

# **Ecological Services Framework 4 (EcoSF4)**

## **Core Terms**

# **Ecological Services Framework 4 (EcoSF4)**

## **FRAMEWORK AGREEMENT No: C26132**

**Project: C21744 Ecological Services Framework 4 (EcoSF4)**

**Lot 1 - Specialist Macroinvertebrate Services**

The Environment Agency  
Horizon House  
Deanery Road  
Bristol  
BS1 5AH

### **OPERATION OF THE FRAMEWORK**

The Framework Agreement will allow the Environment Agency and Defra (including any of its Arm Length Bodies) to place specific call-offs as and when required.

# FORM OF AGREEMENT

**FRAMEWORK AGREEMENT No: C26132**

## **FRAMEWORK RELATING TO: Ecological Services Framework 4 (EcoSF4)**

Framework Agreement dated 4<sup>th</sup> September 2024 between:

- (1) The Environment Agency whose principal office is at Horizon House, Deanery Road, Bristol, BS1 5AH ("EA"); and
- (2) Thomson Environmental Consultants Ltd whose registered address is Compass House, 60 Priestley Road, Surrey, Research Park, Guildford, GU2 7AG ("the Supplier").

IT IS AGREED as follows:

1. The provisions of the following documents form part of this Framework Agreement
  - The 'Core Terms' below and associated Appendix and Schedules ("the Core Terms")
    - Joint Schedule 1 (Definitions)
    - Joint Schedule 3 (Insurance Requirements)
    - Joint Schedule 5 (Corporate Social Responsibility)
    - Joint Schedule 11 (Processing Data)
    - Framework Schedule 3 (Framework Prices)
    - Framework Schedule 4 (Framework Management)
    - Framework Schedule 6 (Call-Off Award Procedure)
    - Framework Schedule 8 (Self Audit Certificate)
    - Framework Schedule 9 (Cyber Essentials Scheme)
    - Schedule 3 (Continuous Improvement)
    - Schedule 8 (Business Continuity and Disaster Recovery)
    - Schedule 9 (Security)
    - Schedule 16 (Benchmarking)
    - Call-Off Schedule 2 (Staff Transfer)
  - The 'Framework scope and technical specification for **C26132**' and associated Appendices and Schedules ("The Framework Scope")
    - Bidder Pack Part One Core Requirements
    - Bidder Pack Part Two Procurement Specific Requirements
    - Lot Specifications
  - The Supplier's best and final financial proposal dated 7<sup>th</sup> May 2024 in response to the Environment Agency's Invitation to Tender C21744 as agreed with the Environment Agency ("The Pricing Schedule"),

And, in the case of conflict, have precedence in the order listed.
2. Capitalised terms used in this Framework Agreement have the meanings given to them in the Core Terms.
3. The framework shall begin on **1<sup>st</sup> October 2024** and end on **30<sup>th</sup> September 2028** ("Framework Period").
4. The Agency, Defra and Defra's Arms Length Bodies may order Services with the Framework Scope from time to time during the Framework Period by issuing a Confirmation of Instructions. The Supplier shall complete and deliver to the Authority such Services in accordance with and subject to the provisions of the relevant Confirmation(s) of Instructions (which shall incorporate the Core Terms and the Pricing Schedule).

Core Terms

## 1. **Definitions used in the contract**

1.1 Interpret this Contract using Joint Schedule 1 (Definitions).

## 2. **How the contract works**

2.1 The Supplier is eligible for the award of Call-Off Contracts during the Framework Contract Period.

2.2 The Environment Agency (“EA”) and other executive non-departmental public bodies sponsored by Defra (‘Defra Group’) do not guarantee the Supplier any exclusivity, quantity or value of work under the Framework Contract. For the purpose of this framework agreement, the EA and Defra Group are referred either individually or together as EA and/or the Buyer.

2.3 EA has paid one penny to the Supplier legally to form the Framework Contract. The Supplier acknowledges this payment.

