the Contractor is unable to comply with clauses E8.7(a) or E8.7(b) within [20] Working Days of receipt of the Contractor's notification the HSE may terminate the Contract with immediate effect by notice in writing.

11.11 The Contractor grants to the HSE a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the HSE reasonably requires in order exercise its rights and take the benefit of this Contract including the Services provided.

12 PUBLICATION

- 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 this Contract is not Confidential Information. HSE 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.
- 12.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- 12.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

13 GDPR DATA PROTECTION

- 13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor. The only processing that the Contractor is authorised to do is listed in Schedule B (where applicable) by the Customer and may not be determined by the Contractor.
- 13.2 The Contractor shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 13.3 The Contractor shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
 - a) a systematic description of the envisaged processing operations and the purpose of the processing;

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

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

- a) process that Personal Data only in accordance with Schedule B (where applicable), unless the Contractor is required to do otherwise by Law. If it is so required, the Contractor shall promptly notify the Customer before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- c) ensure that:
 - (i) the Contractor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule B);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Contractor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Contractor's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

13.5 Subject to clause 12.6, the Contractor shall notify the Customer immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- e) receives a request from any third Party for disclosure or Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

13.6 The Contractor's obligation to notify under clause 13.5 shall include the provision of further information to the Customer in phases, as details become available.

13.7 Taking into account the nature of the processing, the Contractor shall provide the Customer with full assistance in relation to either Party's obligations under

Data Protection Legislation and any complaint, communication or request made under clause 13.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- a) the Customer with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Customer, at its request with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Customer following any Data Loss Event;
- e) assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.

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

- a) the Customer determines that the processing is not occasional;
- b) the Customer determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Customer determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

13.9 The Contractor shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.

13.10 The Contractor shall designate a data protection officer if required by the Data Protection Legislation.

13.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Contractor must:

- a) notify the Customer in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Customer;
- c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause 13.11 such that they apply to the Sub-processor; and

- d) provide the Customer with such information regarding the Sub-processor as the Customer may reasonable require.

13.12 The Contractor shall remain fully liable for all acts or omissions of any Sub-processor.

13.13 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 Agreement).

13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than 30 Working Days' notice to the Contractor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

14 VARIATION TO CONTRACT

14.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.

14.2 Any agreed changes to the Contract or Schedule A (Programme of Work) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Procurement Unit.

15 GOVERNING LAW

15.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

16 TERMINATION

16.1 This contract may be terminated by either party by giving one months notice. In the event of termination by HSE, the contractor shall be provided with any re-imbursement of costs, actually and reasonably incurred, up to the date of termination, subject to the limit specified in Clause 4 above.

17 TERMS & CONDITIONS OF CONTRACT

17.1 This contract shall be bound by the Terms & Conditions of HSE's Print Management Framework. Details available upon request.

As Witnessed at the Hands of the Parties

IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN AGREED:

Signature

Name in Capitals

Position

Date

Duly authorised to sign on behalf of

PSL MANAGEMENT

Unit A59, Redscar Business Park, Londridge Way, Preston PR2 5ND

Signature

Name in Capitals

Position

Date

Duly authorised to sign on behalf of the

HEALTH AND SAFETY EXECUTIVE

Procurement Unit, Building 2.3, Redgrave Court, Merton Road, Bootle, Merseyside
L20 7HS

Schedule A

STATEMENT OF SERVICES REQUIREMENT

The Contractor shall undertake the following Statement of Service titled **Mailshot Print – Covid-19 Pre-Spot Letter**, dated **18/03/2021** and referenced **1.11.4.3890**.



1.11.4.3890. -
Mailshot Print - Covi

Schedule B

SCHEDULE OF PROCESSING, PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are : Sean Egan, 0203 028 3547, sean.egan@hse.gov.uk
2. The contact details of the Processor's Data Protection Officer are : **NAME, TITLE, TELEPHONE NO., EMAIL ADDRESS:** [xxxxxxxxxxxxx](#),
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

| Description | Details |
|--|---|
| Identity of the Controller and Processor | The Parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Contractor is the Processor in accordance with Clause 1.1 |
| Subject matter of the processing | <i>This should be high level, short description of what the processing is about i.e. its subject matter of the contract.</i> |
| Duration of the processing | |
| Nature and purposes of the processing | The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alternation, retrieval, consultation, use disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. |
| Type of Personal Data | Examples include : name, address, date of birth, NI number, telephone number, pay, images, biometric data etc |
| Categories of Data Subject | Examples include: staff (including volunteers, agents, and temporary workers), customers/clients, suppliers, patients, students/pupils, members of the public, users of a particular website etc. |
| Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data | <i>Describe how long the data will be retained for, how it be returned or destroyed.</i> |

Annex 1

CONTACT LIST

| HSE Contacts | Contractor Contacts |
|--|----------------------------|
| Contractual Queries | |
| | |
| Contract Managers / Technical Queries | |
| | |