2.4 If the Buyer decides to buy Deliverables under the Framework Contract it must use Framework Schedule 6 (Order Form Template and Call-Off Schedules) and stated requirements. If allowed by the Regulations, the Buyer can:

- make changes to Framework Schedule 6 (Order Form Template and Call-Off Schedules)
- create new Call-Off Schedules
- exclude optional template Call-Off Schedules
- use Special Terms in the Order Form to add or change terms.

2.5 Each Call-Off Contract:

- is a separate Contract from the Framework Contract
- is between a Supplier and a Buyer
- includes Core Terms, Schedules and any other changes or items in the completed Order Form
- survives the termination of the Framework Contract

2.6 Where the Supplier is approached by an eligible Buyer requesting Deliverables or substantially similar goods or services, the Supplier must tell them about this Framework Contract before accepting their order. The Supplier will promptly notify EA if the eligible buyer won’t use this Framework Contract.

2.7 The Supplier acknowledges it has all the information required to perform its obligations under each call-off Contract before entering into the respective call-off Contract. When information is provided by a Relevant Authority no warranty of its accuracy is given to the Supplier.

2.8 The Supplier won’t be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:

- verify the accuracy of the Due Diligence Information
- properly perform its own adequate checks

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2.9 EA and the Defra family won't be liable for errors, omissions or misrepresentation of any information.

2.10 The Supplier warrants and represents that all statements made, and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

### 3. **What needs to be delivered**

#### 3.1 **All deliverables**

3.1.1 The Supplier must provide Deliverables:

- that comply with the Specification, the Framework Tender Response and, in relation to a Call-Off Contract, the Call-Off Tender (if there is one)
- to a professional standard
- using reasonable skill and care
- using Good Industry Practice
- using its own policies, processes and internal quality control measures as long as they don't conflict with the Contract.
- on the dates agreed
- that comply with Law.

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects.

#### 3.2 **Goods Provided with Services clauses**

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.

3.2.3 The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

3.2.4 Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within 3 Working Days of Delivery.

3.2.5 The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

3.2.6 The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

3.2.7 The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.

3.2.8 All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

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3.2.9 The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.

3.2.10 The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.

3.2.11 The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than 14 days notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier takes all reasonable steps to minimise these costs.

3.2.12 The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.

### **3.3 Services clauses**

3.3.1 Late Delivery of the Services will be a Default of a Call-Off Contract.

3.3.2 The Supplier must co-operate with the Buyer and third-party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions.

3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services.

3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to each Contract.

3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.

3.3.6 The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects. Notwithstanding the previous provision, the Supplier's standard of performance under this Agreement is to exercise Good Industry Practice and reasonable skill and care.

3.3.7 The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under the Contract.

## **4 Pricing and payments**

4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Order Form.

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4.2 The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the Order Form.

4.3 A Supplier invoice is only valid if it:

- includes all appropriate references including the Contract reference number and other details reasonably requested by the Buyer.
- includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any)

4.4 The Buyer may retain, or set-off payment of any amount owed to it by the Supplier if notice and reasons are provided.

4.5 The Supplier must ensure that all Subcontractors are paid, in full, within 30 days of receipt of a valid, undisputed invoice. If this doesn't happen, EA or the Buyer can publish the details of the late payment or non-payment.

4.6 If EA can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then EA or the Buyer may either:

- require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.
- enter into a direct agreement with the Subcontractor or third party for the relevant item.

4.7 If EA or the Buyer uses Clause 4.8 then the Framework Prices (and where applicable, the Charges) must be reduced by an agreed amount by using the Variation Procedure.

4.8 EA and the Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to both:

- the relevant item being made available to the Supplier if required to provide the Deliverables.
- any reduction in the Framework Prices (and where applicable, the Charges) excludes any unavoidable costs that must be paid by the Supplier for the substituted item, including any licence fees or early termination charges.

4.9 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

## 5. The buyer's obligations to the supplier

5.1 If Supplier Non-Performance arises from an Authority Cause:

- neither EA or the Buyer can terminate a Contract under Clause 10.4.1
- the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract.
- the Supplier is entitled to additional time needed to make the Delivery.
- the Supplier cannot suspend the ongoing supply of Deliverables.



5.2 Clause 5.1 only applies if the Supplier:

- gives notice to the Party responsible for the Authority Cause within 10 Working Days of becoming aware.
- demonstrates that the Supplier Non-Performance only happened because of the Authority Cause
- mitigated the impact of the Authority Cause

## **6. Record keeping and reporting**

6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Order Form.

6.2 The Supplier must keep and maintain full and accurate records and accounts on everything to do with the call-off Contract for 7 years after the End Date.

6.3 The Supplier must allow any Auditor access to their premises to verify all contract accounts and records of everything to do with the Contract and provide copies for an Audit.

6.4 The Supplier must provide information to the Auditor and reasonable co-operation at their request.

6.5 If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

- tell the Relevant Authority and give reasons.
- propose corrective action.
- provide a deadline for completing the corrective action.

6.6 The Supplier must provide EA with a Self-Audit Certificate supported by an audit report at the end of each Contract Year. The report must contain:

- the methodology of the review
- the sampling techniques applied.
- details of any issues
- any remedial action taken.

6.7 The Self Audit Certificate must be completed and signed by an auditor or senior member of the Supplier's management team that is qualified in either a relevant audit or financial discipline.

## 7. Supplier staff

7.1 The Supplier Staff involved in the performance of each Contract must:

- be appropriately trained and qualified.
- be vetted using Good Industry Practice and the Security Policy
- comply with all conduct requirements when on the Buyer's Premises

7.2 Where a Buyer decides one of the Supplier's Staff isn't suitable to work on a contract, the Supplier must replace them with a suitably qualified alternative.

7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clause 27.

7.4 The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.5 The Supplier indemnifies EA and the Buyer against all claims brought by any person employed by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

## 8. Rights and protection

8.1 The Supplier warrants and represents that:

- it has full capacity and authority to enter into and to perform each call-off Contract.
- each call-off Contract is executed by its authorised representative.
- it is a legally valid and existing organisation incorporated in the place it was formed.
- there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform each call-off Contract.
- it maintains all necessary rights, authorisations, licences and consents to perform its obligations under each call-off Contract.
- it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform each call-off Contract.
- it is not impacted by an Insolvency Event
- it will comply with each Call-Off Contract

8.2 The warranties and representations in Clauses 2.10 and 8.1 are repeated each time the Supplier provides Deliverables under the Contract.

8.3 The Supplier indemnifies both EA and every Buyer against each of the following:

- wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts the call-off Contract.
- non-payment by the Supplier of any tax or National Insurance

8.4 All claims indemnified under this call-off Contract must use Clause 26.

8.5 EA or a Buyer can terminate the call-off Contract for breach of any warranty or indemnity where they are entitled to do so.

8.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify EA and every Buyer.

8.7 All third-party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier.

## **9. Intellectual Property Rights (IPRs)**

9.1 Each Party keeps ownership of its own Existing IPRs. The Supplier gives the Buyer a non-exclusive, perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-license the Supplier's Existing IPR to enable it to both:

- receive and use the Deliverables.
- make use of the deliverables provided by a Replacement Supplier

9.2 Any New IPR created under a Contract is owned by the Buyer. The Buyer gives the Supplier a licence to use any Existing IPRs and New IPRs for the purpose of fulfilling its obligations during the Contract Period.

9.3 Where a Party acquires ownership of IPRs incorrectly under a call-off Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.

9.4 Neither Party has the right to use the other Party's IPRs, including any use of the other Party's names, logos or trademarks, except as provided in Clause 9 or otherwise agreed in writing.

9.5 If there is an IPR Claim, the Supplier indemnifies EA and each Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

9.6 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

- obtain for EA and the Buyer the rights in Clause 9.1 and 9.2 without infringing any third party IPR
- replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.

## **10. Ending the contract**

10.1 This Framework Core Terms is valid for 4-years.

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10.2 The call-off Contract takes effect on the Start Date and ends on the End Date or earlier if required by Law.

10.3 The Relevant Authority can extend the call-off Contract for the Extension Period by giving the Supplier no less than 3 Months' written notice before the Contract expires.

#### **10.4 Ending the contract without a reason**

10.4.1 EA has the right to terminate the Framework Contract at any time without reason or liability by giving the Supplier at least 30 days' notice and if it's terminated Clause 10.5.2 to 10.5.6, and 10.6 applies.

10.4.2 Each Buyer has the right to terminate their Call-Off Contract at any time without reason or liability by giving the Supplier not less than 90 days' written notice and if it's terminated Clause 10.5.2 to 10.5.6, and 10.6 applies.

#### **10.5 When EA or the buyer can end a contract**

10.5.1 If any of the following events happen, the Relevant Authority has the right to immediately terminate its call-off Contract by issuing a Termination Notice to the Supplier:

- there's a Supplier Insolvency Event
- there's a call-off Contract Default that is not corrected in line with an accepted Rectification Plan
- the Relevant Authority rejects a Rectification Plan or the Supplier does not provide it within 10 days of the request
- there's any material default of the call-off Contract.
- there's a Default of Clauses 2.10, 9, 14, 15, 27, 32 or Framework Schedule 9 (Cyber Essentials) (where applicable) relating to any call-off Contract.
- there's a consistent repeated failure to meet the Performance Indicators in Framework Schedule 4 (Framework Management)
- there's a Change of Control of the Supplier which isn't pre-approved by the Relevant Authority in writing.
- there's a Variation to a call-off Contract which cannot be agreed using Clause 24 (Changing the contract) or resolved using Clause 34 (Resolving disputes)
- if the Relevant Authority discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time the call-off Contract was awarded
- the Court of Justice of the European Union uses Article 258 of the Treaty on the Functioning of the European Union (TFEU) to declare that the call-off Contract should not have been awarded to the Supplier because of a serious breach of the TFEU or the Regulations
- the Supplier or its Affiliates embarrass or bring EA or the Buyer into disrepute or diminish the public trust in them.

10.5.2 EA may terminate the Framework Contract if a Buyer terminates a Call-Off Contract for any of the reasons listed in Clause 10.5.1 in accordance with 10.4.1.

10.5.3 If there is a Default, the Relevant Authority can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

10.5.4 When the Relevant Authority receives a requested Rectification Plan it can either:

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- reject the Rectification Plan or revised Rectification Plan, giving reasons.
- accept the Rectification Plan or revised Rectification Plan (without limiting its rights) and the Supplier must immediately start work on the actions in the Rectification Plan at its own cost, unless agreed otherwise by the Parties.

10.5.5 Where the Rectification Plan or revised Rectification Plan is rejected, the Relevant Authority:

- must give reasonable grounds for its decision.
- may request that the Supplier provides a revised Rectification Plan within 5 Working Days

10.5.6 If any of the events in 73 (1) (a) to (c) of the Regulations happen, the Relevant Authority has the right to immediately terminate the Contract and Clause 10.5.2 to 10.5.6, and 10.6 applies.

## 10.6 What happens if the call-off contract ends

Where the Relevant Authority terminates a call-off Contract under Clause 10.4.2 all of the following apply:

10.6.1 The Supplier is responsible for the Relevant Authority's reasonable costs of procuring Replacement Deliverables for the rest of the relevant call-off Contract Period.

10.6.2 The Buyer's payment obligations under the terminated relevant call-off Contract stop immediately.

10.6.3 Accumulated rights of the Parties are not affected.

10.6.4 The Supplier must promptly delete or return the Government Data except where required to retain copies by law.

10.6.5 The Supplier must promptly return any of EA or the Buyer's property provided under the terminated relevant call-off Contract.

10.6.6 The Supplier must, at no cost to EA or the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).

10.6.7 The following Clauses survive the termination of each Contract: 3.2.10, 6, 7.2, 9, 11, 14, 15, 16, 17, 18, 34, 35 and any Clauses and Schedules which are expressly or by implication intended to continue.

## 10.7 When the supplier can end the contract

10.7.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate a Call-Off Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the annual Call-off Contract Value within 30 days of the date of the Reminder Notice.

10.7.2 If a Supplier terminates a Call-Off Contract under Clause 10.6.1:

- the Buyer must promptly pay all outstanding Charges incurred to the Supplier.
- the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence - the maximum value of this payment is limited to the total sum payable to the Supplier if the call-off Contract had

not been terminated.

- Clauses 10.5.4 to 10.5.6 and 10.6 applies.

## **10.8 When subcontracts can be ended**

At the Buyer's request, the Supplier must terminate any Subcontracts in any of the following events:

- there is a Change of Control of a Subcontractor which isn't pre-approved by the Relevant Authority in writing.
- the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 10.4
- a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Relevant Authority

## **10.9 Partially ending and suspending the contract**

10.9.1 Where EA has the right to terminate the Framework Contract it can suspend the Supplier's ability to accept Orders (for any period) and the Supplier cannot enter into any new Call-Off Contracts during this period. If this happens, the Supplier must still meet its obligations under any existing Call-Off Contracts that have already been signed.

10.9.2 Where EA has the right to terminate a Framework Contract it is entitled to terminate all or part of it.

10.9.3 Where the Buyer has the right to terminate a Call-Off Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends a call-off Contract it can provide the Deliverables itself or buy them from a third party.

10.9.4 The Relevant Authority can only partially terminate or suspend a Contract if the remaining parts of that Contract can still be used to effectively deliver the intended purpose.

10.9.5 The Parties must agree any necessary Variation required by Clause 10.8 using the Variation Procedure, but the Supplier may not either:

- reject the Variation.
- increase the Charges, except where the right to partial termination is under Clause 10.3

10.9.6 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under Clause 10.8.

## **11. How much you can be held responsible for**

11.1 Each Party's total aggregate liability in each Contract Year under this Framework Contract (whether in tort, contract or otherwise) is no more than £100,000.

11.2 Each Party's total aggregate liability in each Contract Year under each Call-Off Contract (whether in tort, contract or otherwise) is no more than the value of the Charges or £1 million (one million pounds) whichever is higher unless specified in the Call-Off Order Form

11.3 No Party is liable to the other for:

- any indirect Losses
- Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect)

11.4 In spite of Clause 11.1 and 11.2, neither Party limits or excludes any of the following:

- its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors
- its liability for bribery or fraud or fraudulent misrepresentation by it or its employees
- any liability that cannot be excluded or limited by Law
- its obligation to pay the required Management Charge or Default Management Charge

11.5 In spite of Clauses 11.1 and 11.2, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.5, 8.3, 9.5, 12.2 or 14.8 or Call-Off Schedule 2 (Staff Transfer) of a call-off Contract.

11.6 Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with each Contract, including any indemnities.

11.7 When calculating the Supplier's liability under Clause 11.1 or 11.2 the following items will not be taken into consideration:

- Deductions
- any items specified in Clause 11.5

11.8 If more than one Supplier is party to a Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

This clause sets out the EA's entire liability to the Supplier sole remedy for breach of this agreement.

## 12. Obeying the law

12.1 The Supplier must use reasonable endeavours to comply with the provisions of Joint Schedule 5 (Corporate Social Responsibility).

12.2 The Supplier indemnifies EA and every Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with a Contract.

12.3 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 12.1 and Clauses 27 to 32.

## 13. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Joint Schedule 3 (Insurance Requirements) and any Additional Insurances in the Order Form.

## 14. Data protection

14.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Joint Schedule 11 (Processing Data).

14.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.

14.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies every 6 Months.

14.4 The Supplier must ensure that any Supplier system holding any Government Data, including back-up data, is a secure system that complies with the Security Policy and any applicable Security Management Plan.

14.5 If at any time the Supplier suspects or has reason to believe that the Government Data provided under a call-off Contract is corrupted, lost or sufficiently degraded, then the Supplier must notify the Relevant Authority and immediately suggest remedial action.

14.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Relevant Authority may either or both:

- tell the Supplier to restore or get restored Government Data as soon as practical but no later than 5 Working Days from the date that the Relevant Authority receives notice, or the Supplier finds out about the issue, whichever is earlier.
- restore the Government Data itself or using a third party.

14.7 The Supplier must pay each Party's reasonable costs of complying with Clause 14.6 unless EA or the Buyer is at fault.

14.8 The Supplier:

- must provide the Relevant Authority with all Government Data in an agreed open format within 10 Working Days of a written request.
- must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading.
- must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice
- securely erase all Government Data and any copies it holds when asked to do so by EA or the Buyer unless required by Law to retain it.
- indemnifies EA and each Buyer against any and all Losses incurred if the Supplier breaches Clause 14 and any Data Protection Legislation.

## 15. What you must keep confidential

15.1 Each Party must:



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- keep all Confidential Information it receives confidential and secure.
- not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under the call-off Contract.
- immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information

15.2 In spite of Clause 15.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- where disclosure is required by applicable Law or by a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure.
- if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party
- if the information was given to it by a third party without obligation of confidentiality
- if the information was in the public domain at the time of the disclosure
- if the information was independently developed without access to the Disclosing Party's Confidential Information
- to its auditors or for the purposes of regulatory requirements
- on a confidential basis, to its professional advisers on a need-to-know basis
- to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010

15.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under the call-off Contract. The Supplier Staff must enter into a direct confidentiality agreement with the Relevant Authority at its request.

15.4 EA or the Buyer may disclose Confidential Information in any of the following cases:

- on a confidential basis to the employees, agents, consultants and contractors of EA or the Buyer
- on a confidential basis to any other Central Government Body, any successor body to a Central Government Body or any company that EA or the Buyer transfers or proposes to transfer all or any part of its business to
- if EA or the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions
- where requested by Parliament.
- under Clauses 4.7 and 16

15.5 For the purposes of Clauses 15.2 to 15.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 15.

15.6 Transparency Information is not Confidential Information.

15.7 The Supplier must not make any press announcement or publicise the Contracts or any part of them in any way, without the prior written consent of the Relevant Authority and must take all reasonable steps to ensure that Supplier Staff do not either.

## **16. When you can share information**

16.1 The Supplier must tell the Relevant Authority within 48 hours if it receives a Request For Information.

16.2 Within the required timescales the Supplier must give EA and each Buyer full co-operation and information needed so the Buyer can:

- publish the Transparency Information
- comply with any Freedom of Information Act (FOIA) request.
- comply with any Environmental Information Regulations (EIR) request.

16.3 The Relevant Authority may talk to the Supplier to help it decide whether to publish information under Clause 16. However, the extent, content and format of the disclosure is the Relevant Authority's decision, which does not need to be reasonable.

## **17. Invalid parts of the contract**

If any part of a call-off Contract is prohibited by Law or judged by a court to be unlawful, void or unenforceable, it must be read as if it was removed from that call-off Contract as much as required and rendered ineffective as far as possible without affecting the rest of the call-off Contract, whether it's valid or enforceable.

## **18. No other terms apply**

The provisions incorporated into each call-off Contract are the entire agreement between the Parties. The call-off Contract replaces all previous statements and agreements whether written or oral. No other provisions apply.

## **19. Other people's rights in a contract**

No third parties may use the call-off Contract (Rights of Third Parties) Act (CRTPA) to enforce any term of the call-off Contract unless stated (referring to CRTPA) in the call-off Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

## **20. Circumstances beyond your control**

20.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under a Contract while the inability to perform continues, if it both:

- provides a Force Majeure Notice to the other Party.
- uses all reasonable measures practical to reduce the impact of the Force Majeure Event

## Core Terms

20.2 Either party can partially or fully terminate the affected call-off Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for 90 days continuously.

20.3 Where a Party terminates under Clause 20.2:

- each party must cover its own Losses.
- Clause 10.5.2 to 10.5.6 and 10.6 applies.

## 21. Relationships created by the contract

No call-off Contract creates a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

## 22. Giving up contract rights

A partial or full waiver or relaxation of the terms of a call-off Contract is only valid if it is stated to be a waiver in writing to the other Party.

## 23. Transferring responsibilities

23.1 The Supplier cannot assign a call-off Contract without the Relevant Authority's written consent.

23.2 The Relevant Authority can assign, novate or transfer a call-off Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Relevant Authority.

23.3 When EA or the Buyer uses its rights under Clause 23.2 the Supplier must enter into a novation agreement in the form that EA or the Buyer specifies.

23.4 The Supplier can terminate a call-off Contract novated under Clause 23.2 to a private sector body that is experiencing an Insolvency Event.

23.5 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.

23.6 If EA or the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:

- their name
- the scope of their appointment
- the duration of their appointment

## 24. Changing the contract (call-off contract)

24.1 Either Party can request a Variation to a call-off Contract which is only effective if agreed in writing and signed by both Parties

24.2 The Supplier must provide an Impact Assessment either:

- with the Variation Form, where the Supplier requests the Variation.

## Core Terms

- within the time limits included in a Variation Form requested by EA or the Buyer

24.3 If the Variation to a call-off Contract cannot be agreed or resolved by the Parties, EA or the Buyer can either:

- agree that the call-off Contract continues without the Variation.
- terminate the affected call-off Contract, unless in the case of a Call-Off Contract, the Supplier has already provided part or all of the provision of the Deliverables, or where the Supplier can show evidence of substantial work being carried out to provide them.
- refer the Dispute to be resolved using Clause 34 (Resolving Disputes)

24.4 EA and the Buyer are not required to accept a Variation request made by the Supplier.

24.5 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Framework Prices or the Charges.

24.6 If there is a Specific Change in Law or one is likely to happen during the call-off Contract Period, the Supplier must give EA and the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, Framework Prices or a call-off Contract and provide evidence:

- that the Supplier has kept costs as low as possible, including in Subcontractor costs.
- of how it has affected the Supplier's costs

24.7 Any change in the Framework Prices or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 24.1 to 24.4.

## 25. How to communicate about the contract (call-off contract)

25.1 All notices under the call-off Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective when sent unless an error message is received.

25.2 Notices to EA must be sent to the EA Authorised Representative's address or email address in the Framework Award Form.

25.3 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Order Form.

25.4 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

## 26. Dealing with claims

26.1 If a Beneficiary is notified of a Claim, then it must notify the Indemnifier as soon as reasonably practical and no later than 10 Working Days.

26.2 At the Indemnifier's cost the Beneficiary must both:

- allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim.
- give the Indemnifier reasonable assistance with the claim if requested.

26.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.

26.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.

26.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.

26.6 Each Beneficiary must take all reasonable steps to minimise and mitigate any losses that it suffers because of the Claim.

26.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:

- the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money.
- the amount the Indemnifier paid the Beneficiary for the Claim

## **27. Preventing fraud, bribery and corruption**

27.1 The Supplier must not during any call-off Contract Period:

- commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2)
- do or allow anything which would cause EA or the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.

27.2 The Supplier must during the call-off Contract Period:

- create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same.
- keep full records to show it has complied with its obligations under Clause 27 and give copies to EA or the Buyer on request.
- if required by the Relevant Authority, within 20 Working Days of the Start Date of the relevant call-off Contract, and then annually, certify in writing to the Relevant Authority, that they have complied with Clause 27, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.

## Core Terms

27.3 The Supplier must immediately notify EA and the Buyer if it becomes aware of any breach of Clauses 27.1 or 27.2 or has any reason to think that it, or any of the Supplier Staff, has either:

- been investigated or prosecuted for an alleged Prohibited Act
- been debarred, suspended, proposed for suspension or debarment, or is otherwise ineligible to take part in procurement programmes or call-off contracts because of a Prohibited Act by any government department or agency.
- received a request or demand for any undue financial or other advantage of any kind related to a call-off Contract.
- suspected that any person or Party directly or indirectly related to a call-off Contract has committed or attempted to commit a Prohibited Act

27.4 If the Supplier notifies EA or the Buyer as required by Clause 27.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

27.5 In any notice the Supplier gives under Clause 27.4 it must specify the:

- Prohibited Act
- identity of the Party who it thinks has committed the Prohibited Act
- action it has decided to take.

## 28. Equality, diversity and human rights

28.1 The Supplier must follow all applicable equality Law when they perform their obligations under the call-off Contract, including:

- protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise
- any other requirements and instructions which EA or the Buyer reasonably imposes related to equality Law.

28.2 The Supplier must take all necessary steps and inform EA or the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on a call-off Contract.

## 29. Health and safety

29.1 The Supplier must perform its obligations meeting the requirements of:

- all applicable Law regarding health and safety
- the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

29.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of a call-off Contract.

## 30. Environment

30.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

30.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

## 31. Tax

31.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. EA and the Buyer cannot terminate a call-off Contract where the Supplier has not paid a minor tax or social security contribution.

31.2 Where the Charges payable under a call-off Contract with the Buyer are or are likely to exceed £5 million at any point during the relevant call-off Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify EA and the Buyer of it within 5 Working Days including:

- the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant.
- other information relating to the Occasion of Tax Non-Compliance that EA and the Buyer may reasonably need.

31.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under a Call-Off Contract, the Supplier must both:

- comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions.
- indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the call-off Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff

31.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- the Buyer may, at any time during the call-off Contract Period, request that the Worker provides information which demonstrates they comply with Clause 31.3, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding.
- the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer.
- the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 31.3 or confirms that the Worker is not complying with those requirements.

- the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

## 32. Conflict of interest

32.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual or potential Conflict of Interest.

32.2 The Supplier must promptly notify and provide details to EA and each Buyer if a Conflict of Interest happens or is expected to happen.

32.3 EA and each Buyer can terminate its Contract immediately by giving notice in writing to the Supplier or take any steps it thinks are necessary where there is or may be an actual or potential Conflict of Interest.

## 33. Reporting a breach of the contract (call-off contract)

33.1 As soon as it is aware of it the Supplier and Supplier Staff must report to EA or the Buyer any actual or suspected breach of:

- Law
- Clause 12.1
- Clauses 27 to 32

33.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach listed in Clause 33.1 to the Buyer or a Prescribed Person.

## 34. Resolving disputes

34.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within 28 days of a written request from the other Party, meet in good faith to resolve the Dispute.

34.2 If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 34.3 to 34.5.

34.3 Unless the Relevant Authority refers the Dispute to arbitration using Clause 34.4, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

- determine the Dispute.
- grant interim remedies.
- grant any other provisional or protective relief.

34.4 The Supplier agrees that the Relevant Authority has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the



Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

34.5 The Relevant Authority has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 34.3, unless the Relevant Authority has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 34.4.

34.6 The Supplier cannot suspend the performance of a Contract during any Dispute.

## **35. Which law applies**

This Contract and any issues arising out of, or connected to it, are governed by English law.